

Remittance of Assets by the Non-Residents

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Remittance of Assets by the Non-Residents

1. Introduction

Generally, the question of remittance of assets arises when the Non-Resident makes the 'original' investment in India on 'non' repatriation basis or 'out of local rupee funds'. The investment by Non Resident in India may be in the Shares & Securities, Immovable Properties, Strategic Investments in WOS or JV or Deposits with various Banks and/or other Government or Private Bodies. The Notifications relevant to various permissible investments classified as capital account transactions provide the criteria/ rules for repatriation of funds realised at the time of liquidating such investments/assets. For instance, Notification No. FEMA 21 (Acquisition and Transfer of Immovable Property in India), Regulations, 2000, provides that the Non Resident Indians can repatriate, the sale consideration of Immovable property, up to the 'principal' amount equivalent to the 'original' amount of foreign exchange invested in India at the time of acquiring such Property, provided that the original purchase consideration was brought into India by way of inward remittance or invested out of the funds held either in NRE A/c or FCNR A/c.

This notification issued by RBI deals with remittance of sale proceeds of assets which are 'originally' acquired by NRI/PIO out of 'rupee' funds which in normal course, is not allowed to be remitted. Hence, the remittance of US \$ 1 million scheme, is over and above, the other permissible repatriations' allowable under the various notifications for 'capital account' transactions issued by RBI from time to time from NRO account

2. Statutory provisions

The Reserve Bank of India has issued Notification No. 13, i.e., Foreign Exchange Management (Remittance of Assets) Regulations, 2000, wherein, a general permission is given for remittance of assets held in India to the extent of US \$ 1 million 'per financial year i.e. April to March'

3. the Important terms

3.1 Non-resident India (NRI) means a person 'resident outside' India who is a 'citizen of India'.

3.2 person of Indian Origin

'Person of Indian Origin (PIO)' means a 'citizen of any country' other than Bangladesh or Pakistan, if

- (a) he at any time held 'Indian' passport; or
- (b) he or either of his 'parents' or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or

- (c) the person is a 'spouse' of an Indian citizen or a person referred to in sub-clause (a) or (b).

3.3 Remittance of assets

'Remittance of assets' means remittance, 'outside' India of funds representing

- (a) a 'deposit' with a bank or a firm or a company,
- (b) 'provident fund' balance or superannuation benefits,
- (c) 'amount of claim' or maturity proceeds of Insurance Policy,
- (d) 'sale proceeds' of shares, securities or 'immovable' property or any other asset held in India in accordance with the provisions of the Act or rules or regulations made thereunder;

The above assets/funds are 'eligible for repatriation' outside India.

4. 'prohibitions' on the Remittance of the Assets held in India

No person whether, resident in India or resident outside India, shall make remittance of any asset held in India by him/her 'unless otherwise permitted' under the Act or Rules or Regulations made thereunder.

5. General permission

Under the Notification, general permission as described below is available to certain persons for overseas remittance of the sale proceeds of the assets held in India.

5.1 the persons 'eligible for remittance' of assets

The remittance facility is available to the following category of persons:

(i) Remittance of assets by a foreign national of 'non-Indian origin' Who

- (a) has 'retired' from an employment in India or
- (b) has 'inherited the assets' from a person who was a resident in India or
- (c) is a 'widow' resident outside India and has inherited assets of her deceased husband who, was an Indian citizen, resident in India.
- (d) had come to India 'for studies/training' and has completed his studies/training, may remit the balance available in his account, provided such balance represents funds derived out of remittances received from abroad through normal banking channels or rupee

proceeds of foreign exchange brought by such person and sold to an Authorised Dealer or out of stipend/ scholarship received from the Government or any Organization in India.

This remittance facility is 'not available' to a citizen of Nepal or Bhutan.

(ii) Remittance of Assets by NRI/PIO who

acquired the assets in question, 'out of rupee' resources when he/she was in India or by way of 'legacy/inheritance/settlement' from a person who was a resident in India.

The remittance of the assets representing the sale proceeds of Immovable Properties belonging to a 'citizen of Pakistan', Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan is not permitted without prior approval of Reserve Bank of India.

5.2 permissible amount for remittance

Above referred eligible persons other than persons in 5.1(i)(d) described above, can remit an amount up to US \$ 1 million per financial year through the Authorized Dealer 'without prior permission' from Reserve Bank of India from NRO account.

The permissible limit of the remittance up to US \$ 1 million to the eligible person as referred above, is over and above the other permissible repatriations allowable under various Notifications for Capital Account Transactions like Notification No. 21 relating to Acquisition and Transfer of Immovable Property in India by a Non-Resident's, Notification No. 20 related to Acquisition of the Shares or Securities of the Indian companies by a Non-Resident.

5.3 purpose of the remittance of assets

The liberalized remittance facility of US \$ 1 million is available for any 'bonafide' purpose. Earlier separate monetary limits for different transactions were specified by RBI e.g. (a) Education Abroad, (b) Overseas Medical Treatment (c) Sale Proceeds of Immovable Property, etc. Now such separate limits for different purposes are replaced by one single consolidated limit of US \$ 1 million for all the purposes from NRO account.

5.4 Documents required for remittance of assets

Following documents are required to be submitted to Authorised Dealer for the remittance of assets:

- (i) 'Documentary evidence' in support of the acquisition of the funds/assets proposed to be remitted.
- (ii) 'Undertaking' by the remitter and a Certificate issued by Chartered Accountant as prescribed by CBDT Circular No. 10/2002 dated 9-10-2002 (now that circular is replaced by CBDT Circular No. 4/2009 dated 29-6-2009).

5.5 Remittance of sale proceeds of the Immovable property

The following are the allowable remittances out of :

- (i) the sale proceeds of immovable property, acquired out of Rupee funds 'without any conditions' of lock-in period/holding period.
- (ii) the sale proceeds of immovable property, acquired by way of 'Inheritance/legacy/settlement'.
- (iii) the excess sale proceeds of immovable property which is 'not permissible for repatriation' under Notification No. 21 (Acquisition & Transfer of Immovable Property in India by Non-Residents).

5.6 Remittance of Assets of Indian Company under Liquidation

An Authorised Dealer in India may, 'without approval' of Reserve Bank of India, allow the remittance out of assets of Indian companies under Liquidation as per the provisions of Indian Companies Act, 2013 subject to following conditions;

An Authorised Dealer shall ensure that the remittance is in compliance with the order of court in India/ order issued by the official liquidator or liquidator in case of voluntary winding up and no remittance is allowed until the following documents/submissions are made by the applicant:

- (a) 'No objection certificate/tax' clearance certificate from Income Tax Authority for the remittance.
- (b) 'A certificate from Auditor' confirming that all Indian liabilities of the company have been either fully met or provided for.
- (c) 'Auditor's certificate' that winding up is in accordance with the provisions of Companies Act, 1956.
- (d) In case of Winding up 'otherwise than by court', a certificate from the Auditor to the effect that there is no legal proceedings pending in any court in India against the applicant or the company under liquidation & there is no legal impediment in permitting such remittance.

5.7 Remittance of 'Current Income' of Non-Resident Indians/person of Indian Origins:

The current income like Rent, Interest, Dividend, Pensions, etc. of NRIs/PIOs can be remitted directly to their home countries

(a) When NRI/PIO's income is 'not taxable in India'.

By submission of only a 'self declaration' to the Authorised Dealer

(b) When NRI/PIO's income is 'taxable in India'

By submission of a 'self declaration' to Authorised Dealer along with a certificate from Chartered Accountant stating that the taxes due on income of such NRI/PIO have been either paid or provided for.

It is to clarify that for such remittance of above referred current income, NRI/PIO need not maintain NRO A/c in India.

Even such current income, subject to production of above referred documents as applicable, can also be credited to NRE A/c of the such NRI/PIO, if so desired.

(Refer A.P (Dir) Circular Nos.1 dated 2-7-2002 & No. 5 dated 15-7-2002)

5.8 Issuance of International Credit Cards by Authorised Dealers

Authorised Dealers are permitted to issue International credit Cards to NRI/PIO and also permitted to allow the charges on usage of such cards to be debited to NRO, NRE or FCNR A/c of the concerned NRI/ PIO.

(Refer A.P. (Dir) Circular No. 40 dated 5-11-2002 & No. 59 dated 9-12-2002)

5.9 Remittance of Refunds due to 'Non-allotment or cancellation of Flats/plots

Authorised Dealer is 'permitted to allow remittance' on account of refunds of original consideration due to Non allotment/cancellation of Flats/plots, etc. along with interest due thereon provided that the Authorised Dealer is satisfied that the original consideration for acquiring such flats/plots, etc. had flown from repatriable funds of such NRI/PIO. i.e. either out of NRE A/c, FCNR A/c or received directly by way of Inward Remittance from abroad.

(Refer A.P. (Dir) Circular No. 46 dated 12-11-2002)

5.10 'Remittance' of sale proceeds of Immovable property funded with housing loan to the extent such loan is 'repaid out of' repatriable funds

The Authorised Dealer is permitted to allow remittance of sale proceeds of immovable property funded with Housing Loan to the extent such loan is repaid out of the funds from NRE A/c or FCNR A/c or through direct remittance from abroad.

(Refer A.P. (Dir) Circular No.101 dated 5-5-2003)

5.11 Remittance of Assets belonging to 'student going abroad for education'

W.e.f. 8-12-2003 *vide* AP (Dir) Circular No. 45, the status of a student going abroad for education shall be that of Non-Resident u/s 2(v)(i) of FEMA and as a non-resident such student will be eligible for the following remittances:

- (a) Remittance from 'close relatives' [as defined under Sec. 6 of Companies Act, 2013] up to US \$ 1,00,000 for maintenance & educational purposes.
- (b) Remittance up to 'US \$ 1 million' out of balances held in NRO Bank A/c or sale proceeds of assets belonging to such student.

The students are entitled for all other facilities/ benefits which are normally available to NRIs under the various provisions of FEMA and are also allowed to continue the educational loan borrowed by them from banks in India when their status was Resident.

5.12 Certain other conditions for Remittance of assets

- (i) In case, the remittance is to be made in more than one installment, the remittances of all installments should be made through the same Authorised Dealer.
- (ii) It is clarified that the remittance facility is also available even if the NRI/PIO/Foreign National is not maintaining any NRO account in India. However, the remittance should be routed through banking channels only, subject to tax compliance.

6. permission to an Indian Entity for the Remittance for its Staff

An Indian entity may remit the amount being its contribution towards the Provident Fund/Superannuation Fund/Pension Fund in respect of the expatriate staff in its employment who is resident in India but not permanently resident.

It is clarified that

- (a) 'Expatriate staff' means a person whose provident/superannuation/pension fund is maintained outside India by his principal employer outside India;

- (b) **'Not permanently resident'** means a person resident in India for the employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

7. Reserve Bank's 'prior permission' in Certain Cases

- (1) A person who desires to make a remittance of assets in the following cases, may apply for specific permission to Reserve Bank of India, namely:
- (i) Remittance 'exceeding US \$ 10,00,000' (US Dollar one million only) per financial year from NRO account
 - (a) on account of legacy, bequest or inheritance to a 'citizen' of 'foreign state', permanently resident outside India by filing Form LEG with RBI and
 - (b) by a Non-Resident Indian (NRI)/Person of Indian Origin (PIO), out of the balance held in NRO accounts/sale proceeds of assets/the assets in India acquired by way of inheritance/legacy.
 - (ii) Remittance to a person resident outside India on the ground that 'hardship' will be caused to such a person, if remittance from India is not made, by making an application on the plain paper to the RBI.
 - (iii) Remittance of 'winding up proceeds' of a branch/office (Other than project office) in India of a person resident outside India.

The application to RBI shall be supported by the following documents, namely:

- (a) Copy of the Reserve Bank's permission for establishing the branch/office in India;
- (b) 'Auditor's certificate',—
 - (i) Indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets;
 - (ii) Confirming that 'all liabilities in' India including arrears of gratuity and other benefits to the employees etc. of the branch/office have been either fully met or adequately provided for;
 - (iii) Confirming that 'no income' accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India;

- (c) No-objection or tax clearance certificate from the Income-tax authority for the remittance; and
 - (d) Confirmation from the applicant that no legal proceedings in any Court in India are pending and there is no legal impediment to the remittance.
 - (e) A report from the Register of Company regarding compliance with the provisions of Companies Act, 1956 in case of winding up of the office in India. (Inserted w.e.f. 24-9-2009 *vide* Notification FEMA 198)
- (2) On consideration of the application made, the Reserve Bank may permit the remittance, subject to such terms and conditions as it deem necessary.

8. Conclusion

During FERA regime, there were many restrictions/prohibitions making it very difficult for residents as well as non-resident Indians to remit the funds abroad as that time India was facing acute shortage of foreign exchange reserve. But today's scenario, as far as remittance of funds abroad is concerned, has undergone a drastic change as the nation has built up a huge reserve of foreign exchange and hence, as a result of that, the Government of India has opened up many windows for the residents as well as non-residents, for remittance of funds abroad for various overseas investments/ other bonafide purposes.

Normally the funds held in NRO a/cs of non-resident Indians were not allowed to be remitted abroad, which under the present "Remittance Scheme of US \$ 1 million" has been made allowable up to the extent of US \$ 1 million per financial year.

Similarly, the ceiling of remittance by the Indian Company for opening up a WOS/JV outside India has also been raised to 400% of net-worth as against the initial ceiling of 25% of the net worth when FEMA, 1999 was put to the statute in the year 2000, which means, today, an Indian company can borrow funds up to the extent of 300% of its net worth and remit the same for overseas investments in WOS/JVs.

All these amendments in FEMA, 1999, during the decade, can be considered to be very bold and welcoming steps towards liberalisation of the economy of the country and hence, under such liberalised scenario, it won't be an exaggeration in saying, today, that the rupee is almost fully convertible.