

Bank Accounts

Intensive Series on FEMA, ICAI Ahmedabad

CA Miral Sangharajka

24 November 2021

Table of contents

Table of Contents

1

Definitions

- Person resident in India (PRI); Person resident outside India (PROI);
- Non-resident Indian (NRI); Overseas Citizen of India (OCI)

2

Bank Accounts

- Non-resident External Account (NRE); Non-resident Ordinary Account (NRO);
- Foreign Currency (Non-resident) Account; Portfolio Investment Scheme;
- Special Non-resident Rupee Account; Escrow Account

3

Remittance of Assets by PROI

- Foreign National;
- NRI

Definitions

Definitions - Person

Section 2(u) – Person

Includes

- an individual;
- a Hindu undivided family;
- a company;
- a firm;
- an association of persons or a body of individuals, whether incorporated or not,
- every artificial judicial person, not falling within any of the preceding sub-clauses, and
- any agency, office or branch owned or controlled by such persons

Definitions – Person resident in India

Section 2(v) – Person resident in India means

- i) Individual residing in India > 182 days during preceding financial year but does not include –
 - (A) Individual who has gone out of India or who stays outside India, in either case
 - (a) for or on taking up employment outside India, or
 - (b) for carrying of outside India a business or vocation outside India, or
 - (c) for any purpose, indicating intention to stay outside India for an uncertain period
 - (B) Individual who has come to or stays in India, otherwise than
 - (a) for or on taking up employment in India, or
 - (b) for carrying on in India a business or vocation in India, or
 - (c) for any other purpose, indicating intention to stay in India for an uncertain period

Residence of an Individual

- **Primary provision**
 - Individual is a resident if he is in India > 182 days in ***preceding financial year***
- **Secondary provision**
 - ***Two exception to primary provision***
 - clause (A) : for person leaving India
 - clause (B) : for person coming to India

Residence of an Individual: Person leaving India

- Clause (A) to sec 2(v)(i) exception for person leaving India
- Main provision and exception clause to be read together collectively
- Person will be non resident even if he was in India > 182 days, if
 - he leaves India for following purpose:
 - a) for or on taking up employment outside India, or
 - b) for carrying on outside India a business or vocation outside India, or
 - c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

A.P.(DIR Series) Circular No. 45 dated 8 December 2003 - RBI has through this Circular clarified that Indian students studying overseas stay abroad for more than 182 days in preceding financial year and their intention to stay outside India is for an uncertain period and hence, will be treated as 'person resident outside India'.

Residence of an Individual: Person coming to India

- Clause B to sec 2(v)(i) exception for person coming to India
 - further includes an exception
 - For person coming to India for specified purpose (employment, business or uncertain period)
- Thus, two exception to main provision:
 - 1st exception to the main provision —“a person residing in India for more than 182 days during the course of the preceding financial year **but does not include**”
 - 2nd exception to the clause
 - “ a person who has come to or stays in India, in either case, **otherwise than**
 - a) for or on taking up employment in India, or
 - b) for carrying on in India a business or vocation in India, or
 - c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.”
- Thus, there is exception to exception

Definitions – Person resident outside India

Section 2(w) – Person resident outside India

- Person resident outside India means a person who is not resident in India.

Definitions – NRI, PIO, OCI

Non Resident Indian (NRI) means

- a person resident outside India; and (stay < 182 days/ intention)
- is a citizen of India

Person of Indian Origin (PIO)

- means a person resident outside India who is a citizen of any country (other than Citizens of Pakistan or Bangladesh) and satisfies following conditions:
 - Was a citizen of India as per Constitution of India or the Citizenship Act, 1955
 - Belonged to a territory that became part of India after 15th August, 1947
 - Children / grand children / great grand children of above person
 - Spouse of the above person

Overseas Citizen of India (OCI)

- Any person registered as Overseas Citizen of India (OCI) Cardholder under section 7A of the Citizenship Act, 1955
 - Conditions similar to PIO but have to obtain OCI card

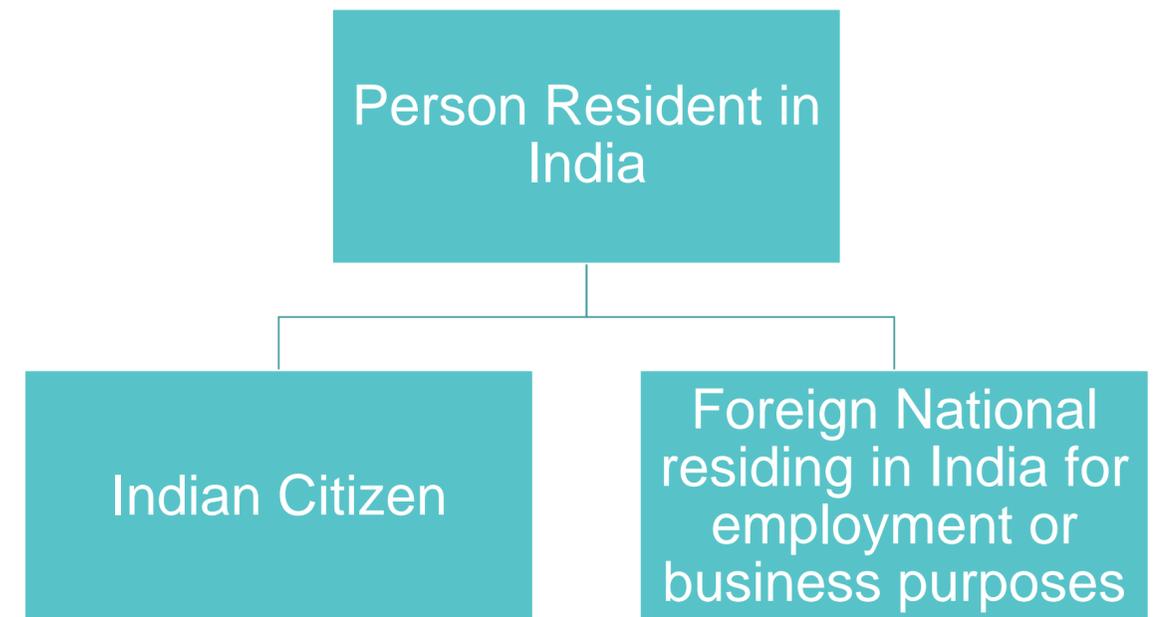
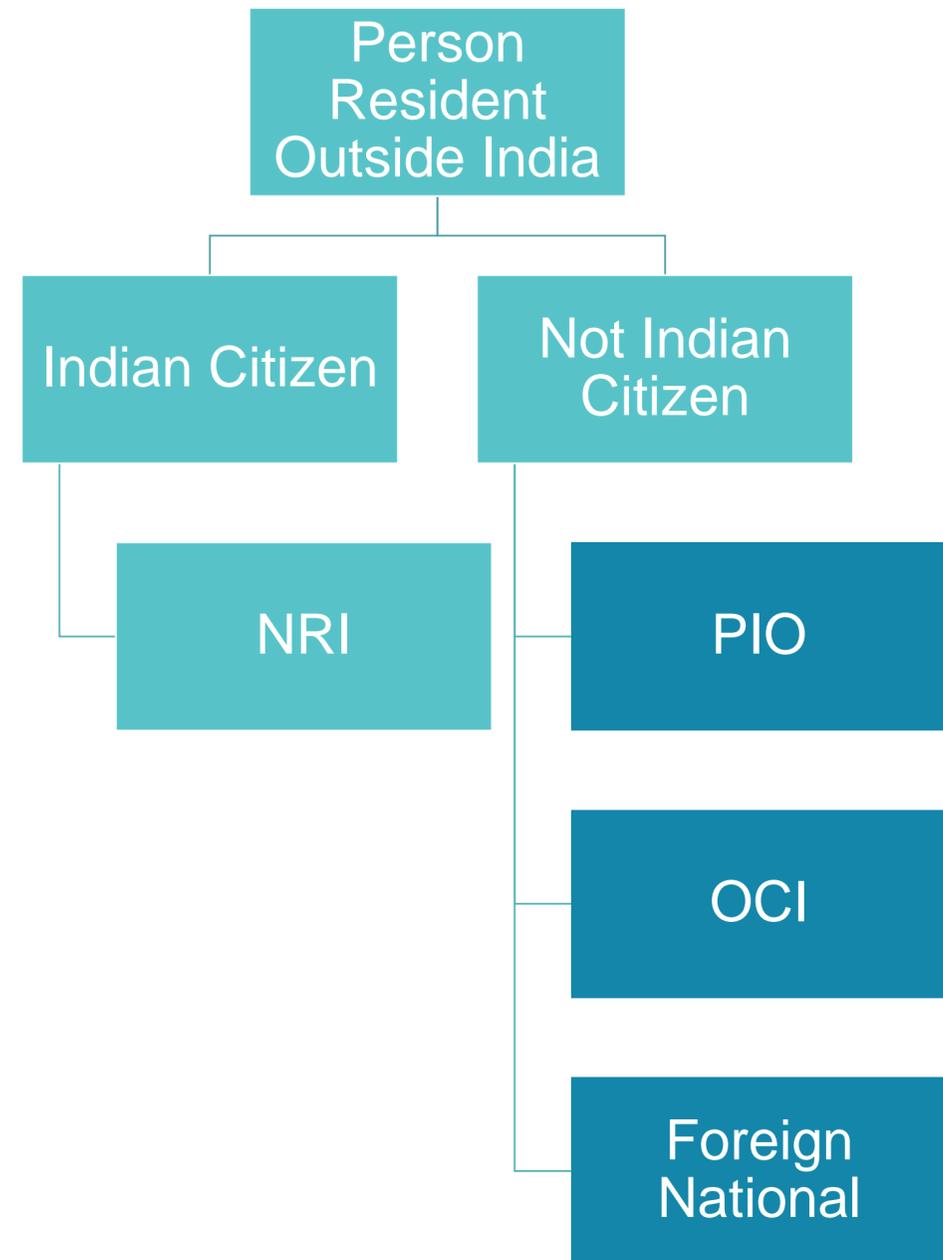


Definitions – NRI, PIO, OCI

Particulars	NRI	PIO	OCI
Definition	NRI means a person resident outside India who is a citizen of India	PIO means a person resident outside India who is a citizen of any country (excluding Bangladesh, Pakistan) and fulfills any of following conditions: i) Was a citizen of India as per Constitution of India or the Citizenship Act, 1955 ii) Belonged to a territory that became part of India after 15th August, 1947 iii) Children / grand children / great grand children of above person iv) Spouse of the above person	OCI means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955
Citizenship	Indian	Any country (excluding Bangladesh and Pakistan)	Any country (excluding Bangladesh and Pakistan)
Includes	None	Includes OCI card holder	Existing PIO cardholders are deemed to be OCI card holders but separate OCI card to be obtained

As PIO Card is discontinued w.e.f. 9.01.2015, only two categories remain relevant, NRI and OCI

In Summary – NRI, PIO, OCI



Bank Accounts

Non-resident Ordinary Account – NRO Account

- Rupee denominated bank account
- opened by a PROI
- Types of accounts - current, savings, recurring or fixed deposit account.
- Prior Approval by RBI required for–
 - Individuals of Pakistan nationality or entities of Pakistan ownership
 - Entities of Bangladesh ownership.
- Account may be held jointly with residents on ‘former or survivor’ basis.
- NRI’s / OCI’s may hold account with other NRI’s / OCI’s.
- Permissible credits
 - Inward remittances from outside India,
 - Legitimate dues in India,
 - Transfer from other NRO accounts
 - Any amount received in accordance with other FEMA Regulations

Non-resident Ordinary Account – NRO Account

- Permissible debits
 - Local payments,
 - Transfer to other NRO accounts,
 - Remittance of current income abroad.
- Repatriation:
 - Apart from above, NRO account cannot be repatriated abroad
 - Exception - NRIs and OCIs up to USD 1 million
 - Exception – PROI other than NRI/OCI visting India – repatriate all balances in NRO if: i) account maintained for a period not exceeding six months ii) not credited with any local funds, other than interest accrued thereon.
- Operations of an NRO account by a power of attorney holder - permitted but restricted to local payments and remittance to non-residents.
- Change in Residency Status
 - NR to R - account to be designated as a resident rupee account.
 - R to NR - account shall be designated as a NRO account

Non-resident Ordinary Account – NRO Account

- Loans to account holders / third party
 - Loans against fixed deposits can be granted in India to the account holder or third party subject to usual norms and margin requirement. The loan amount cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate business.

Non-resident (External) Rupee Account – NRE Account

- Rupee denominated bank account
- Can be opened by a NRI or a OCI
- Types of accounts - current, savings, recurring or fixed deposit account.
- Account may be held jointly with residents. NRI's / OCI's may hold account with other NRI's / OCI's.
- Permissible credits –
 - Through inward remittance.
 - Interest accruing on the account,
 - Interest on investment and current income after paying the applicable taxes in India,
 - Transfer from other NRE / FCNR(B) accounts,
 - Maturity proceeds if such investments were made from this account (Credit to NRE a/c restricted to 2 properties during lifetime)
- Permissible debits
 - Local disbursements,
 - Transfer to other NRE / FCNR(B) accounts,
 - Investments in India.

Non-resident (External) Rupee Account – NRE Account

- Operations on the account by a resident power of attorney holder - permitted but restricted to withdrawals for local payments or remittance to the account holder.
- NR to R – Account to be designated as a resident rupee account or funds must be transferred to RFC account.
- Interest Income and balances in NRE Account - exempt from Income Tax.

Non-resident (External) Rupee Account – NRE Account

- Loans outside India:
 - AD may allow their branches correspondents o/s India to grant loans to NRI/PIO or to Third Parties for bona fide purpose against the security of funds held in the NRE accounts in India, subject to usual margin requirements.
- Loans in India:
 - AD can sanction loans in India to NRI/PIO/ third parties without any limit, subject to usual margin requirements.
 - These loans cannot be repatriated outside India. It should be used only for personal purposes or business purposes (excluding relending, carrying on agricultural/ plantation activities or investment in real estate business)
 - In case of loans sanctioned to a third party, there should be no direct/indirect forex consideration for NRI/PIO agreeing to pledge his deposits to enable the resident individual/firm/company to obtain such facilities
 - In case of the loan sanctioned to the NRI, it can be repaid either by adjusting the deposits or through inward remittances from o/s India through banking channels or out of self NRO a/c
 - The facility for premature withdrawal of deposits not be available in such cases.

Foreign Currency (Non-resident) Account Banks Scheme

- Foreign Currency denominated bank account
- Opened by NRI or a PIO
- Term deposit with maturity period of 1 to 5 years.
- Permissible Credits & Debits—
 - Same as permissible to NRE accounts
- The NRI / PIO on becoming a resident,
 - Deposits may be allowed to continue till maturity at the contracted rate of interest
 - The deposit shall be treated as a resident deposit from the date of return of the account holder to India
 - On maturity, such deposits shall be converted to resident rupee deposits or RFC account at the option of the accountholder.

Portfolio Investment Scheme

- NRI's and OCI's – may designate an account as NRE PIS account.
- Eligible to purchase capital instruments of listed Indian companies.
- The investment can be on repatriation basis
 - **up to 5 per cent** of the paid- up equity / paid-up value of each series of listed debentures or preference shares or warrants
 - Maximum investment of **10% by all NRIs** of the paid-up equity / paid-up value of each series of listed debentures or preference shares or warrants .
 - Limit of 10% may be enhanced to 24% by passing a special resolution by the general body of shareholders and intimation to the RBI.
- Investment on repatriation basis –
 - Funds held in NRE / FCNR(B) account,
 - Inward remittance of foreign exchange
 - Repatriable sale proceeds / dividend / income of capital instruments

In summary – NRO, NRE, FCNR Account

Particulars	NRO	NRE	FCNR
Can be opened by	Any PROI	NRI / PIO	NRI / PIO
Currency Denomination	Indian Rupees	Indian Rupees	Pound Sterling/ US Dollar/ Yen/Euro
Type of accounts	Current, Savings, Recurring, Fixed Deposits	Current, Savings, Recurring, Fixed Deposits.	Term deposits only
Repatriability – Principal	Not repatriable (Exceptions as discussed before)	Freely repatriable	Freely repatriable
Interest	Freely repatriable	Freely repatriable	Freely repatriable
Foreign currency risk	Exposed	Exposed	Protected
Period of fixed deposits	For the periods as announced by the deposit taking bank.	For the periods as announced by the deposit taking bank.	For terms not less than 1 year and not exceeding 5 years
Rate of interest	Banks are free to determine interest rates.	Banks are free to determine interest rates.	Banks are free to determine interest rates.
Taxability	Taxable	Exempt	Exempt

Special Non-resident Rupee Account – SNRR Account

Particulars	SNRR
Who can open an account ?	Any person resident outside India (excluding Pakistan and Bangladesh nationals), having a business interest in India. Business interest to include following: <ul style="list-style-type: none"> ▪ Investment under FEM (Non-Debt Instruments) Rules 2019 and FEM (Debt Instruments) Regulations 2019; ▪ Import of goods and services; ▪ Export of goods and services ▪ Trade credit transactions and lending as permitted under FEM (Borrowing and lending) Regulations, 2018 ▪ Business related transactions outside IFSC by IFSC units as may be notified by RBI
Purpose	For undertaking bona fide business transactions in India
Type of Account	Current
Repatriability	Repatriable
Permissible debits and credits	Specific/ incidental to the business proposed to be done by the account holder
Number of accounts	Possible to have separate SNRR A/c for specific business which is in operation in India carried by single person

Special Non-resident Rupee Account – SNRR Account

Particulars	SNRR
Tenure	Concurrent to the tenure of the contract/ period of operation/ the business of the account holder. However, maximum tenure should not exceed 7 years and extension beyond 7 years will require RBI approval. However, if its for business interested listed in the previous slide, restriction of 7 years will not apply.
Transfer from NRO Account	Not permissible
Applicable taxes	All transactions would be subject to applicable taxes
Change in residential status of account holder	SNRR account may be designated as resident rupee account on the account holder becoming a resident

Escrow Account

Particulars	Escrow Account
Who can open an account ?	<ul style="list-style-type: none"> ▪ Non resident corporates for acquisition/ transfer of capital instruments/convertible notes through open offers/ delisting/ exit offers; ▪ Resident and non-resident acquirers for acquisition/ transfer of capital instruments/convertible notes
Purpose	For acquisition / transfer of capital instruments / convertible notes
Type of Account	Current
Repatriability	Repatriable
Permissible debits and credits	Repatriable after all formalities relating to acquisition are completed
Foreign exchange risk	Foreign exchange risk has to be on person resident outside India

Escrow Account

Particulars	Escrow Account
Permissible credits	<p><i>Opened by non-resident corporates for transfer of capital instruments through open offers / delisting / exit offers</i></p> <ul style="list-style-type: none"> ▪ Foreign remittance through banking channels; ▪ Guarantee issued by AD Bank subject to FEM (Guarantee) Regulations, 2000 <p><i>Opened by resident / non-resident acquirers in other cases</i></p> <ul style="list-style-type: none"> ▪ Foreign remittance through banking channels; ▪ Receipt of rupee consideration by resident acquirer who proposes to acquire capital instruments from non-resident sellers; ▪ Guarantee issued by AD Bank subject to FEM (Guarantee) Regulations, 2000
Permissible debits	<p><i>Opened by non-resident corporates for transfer of capital instruments through open offers / delisting / exit offers</i></p> <ul style="list-style-type: none"> ▪ As permitted by SEBI Regulations <p><i>Opened by resident / non-resident acquirers in other cases</i></p> <ul style="list-style-type: none"> ▪ Remittance of consideration in bank account of beneficiary (in India or abroad) ▪ Remittance of consideration for refund in case failure of FDI transaction for which account was opened

Escrow Account

Particulars	Escrow Account
Tenure	<p><i>Opened by non-resident corporates for transfer of capital instruments through open offers / delisting / exit offers</i></p> <ul style="list-style-type: none"> ▪ Immediately upon completion of the purpose <p><i>Opened by resident / non-resident acquirers in other cases</i></p> <ul style="list-style-type: none"> ▪ Maximum period of 6 months. Extension beyond 6 months would require prior RBI approval ▪ However, if escrow account is opened for 25% of total consideration as permitted under FEM (NDI) Rules 2019, it can be opened for up to 18 months from date of agreement
Transfer from NRO Account	Not permissible
Others	No fund/ non-fund based facility would be permitted against the balances in the account

Remittance of assets by PROI

Remittance by individuals not being NRI / OCI

- Remittance of assets by a foreign national is allowed where the person:
 - has retired from employment in India
 - has inherited assets from a person resident in India
 - is a widow of Indian citizen & has inherited assets from his deceased spouse who was an Indian national resident in India
- Remittance should not exceed USD 1 million per financial year.
 - Except for sale proceeds of assets held on repatriation basis
- Remittance by foreign student who has completed their studies
 - No restriction on remittance of balance held in bank
 - Proceeds must have received from abroad
 - through banking channels / AD Banks
- These facilities are not applicable to citizens of Nepal or Bhutan

Remittance by NRI / OCI is covered under the permissible debits to NRE / NRO / FCNR account

Case Studies

Case Study - 1

Facts

- Mr. A is an Indian citizen who went to US for the purpose of his employment on 1 January 2005. He left his job in November 2020 and returned to India permanently for setting up his business.
- During the period from January 2005 to November 2020, he was non-resident under FEMA.
- While in US, he had opened NRE Account in India and transferred his US salary income to his Indian NRE Account.
- During December 2020 to March 2021, he received interest income of Rs. 100,000 from his NRE Account in India.

Query

- Can he continue to keep his NRE A/c after returning to India ?
- Taxability of NRE interest income ?

Case Study - 2

Facts

- Mr. XYZ, is a Indian citizen who went to US for the purpose of his employment on 1 January 2015.
- He opened NRE Account in December 2015 by remitting his funds from US
- He wishes to transfer funds from his NRE Account to his Indian savings bank account which existed before he moved to US for making some investments in India

Query

- Whether transfer of funds from NRE Account to his Indian savings bank account is permissible under FEMA ?

Case Study - 3

Facts

- Mr. X, NRI has purchased 1000 shares of Reliance Industries Limited from his NRE Account
- Mr. X has received dividend amounting to Rs. 1000 and wants to deposit the same in his NRE A/c

Query

- Whether it is permissible to credit dividend income to NRE A/c?
- Would answer be different if shares were purchased from NRO Account on non-repatriable basis ?

Thank you

CA Miral Sangharajka

+91 95 86 86 59 18

sangharajkamiral@gmail.com

The views in this presentation are personal views of the Presenter. Further, the information contained is of a general nature for explaining the topics and issues. The presentation is not intended to serve as an advice or address the circumstances of any particular individual or entity. Although, the endeavor is to provide accurate and timely information, there can be no guarantee that there is an absence of any compilation error or such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such / this information without appropriate professional advice which is possible only after a thorough examination off acts / particular situation.

Annexure 1 – Section 7A of Citizenship Act, 1955

Section 7A - Registration of overseas citizens of India

- The Central Government may, subject to such conditions and restrictions as may be prescribed, on an application made in this behalf, register as an overseas citizen of India:
 - (a) any person of full age and capacity,--
 - (i) who is citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or
 - (ii) who is citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or
 - (iii) who is citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or
 - (iv) who is a child or a grand-child of such a citizen; or
 - (b) a person, who is a minor child of a person mentioned in clause (a) :

Provided that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India.

