

D e s t i n a t i o n » I N D I A



**INVESTING IN INDIA  
FOR  
NON-RESIDENT INDIANS  
PERSONS OF INDIAN ORIGIN  
&  
OVERSEAS COMMERCIAL BODIES**

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## **Introduction**

Indian economy is moving towards a free market system through liberalised investment policies, trade policies and fiscal reforms. This is being achieved through economic reforms aimed at making India an investment friendly destination. The Government of India provides several facilities and incentives for Non Resident Indians/Persons of Indian Origin and Overseas Corporate Bodies to encourage them to invest in India.

A part of the GBS's "**Destination India**" series, this guide looks at the various policies and procedures relating to foreign investment into India by Non Resident Indians/Persons of Indian Origin and Overseas Corporate Bodies.

## Taxonomy

1. **NON RESIDENT INDIAN NATIONALS (NRIs):** Non Resident Indian Nationals generally fall under the following broad categories:
  - a. Indian citizens who stay abroad for employment or for carrying on any business or vocation or for any other purpose in circumstances indicating an indefinite period of stay outside India.
  - b. Indian citizens working abroad on assignments with foreign Governments, Government agencies or international/multinational agencies like United Nations Organisation (UNO), International Monetary Fund (IMF), World Bank etc.
  - c. Officials of Central and State Governments and public sector undertaking deputed abroad on assignments with foreign Government/agencies/organisations or posted to their own offices (including Diplomatic Missions) abroad.
2. **PERSONS OF INDIAN ORIGIN (PIOs):** For the purpose of the facility of opening and maintenance of various types of bank accounts and making investments in shares and securities in India, a foreign citizen (not being a citizen of Pakistan or Bangladesh) is deemed to be a person of Indian origin if:
  - a. He, at any time, held an 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 Citizenship Act 1955 (57 of 1955).
  - c. A spouse (not being a citizen of Pakistan or Bangladesh) of an Indian citizen or of a person of Indian origin is also treated as a person of Indian origin for the above purpose provided the bank accounts are opened or investments in shares/securities in India are made by such persons only jointly with their NRI/PIO Spouses.

3. **OVERSEAS CORPORATE BODIES (OCBs):** Overseas Corporate Bodies predominantly owned by individuals of Indian nationality or origin resident outside India include overseas companies, partnership firms, societies and other corporate bodies which are owned, directly or indirectly, to the extent of at least 60% by individuals of Indian nationality or origin resident outside India as also overseas trusts in which at least 60% of the beneficial interest is irrevocably held by such persons.
4. **FOREIGN INVESTMENT PROMOTION BOARD (FIPB):** To promote accelerated growth in the industrial sector and to increase inflows of Foreign Direct Investment into the country, as also to provide appropriate institutional arrangements, transparent procedures and guidelines for investment promotion and to consider and recommend proposals for foreign investment (other than those eligible for automatic approval by the Reserve Bank of India), the Government of India have constituted this Board chaired by the Secretary (Department of Industrial Policy & Promotion), Government of India. The objective of the Board is to promote foreign direct investment into India:
  - a. by undertaking investment promotion activities; and
  - b. facilitating investment in the country by international companies, Non Resident Indians (NRIs) and other foreign investors.
5. **Non-Resident(External) Rupee Accounts (NRE Accounts):** NRIs, PIOs, OCBs are eligible. These are rupee denominated accounts. Accounts can be in the form of savings, current, recurring or fixed deposit accounts. Accounts can be opened by remittance of funds in free foreign exchange. Foreign exchange brought in legally, repatriable incomes of the account holder, etc. can be credited to the account.

- a. The deposits can be used for all legitimate purposes/ The balance in the account is freely repatriable.
- b. There is no income tax or wealth tax on the deposits (except in the case of OCBs).
- c. Joint operation with other NRIs/PIOs is permitted.
- d. Power of attorney can be granted to residents for operation of accounts.

6. **Ordinary Non-Resident Rupee Accounts (NRO Accounts):** These are Rupee denominated non-repatriable accounts and can be in the form of savings, current or term deposits. These accounts can be opened jointly with close relative in India, also. When an Indian National/PIO resident in India leaves for taking up employment, etc. outside the country, his bank account in India gets designated as NRO account. The deposits can be used to make all legitimate payments in rupees.

7. **Non-resident(Non-repatriable)Rupee Deposit Accounts (NRNR Accounts):** NRIs/PIOs/OCBs, other non-resident Individuals/entities are permitted to open these accounts. Accounts can be opened by transfer of freely convertible foreign currency funds from abroad, or from NRE/FCNR accounts. Deposits can be held jointly with a resident. Deposits can be for period from 6 months to 3 years, and can be renewed further.

- a. The principal is non-repatriable; interest can be repatriated.
- b. There is no income tax on the interest (not available for residents)

8. **Foreign Currency (Non-Resident) Accounts (Banks)(FCNR (B) Accounts):** NRIs/PIOs/OCBs are permitted to open such accounts in US Dollars, Sterling Pounds, Deutsche Marks and Japanese Yen, as term deposits (6 months to 3 years).

## Information on PIO Card Scheme

The Government has announced the launching of a People of Indian Origin Card, which will allow visa free entry to Indian origin people living abroad and give them all the rights enjoyed by Non-Resident Indians (NRI's) including purchase of non-agricultural land. They can also benefit from housing schemes of the Life Insurance Corporation, State Governments and other Government agencies. It is eligible for the Indians who hold a foreign passport living abroad till the fourth generation.

Fee for PIO Card is US \$ 310.00 for adult and for children below the age of 18 years is US \$ 155.00 (effective from September 15, 2002). Validity of new PIO card will be 15 years from the date of issue.

Besides making their journey back to their roots simpler, easier and smoother, this Scheme entitles the PIO to a wide range of economic, financial, educational and cultural benefits. The benefits envisaged under the Scheme include: -

- (i) No requirement of visa to visit India:
- (ii) No requirement to register with the Foreigners Registration Officer if continuous stay does not exceed 180 days. If continuous stay exceeds 180 days, then registration is required to be done within a period of 30 days of the expiry of 180 days.
- (iii) Parity with Non-Resident Indians in respect of facilities available to the latter in economic, financial, educational fields, etc. These facilities will include:-
  - a. Acquisition, holding, transfer and disposal of immovable properties in India except of agricultural/plantation properties;

- b. admission of children in educational institutions in India under the general category quota for NRI's - including medical / engineering college, IITs, IIMs etc.
- c. Various housing schemes of Life Insurance Corporation of India, State Governments and other Government agencies;
- d. All future benefits that would be extended to NRIs would also be available to the PIO Card holders;

(iv) However,

- a. They shall not enjoy political rights in India.
- b. The right to buy property would not be valid to Jammu & Kashmir.
- c. It would not be issued to people of Indian origin living in Pakistan and Bangladesh.

It does not give voting rights to the holders of the Card.



## **Investment options available for NRIs**

NRIs have a wide variety of investment options before them. These include the following:

1. Investment in shares and debentures of Indian Companies
2. Direct Investment in Indian industries / Joint Ventures
3. Deposits with Indian Companies/ Firms, etc. including NBFCs
4. Investment in Bank Accounts
5. Portfolio Investment in Listed Companies
6. Investment in dated Government securities, treasury bills, Units of domestic/money market mutual funds, National Plan/Savings Certificates
7. Investment in Bonds of Public Sector Undertaking, disinvested shares of Public Sector Enterprises
8. Investment in immovable properties, Housing and Real Estate Business.

Investment in any of the above can be made both on repatriation as well as on non-repatriation basis.

## **Sectors in which foreign investment is allowed**

Foreign investment is allowed in all priority sectors, **except the following, subject to certain sectoral caps, viz.**

- 1. Banking**
- 2. Non Banking Financial Companies**
- 3. Civil Aviation**
- 4. Petroleum including exploration/refinery/marketing**
- 5. Venture Capital Companies/Funds**
- 6. Atomic Energy and related projects**
- 7. Defense and strategic industries**
- 8. Agriculture (including plantation)**
- 9. Print Media**
- 10. Investing companies infrastructure and service sector**
- 11. Broadcasting**
- 12. Postal services**

**There have been some relaxations in respect of banking, NBFCs, Oil refining sector and Venture capital funds.**

## **Investments in immovable properties**

A non-resident Indian citizen does not require permission of the Reserve Bank to acquire residential /commercial property in India. Foreign citizens of Indian origin require permission of the Reserve Bank to purchase immovable property in India for their residential use.

The Reserve Bank has granted general permission to foreign citizens of Indian origin, whether resident in India or abroad, to purchase immovable property in India for their bona fide residential purposes. They are, therefore, not required to obtain separate permission of the Reserve Bank.

The purchase consideration for the residential immovable property to be paid by foreign citizens of Indian origin under the general permission, should be met either out of inward remittances in foreign exchange, through normal banking channels or out of funds from NRE/FCNR accounts maintained with banks in India.

1. Under the general permission granted by Reserve Bank properties other than agricultural land/farm house/plantation property can be purchased by the foreign citizens of Indian origin.
2. The foreign citizens of Indian origin when they purchase immovable property in India under the general permission, they are required to file a declaration in form IPI 7 with the Central Office of Reserve Bank at Mumbai within a period of 90 days from the date of purchase of immovable property or final payment of purchase consideration along with a certified copy

of the document evidencing the transaction and bank certificate regarding the consideration paid.

3. The Reserve Bank has granted general permission for sale of such property purchased in India.
  - a. However, where the property is purchased by another foreign citizen of Indian origin, funds towards the purchase consideration should either be remitted to India or paid out of balances in NRE/FCNR accounts.
  - b. In respect of properties purchased on or after 26th May 1993, Reserve Bank considers applications for repatriation of sale proceeds up to the consideration amount remitted in foreign exchange for the acquisition of the property.
  - c. The balance amount of sale proceeds if any or sale proceeds in respect of properties purchased prior to 26th May 1993 will have to be credited to the ordinary non-resident rupee account of the owner of the property.
  - d. Applications for repatriation of sale proceeds are considered provided the sale takes place after three years from the date of final purchase deed or from the date of payment of final instalment of consideration amount, whichever is later.
  - e. Applications for necessary permission for remittance of sale proceeds should be made in form IPI 8 to the Central Office of Reserve Bank at Mumbai within 90 days of the sale of the property.
4. Reserve Bank has also granted general permission to foreign citizens of Indian origin to acquire or dispose of properties up to two houses by way of gift from or to a relative who may be an Indian citizen or a person of Indian origin whether resident in India or not, provided gift tax has been paid.

5. Reserve Bank has granted general permission for letting out any immovable property in India. The rental income or proceeds of any investment of such income has to be credited to NRO account.
6. NRI's can obtain loans for the acquisition of a residential house/flat from financial institutions providing housing finance e.g. HDFC, LIC Housing Finance Ltd., etc subject to certain conditions.
7. Authorized dealers have also been granted permission to grant loans to non-resident Indian nationals for acquisition of house/flat for self-occupation on their return to India subject to certain conditions. (Repayment of the loan should be made within a period not exceeding 15 years out of inward remittance through banking channels or out of funds held in the investor's NRE/FCNR/NRO accounts)
8. Immovable properties acquired in India can be rented out without RBI permission. Rental income has to be credited to NRO account.

## **Investment with repatriation benefits**

### **1. INVESTMENT WITH 100% REPATRIATION BENEFITS**

#### **HIGH PRIORITY INDUSTRIES**

NRIs/PIOs/OCBs are permitted to invest up to 100% equity in new industries/expansion/diversification of existing industries listed as High Priority Industries.

#### **TRADING COMPANIES**

100% investment with repatriation benefits is also allowed in trading companies primarily engaged in export activities and registered as Export/Trading/Star Trading/Super Star Trading Houses with the Directorate General of Foreign Trade.

No prior permission from the Government of India/Reserve Bank of India is required for receiving inward remittances and issue of shares to NRIs/PIOs/OCBs. The Indian Company is however, required to file form ISD(R) along with relevant documents with the concerned Regional Office of the Reserve Bank of India within 30 days of issue of shares.

In the case of specified consumer goods industries, dividend balancing out of export earnings over a period of 7 years from commencement of commercial production has to be met.

**INVESTMENT IN 100% EXPORT ORIENTED UNITS (EOUs), UNITS IN FREE TRADE ZONE/EXPORT PROCESSING ZONES, SOFTWARE TECHNOLOGY PARKS (STPs), ELECTRONIC HARDWARE TECHNOLOGY PARKS (EHTPs)**

Up to 100% equity on repatriation basis is permitted by NRIs/PIOs/OCBs. Application for permission has to be made to the Development Commissioner of the Free Trade Zone/Export Processing Zone /Chief Executive of the STP/Designated officer of the EHTP.

**INVESTMENT IN HOUSING AND REAL ESTATE DEVELOPMENT**

NRIs/PIOs/OCBs can invest up to 100% in new issues of equity share of Indian companies engaged in:

1. Development of serviced plots and built up residential premises.
2. Real Estate covering construction of residential and commercial premises including business centres and offices
3. Development of townships.
4. City and Region level urban infrastructure facilities including roads and bridges
5. Manufacturing of building materials
6. Financing of Housing Development.
7. Repatriation of original investment is permitted after a lock in period of 3 years.

In the case of OCBs, repatriation of net profits (up to 16%) arising from the sale of such investments will be permitted after a lock in period of 3 years. There is no "lock-in-period" for repatriation of dividend/interest on shares/convertible debentures by OCBs. Application for investment has to be made in form ISD(R) to the Central Office of RBI.

## **DOMESTIC AIR TRANSPORT SERVICES**

Upto 100% equity participation is permitted. Repatriation of investment and remittance of dividends will be permitted after a lock in period of 5 years and out of accumulated Net-Foreign Exchange Earnings. Approval has to be obtained from the Foreign Investment Promotion Board (FIPB).

## **INVESTMENT IN SICK INDUSTRIAL UNITS**

NRIs/PIOs/OCBs are permitted to make bulk investment on private placement basis, upto 100 equity capital of any sick company either by way of purchase of equity shares from the existing shares holders or in the form of subscription to new equity shares of the sick company. There is no 'lock-in-period' for such investments. The Indian company has to apply for permission to the Central office of the Reserve Bank of India in form RSU.

## **2. INVESTMENT UPTO 40% EQUITY ON REPATRIATION BASIS**

NRIs/PIOs/OCBs are permitted to subscribe to new issues of equity shares/convertible debentures of new or existing companies (both private and public limited) for setting up new industrial/manufacturing projects or expansion/diversification of such projects, as well as hospitals/diagnostic centres, hotels(3/4/5 star), shipping, development of computer software and oil exploration services.

No prior permission is required for receiving inward remittances and issue of shares to NRIs/PIOs/OCBs. The Indian company is required to file form ISD with relevant



documents with the concerned Regional office of the Reserve Bank of India within 30 days of issue of shares.

### **BANKING SERVICES**

NRI's can invest upto 40% of the paid up capital in Private Banks. (Inclusive of 20% allowed to other foreign investors)

### **3. INVESTMENT UPTO 24% EQUITY ON REPATRIATION BASIS**

NRIs/PIOs/OCBs are permitted to subscribe to new issues of equity shares/convertible debentures of new or existing companies (private and public limited) in the fields of finance, hire purchase, leasing, trading or other services (except agriculture/plantation activities), and establishment of schools/colleges in India upto 24%.

No prior permission is required for receiving inward remittance and issue of share to NRIs/PIOs/OCBs. The Indian company is required to file form ISD(R) with relevant documents with the concerned Regional Office of the Reserve Bank of India within 30 days of issue of shares.

In the case of items reserved for small scale sector, investment by NRIs/PIOs/OCBs upto 24% is allowed. Application for permission has to be made in form FC/IL(SIA) to the Secretariat for Industrial Assistance.

#### **4. OTHER INVESTMENTS WITH REPATRIATION BENEFITS**

##### **INVESTMENT IN DOMESTIC MUTUAL FUNDS**

NRIs/PIOs/OCBs can invest in domestic, private or public sector Mutual Funds on repatriation basis. The concerned Mutual Fund is required to obtain permission from the Reserve Bank of India by applying in Form ISD(R).

##### **INVESTMENT IN BONDS ISSUED BY PUBLIC SECTOR UNDERTAKINGS**

NRIs/PIOs/OCBs are permitted to invest in Bonds issued by Public Sector Undertakings. The concerned Public Sector undertaking should obtain necessary permission from the Government of India for raising funds through such Bonds. They are also required to obtain permission from the Central office of Reserve Bank of India by applying in form ISD(R).

##### **GENERAL PERMISSION TO NRIs/PIOs/OCBs TO PURCHASE SHARES OF PUBLIC SECTOR ENTERPRISES**

Shares disinvested by Government in such public sector enterprises can be purchased subject to ceiling applicable for portfolio investment. Application has to be made by NRIs/PIOs/OCBs to the designated branch of State Bank of India.

##### **DEPOSITS WITH COMPANIES**

NRIs/PIOs (not OCBs) will be permitted to place funds in Fixed Deposit with Public limited companies including Government companies with limited liabilities (with full repatriation benefits).

Application for permission has to be made by the Indian company through its bank to the Regional Office of the Reserve Bank of India. The approval will also include authorization for remittance of interest and maturity proceeds to the depositor's NRE/FCNR accounts.

### **INVESTMENT IN SECURITIES/SHARES**

NRIs/PIOs are permitted to invest their funds in Government securities (except bearer securities like Indira Vikas Patra/Kisan Vikas Patra) or units of the Unit Trust of India and National Savings Certificates through authorized dealers. Units can also be purchased directly from the Unit Trust of India and freely transferred and sold.

If these are purchased out of funds remitted from abroad or from NRE /FCNR accounts, sale/maturity proceeds can be repatriated.

### **5. INVESTMENTS UPTO 100% EQUITY WITHOUT REPATRIATION BENEFITS**

**Proprietary/Partnership concerns** - NRIs/PIOs can invest by way of capital contribution to any proprietary or partnership concern engaged in industrial/trading/commercial activity(except agricultural/plantation activities or real estate business) up to 100%. The principal amount is non-repatriable. (This facility is not available to OCBs).

The Indian company is required to file a declaration with Reserve Bank of India within 90 days in form DIN.

## **NEW ISSUES OF SHARES/DEBENTURES OF INDIANS COMPANIES**

NRIs/PIOs/OCBs are permitted to subscribe to shares/convertible debentures of Indian companies on non-repatriation basis. The Indian companies can issue shares or convertible debentures of new/right issues to NRIs/PIOs on non-repatriation basis provided the company is not engaged in agricultural/plantation or real estate business. The payment towards these shares shall be received by inward remittances or from NRE/FCNR/NRO accounts.

The Indian company should file a declaration in form DIN within 90 days from the date of receipt of investment with the concerned Regional office of the Reserve Bank of India.

## **Investment without repatriation benefits**

1. **INVESTMENT IN NON CONVERTIBLE DEBENTURES:** Proposals for investment in non-convertible debentures by NRIs/PIOs/OCBs on non-repatriation basis will be considered by the Reserve Bank of India on case to case basis. The Indian company has to apply in form ISD to Reserve Bank of India.
2. **MONEY MARKET MUTUAL FUNDS:** NRIs/PIOs (not OCBs) can invest on non-repatriation basis in the money market mutual funds floated by the commercial banks/private sector financial institutions. The concerned bank/institution is required to apply to the Reserve Bank of India and get necessary authorization for this.
3. **DEPOSITS WITH COMPANIES:** Deposits with companies are permitted in the case of NRIs/PIOs (not OCBs) with prior approval and within the prescribed ceilings. The depositor/Accepting company/firm has to obtain prior permission from the Regional office of the Reserve Bank of India for deposits under the public deposit Scheme. The Indian company/firm has to apply through authorized dealers to the regional office of the Reserve Bank of India.
4. **COMMERCIAL PAPERS:** The Reserve Bank of India has granted general permission to Indian companies to issue commercial papers to NRIs/PIOs/ (not OCBs). Commercial papers are non-transferable. The amount invested is non-repatriable. The Indian company has to file a statement in form ICP countersigned by the Bank which has been issued approval letter by Reserve Bank of India within 10 days of closure of the issue to the Regional office of the Reserve Bank of India.

## Portfolio investments

Under the scheme, NRIs/PIOs/OCBs are permitted to invest in shares/debentures (convertible/non-convertible) of Indian companies through stock exchanges in India.

1. Investment limit by a single NRI/PIO/OCB for purchase of shares/debentures in a company through Stock Exchanges under the portfolio investment scheme is allowed up to 5%.
2. Aggregate limit for all NRIs/PIOs/OCBs is allowed up to 10 %.
3. The aggregate limit for investment by NRIs/PIOs/OCBs can be enhanced to 24% subject to General Body Resolution of the company to that effect. The above ceiling is separate from the ceiling of 24%/30% applicable to Foreign Institutional Investors (FII's).
4. Investment by NRIs/PIOs in unlisted companies is now permitted. Norms and procedures described above will be applicable in these cases also.
  - a. The purchase has to be made through stock exchange/designated branch of authorized dealer.
  - b. Only one such branch can be designated for this purpose.
  - c. For investment on non-repatriation basis, NRIs/PIOs have to apply in form NRI and OCBs in form NRC. NRI and OCB in form NRC. For investment on repatriation basis the forms will be RPI and RPC respectively.
  - d. The application has to be made through designated branch of authorized dealers through the Central office of the Reserve Bank of India.

**HOLDING IN JOINT NAMES:** Shares/debentures purchased out of funds remitted from abroad in convertible currency or from the investor's NRE/FCNR account can be held jointly, the first holder being the NRI/PIO and the second holder a close relative of NRI/PIO. However, if the resident inherits the shares/debentures, there will be no repatriation benefit.

**REMITTANCE OF DIVIDEND/ INTEREST/ OTHER INCOME AND SALE/TRANSFER:**

The same is permitted. The Indian company has to apply through the authorized dealer for this purpose.

**REMITTANCE OF INCOME ON INVESTMENT ON NON-REPATRIATION BASIS:** From the Financial year 1996-97, the entire income accruing on such investments is freely repatriable after payment of tax. The NRIs/PIOs/OCBs has to designate a branch of an authorized dealer through whom such remittance is to be made and apply to the Regional Branch of RBI under whose jurisdiction the designated branch is situated in form RCI. The Reserve Bank of India will issue necessary approval/exchange permit to the designated branch.

**Other facilities available include:**

- Sale/Transfer of Shares/Bonds/Debentures by NRIs to Residents ;
- Transfer of Rupee Securities by Non-Residents as Gifts;
- Transfer of Rupee Securities to Non-Residents as Gifts;
- Loans Abroad against Securities provided in India;
- Loans in India to Non-Residents against Shares/ Securities/Properties held by them in India;
- Loans in India to NRIs against security of NRI Bonds issued by the State Bank of India;
- Loans in India against Guarantees by Non-Residents;
- Loans to Residents against Shares/Securities/Properties in India by Non-Residents;
- Loans from Non-Resident Relatives

## **Further liberalizations for NRI's**

**Sale of Shares under Portfolio Investment Scheme:** The general permission granted by RBI covering sale of share acquired under the portfolio investment scheme on repatriation basis by individual NRIs/PIOs is extended to OCBs also.

**Loans from NRI Relatives:** General Permission will be given by RBI for interest free non-repatriable loans from NRI relatives for personal purposes and for business activities. Interest free repatriable loan upto US\$ 2.5 lakhs and maturity of 7 years will be cleared by RBI automatically. Other cases will continue to be cleared by RBI on a case-to-case basis.

**Transfer of Funds: NRE Accounts:** RBI will permit transfer of funds from one Non Resident External (NRE) account to the NRE account of another person for any purpose.

**Companies with NRI Participation:** The general permission granted by RBI for subscription to memorandum and articles of association by NRI's is extended to all companies except those engaged in agricultural/plantation activities.

**NRO Account Condition:** The declaration that the depositor will not make available foreign currency to residents against payment of rupees by credit to the NRO account in India prescribed by RBI for opening NRO accounts by authorized dealers (ADs) has been dispensed with.



**Rupee Loan to NRIs:** RBI has granted general permission to ADs to sanction rupee loans to NRI's against the security of shares held by them either on repatriation or non-repatriation basis, subject to lending norms.

**Remittance of Sale Proceeds of Shares Abroad:** NRI's are permitted to raise loans abroad against the security of shares of Indian companies held by them on repatriation basis. However, in case the shares are sold and the amount of sale proceeds is required to be remitted abroad for repaying the loan, prior permission of RBI is required. The aforementioned condition has been waived and ADs are permitted to remit the sale proceeds to the overseas bank who has extended the loan to the NRI's, net of applicable taxes, if any.

**Rupee loans against immovable property held in India:** NRI's are permitted to raise rupee loans on non-repatriation basis in India against the collateral of their immovable property irrespective of the fact whether the property is purchased by remittances from abroad or acquired otherwise.

**ADs Authorized to Extend Rupee Loans to NRI's:** RBI has granted permission to certain housing finance companies to extend rupee loans to NRI's for acquisition of houses in India. These loans are required to be repaid by NRI's by sending remittances from abroad. This facility has been extended to ADs who may be willing to extend rupee loans to NRI's for acquisition of residential houses in India subject to the same terms and conditions as applicable to loans granted to NRI's by housing finance companies.

**Ceiling of Loans by Housing Finance Institutions:** The ceiling on total loan to be advanced and the percentage of the project cost which can be funded, and the purposes for which loans may be given are brought at par with the ceiling and percentage etc. for residents.

**Shares of Companies Supplying Second Hand Machinery:** The powers for issue of shares to NRI's/OCBs on repatriation basis against payments made by them directly to suppliers in case of second hand machinery are delegated to RBI subject to the condition that the acquisition of machinery fulfils the requirements relating to import of second hand capital goods without license under the Export-Import Policy.

**Payment of Interest on Delayed Refunds:** RBI has granted general permission to Indian companies for payment of interest on delayed refunds of share subscriptions if such payment of interest is as per SEBI guidelines.

**Safe Custody of Securities:** The safe custody of securities on behalf of NRIs/PIOs is permitted to be done by institutional custodians besides the ADs.

**Investment in Health Sector:** Keeping in view the need to augment health services and to facilitate NRI investment, the Government has decided that henceforth the two conditions for investment in the health sector will no longer apply. The conditions were that:

1. the Centres are equipped as per the norms specified by the Ministry of Health and Family Welfare and

2. 25% of the facilities available in hospital/centres are provided free of cost to poor and the needy. However, it is clarified that the removal of these conditions is without prejudice to any conditions agreed to by companies while availing any special incentives/concessions.

The Government has decided to remove these conditions following representations received from NRI investors that the conditions stipulating mandatory offer of facilities free of cost would render NRI investments in health sector and diagnostic centres commercially unviable and the condition requiring equipping diagnostic centres as per specified norms is unduly restrictive. It is hoped that the exclusion of these two conditions will facilitate greater NRI investment in the health services sector and will encourage induction of up-to-date diagnostic facilities.

## **Tax concessions**

### **BASIS OF TAX LIABILITY TO INDIA**

The Tax liability of a person under the Income Tax Act depends on the residential status in the financial year (1st April to 31st March) in which the income accrues or arises to him or is received by him. For income tax purposes the residential status of an individual generally depends on his physical presence or stay in India and not on his nationality or domicile.

### **Resident**

An individual is said to be a resident in India in any financial year if he has been in India during that year:

1. for a period of 182 days or more ; or
2. for a period or periods of 60 days or more and has also been in India within the preceding four years for a period or periods of 365 days or more.

However, the period of 60 days is increased to 182 days in the case of: -

1. a citizen of India or person of Indian origin who has been outside India and comes on a visit;
2. when a citizen of India leaves India for purpose of employment outside India or as a member of a crew of an Indianship.

### **Resident but Not Ordinarily Resident**

An individual is said to be 'not ordinarily resident' any financial year if:

1. he has not been resident in India in nine out of ten financial years preceding that financial year; or

2. has not during the seven financial years preceding that year, been in India for a period or periods of 730 days or more.

An individual would be "not ordinarily resident" if he fulfills either of the above conditions.

A Hindu Undivided Family is said to be 'not ordinarily resident in India if its manager is ' not ordinarily resident' in India. For calculating the length of the manager's stay in India periods of stay in India of successive managers of a Hindu Undivided Family have to be added up. The status of 'resident but not ordinarily resident' is available only to individual and Hindu Undivided Families.

### **Non Resident**

A person who is not resident in India is a 'non-resident'

### **EXTENT OF TAX LIABILITY**

Based on the residential status of a tax payer and the place where the income is earned, the income that is included in the total income is as under :

#### **RESIDENTIAL STATUS NATURE OF INCOME**

Resident All income whether earned in India or outside India

Not Ordinarily All incomes: -

#### **Resident**

1. earned in India and
2. all income earned outside India if the same is derived from a business which is controlled in India or from a profession which is set up in India.

## **Non-resident All income earned in India**

### **DOUBLE TAXATION AVOIDANCE**

Since a resident is liable to pay tax in India on his 'total world income', it is possible that he may have to pay tax on his foreign income in that country also. To avoid such a situation the Government of India has entered into agreements for avoidance of 'double taxation' with different countries.

### **SPECIAL PROVISIONS APPLICABLE TO NON RESIDENT INDIANS**

With a view to attract investment by Non-Resident Indians(NRIs), certain relieves, exemptions and incentives have been provided (Chapter XII A of Income Tax Act).

For Income Tax purposes, a Non-resident Indian has been defined as an individual being a citizen of India or a person of Indian origin who is not a resident. A person is considered to be of Indian Origin if he or either of his parents or his grand parents was born in undivided India.

### **TAX SCHEME**

Income from foreign exchange assets (any specified asset which the assessee has acquired or purchased or subscribed to in convertible foreign exchange) comprising of shares/debentures/deposits with Indian companies, Central Government securities or any other notified assets subscribed to or purchased in convertible foreign exchange can be charged at a flat rate of 20%. No deduction, basic exemptions etc. will be available under the 20% scheme.

## **LONG TERM CAPITAL GAINS**

Long term capital gains on specified foreign exchange assets such as Units/Bonds/Shares and listed securities as specified by the Government held by NRIs are taxable @ 10%.

Minimum holding period for allowing this rate is one year for shares and other securities listed in stock exchanges in India and units of specified mutual funds. For other assets the minimum holding period is 36 months.

If the proceeds are reinvested within six months of such transfer in any specified securities and new assets are retained for 3 years, the proceeds are exempted from payment of Income Tax.

Income from units of UTI are totally exempted from payment of Income Tax.

On short time capital gains, NRIs are liable to pay capital gains tax at the same rate that is applicable to residents i.e. @ 30%.

## **TAX EXEMPTIONS**

Income from following investments made by NRIs out of convertible foreign exchange is totally exempt from income tax.

1. Following Bank Accounts : NRE, FCNR,
2. Units of UTI
3. Specified securities, bonds, saving certificates

The above exemptions will cease immediately on the NRI becoming resident.

Where the NRI has income from only foreign exchange assets or income by way of long term capital gains from foreign exchange assets or both, and tax deductible at source from such income has been deducted he is not required to file return of income as otherwise required under the Income Tax Act.

The special provisions in relation to investment income from foreign exchange assets (other than shares of an Indian company) will continue , even after the NRI becomes resident till transfer or conversions of such assets into money, if the NRI so wishes.

### **WEALTH TAX**

Wealth Tax is levied only on non-productive assets like urban land, buildings (except one house property), jewellery, bullion, vehicles, cash over Rs.50,000 etc. Wealth Tax is levied @ 1% over aggregate value of chargeable assets in excess of Rs. 1.5 million.

### **ADVANCE RULINGS**

NRI/OCB desirous of obtaining advance ruling may make an application stating the question on which the ruling is sought.

The question which could be of law or fact should relate to a transaction undertaken or proposed to be undertaken by the applicant.



## **Entry Strategies for Foreign Investors**

A foreign company or individual planning to set up business operations in India can do so in the following ways:

1. As a foreign company through a
  - a. Liaison Office/Representative Office
  - b. Project Office
  - c. Branch Office
2. As an Indian company through a
  - a. Joint Venture
  - b. Wholly Owned Subsidiary

### **1. AS A FOREIGN COMPANY**

Foreign Company is one, which has been incorporated outside India and conducts business in India. These companies are required to comply with the provisions of the Companies Act, 1956.

Foreign Company can set up Liaison, Project and Branch Offices in India. Such companies have to register themselves with Registrar of Companies (ROC) within 30 days of setting up a place of business in India.

#### **a. LIAISON OFFICE/REPRESENTATIVE OFFICE**

One of the practices for foreign companies to enter the Indian markets is the setting up of a Liaison/Representative office. A Liaison office is not allowed to undertake any business activity in India and cannot therefore, earn any income in India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and

providing information about the company and its products to the prospective Indian Customers.

The opening and operation of such offices is regulated by the Foreign Exchange Management Act-1999 (FEMA). Approval from the Reserve Bank of India (RBI) is required for opening such offices. There are certain standard conditions imposed for operations of such offices:

Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office abroad. Such offices should not undertake any trading or commercial activities and their activities should be limited to collecting and transmitting information between the overseas Head Office and potential Indian customers.

Such offices should not charge any commission or receive other income from Indian customers for providing liaison services. Liaison/representative offices also have to file an annual activity certificate etc. from a Chartered Accountant to RBI. Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time.

**b. PROJECT OFFICE**

Foreign Companies planning to execute specific projects in India can set up temporary project/site offices in India. For the purpose specific approval from the RBI is required for setting up a project office. Such approval is generally accorded in respect of projects of

approved by appropriate authorities or where the projects are financed by Indian bank/Financial Institution or a multilateral/ bilateral international financial institution.

**c. BRANCH OFFICE**

Government has allowed foreign companies engaged in manufacturing and trading activities abroad to set up Branch Offices in India for the following purposes:

- i. To represent the parent company/ other foreign companies in various matters in India e.g. acting as buying/selling agents in India.
- ii. To conduct research work in the area in which the parent company is engaged
- iii. To undertake export and import trading activities
- iv. To promote possible technical and financial collaborations between the Indian companies and overseas companies.
- v. Rendering professional or consultancy services
- vi. Rendering services in Information technology and development of software in India.
- vii. Rendering technical support to the products supplied by the parent/ Group companies.

A branch office is not allowed to carry out manufacturing, processing activities directly/indirectly. Branch Office will have to submit activity certificate from a Chartered Accountant on an annual basis to Reserve Bank of India. For annual remittance of profit Branch Office may submit required documents to authorised Bank. Permission for setting up branch offices is granted by the Reserve Bank of India on a case-to-case basis. RBI normally, considers the operating history of the applicant company worldwide and its proposed activities in India for granting the approval.

## 2. AS AN INDIAN COMPANY

A foreign company can commence operations in India through incorporation of a company under the provisions of the Indian companies Act, 1956. Foreign equity in such Indian companies can be up to 100% depending on the business plan of the foreign investor, prevailing investment policies of the Government and receipt of requisite approvals. For registration as an Indian company and its incorporation, an application has to be filed with Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it will be subject to same Indian laws and regulations as applicable to other domestic Indian companies.

### **JOINT VENTURE WITH AN INDIAN PARTNER/**

### **ESTABLISHMENT OF WHOLLY OWNED SUBSIDIARIES (WOS)**

Foreign Companies can set up the operations in India by forgoing strategic alliances with Indian partners. Setting up of operations through a joint venture may entail the following advantages for a foreign investor.

- a. established distribution/ marketing set up of the Indian partners.
- b. available financial resource of the Indian partner.
- c. established contacts of the Indian partner which help smoothen the process of setting up of operations.

**FOREIGN INVESTMENTS are approved through two routes:**

1. **AUTOMATIC ROUTE:** Indian companies can issue shares under the automatic route up to 100% of their paid capital except for those engaged in certain sector. In certain other sector, the foreign investment is limited to a prescribed percentage ceiling. A company eligible to issue shares under the Automatic Route can receive foreign inward remittance and issue shares without obtaining any prior approval subject to certain reporting requirements.
2. **GOVERNMENT APPROVAL:** All other cases where the automatic route is not applicable require prior specific approval from the Foreign Investment Promotion Board.

## QUICK REFERENCE GUIDE\* – INVESTMENT ON NON REPATRIATION BASIS

Type of Investment	Ceiling on Amount of Investment	Remarks
<b>A.</b> Portfolio Investment in Equity shares/convertible debentures thro' stock exchanges in India	Within an overall ceiling of 10% of the total paid-up equity share capital / 10% of the total paid-up value of each series of convertible debenture issue - Individual ceiling on each NRI/OCB is 5% out of the overall 10% mentioned above. This ceiling is applicable to purchases both on repatriation and non-repatriation basis. Indian listed Companies can allow NRIs/OCBs to invest up to 24% instead of 10% by passing a special resolution.	NRI/OCB has to apply thro' designated branch of Bank and all such transactions are to be routed thro' this account only. Payment to be made either thro' inward remittance or thro funds held in NRE/FCNR/NRO/ NRNR/NRSR account.
<b>B.</b> Investment in new issues of equity preference shares/convertible debentures of public/private limited companies NOT BEING CHIT FUND/NIDHI OR AGRICULTURAL/ PLANTATION COMPANY OR REAL ESTATE OR CON- STRUCTION OF FARM HOUSES AND COMPANIES IN PRINT MEDIA SECTOR	No Limit	Consent of SEBI may have to be obtained , if required
<b>C.</b> Investment in non - convertible debentures of Indian Companies NOT BEING CHIT FUND/NIDHI OR AGRICULTURAL/ PLANTATION COMPANY OR REAL ESTATE OR CON- STRUCTION OF FARM HOUSES AND COMPANIES IN PRINT MEDIA SECTOR	No Limit	Indian Companies not to engage in agricultural/plantation/real estate business or trading in TDRs or to act as Chit Fund or Nidhi Company. Payment to be made either thro' inward remittance or thro funds held in NRE/FCNR/NRO/ NRNR/NRSR account.
<b>D.</b> Investment in partner- ship/proprietary concerns engaged in any industrial, commercial, or trading activity other than agricul- tural/plantation/real estate Business	No Limit	OCBs are not allowed to invest under this Scheme. No RBI permission required. Concerned partnership/proprietorship concerns to obtain a non-repatriation undertaking from the NRI investors.
<b>E.</b> Investment in Units of Domestic Mutual Funds, dated Govt. Securities (other than bearer), Money Market Mutual Funds, National Plan/Savings Certificates, including UTI. (other than bearer securities)	No Limit	Payment to be made either thro' inward remittance or thro funds held in NRE/FCNR/NRO/ NRNR/NRSR account of the investor.
<b>F.</b> Investment in Commercial Paper ("CP") of Indian Companies	No Limit	CPs will be non-transferable and the Company issuing CPs will have to comply with the requisite RBI Guidelines
<b>G.</b> Investment in Foreign Currency Bonds/Depository Receipts	No Limit	Indian Company will have to submit details to RBI.
<b>H.</b> Investment in Immovable property other than agricultural land/farm House/plantation property	No ceiling	
<b>I.</b> Deposits with firms/ proprietorship concerns/ companies including NBFCs registered with RBI	No Limit	No RBI permission required. Acceptance by Indian Companies subject to applicable regulations. Companies cannot utilise funds for agricultural/plan- tation/real estate activities.

## QUICK REFERENCE GUIDE\* – INVESTMENTS ON REPATRIATION BASIS

Type of Investment	Ceiling on Amount of Investment	Remarks
<b>A.</b> Portfolio Investment in Equity shares/preference shares through stock exchanges in India (other than Companies engaged in the print media sector).	Purchase of shares by a single investor in any one Company not to exceed 5% of its total paid-up equity and preference capital. The aggregate investments all NRIs/OCBs/PIOs thro the secondary market in a Company, including shares of the Company acquired with repatriation benefits under any other scheme, should not exceed 10% of the total paid up equity capital. Indian listed Companies can allow NRIs/OCBs to invest up to 24% instead of 10% by passing a special resolution.	NRI/OCB has to apply thro' designated branch of Bank and all such trans- actions are to be routed thro' this account only. Payment to be made either thro' inward remittance or thro funds held in NRE/FCNR account. OCBs are required to inform the designated branch of the Bank, immediately when the holding interest of NRIs in the OCB falls less than 60%.
<b>B.</b> Portfolio Investment in convertible debentures thro stock exchanges (other than Companies engaged in the print media sector).	Purchase of CDs by any single NRI/OCB in any one Company not to exceed 5% of its total paid-up value of the CDs issued in that particular series by that Company. The aggregate investments all NRIs/OCBs thro the secondary market in a Company, including CDs of the Company acquired with/without repatriation benefits should not exceed 10% of the total paid up value of each series of CDs issued by the Company. Indian listed Companies can allow NRIs/OCBs to invest up to 24% instead of 10% by passing a special resolution.	NRI/OCB has to apply thro' designated branch of Bank and all such trans- actions are to be routed thro' this account only. Payment to be made either thro' inward remittance or thro funds held in NRE/FCNR account. OCBs are required to inform the designated branch of the Bank, immediately when the holding interest of NRIs in the OCB falls less than 60%.
<b>C.</b> Investment in new issues of equity, preference shares/convertible debentures of any Indian Company engaged in manufacturing or trading activity	There are certain sectoral caps for investment in manufacturing activities. 51% of the capital is permitted in case of a trading activity. 24% of the capital if the units is an Small Scale unit.	Automatic RBI route available for specified activities upto certain limits. Approval of FIPB/SIA required if conditions related to automatic approval are not fulfilled. A trading company cannot remit dividend outside India until and unless it secures registration as Export/Trading/ Star Trading/Super Star Trading House from DGFT, Govt. of India.
<b>D.</b> Investment in new issue of non-convertible debentures of Indian Companies NOT BEING CHIT FUND/NIDHI OR AGRICULTURAL/ PLANTATION COMPANY OR REAL ESTATE OR CON- STRUCTION OF FARM HOUSES AND COMPANIES IN PRINT MEDIA SECTOR	Ceilings have been prescribed by RBI for foreign direct investment in certain sectors.	Indian Companies not to engage in agricultural/plantation/real estate business or trading in TDRs or to act as Chit Fund or Nidhi Company. Funds for investment to be received from outside or transferred from NRE/FCNR account of the investor.
<b>E.</b> Investment in Units of Domestic Mutual Funds, dated Govt. Securities (other than bearer certificates) and Treasury Bills	No Limit	Payment to be made either thro' inward remittance or thro funds held in NRE/FCNR/ account of the investor
<b>F.</b> Investment in 100% Export Oriented Units and Units in Export Processing Zones	Investment ceilings as per sectoral cap to be adhered to. Restriction of 24% relating to SSI Units not applicable for 100% EOU/ EPZ Units	Approval of SIA/Development Commi- ssioner required if automatic approval of RBI is not available
<b>G.</b> In savings/ fixed and other deposits with Banks in India under NR(E) and FCNR(B) Schemes	No Limit	Normal formalities to be completed. FCNR(B) accounts can be opened only in designated currencies.
<b>H.</b> Deposits with Indian companies including NBFCs registered with RBI.	No Limit. However, aggregate amount of deposits accepted by the Company should not exceed 35% of the net owned funds of the Company.	OCBs not allowed to keep deposits. NBFCs to be registered with RBI.
<b>I.</b> Immovable property other than agricultural land/ plantation/farm house	No ceiling	Repatriation of sale proceeds by a person who acquired the property when he was a resident required RBI permission.
<b>J.</b> Investment in bonds issued by Public Sector Undertakings	No Limit	NRIs/OCBs to remit funds thro inward remittances or thro Nre/FCNR accounts.
<b>K.</b> Participation in equity capital of Pubic Sector Enterprises disinvested by the Central Government	No Limit	Purchase Consideration / bid money to be received from abroad by way of inward remittance or out of funds held in NRE/FCNR accounts

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<http://nri.indiainfo.com/faq/investmentindia.html> \*QUICK REFERENCE GUIDE

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