

Bombay Chartered Accountants' Society

Study Course on FEMA

Subject - FEMA provisions on Inheritance

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Inheritance under FEMA

- FEMA applies whenever there is a cross border situation or a transaction.
- Cross border acquisition or holding of an assets is a Capital Account Transaction. Whether acquisition is by purchase, gift or inheritance, it is a Capital Account Transaction.
- Hence unless specifically permitted by Rules and Regulations, the asset cannot be held.

FEMA law

- FEMA law is not drafted in precise and user friendly language.
- FEMA does not have specific rules for many kinds of assets.
- Some issues go by practice.
- It is an incomplete law. Still RBI tries to regulate everything. Hence there are difficulties.

FEMA law

- Broadly -

If Indian resident heir **inherits assets situated outside India**, he has to bring the funds in India, or sell the asset and bring back the funds. (Section 8)

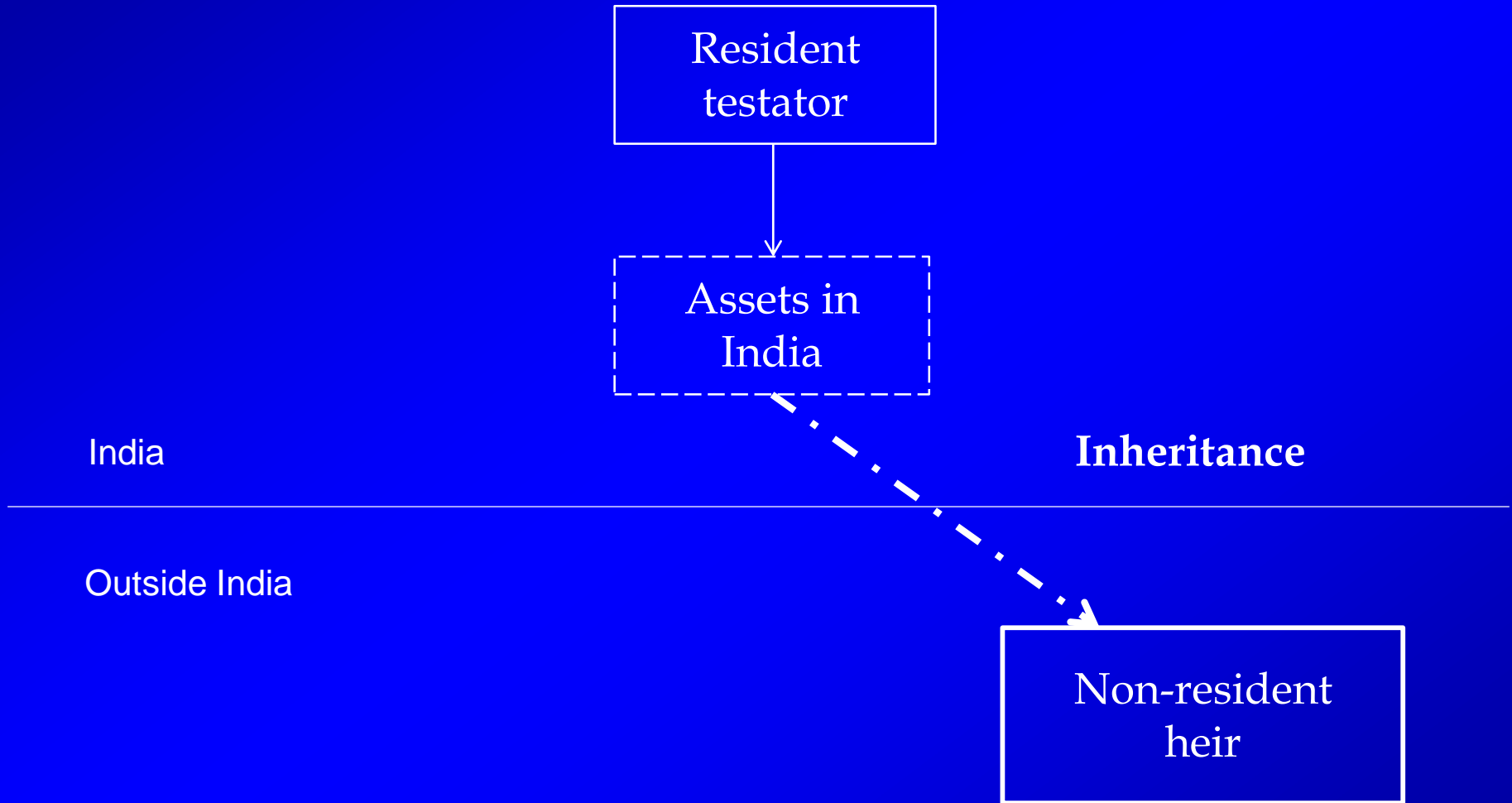
If a non-resident heir **inherits assets situated in India**, he has to retain the same in India. If eligible, he may remit upto US\$ 1 mn. per year.

There are some exceptions – RBI has given permissions for holding / repatriation for some assets.

Bequest and Inheritance

- A person can bequeath assets to anyone.
- **The restrictions are on the heir** – for holding the asset, sale, repatriation of funds, etc. Hence issues are from inheritor's angle.
- FEMA rules are based on kind of assets. If testator expires, one has to see different rules for different assets.

Situation 1



Immovable property (IP)

- NRI / OCI can inherit the property.
If agricultural property is inherited – agricultural activities cannot be undertaken.
- Property can be sold to resident, NRI or OCI. Agri property can be sold only to Indian resident.
- Funds can be repatriated under US\$ 1 mn. facility.

IP - Inheritance by Non-NRIs

- Non-NRIs require approval to inherit IP and hold the same. [Even PIO requires an approval to hold the IP.]
- Sale - No approval is required for transfer to Indian resident. [R.30(2) of NDI rules]. Provided that the resident is otherwise eligible to purchase (i.e. he should not be a citizen of 11 countries - (Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Hong Kong, Macau, Nepal, Bhutan and North Korea)).

IP – Remittance of sale proceeds

- Executor of the estate can repatriate upto US \$ 1 mn. per annum without approval on account of legacy, bequest or inheritance to a foreign national resident outside India. [Notn. 13(R), 7(1)(i)(a).]
- Widow/ widower (not an NRI or OCI) who has inherited assets of the deceased spouse who was an Indian citizen resident in India, can remit upto USD 1,000,000 per financial year. [Notn. 13(R), 4(1)(iii)].

Equity instruments

- No specific rules for inheritance.

A basic test - If the non-resident can acquire the shares by purchase or gift, he can inherit the same.
(This principle can be applied to other assets also.)

- Restricted sector – Eg If company is in agricultural activity, the activity has to stop.

NRI/OCI

- NRI/OCI can inherit the equity instruments on non-repatriable basis.
- Equity instruments can be sold.
- Upto US\$ 1 mn. can be repatriated per year.

Entity controlled by NRI / OCI

- Under Schedule IV of FDI rules, foreign company, firm or trust incorporated outside India, can invest on non-repatriable basis.

Thus these entities can also inherit equity instruments. Such entities however cannot repatriate funds abroad on sale. US\$ 1 mn. facility is only for NRI/OCI.

Better to avoid such bequests.

Outright foreigner

- They require approval from DPIIT for holding the equity instruments.
- For sale and repatriation of funds, an approval is required.

Mutual funds and Debt instruments

- No specific rules for inheritance.
- NRI/OCI can invest in several kinds of mutual funds and debt instruments. Hence NRI/OCI can inherit such instruments.

NRI can also sell assets listed in Sch. III of NDI rules.

Repatriation upto US\$ 1 mn. per year.

- For outright foreigners, approval is required for inheritance, sale and repatriation.

Mutual funds and Debt instruments

- However for debt instruments there is no specific rule for sale.
- Sch. I to Debt instruments, clause 3 states – “A person resident outside India who has purchased instruments in accordance with this Schedule may sell/ redeem the instruments”.

Thus for inherited instruments there is no specific permission given. Approval required for sale of the instruments.

Loans and deposits

- Under some situations, NRI/OCI can keep deposits and give loans on non-repatriable basis. Hence on inheritance, NRI/OCI can hold such deposits.
- Those who are not eligible to keep deposits or give loans, require approval from RBI to hold such loans and deposits.

Bank accounts

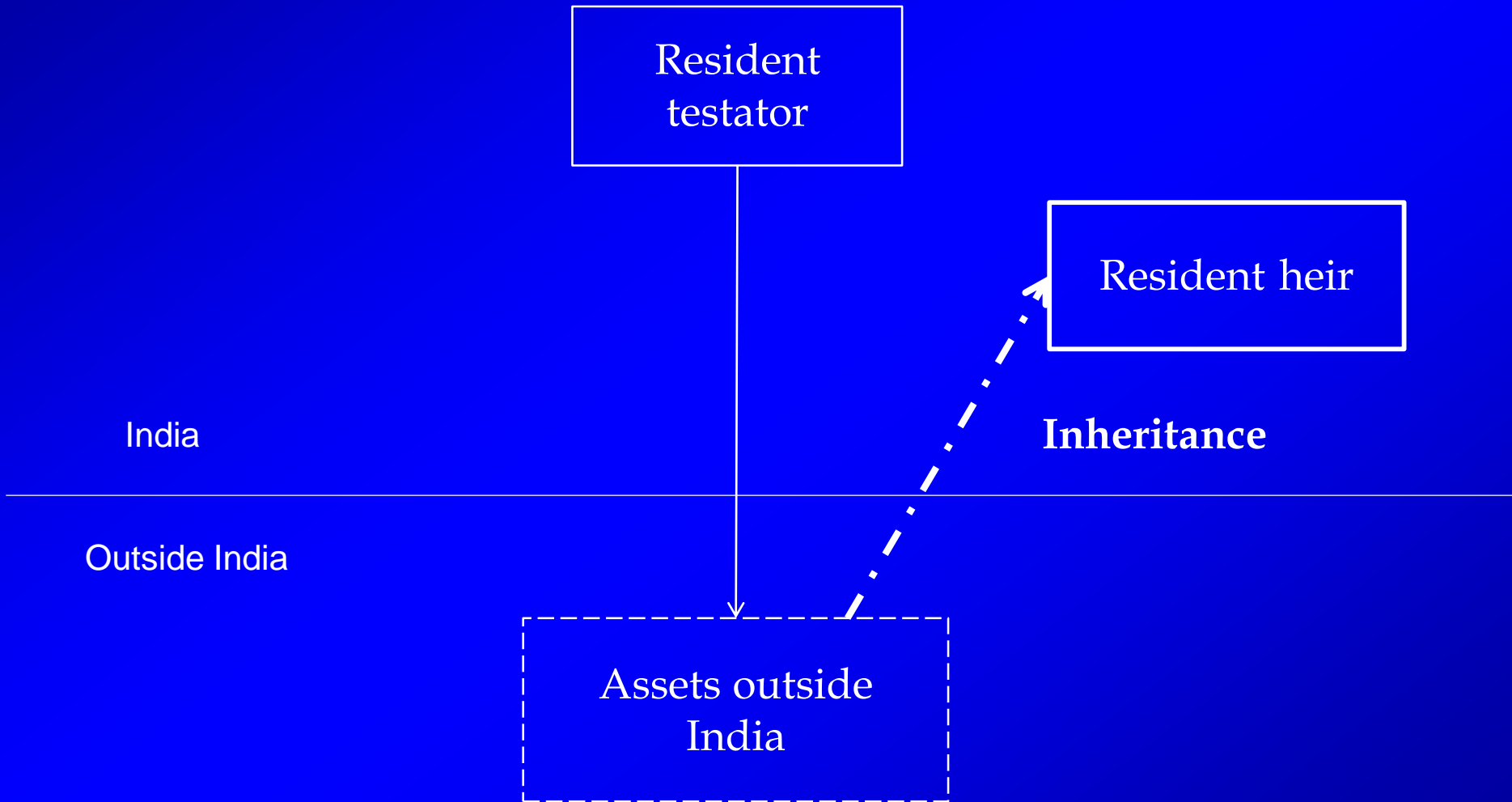
- There is no specific rule for inheritance.
- NRI/OCI can hold bank accounts. In practice, they can inherit the bank funds.

Gold, Jewellery etc.

- No specific regulations. Holding such assets is a Capital Account transactions.
- In practice, inheritance is permitted.
- NRI/OCI can take away such assets outside India as personal baggage. However if the value exceeds US\$ 1 mn., approval should be taken.

If the amount is less than US\$ 1 mn., consider it as a part of US\$ 1 mn.

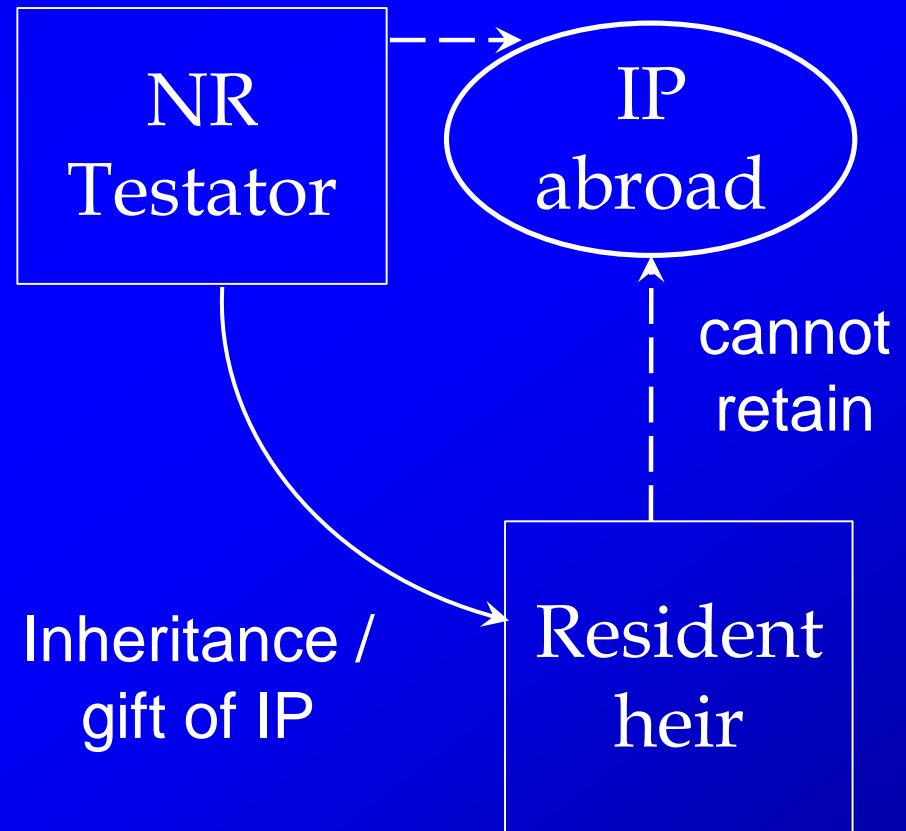
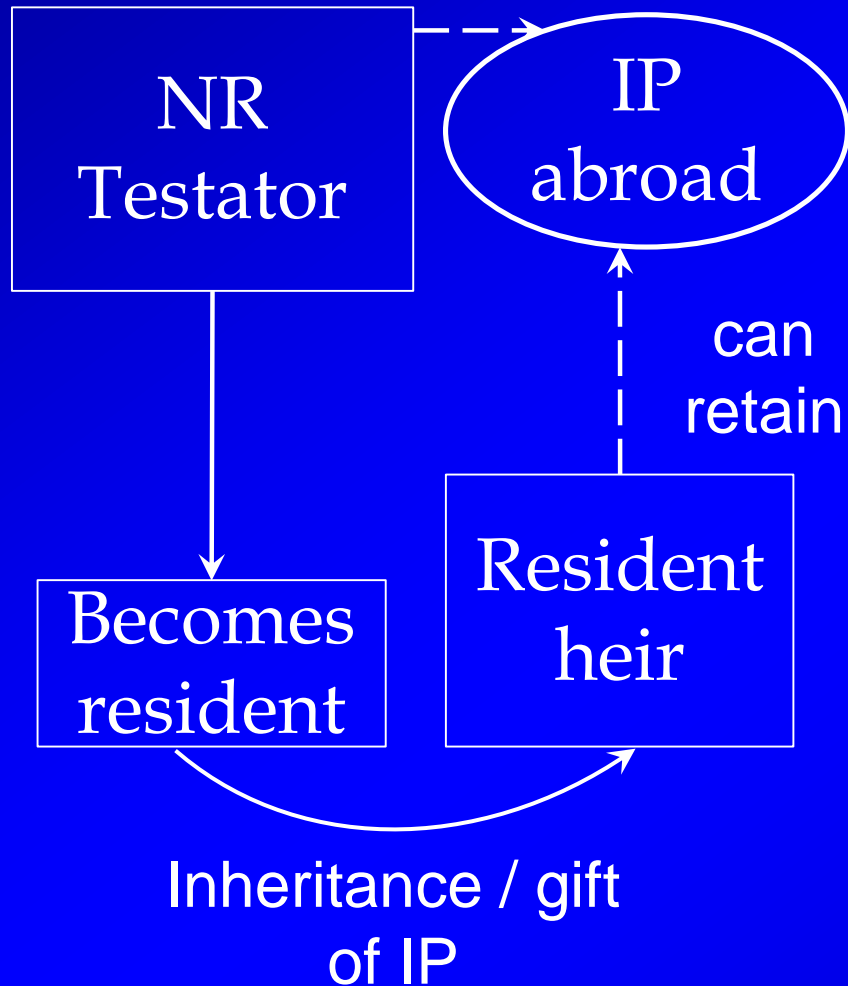
Situation 2



Immovable property

- If testator had acquired Immovable property as permitted under FEMA, heir can hold the same.
- Heir can sell the property. On sale funds have to be brought in India.
- Under Reg. 5(2) of Notn. 7(R) the property can pass from one heir to another. This is a important relief introduced from 2016.

Inheritance of IP – S. 6(4)



Shares and securities

- Securities acquired by testator as per FEMA rules, can be inherited by the individual heir. Heir of heir can also hold the securities. [Reg. 22(1)(iii) of FEMA Notification no. 120]

On sale, funds have to be repatriated to India.

- Shares acquired under ODI route – can be inherited. Some compliance has to be undertaken.

On sale, funds have to be repatriated to India.

Bank accounts, foreign currency and Loans

- Heir has to bring back the funds into India.
- If before maturity of deposits or loan, these cannot be encashed, the same be held till maturity. Inform and take approval from RBI.

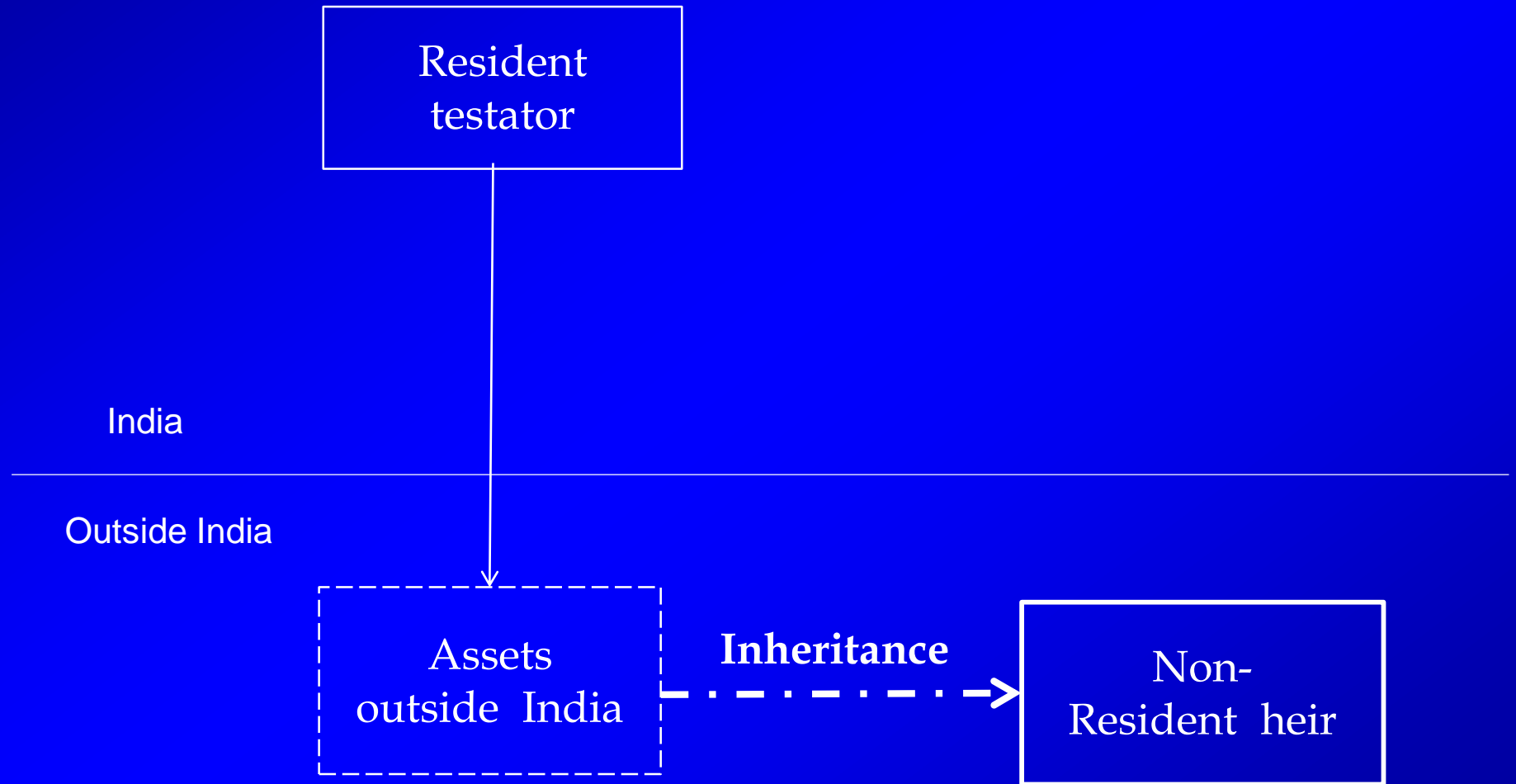
Gold, etc.

- No specific rules.
- Returning Indians are also not permitted specifically to hold gold etc. abroad.
- Testator may have acquired gold under old rules of LRS. The heir has to bring back the assets.

Transfer foreign assets to foreign company

- Can foreign assets which cannot be held by the heirs on inheritance, be transferred to a foreign company by the testator?
- Yes. But consider tax implications, other applicable laws, tax anti-avoidance rules, section 93 of ITA, etc.

Situation 3



Immovable Property

- Heir can inherit the property.
- Once the property is with the non-resident, it goes out of FEMA jurisdiction.

Shares and securities

- No specific rules.
- If testator had acquired the securities when he was a non-resident, or under LRS, or from RFC account, the heir can inherit the securities.
- Once the securities are with the non-resident, these go out of FEMA jurisdiction.

Shares and securities

- If testator had acquired the securities under Overseas Direct Investment route, the heir should take approval for continuing to hold the securities.
- (Clarification: If IR Co. had invested abroad, there is no question of inheritance. Only when IR individual has invested abroad, there will be inheritance.)
- Legally the securities and heir are non-residents and should not be under FEMA jurisdiction.

However as investment is under regulation, till the investments remain, it is advisable to take directions from RBI.

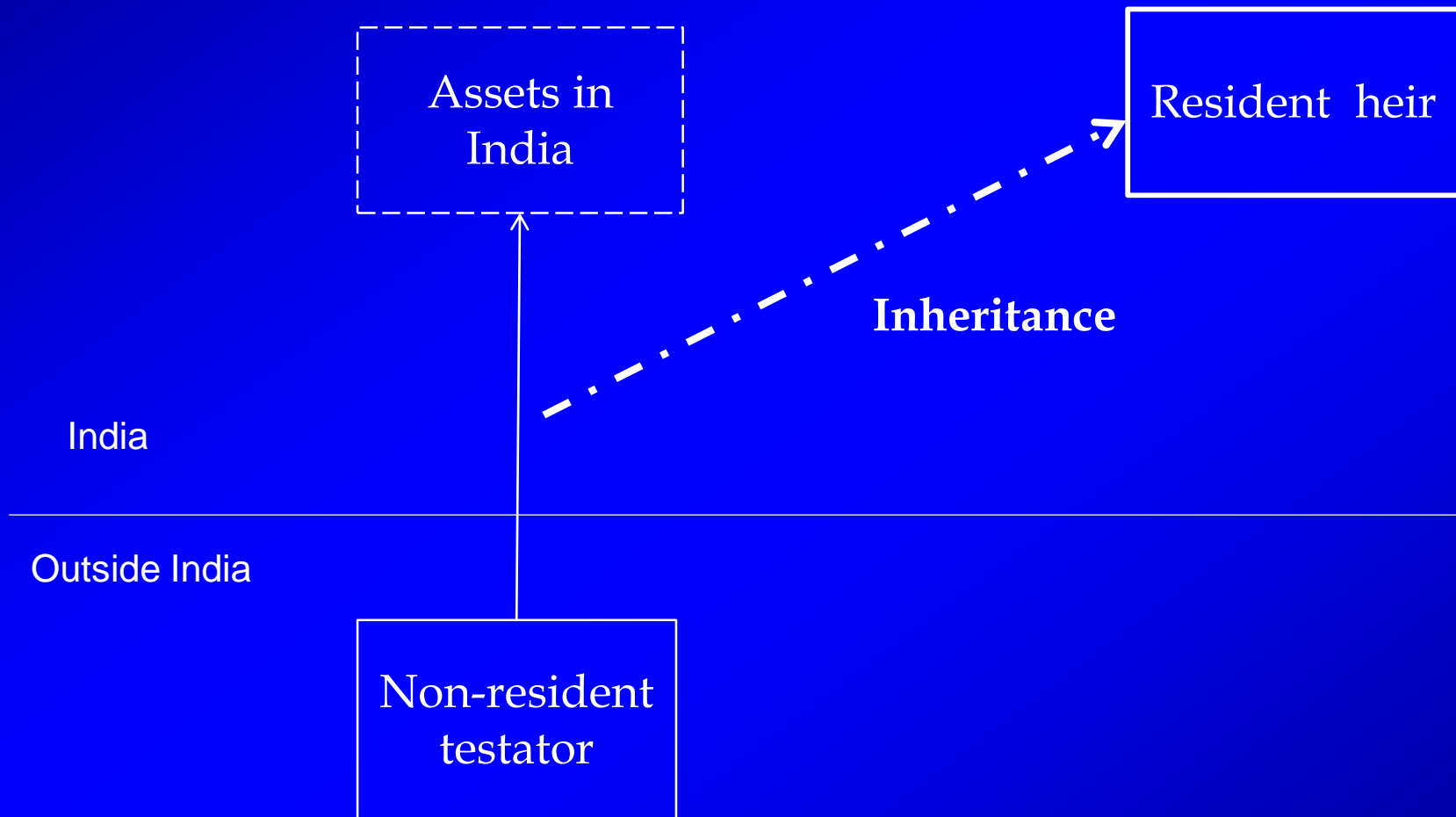
Bank accounts and Loans

- No specific rules.
- Heir can inherit the assets.
- Once the assets are with the non-resident, these go out of FEMA jurisdiction.

Gold etc.

- No specific rules.
- These assets can be inherited if the testator could have acquired as per FEMA rules.
- Testator could have acquired gold under old rules of LRS. Once the assets are with the non-resident, these go out of FEMA jurisdiction.

Situation 4



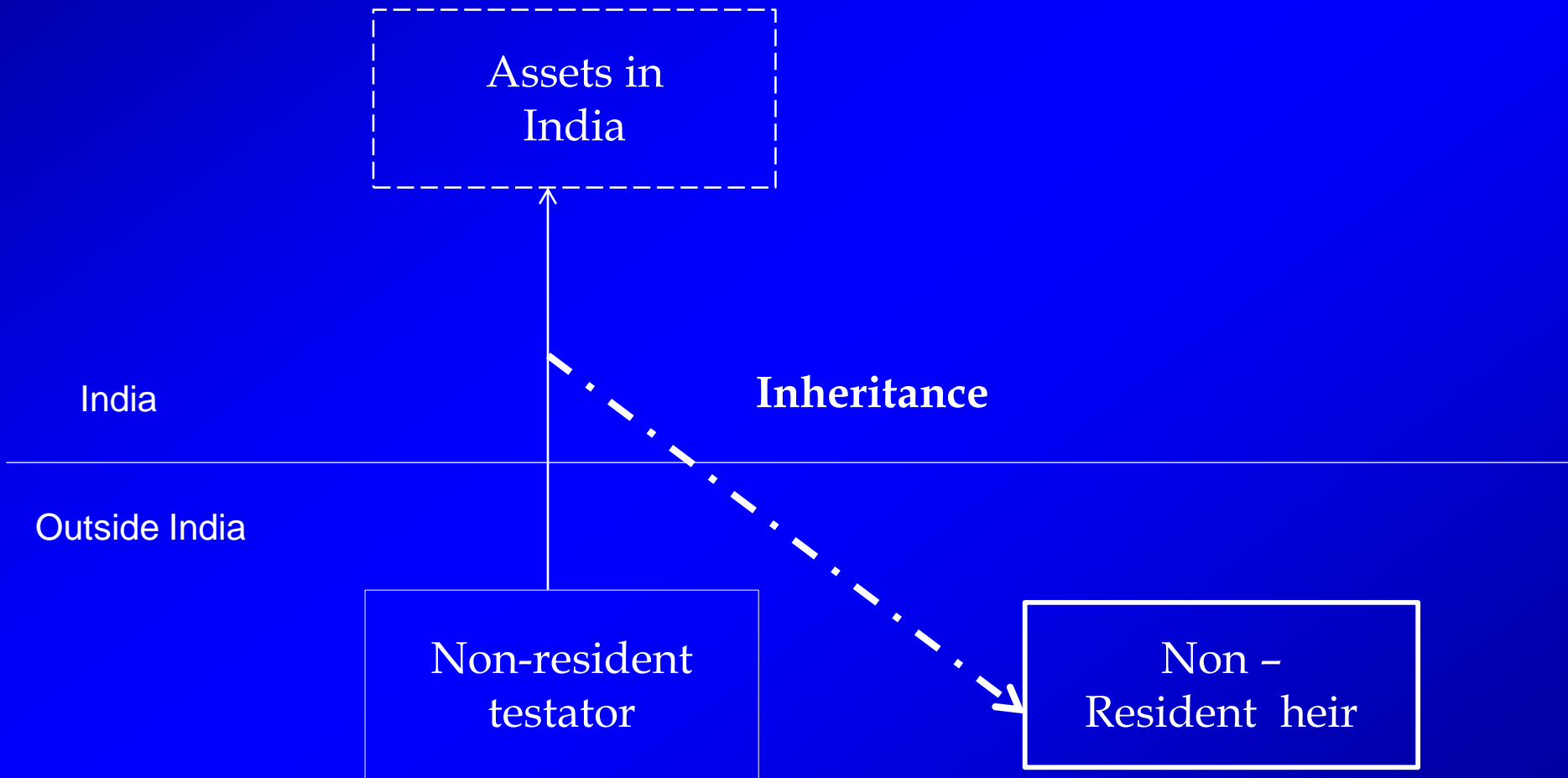
Immovable property

- No specific rules.
- Acquisition of property in India by an Indian resident is **not a Capital Account transaction**. Hence inheritance is permitted.

Other assets

- No specific rules.
- Acquisition of assets in India by an Indian resident is not a Capital Account transaction. Hence inheritance is permitted.

Situation 5



Immovable Property

- NRI/OCI can inherit the property.
- Non-NRI/Non-OCI requires approval to hold the property.
- Emigrating Indian can hold Indian property after he becomes a non-resident of India. [S.6(5)].
Such property can be inherited by any non-resident. (Section interpretation is controversial.)

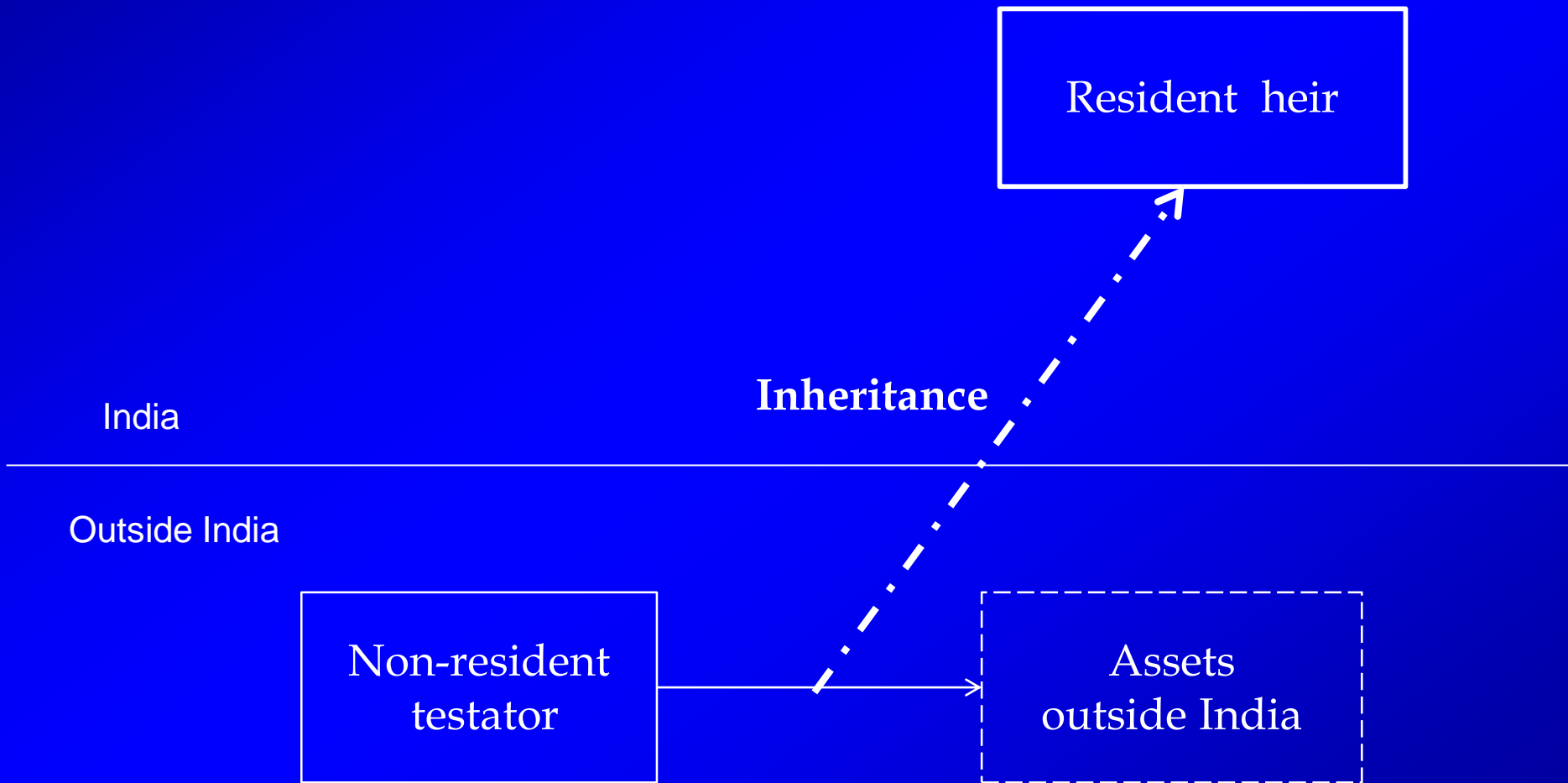
Immovable Property

- From sale of proceeds of IP inherited from a non-resident u/s. 6(5), upto US\$ 1 mn. can be repatriated. [Notn. 13(R), Reg. 4(1)(ii).]

Other assets

- No specific rules.
- If the non-resident is eligible to hold the assets, then he can inherit such assets.

Situation 6



Immovable property

- Resident heir can & must receive inheritance. [S. 8]
- Resident heir has to sell the property and bring the funds to India.

Shares and securities

- Foreign securities can be inherited by an individual resident from a non-resident.
- In fact, IR should not reject inheritance. [S. 8]
- He can sell the shares. Sale proceeds have to be brought in India.

Other assets

- The assets have to be sold and funds have to be repatriated to India.
- Hold foreign assets in a foreign company – same issues as in Situation 2, slide 24.

Thank you.
Questions and comments are welcome.

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Thanks for contribution by CA Mr. Rashmin
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