

**NRI :**

- i. Amendment to the meaning under FEMA**
- ii. Facilities for NRI Investment on non-repatriable basis**

Recently the meaning of “NRI” has been amended under Foreign Exchange Management Act (FEMA). Further NRIs have been permitted to invest more freely on non-repatriable basis. Prime Minister Narendra Modi had promised to consider NRI investment as domestic investment. To some extent, the above is in line with the promise.

The amendment may affect those NRIs who are foreign citizens and who do not have an Overseas Citizenship of India (OCI) card. It is advisable to acquire the OCI card.

Your existing investments also may be affected if you do not hold OCI card.

We have explained below the main changes.

**1. The old definition:**

1.1 NRI meant an individual who was a non-resident of India and:

- i) Either he was Indian citizen, or
- ii) He was a Person of Indian Origin (PIO).

1.2 PIO meant a person who himself, or any of his parents or grandparents was an Indian citizen. It also included a spouse of an NRI.

NRIs and PIOs were treated on par. Both were generally referred to as NRIs.

Citizen of Bangladesh and Pakistan were excluded from being a PIO even if he would otherwise qualify as an NRI.

1.3 The meaning of PIO is slightly different for investment in immovable property in India compared to other investments. Citizens of a few more countries and spouses and PIOs are excluded from being considered as PIOs. The existing meaning of PIO for immovable property continues.

## 2. **The new definition:**

2.1 The new definition of NRI is as under:

*“Non-Resident Indian (NRI) means an individual resident outside India who is citizen of India or is an ‘Overseas Citizen of India’ cardholder within the meaning of section 7 (A) of the Citizenship Act, 1955.”*

The reference to PIOs is not there in the meaning of NRI. Instead NRI now includes an OCI cardholder.

2.2 However PIO has been defined separately in Notification No. FEMA 5(R)/2016-RB dated 1<sup>st</sup> April, 2016. PIO means a person who was an Indian citizen himself or any of his parents, grandparents or great grandparents was an Indian citizen. Spouses of such persons are also considered as PIOs. Thus now upto 4<sup>th</sup> generation of foreign citizens can be considered as PIO. Earlier it used to be upto 3 generations of foreign citizens.

Citizens of Pakistan and Bangladesh are not considered as PIOs.

2.3 For immovable property in India, the meaning of PIO continues as earlier (see para 1.3 above).

## 3. **The implications:**

3.1 NRIs have been allowed to invest funds in India in Bank accounts, shares, immovable property, etc. Under the old meaning, NRI and PIO were considered at par for all investments in India.

Under the new meaning there are some changes as under.

3.2 All investments continue to be available to NRIs. However in case of PIOs there are some changes / restrictions.

PIOs can invest in bank deposits and immovable properties. They can also invest as foreign investor in shares of Indian companies on repatriable basis.

However they cannot make portfolio investment (investment on stock market). They also cannot invest in India on non-repatriable basis in Indian companies, firms and LLPs. Whereas NRIs can make these investments.

3.3 **The way out** – An NRI includes an OCI cardholder. PIOs are normally eligible for OCI cards. Hence if PIOs obtain OCI cards, they will be considered as NRIs. Then they can invest in India.

**Thus if PIOs do not obtain an OCI card, they will have some restrictions.**

#### 4. **Non-repatriable investment in India in Indian companies, firms and LLPs:**

4.1 This is a major change for NRIs.

Prior to 2003, NRIs (which included PIOs) could invest in India directly or through their foreign companies, trusts etc. provided they held at least 60% of capital or beneficial ownership in those foreign entities. These foreign entities were known as Overseas Corporate Bodies (OCBs). Due to stock market scam by a share broker the OCBs were barred from investment.

4.2 Now from 15<sup>th</sup> February 2016, NRIs have been allowed to invest in India through their foreign entities. Following are the salient features of the new facilities:

i) NRIs can invest but not PIOs. NRIs include OCI cardholders.

ii) Investment can be made in an Indian company, firm or LLP.

iii) Investment cannot be made in agricultural activities, Nidhi companies, real estate trading, farm houses and Transfer of Development Rights.

It has been specifically clarified that leasing of real estate is NOT a prohibited activity. Thus real estate leasing can be undertaken.

iv) The investment can be made by a foreign company, trust or firm which is owned by NRIs collectively and also controlled by NRIs.

v) Investment will be on non-repatriable basis.

vi) **There are no compliance requirements.** NRIs can straightway invest. It is however advisable that NRIs and investee entities keep documentary evidence of investment as per these rules. These can be required at the time of disinvestment.

4.3 The objective is to permit NRIs to do business in India through non-repatriable route more freely.

There are however some doubts about certain investments. Let us consider some situations:

- i) Can an Indian **immovable property** be “held” through an **Indian entity** (SPV) without undertaking leasing activity?
- ii) Can **portfolio investment** be undertaken through an Indian entity (SPV)?

Under the rules, there is no specific restriction on holding immovable property or undertaking portfolio investment. We are trying to seek clarifications.

Till there is clarity, this route should be used only for regular business in India.

- 4.4 An NRI has been permitted to acquire securities of Indian company either on the stock market or outside it.

An NRI can also invest in units of Investment Vehicle (Venture Funds, REITs, etc.).

Both the above are permitted on non-repatriable basis.

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**Notification No. 361 dated 15<sup>th</sup> Feb. 2016**