

# FEMA Regulations on Deposits and Bank accounts

Presentation by

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At

Chamber of Tax Consultants on 19<sup>th</sup> April 2014

# Topics to be covered

- Deposits from Non-residents
- Remittance facilities available to Non-residents
- Foreign currency Bank Accounts of Residents
- Transactions of Loans & Gifts
- Preparation of Financial Statements

# Key Definitions / concepts

- Person
- Person resident in India
- Person resident outside India
- Capital Account Transaction
- Current Account Transaction
- Repatriation

# Key Definitions

- **Person** [*Section 2(u) of FEMA*]

Person includes:

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office or branch owned or controlled by such person

# Key Definitions

- **Person resident in India** [*Section 2(v) of FEMA*]

Person resident in India means:

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include-

(A) a person 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 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;

# Key Definitions

- **Person resident in India (Contd.)**
  - (B) 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;
  - (ii) any person or body corporate registered or incorporated in India
  - (iii) an office, branch or agency in India owned or controlled by a person resident outside India
  - (iv) an office, branch or agency outside India owned or controlled by a person resident in India

# Key concepts

- **“Person resident outside India”** [*Section 2(w) of FEMA*] means a person who is not resident in India
- **Capital Account Transactions** [*Section 2(e)*] means a transaction which alters assets or liabilities, including a contingent liability, outside India of persons resident in India or assets or liabilities in India of persons resident outside India and includes transactions referred to in Section 6(3) of FEMA 1999
- **Current Account Transactions** [*Section 2(j)*] means a transaction other than a capital account transaction .....
- **Repatriability** means an ability of the asset to be moved from foreign country back to Investor’s home country

# Deposits from Non-residents

- Statutory Powers: Under Section 6(3)(f), 47(2) of FEMA 1999–RBI makes regulations relating to Deposits
- Classified as a Capital Account Transaction of a person resident in India
- Principal Notification- No. FEMA 5 /2000-RB dated 3rd May 2000 as amended from time to time
- Regulation of deposits between person resident in India and Person resident outside India



# Deposits from Non-residents –Key Definitions

- **Deposit'** includes deposit of money with a bank, company, proprietary concern, partnership firm, corporate body, trust or any other person [Reg. 2(iv)]
- **'Non-Resident Indian (NRI)'** means a person resident outside India who is a citizen of India or is a person of Indian origin [Reg. 2(vi)]

# Deposits from Non-residents –Key Definitions

- **'Person of Indian Origin'** 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) [Reg. 2(xii)]

# Deposit Regulations

- **Exemptions** (Regulations do not apply to following deposits):
  - (a) Deposits maintained by foreign diplomatic missions and diplomatic personnel and their family members in India
  - (b) Deposits in rupees with an Authorised Dealer by persons resident in Nepal and Bhutan
  - (c) Deposits held in accounts maintained with an Authorised dealer by the United Nations Organisation and its subsidiaries /affiliates in India

# Deposit Regulations

- Acceptance of deposits by an Authorised dealer (AD)/ Authorised bank (AB) from persons resident outside India
- Acceptance of deposits by persons other than AD /AB (entities like Companies, Partnership firm / Proprietorship Business)
- Certain type of deposits can be placed by only NRIs (and not by foreign national of Non-Indian origin)

# Types of Deposits Offered by Banks

- Non-Resident (External) Account Scheme, (NRE account)
- Foreign Currency Non-Resident (Bank) Account Scheme, (FCNR-B account)
- Non-Resident (Ordinary) Account Scheme, (NRO account)

*Choice to be made by NR after considering the features of various types of deposit based on individual requirement*

# NRE Account (features)

- Eligibility (*Non-Resident Indian only*) -citizens of Bangladesh / Pakistan require prior RBI Approval)
- Currency (*Indian Rupees, exchange risk lies with Deposit holder*)
- Types of accounts (*Savings , Current, RD, FD*)
- Permitted Credits (*inward remittance, transfer from another NRE / FCNR Account, income earned in India, interest on deposit, foreign currency / sales proceeds of assets (subject to certain conditions) etc.*)
- Permitted Debits (*Local payments, remittances outside India, transfer to another NRE/ FCNR account, Investments, etc.*)
- Interest Tax free in India (*may be taxable in Foreign Jurisdiction as per local tax law*)

# NRE Account (features)

- Repatriability (*fully repatriable subject to payment of applicable taxes in India*)
- Loans against security of funds held in the account (*in India / outside India*)
- Joint Account [*Non-resident / Resident (Former or survivor), Mandate holder / Non-operating holder / POA holder*]
- Change of resident status of the account holder (*convert to Resident Rupee Account / Resident Foreign Currency Account*)

# FCNR –B Deposit (features)

- Eligibility (*Non-Resident Indian only*)-citizens of *Bangladesh / Pakistan* require prior RBI Approval)
- Currency of Account (*any freely convertible foreign currency*)
- Type of account (*Fixed deposit*)
- Permissible Credits / Debits (*same as NRE deposit*)
- Interest rate (*based on currency of deposit and tenure*)
- Interest Tax free in India (*may be taxable in Foreign Jurisdiction as per local tax laws*)



# FCNR –B Deposit (features)

- Repatriability (*fully repatriable subject to payment of applicable taxes in India*)
- Loans against security of funds held in the account (*in India / outside India*)
- Joint Account [*Non-resident / Resident (Former or survivor), Mandate holder / Non-operating holder / POA holder(Former or survivor)*]
- Change of resident status of the account holder (*deposit allowed to mature*) [*convert to Resident Rupee Account / Resident Foreign Currency Account*]

# NRO Deposit (Features)

- Most common account amongst NRIs (*conversion at the time of Resident becoming non-resident or fresh account by Non-resident*)
- Eligibility (*any foreign national including NRI- citizens of Pakistan require prior RBI Approval*)
- Currency (*Indian Rupee-Exchange risk on depositor*)
- Types of Account (*Current / Savings/ RD/ FD*)
- Permissible Credits (*inward remittance, transfer from another NRE / FCNR / NRO Account, income earned in India, interest on NRO deposit, foreign currency / sales proceeds of assets (subject to certain conditions) etc.*)

# NRO Deposit (Features)

- Debits (*local payments in India, remittance of current income outside India, repatriation of assets under One Million Dollar Scheme*)
- Loans against Deposits (*Rupee loans in India*)
- Joint Accounts with Residents [*Non-resident / Resident (Former or survivor), Mandate holder / Non-operating holder / POA holder(Former or survivor)*]
- Change of Resident Status from NR to R (*convert the account to Resident Rupee Account*)

# Comparison Chart

	<b>NRO</b>	<b>NRE</b>	<b>FCNR</b>
Form	Savings, current, recurring, fixed deposit	Savings, current, recurring, fixed deposit	Term deposits of 1 to 5 years
Currency	Indian Rupee	Indian Rupee	Freely convertible currency
Who can open	NRI or PIO jointly with Resident	NRI or PIO himself (not through POA holder)	NRI or PIO himself (not through POA holder)
Repatriation of principal	Limit per year of 1 million	Freely repatriable without limit	Freely repatriable without limit

# Types of bank accounts

	<b>NRO Account</b>	<b>NRE Account</b>	<b>FCNR Account</b>
Permissible debits	Local payments, remittance of interest, rent, pension etc. outside India	Transfer to other NRE Account, investment in shares, mutual funds of Indian Companies	Same as NRE Account
Permissible credits	Legitimate earnings such as interest, dividend	Sale proceeds of FDI investments, dividends etc	Same as NRE Account
Taxability of interest earned	Taxable	Not taxable	Not Taxable

# Key factors for deciding type of deposit

- Currency (Rupee or Foreign currency)
- Risk Appetite (Currency or foreign exchange risk)
- Repatriability
- Taxability
- Indian sourced income / Foreign sourced income
- Flexibility of operations
- Future plans for re-settlement in India

# Acceptance of Deposits by others

- Company
- Partnership Firm (*Whether LLPs allowed????*)
- Proprietorship Firm
- Other deposits (GDRs etc.)

# Acceptance of Deposits by Companies

- Deposits allowed only from Non-resident Indians
- Repatriation / non-repatriation basis
- Maximum tenure of deposit to be 3 years
- Provisions of Companies Act, 2013 (Deposit rules to be complied)



# Foreign Tourists

- Foreign tourists during their short visit to India can open a NRO account (Current / Savings) with any AD bank dealing in foreign exchange. Such account can be opened up to a maximum period of 6 months
- Credit by way of Funds remitted from outside India through banking channel or those obtained by sale of foreign exchange brought by the tourists to India

# Foreign Tourists

- Can freely make local payments through the NRO account. All payments to residents exceeding INR 50,000 can be made only by means of cheques / pay orders / demand drafts.
- AD banks are allowed to convert the balance in the account for payment to the account holder at the time of departure from India into foreign currency, provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon.

# Foreign National resident in India

- Foreign nationals resident in India can open and maintain a resident Rupee account in India (*provided they are employed in India and hold valid visa*).
- Repatriation of funds allowed at the time of departure (provided the funds to be repatriated outside India were either received from abroad or they are repatriable in nature or permissible under FEMA in terms of RBI notification No. FEMA 13/2000 dated 3rd May 2000, as amended from time to time).
- In order to facilitate such foreign nationals to collect their pending dues in India , AD banks may, permit foreign nationals to re-designate their resident account maintained in India as NRO account on leaving the country after their employment to enable them to receive their pending bonafide dues.

# Remittance facilities to Non Residents

- Relevant Notification [Notification 13/2000 dated 3<sup>rd</sup> May 2000 (as amended from time to time)]
- **Remittance of Asset** [Reg. 2(iv) of Notification 13/2000]

*Means remittance outside of India of funds representing a deposit with a bank or a firm or a Company, Provident fund balance or superannuation benefits, amount of claim or maturity proceeds of Insurance policy, sale proceeds of share, securities, immovable properties or any other asset held in India in accordance with the provisions of the Act, rules or regulations made there under;*

# Remittance facilities to Non Residents

- Remittance of current Income (e.g. Rent, Interest, Dividend, Pension etc.)-*[fully repatriable whether arising out of investment done through repatriable or non-repatriable funds]*
- Remittance of Assets (*depends upon Assets arising out of repatriable / non-repatriable funds*)
- One Million Dollar Scheme (remittance from NRO Account or Sale proceeds of Assets from non-repatriable funds)

# Remittance facilities to NR

- Direct Remittance / Remittance through NRO / NRE Account
- Remittance of proceeds of Residential property (*purchased out of foreign exchange*) [*repatriation allowed for only two such properties and to the extent of amount originally paid, the balance can be credited to NRO account which can be repatriated under One Million Dollar Scheme*]
- *Remittance of sale proceeds of property purchased out of loan funds (allowed to the extent of loan repaid out of inward remittances, debit to NRE /FCNR Accounts)*

# Remittance facilities to NR

- Remittance of Assets by a Foreign national of non-Indian Origin (*retired from employment in India or assets acquired out of inheritance subject to One Million Dollar Scheme and balance can be credited to NRO account*)
- Facility in respect of remittance of proceeds of Immovable Property not available to citizens of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan.

# Remittance facilities to NR- Salaries

- Foreign National on deputation in India or employee of an Indian Company can open, hold and maintain a foreign currency account with a bank outside India and receive / remit the entire salary subject to payment of Income tax.
- NRI being an employee of a foreign company and on deputation to India can open, hold and maintain a foreign currency account with a bank outside India and receive / remit the entire salary subject to payment of Income tax.



# Remittance facilities to NR- Students

- Remittances can be on account of cost of studies and living and maintenance expenses
- Students going abroad are treated as Non-Resident Indian under FEMA
- Remittance towards Tuition fees up to USD 1,00,000 per academic year or the estimate from Education Institution whichever is higher
- Remittance from close relative up to USD 75,000 under LRS towards maintenance expenses on self declaration basis

# Remittance facilities to NR- Students

- Remittance from NRO Account under One Million Dollar Scheme
- Educational and other loans availed of by students as residents in India can be allowed to continue
- Remittance allowed in respect of Foreign students leaving India after completion of study / training in India (*provided balance in the bank account represents inward remittance/ sale of foreign exchange / stipend / scholarship from Government or any Organisation in India*)

# Foreign Currency Bank accounts of Residents

- Section 9 (b) of FEMA 1999 allows holding or operating Foreign currency account by such person or class of persons and the limit up to which the Reserve Bank may specify
- FEMA (Foreign currency accounts by a person resident in India) Regulations, 2000 as amended from time to time (Notification No. FEMA 10 /2000-RB dated 3rd May 2000 as amended from time to time)

# Foreign Currency Bank Account Regulations

- Foreign Currency Account means an account held or maintained in currency other than the currency of India or Nepal or Bhutan
- Restriction on holding foreign currency Account by a person resident in India except as provided in the Regulations
- Foreign Currency Account in India and Outside India

# Foreign Currency Bank Accounts in India

- Exchange Earner's Foreign Currency (EEFC) Account
- Resident Foreign Currency (RFC) Account
- Resident Foreign Currency (RFC-Domestic) Account
- Opening, holding and maintaining a Foreign Currency Account in India in certain other cases (Regulation 6)

*-A shipping or airline company incorporated outside India or its agent in India*

*-Foreign currency accounts opened by Project offices of Foreign companies in India*

# EEFC Account

- Exchange Earners' Foreign Currency Account (EEFC) is an account maintained in foreign currency a bank dealing in foreign exchange. It is a facility provided to the foreign exchange earners, including exporters, to credit their foreign exchange earnings to the account, so that the account holders do not have to convert foreign exchange into Rupees and vice versa, thereby minimizing the transaction costs.
- Protection against currency risk
- All categories of foreign exchange earners, such as individuals, companies, etc. who are resident in India, may open EEFC accounts.

# EEFC Account

- An EEFC account can be held only in the form of a current account. No interest is payable on EEFC accounts
- No credit facility permissible against EEFC Account
- SEZ Units cannot open EEFC Accounts. However, a unit located in a Special Economic Zone can open a Foreign Currency Account with an AD in India subject to certain conditions. SEZ Developers can open EEFC Accounts.
- Resident individuals are permitted to include resident close relative(s) as a joint holder(s) in their EEFC account on 'former or survivor' basis. However, such resident Indian close relative(s), shall not be eligible to operate the account during the life time of the resident account holder.

# EEFC Account (Permitted credits)

- Inward remittance through normal banking channels, other than remittances received on account of foreign currency loan or investment received from abroad or received for meeting specific obligations by the account holder
- Payments received in foreign exchange by a 100 per cent Export Oriented Unit or a unit in (a) Export Processing Zone or (b) Software Technology Park or (c) Electronic Hardware Technology Park for supply of goods to similar such units or to a unit in Domestic Tariff Area



# EEFC Account (Permitted credits)

- Payments received in foreign exchange by a unit in the Domestic Tariff Area for supply of goods to a unit in the Special Economic Zone (SEZ)
- Advance remittance received by an exporter towards export of goods or services
- Professional earnings including directors fees, consultancy fees, lecture fees, honorarium and similar other earnings received by a professional by rendering services in his individual capacity
- Re-credit of un utilised foreign currency earlier withdrawn from the account

# EEFC Account (Permitted debits)

- Payment outside India towards a permissible Current account / Capital Account transaction
- Payment in foreign exchange towards cost of goods purchased from a 100 percent Export Oriented Unit or a Unit in (a) Export Processing Zone or (b) Software Technology Park or (c) Electronic Hardware Technology Park
- Payment of customs duty in accordance with the provisions of the Foreign Trade Policy of the Central Government for the time being in force.

# EEFC Account (Permitted debits)

- Trade related loans/advances subject to compliance with the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000.
- Payment in foreign exchange to a person resident in India for supply of goods/services including payments for airfare and hotel expenditure.

# Resident Foreign Currency Account

- Returning NRIs /PIOs may open, hold and maintain in India a Resident Foreign Currency (RFC) Account to transfer balances held in NRE/FCNR(B) accounts
- Proceeds of assets held outside India at the time of return can be credited to RFC account
- The funds in RFC accounts are free from all restrictions regarding utilization of foreign currency balances including any restriction on investment in any form outside India.

# Resident Foreign Currency Account

- RFC accounts can be maintained in the form of current or savings or term deposit accounts, where the account holder is an individual and in the form of current or term deposits in all other cases.
- RFC accounts are permitted to be held jointly with the resident close relative(s) as defined in the Companies Act, 1956 as joint holder (s) in their RFC bank account on 'former or survivor basis'. However, such resident Indian close relative not eligible to operate the account during the life time of the resident account holder.
- Interest on RFC Account not taxable (during RNOR status)

# Resident Foreign Currency (Domestic) Account

- Any person resident in India can open with a Bank in India, a foreign currency account, to be known as Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, bank notes and travellers cheques:
  - while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or
  - from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or

# Resident Foreign Currency (Domestic) Account

- by way of honorarium or gift while on a visit to any place outside India; or
  - represents the unspent amount of foreign exchange acquired by him from an authorised person for travel abroad.
  - Foreign exchange earnings through export of goods and/or services, royalty, honorarium, etc.
- 
- Account can be maintained in any freely convertible foreign currency
  - Saving in commission charges, as one can withdraw foreign currency whenever required without any conversion charges

# Resident Foreign Currency (Domestic) Account

- Protection from currency risks arising out of exchange rate fluctuations
- Payments allowed towards permissible current / capital account transaction
- The account to be maintained in the form of Current Account and does not bear any interest
- Foreign currency withdrawals are possible in the form of cash, traveller's cheque, foreign currency DD.



# Bank Account outside India

- Opening, holding and maintaining a Foreign Currency Account outside India
- Permitted persons
  - Authorised dealers
  - A branch outside India of a bank incorporated or constituted in India
  - A shipping or airline company incorporated in India
  - Life Insurance Corporation of India or General Insurance Corporation of India and its subsidiaries

# Bank Account outside India

- Exporter who has undertaken a construction contract or a turnkey project outside India or who is exporting services or engineering goods from India on deferred payment terms
- A person resident in India who has gone abroad for studies or who is on a visit to a foreign country provided that on his return to India, the balance in the account is repatriated to India
- Short visits to India by a person who has gone abroad for studies, before completion of his studies, shall not be treated as his return to India.

# Bank Account outside India

- A person resident in India who has gone out of India to participate in an exhibition/ trade fair outside India may open, hold and maintain a Foreign Currency Account with a bank outside India for crediting the sale proceeds of goods on display in the exhibition/trade fair

*(Provided that the balance in the account is repatriated to India through normal banking channels within a period of one month from the date of closure of the exhibition/trade fair)*

# Loans to / from relatives

- **Borrowing by Resident Individual from his close relatives outside India**

Borrowing allowed to the extent of USD 250,000 or its equivalent, subject to the conditions that:

- the minimum maturity period of the loan is one year;
- the loan is free of interest; and
- the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR(B) account of the NRI.

# Loans to / from relatives

- **Lending money by Resident Individual to his close relative NRI / PIO**

Lending allowed by way of crossed cheque /electronic transfer within the overall limit of **USD 75,000** per financial year under the Liberalized Remittance Scheme, to meet the borrower's personal or business requirements in India, subject to conditions. The loan should be interest free and have a maturity of minimum one year and cannot be remitted outside India.

- **Resident individual allowed to repay loans of close relative NRIs to banks in India**

Where an authorized dealer in India has granted loan to a non-resident Indian such loans may also be repaid by resident close relative (relative as defined in Section 6 of the Companies Act, 1956), of the Non-Resident Indian by crediting the borrower's loan account through the bank account of such relative.

# Loans from banks to NRI

- Banks are allowed to grant loan to NRIs against security of shares / Immovable property / deposits
- Loan can be used for meeting Personal / Business purposes
- Not to be used for restricted sectors – Agriculture / real estate business / trading in TDR
- Loan credited to NRE/FCNR A/c cannot be remitted abroad
- Repayment - NRO/ NRE/FCNR/ Inward Remittance or by a close relative resident in India

# Gifts to / from Relatives

- **Gifts to Non-resident Indian close relative in Foreign currency**

Resident individual is permitted to gift to NRI close relative up to USD 75,000 per financial year under LRS Scheme.

- **Rupee Gifts to visiting NRI/PIO close relatives**

Resident individual can give rupee gifts to his visiting NRI/PIO close relatives by way of crossed cheque/electronic transfer within the overall limit of USD 75,000 per financial year and the gifted amount should be credited to the beneficiary's NRO account.

# Financial statements of Non-Residents

- Balance sheet relating to Indian & Foreign operations to be prepared for Non-residents (*helps in filing of Tax returns*)
- Proper records to be maintained in respect of Assets created out of repatriable funds / non-repatriable funds
- Nexus of Loans and consequent investment / deposit should be clearly established
- Tax return disclosures





# Thank you