



RETURNING INDIAN

Returning Indian is a person who comes back to India for various reasons like employment, business, relocation etc. Returning to India involves navigating various compliance requirements, from tax matters and banking procedures to assets ownership and residency status.

Indians who have established themselves outside India and now wish to return to India may like to know what happens to their assets and income outside India. Understanding the legal and financial obligations is essential for a smooth transition and to avoid any complications during the relocation process. We have tried to answer few of questions regarding the compliances and obligations, an NRI may have to comply with after returning to India.

FEMA (Foreign Exchange Management Act)

1. When will the Returning Indian individual become a 'Resident' under FEMA?

If the purpose of returning Indian is to relocate in India permanently or opt for employment, business or vocation from day one he/she will be considered as resident under FEMA.

Though FEMA also refers to physical stay during preceding financial year for more than 182 days to qualify as resident, but it's a secondary condition and usually applicable for the foreign nationals (other than Overseas Citizen of India) who come to India for purpose other than employment, business or vocation and when they desire to purchase immovable property (residential or commercial property).

2. Whether a Returning Indian is required to inform Government Authorities about his change in residential status and overseas assets that he holds?

Returning Indians are not required to report about their change in residential status to Reserve Bank of India (RBI). However, they are required to mention his residential status while filling his return of income with the Income Tax Department.

In addition to the above they are required to inform following persons about the change in their residential status:

- AD Bank with whom he/she holds the NRO, NRE or FCNR accounts.
- Their broker with whom they hold a Demat Account.
- Companies where the returning Indian is a shareholder or a debenture holders and firms where he/she is a partner.

3. Can the individual own any foreign assets after he returns to India?

FEMA allows a resident individual to continue to hold, own or transfer overseas assets if such assets were acquired while such person was resident outside India or has been inherited from a person who acquired the same when he was resident outside India.

Such persons can also transfer or dispose their assets abroad and reinvest proceeds in other assets. These assets may include foreign securities, foreign currency, immovable properties, etc. and also other assets such as balances in foreign bank accounts, investments in businesses, jewellery, paintings, etc.



4. What happens to income and sale proceeds of assets held abroad by returning Indians?

Income earned from investments and sale proceeds of assets held abroad can be kept outside India. RBI has issued clarification on nature of transactions covered under Section 6(4) which covers following:

- Foreign currency accounts opened abroad while a person was resident outside India can be continued.
- Any income earned through employment or business or vocation outside India while being non-resident or from investment made outside India while being non-resident can be continued to be held outside India.
- Assets abroad or income on such assets or sale proceeds of assets acquired outside India while being non-resident can be freely utilised to make any payments or fresh investments abroad without any RBI approval after return to India provided cost of such investments are met exclusively out of funds forming part of eligible assets held by them while being non-resident.

5. Inheritance / gift of assets after returning to India Foreign

Foreign Securities (shares/units of Mutual Funds) – Gift / Inheritance

Donor	Donee	Gift/inheritance	Allowed / NotAllowed	Remarks
Resident	Resident	Inheritance	Allowed	Donor should have held foreign security as per FEMA
Non-Resident	Resident	Inheritance	Allowed	As per Section 6(4) of FEMA
Resident	Non-Resident	Inheritance	No reference under FEMA	Inheritance cannot be stopped but donee is required to report to RBI
Resident	Resident	Gift	Allowed	Provided Donor is relative as per Companies Act and holds foreign security as per FEMA
Non-Resident	Resident	Gift	Allowed	Donee is Relative as per Foreign Contribution Regulation Act (FCRA) & reporting to RBI
Resident	Non-resident	Gift	Not allowed without RBI approval	RBI approval required.



Foreign Immovable Property – Gift / Inheritance

Donor	Donee	Gift/inheritance	Allowed / Not Allowed	Remarks
Resident	Resident	Inheritance	Allowed	Donor should hold foreign security as per FEMA
Non-Resident	Resident	Inheritance	Allowed	As per Section 6(4) of FEMA
Resident	Non-Resident	Inheritance	No reference under FEMA	Inheritance cannot be stopped but donee may be required reporting.
Resident	Resident	Gift	Allowed	Provided Donor is relative as per Companies Act and holds foreign security as per FEMA
Non-Resident	Resident	Gift	Not Allowed	Seek RBI Approval
Resident	Non-resident	Gift	Not Allowed	Seek RBI approval

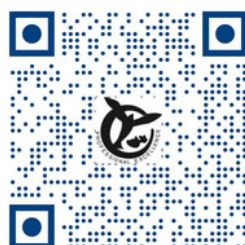
6. Whether income received out of business commenced outside India in form of Private Limited Company or Partnership Firm or Proprietary concern is required to be repatriated to India after return to India?

Since the business was commenced while the person was resident outside India, the profit, share of profit or the dividends as the case may be generated from such business will be considered as income from Section 6(4) asset and hence repatriation of same is not required.

7. Whether Salary Received from employment outside India or honorarium, or gift is required to be repatriated to India after return to India?

If employment was commenced while the person was resident outside India, no repatriation of salary income is required. Further, even though the person is continuing the said employment and now rendering the services from India, so long as employment was commenced before becoming resident, no repatriation is required. Money received in form of Honorarium or gift is required to be surrendered to Authorised Person within 180 days except that person can retain USD 2,000 as prescribed in Notification 11(R) read with Section 9(e) of FEMA.

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