

CHAMBER OF TAX CONSULTANTS

INTENSIVE STUDY COURSE ON FEMA

PURCHASE OF IMMOVABLE PROPERTY  
OUTSIDE INDIA

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# Contents

- 1 Notification 7 (R) – Acquisition and Transfer of Immovable Property Outside India
- 2 Section 6(4)
- 3 Liberalised Remittance Scheme (LRS)
- 4 Notification 9 (R) - Reliasation, Repatriation and Surrender of Foreign Exchange
- 5 Notification 8 - Guarantee
- 6 Notification 10(R) – Foreign Currency Accounts by a Person Resident in India
- 7 Case Studies

# Notification 7(R)

- A person resident in India
  - Acquire immovable property outside India by way of
    - Gift
    - Inheritance
      - from a person referred to in section 6(4) of FEMA, 1999
    - Purchase out of foreign exchange held in RFC A/c
    - Jointly with a relative who is a PROI provided no outflow of funds from India.
    - Inheritance or gift from PRII
      - who had acquired property in accordance with foreign exchange provisions in force at the time of acquisition

# Notification 7(R)

- Following persons are freely permitted to hold property outside India
  - Held by a PRII who is a national of foreign state
  - Acquired by a PRII on or before 08/07/1947 and continued to be held by him with permission of RBI
- Relative means husband, wife, brother or sister or any lineal ascendant or descendant of that individual
- Property taken on lease for less than 5 years - Permitted

# Notification 7(R)

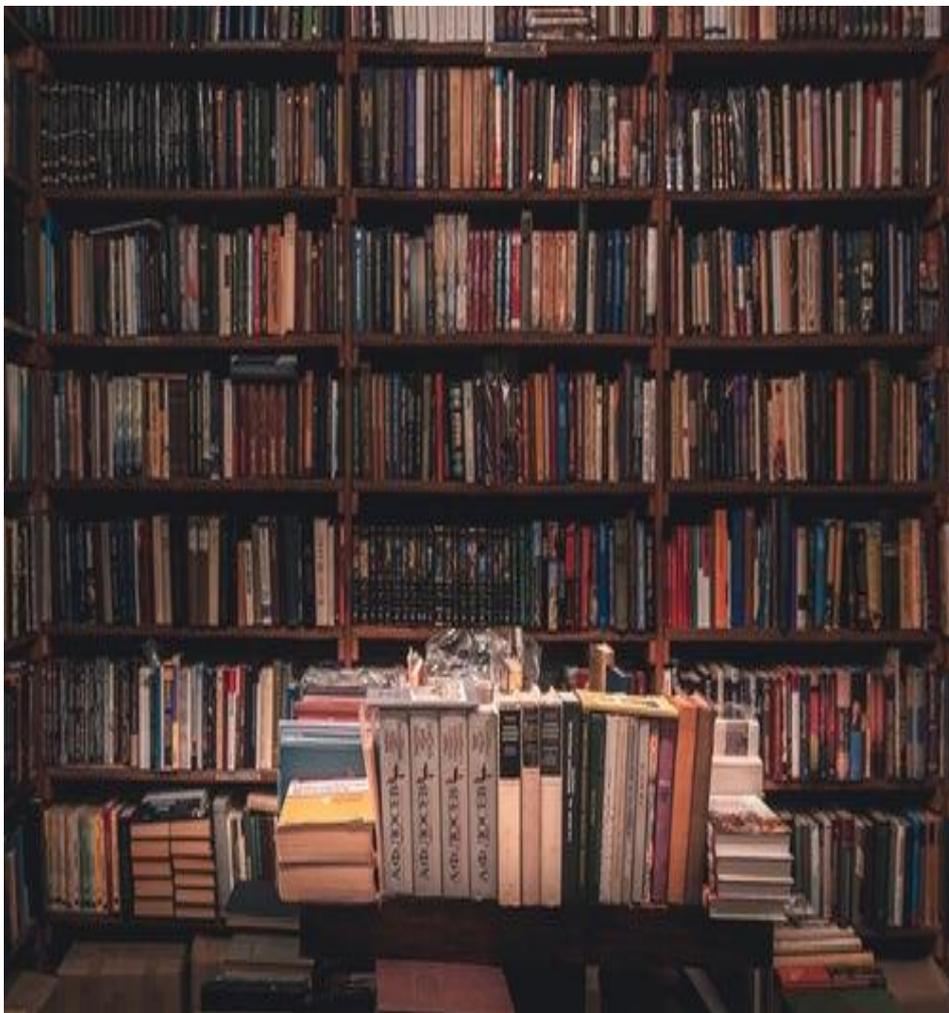
- Company having overseas office
- Acquire immovable property outside India
  - Business
  - Residential purpose of its staff
- Total remittance not to exceed
  - Initial expenses –
    - 15% of avg. annual sales/income/turnover of the Indian entity during the last 2 FY or
    - 25% of its net worth
      - whichever is higher
  - Recurring exp. – 10% of avg. sales/income/turnover of the Indian entity during the last 2 FY

# Liberalised Remittance Scheme

- PRII can purchase immovable property under LRS
- Limit of US\$ 2,50,000/-
- Clubbing of LRS by family members provided
  - they are the co-owners of the property
  - Individual family members complying with terms and conditions
- Non-cooperative countries and territories identified by Financial Action Task Force (FATF)

# Notification 9(R)

- Realisation, Repatriation and Surrender of Foreign Exchange
  - Individual – Reg. 7
    - Surrender the received/ realized/ unspent/ unused foreign exchange
      - Within 180 days of receipt/ realization/ purchase/ acquisition or date of his return to India as the case may be.
  - Other than individual – Reg. 6 – sell foreign exchange to authorized person
    - Remuneration of services rendered
    - Settlement of any lawful obligation
    - Income on assets held outside India
    - Inheritance, settlement of gift
      - Within 7 days from date of its receipt
    - Other cases
      - Within 90 days from date of its receipt



## CASE STUDIES

# Case Study 1

- Mr. A, a person resident in India is having income from USA. From that income he wants to purchase a house property in USA by paying directly from the income earned in USA. Kindly advice A whether he is permitted to do so.

# Case Study 2

- What will be the position in case study No: 1, if Mr. A is a PRTI and a Citizen of USA.

# Case Study 3

- What will be the position in case study No. 1, if Mr. A is having income from Iran / Germany / North Korea and he wants to purchase a property in Iran / Germany / North Korea .

# Case Study 4

- What will be the position in case study No: 3, if Mr. A is returning Indian and having RFC accounts wants to purchase property in Iran / Germany / North Korea / USA.

# Case Study 5

- Mr. A, a PROI wants to gift immovable property situated in Canada to Mr. B, a PRII. Whether Mr. A is permitted to gift the immovable property to Mr. B?

# Case Study 6

- Mr. A, a PRTI receives Gift of immovable property situated in Germany from Mr. B, a PRTI. Mr. B had purchased the property under \$ 2,50,000/- scheme. Whether Mr. A is permitted to receive gift?

# Case Study 7

- Mr. A, a PRTI receives Gift of immovable property situated in Germany from Mr. B, a PRTI. Mr. B had acquired the property when he was a Non-Resident. Whether Mr. A is permitted to receive gift?

# Case Study 8

- Mr. A, a PRII had purchased a property in Dubai through RFC account / liberalized scheme. Now he wants to sell the property & wants to buy another property. Whether he is permitted to do so?

# Case Study 9

- What would be the position in case study No: 8, If Mr. A had acquired the property when he was a PROI.

# Case Study 10

- What would be the position in case study 8 if Mr. A wants to purchase another property out of the sale proceeds of the property sold.

# Case Study 11

- Mr. A, PRII had acquired property situated in UK by way of gift from Mr. B, a PRII. Mr. B had acquired the property when he was a PROI. Now Mr. A wants to sell the property in UK. Whether he is permitted to sell the property?

# Case Study 12

- Mr. A, a PRII wants to purchase a property situated in Dubai along with his wife. Property is for \$ 6,00,000/-. Mr. A can remit \$ 2,50,000/- under LRS from his account and \$ 2,50,000/- from his wife account. Balance of \$ 1,00,000/- he wants to obtain loan from Dubai Branch of SBI. Whether he is permitted to do so?

# Case Study 13

- What would be the position in case study No: 11, if Mr. A wants to remit \$ 1,00,000/- from the account of his minor child by giving him a loan. Whether he is permitted to do so?

# Case Study 14

- Mr. A, a PResident, a Citizen of UK had acquired a property in UK when he was a PResident. Now he wants to mortgage the property and obtain a loan / sell / gift. Whether he is permitted to do so?

# Case Study 15

- Mr. A, a PRII wants to purchase agriculture property in UK. for \$ 1,50,000/- from RFC account / under LRS. Whether he is permitted to purchase the agriculture property?

# Case Study 16

- Mr. A, a PRII had purchased 8 properties in Japan which he had purchased from RFC account / under LRS. Now he wants to give all the properties on rent. Whether Mr. A is permitted to give the property on rent?

# Case Study 17

- XYZ Ltd. is a Company incorporated in India in April 2014. Now it wants to open a Branch in USA . It wants to remit US\$ 1,00,000/- to the Branch in USA for the purchase of property in USA. Net Worth of XYZ Ltd. as at 31/03/2018 is US\$ 5 lakhs. The turnover of XYZ Ltd. from for FY 2016-17 is US\$ 10 lakhs and for FY 2017-18 is US\$ 20 lakhs. Kindly advice XYZ Ltd.

# Case Study 18

- Mr. Bill, a UK resident, comes on deputation on behalf of a UK Co. to India for a **certain period**. Whether he can buy / hold a property outside India?

# Case Study 19

- Mr. Mehboob, a PRII wants to purchase a house in Dubai for US\$ 15,00,000/- payable in 6 yearly instalments. Whether Mr. Mehboob can purchase house in Dubai

# Case Study 20

- Mr. Hasmukh, a PRII wants to purchase a property situated in Dubai along with his wife. Property is for \$ 6,00,000/-. Mr. A can remit \$ 2,50,000/- under LRS from his account and \$ 2,50,000/- from his wife account. Balance of \$ 1,00,000/- he wants to obtain loan from Indian Branch of SBI. Mr. Anonymous, his brother will give guarantee on behalf of Mr. Hasmukh. Whether he is permitted to do so?

# Case Study 21

- Whether Mr. Nobody, a PRII wants to acquire property on lease in France for 7 years. Whether he can do so?

# Case Study 22

- Ms. Hillary, a PRII has EEFC account with SBI Bank. From this EEFC account she want to purchase immovable property in USA. Whether she can do so?



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# Section 6(4)

- A person resident in India may hold, own, transfer or invest in foreign currency, security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India

# Notification 3

- A PRII may borrow, whether by way of loan or overdraft or any other credit facility from a bank outside India, for execution outside India of a turnkey project or civil construction contract or in connection with exports on deferred payment terms, provided the terms and conditions stipulated by the authority which has granted the approval to the project or contract or export in accordance with FEMA (Export of Goods and Services) Regulations, 2000

# Notification 8 – Reg. 5

- A **person other than an authorised dealer may give a guarantee** in the following cases, namely:
  - (a) **a person resident in India being an exporting company** may give a guarantee for performance of a project outside India, or for availing of credit facilities, whether fund-based or non-fund based, from a bank or a financial institution outside India in connection with the execution of such project :
  - (b) **a company in India promoting or setting up outside India, a joint venture company or a wholly-owned subsidiary,** may give a guarantee to or on behalf of the latter in connection with its business :
  - (c) **an agent in India of a shipping or airline company incorporated outside India** may give a guarantee on behalf of such company in connection with its obligation or liability owed to any statutory or Government authority in India.

# Notification 7(R)-Regulation 5(1)

- (1) A person resident in India may acquire immovable property outside India, -
  - (a) by way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the Act, or referred to in clause (b) of regulation 4;
  - (b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015;
  - (c) jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India

# Notification 10(R) – Schedule I – Reg. 3

- **3. Permissible debits to the EEFC account**
- Following debits may be made to an EEFC Account, namely -
- i) **Payment outside India towards a current account transaction** in accordance with the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 and towards a capital account transaction permissible under the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.
- ii) **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
- iii) **Payment of customs duty** in accordance with the provisions of Export Import Policy of Central Government for the time being in force.
- iv) **Trade related loans/ advances, by an exporter** holding such account to his importer customer outside India, subject to compliance with the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000.
- v) **Payment in foreign exchange to a person resident in India for supply of goods/ services** including payments for air fare and hotel expenditure.