



M/s PRANJAL JOSHI & CO
CHARTERED ACCOUNTANTS

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Non Resident Indians and Purchase or Sale of Immovable Property in India

Purchase and Sell of Immovable Property by Non resident needs to be considered from two legislative aspects –

- 1. Primary Legislation – FEMA – Foreign Exchange Management Act** – This basically guides whether the transaction can be executed or not and the procedure to do so.
- 2. Tax Legislation – Income Tax Act** – Once the transaction is permissible under FEMA, one needs to take care of Income tax provisions in India.

So, let's first look at the provision of FEMA –

Table A – Purchase of Immovable Property in India by Non Resident or OCI

Sr. No.	NRI or OCI is permitted to	From whom he can Purchase / Acquire such Property
01	Purchase Residential Property in India	Any Resident/ NRI/ OCI
02	Purchase Commercial Property in India	Any Resident/ NRI/ OCI
03	Purchase pre-leased commercial / residential property in India	Any Resident/ NRI/ OCI
04	Acquire as Gift any residential or commercial property in India	Any Resident/ NRI/ OCI who is relative
05	Acquire as Inheritance any immovable property in India	Only from – a. Any person who has acquired it under laws in force b. Resident

Thus, Non resident can Purchase of Property in India even from other non resident or OCI (Overseas Citizen of India). However, non permissible purchase list is also important, which is as follows –

Sr. No.	NRI or OCI is NOT permitted to
01	Purchase of Agriculture Land in India
02	Purchase of Farm House in India
03	Purchase of Plantation in India
04	Acquire as Gift any Agriculture Land or Farm House of Plantation in India



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One interesting question can be – **Can a spouse of an NRI/ OCI who is not a NRI/ OCI acquire property in India?**

The reply is - A person resident outside India, who himself / herself is not a Non-Resident Indian or an Overseas Citizen of India, but who is a spouse of a Non-Resident Indian or an Overseas Citizen of India – then he / she can acquire one immovable property (of course other than agricultural land/ farm house/ plantation property), but it has to be jointly with his/ her NRI/ OCI spouse. Further, this is also subject to certain conditions.

Table B – Payment modes for Purchase of Property –

Permissible modes of Payment	Non – Permissible modes of Payments
Payment for immovable property has to be received in India through banking channels and is subject to payment of all taxes and other duties/ levies in India. Payment can also be made out of funds held in NRE/ FCNR(B)/ NRO accounts of the NRIs/ OCIs	Payments should not be made through travellers' cheque and foreign currency notes.

Now, let's us see the provisions of FEMA related to Sale of Immovable Property –

Table C – Sale of Property in India by Non Resident or OCI

Sr. No.	NRI or OCI is permitted to	To whom he can Sale / Gift such Property
01	Sale Residential Property in India	Any Resident/ NRI/ OCI
02	Sale Commercial Property in India	Any Resident/ NRI/ OCI
03	Sale pre-leased commercial / residential property in India	Any Resident/ NRI/ OCI
04	Sale of Agriculture Land in India	Only to Resident in India
05	Gift any residential or commercial or pre-leased property in India	Any Resident/ NRI/ OCI
06	Gift any Agriculture land in India	Only to Resident in India

Thus, Non resident can sell Property in India even to other non resident or OCI (Overseas Citizen of India).

In many cases, Non-resident is in need of funds at his residence country. So obvious question is can NRI repatriate the funds received out of sale of immovable property in India ?

Answer is YES, subject to certain conditions referred below.



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Table D – Sell and Repatriation of Proceeds Outside India under FEMA

Situation for NRI	Repatriation allow ability
<u>Self Acquired Property</u> NRI selling Property which he has purchased / acquired when he was NRI NRI selling property which he Purchased / acquired when he was resident in India	 If residential property then repatriation is restricted to max two properties RBI prior approval is required for repatriation
<u>Inherited Property</u> Inheritance from a person who was resident in India. inherited property from another non resident if such non resident has acquired it when he was resident	 RBI prior approval is required for repatriation Repatriation up to USD 1 million per financial year is allowed
Situation for PIO and a Foreign Citizen (except Nepal/ Bhutan)	
<u>Self Acquired or inherited Property</u> PIO or Foreign Citizen selling Property which he has purchased / acquired when he was NRI PIO or Foreign Citizen selling Property which he has Purchased Property when he was resident in India	 Repatriation up to USD 1 million per financial year is allowed Repatriation up to USD 1 million per financial year is allowed



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Income Tax Compliance for Purchase of Immovable Property

1. TDS Compliance

A. If Seller is Resident in India

- Any non resident while making payment to a resident Indian for purchase of any immovable property (other than agricultural land), needs to deduct TDS @ 1% if the purchase price is more than Rs 50 Lacs.
- Such TDS is to be paid within 30 days.
- Also TDS certificate is to be issued to the seller.
- Important Forms – 26QB and Form 16B

2. File Tax Return and Disclose your Property Purchase

Income Tax Compliance for Sell of Immovable Property

1. File Tax Return and Disclose Capital Gain for Sale of Property – First you need to determine whether the Capital Gain is short term or Long Term. Long Term Capital Gain is eligible for certain exemptions also. In case you choose not to claim exemptions then tax shall be payable as follows –

Long Term Capital Gain – Where the property is held for more than 2 years (From FY 2018-19). Tax is to be deducted as per the following table by the buyer of the property

Particulars	Where Income of NRI Seller < Rs. 50 Lakhs	Where Income of NRI Seller is between Rs. 50 Lakhs to Rs 1 Crore	Where Income of NRI seller is > Rs 1 Crore.
Tax Rate	20%	20%	20%
(+) Surcharge	-	10% on above	15% on above
Total	20%	22%	23%
(+) HEC @ 4%	4% on above Rate	4% on above	4% on above
Effective Tax Rate	20.8%	22.88%	23.92%



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Short Term Capital Gain - Where the property is held for a period of less than 2 years. The tax to be deducted is based according to the applicable income tax slab rates of the Non-Resident Indian based on his Total Income.

One important point to note is that where the property is inherited, the period of holding of the original owner should also be considered.

2. File Tax Return and Disclose your Property

- 3. Requesting Lower deduction of tax by buyer** – Buyer is required to deduct Tax at source while making payment to seller. If the capital gain tax is less than TDS to be deducted by buyer, then seller (non resident) can make application to his jurisdictional officer to allow buyer to deduct tax at a lower rate.
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