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FEMA 360 Degree: Regulations, Reporting and compliance

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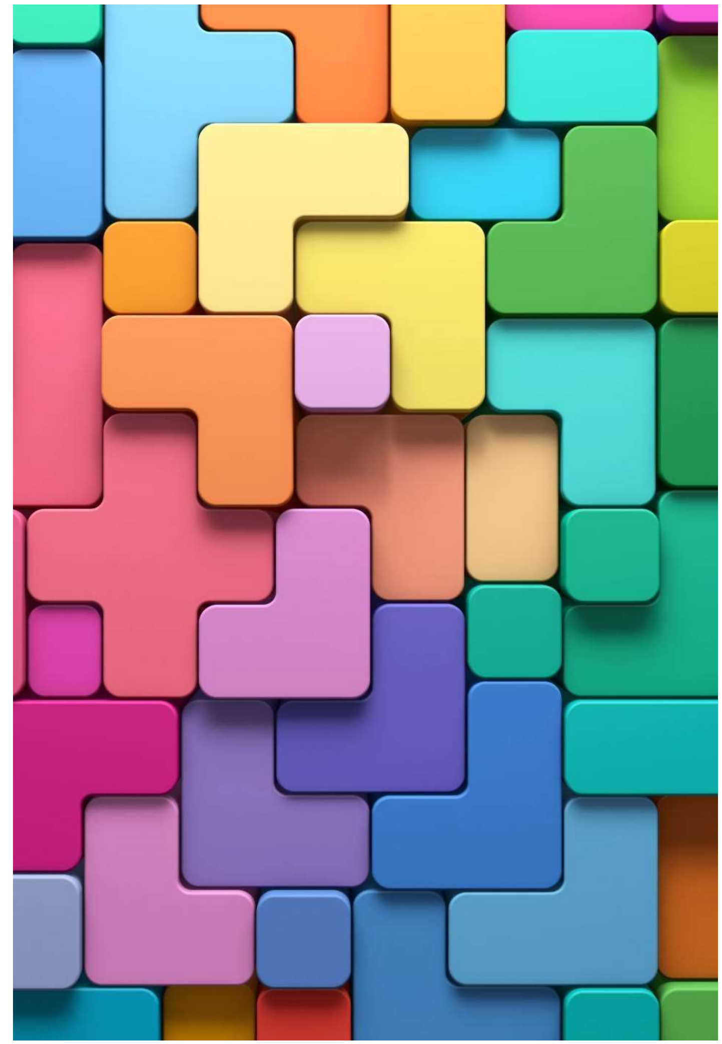
CHARTERED ACCOUNTANTS



Need of FEMA

Facilitating **External Trade and Payment** and promoting orderly development and maintenance of Foreign Exchange Market in India

To **channelize Foreign Exchange** Inflows for Productive and long term purposes for Indian Economy

Structure of FEMA

- FEMA ACT
- Notifications
- Rules
- Master Directions
- A.P. DIR circulars
- FAQs

Overview of FEMA

Basics of FEMA

- FEMA Governs
- Type of Persons
- Type of Transactions
- Section 3 of FEMA
- Various form of Inbound Investment

FEMA GOVERNS

Sr. No.	Types of Assets/ Transaction	Owned or Entered by
A	Currency / security / properties outside India	Person resident in India (PRI)
B	Currency / security / properties in India	Person resident outside India (PRO)

Remittance vis-a-vis Legal Provisions FEMA

Current Account

Freely Permitted

- ❑ Prohibited list
- ❑ Requiring Govt approval
- ❑ Requiring RBI approval

Capital Account

Strictly Regulated

- ❑ Investments
- ❑ Loans
- ❑ Setting up offices in India
- ❑ Immovable Property

Definition of Capital Account Transactions

Section 2(e) defines "Capital Account Transactions" to mean

"a transaction which -

- Alters the assets or liabilities, including contingent liabilities, outside India of a PRI, or
- Assets or liabilities in India of Non-resident, including capital account transactions as per Section 6(3)

Definition of Current Account Transaction

According to section 2 (j) of the Act the "Current Account transaction " means a transaction **other than a capital account transaction** and without prejudice to the generality of the foregoing, such transaction includes all trade payments

Permissible Current Account Transactions

1

Private visits abroad:

It includes airfares, hotels (except Nepal/ Bhutan) and all transport costs, but not overseas expenses charged on ICC's

2

Gifts to PROI & donations to an OOI

Covers gifts to PROI (natural love & affection) & foreign donations (charity, social & philanthropic purposes).
Note: Large overseas transfers may face regulatory scrutiny.

3

Maintenance of close relatives abroad

It includes items to support living expense like food, rent, education, medical care etc. and should not include expenses made on behalf of relatives.

4

Medical treatment abroad & related incidental expenses

It covers medical treatment outside India including hospitalization & medical procedure.
Exception: If estimate of expense > USD 250,000*, forex may be released beyond LRS (Sch III).

5

Studies Abroad

It covers tuition fees, living expense, deposits with universities, etc.

Exception: If estimate of expense > USD 250,000, forex may be released beyond LRS.

6

Emigration

It includes immigration, residency & settlement related payments.

Exception: Additional forex allowed as per overseas country's requirements *but only* towards meeting incidental expenses in the country of immigration and not for earning points or credits to become eligible (e.g. by way of overseas investments in government bonds; land; commercial enterprise; etc.)

Note : Other current account purposes not prohibited (subject to proper documentation and within LRS Limit)

**Limit of USD 250,000 per FY is also allowed for accompanying as an attendant to a patient going abroad.*

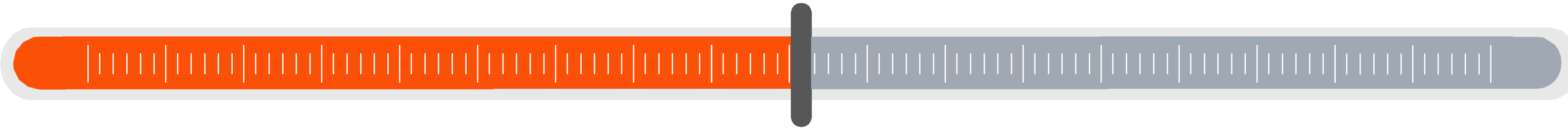
Permissible Capital Account Transactions

Overseas Investment	• Unlisted Equity / Listed w/ control – ODI • Listed w/o control – OPI
Acquisition of IMP abroad	• By purchase, gift (from eligible person), inheritance, or other permitted modes • Remittances can be consolidated - see slide 20
Purchase of objects of Art	• Permitted Subject to the provisions of foreign trade policy
Opening & maintaining FCA abroad	• Permitted to open, hold and maintain FCA abroad with banks for eligible LRS transactions • FCA in International Financial Service Center [IFSCs] are permitted for all allowable purposes under LRS
Loans in INR to NRI relatives	• Loans in INR to NRI relatives is permitted capital account transaction under LRS, subject to Borrowing and Lending Regulations
Subscription to FS	• Listed equity and debt, mutual funds, ETFs, AIFs, REITs , InvITs, etc. • ESOP / EBS / Sweat equity shares, etc. - no separate cap, however, subsumed under LRS

Permission G Compliances

- All **Current Account** Transactions are falling under the **General Permission**
- All **Capital Account** Transactions are falling under the **permission route** unless and otherwise it is expressly permitted under the General Permission
- For General Permission, it is **reporting requirement** to RBI for statistical purposes
- For Approval, one has to follow the guidelines stipulated under each of the regulation drafted by RBI
- Approval is granted by DIPP – Ministry of Commerce

Sec-8 Repatriation, Retention and 180-Day Rule



180th Day

General Rule

Residents in India
Cannot freely acquire, hold, own, transfer or invest (except as provided in FEMA and rules/ regulations):

- Foreign exchange; or
- Foreign security; or
- Immovable property.

Outside India.

Allowed to be held abroad (Without RBI Approval):

- Foreign assets acquired when the person was resident outside India
- Foreign assets inherited from person resident outside India

LRS Investments

Foreign exchange under LRS or any income*:

- If reinvested abroad as permissible - Allowed without repatriation.
- If remained idle/ unused/ unutilized – **should be repatriated to India within 180 days.**

**Any Income refers to dividends, interest, capital gains and sale proceeds from LRS investments*

Case Study-1

A professional earned fees for rendering services in UAE and invested the same in buying of property there. Instead of repatriating the funds so received back to India he invested in property in UAE.

Contravention -Non realization and repatriation of funds to India which are received towards professional fees received in UAE is a contravention.

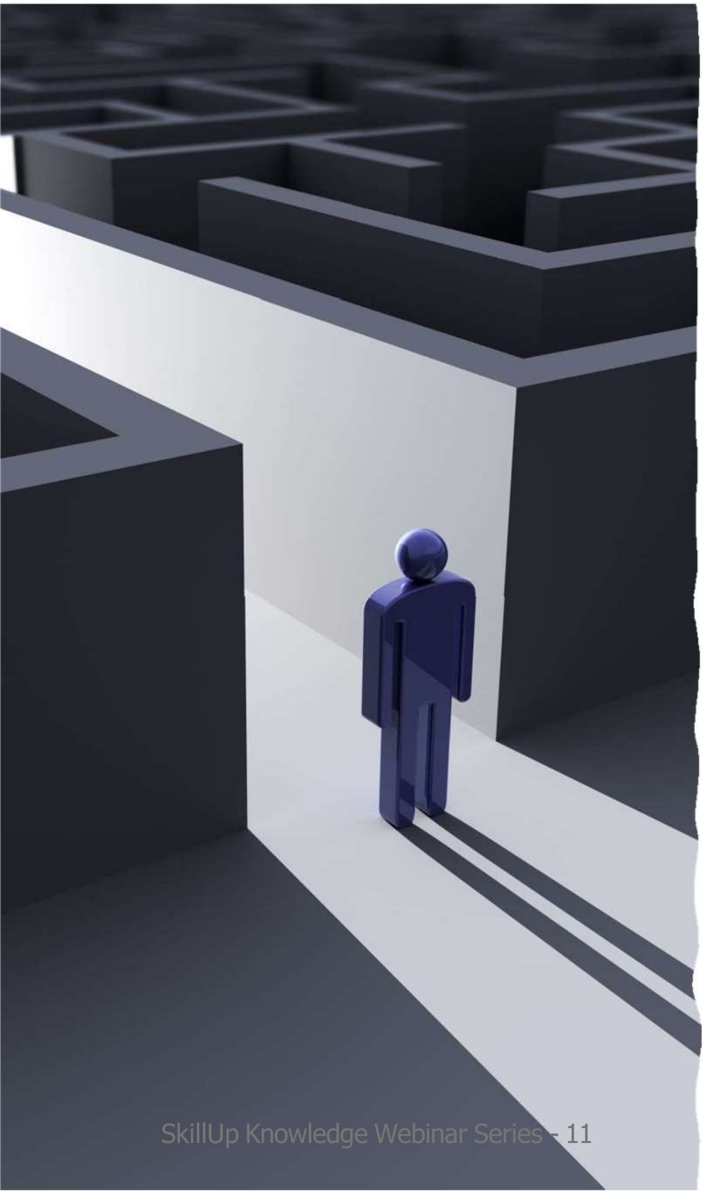
Case study 2-on Guarantee by NR

- An Indian WOS is in need of funds for working capital
- Parent Company doesn't want to raise equity
- They are open to giving debt, but ECB policy requires long term debt and that too if for working capital, minimum maturity period is five years
- Is there any other way for Indian sub to raise funds from its Parent Company

Case study 2-on Guarantee by NR

- Solution- funding Indian sub through SBLC
- SBLC in favour of Indian sub based on guarantee by foreign parent company
- The funding will be in INR, as based on SBLC Indian bank or Indian branch of a foreign bank
- Does it result in capital account transaction ?

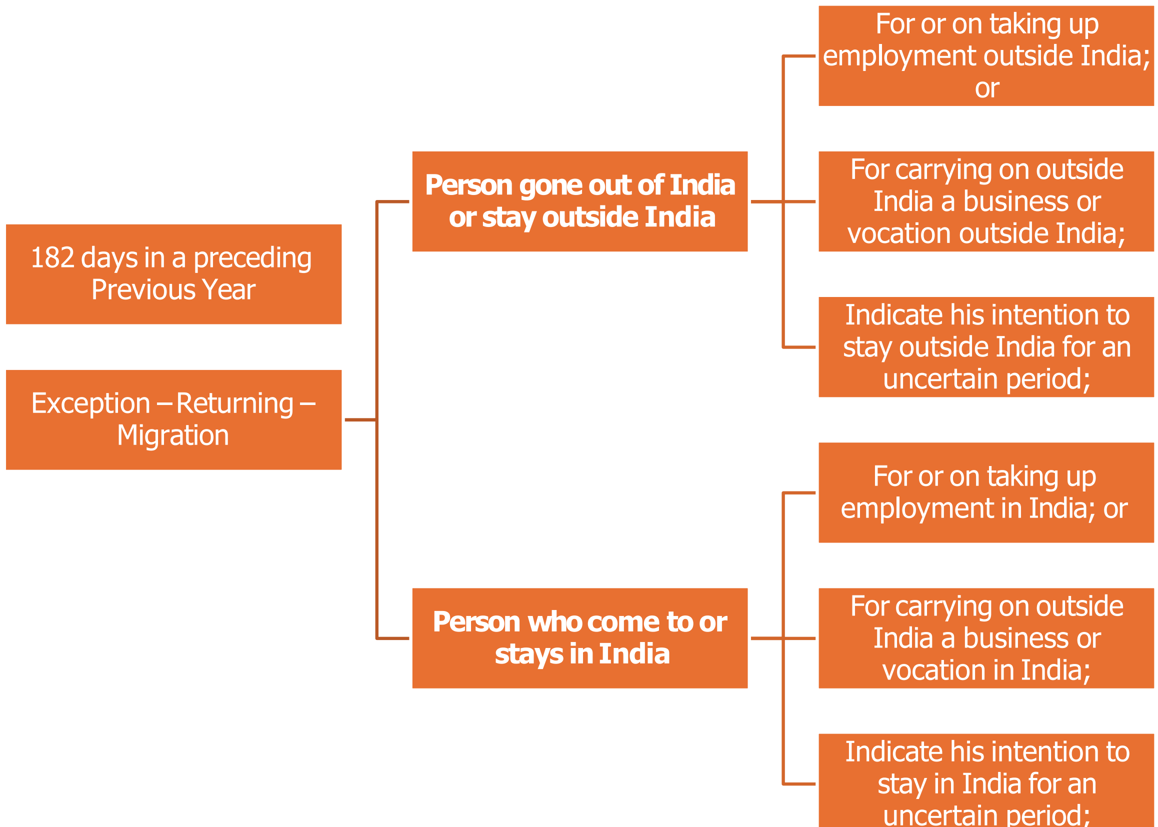
Determination of Residential Status FEMA



Person define under FEMA includes…

- Person resident in India
- Not Permanently Resident
- Person resident outside India

FEMA - Basic Definition of Person Resident in India – Individual



FEMA - Basic Definition of Person Resident in India – Individual

"Person resident outside India" means a person who is not resident in India;

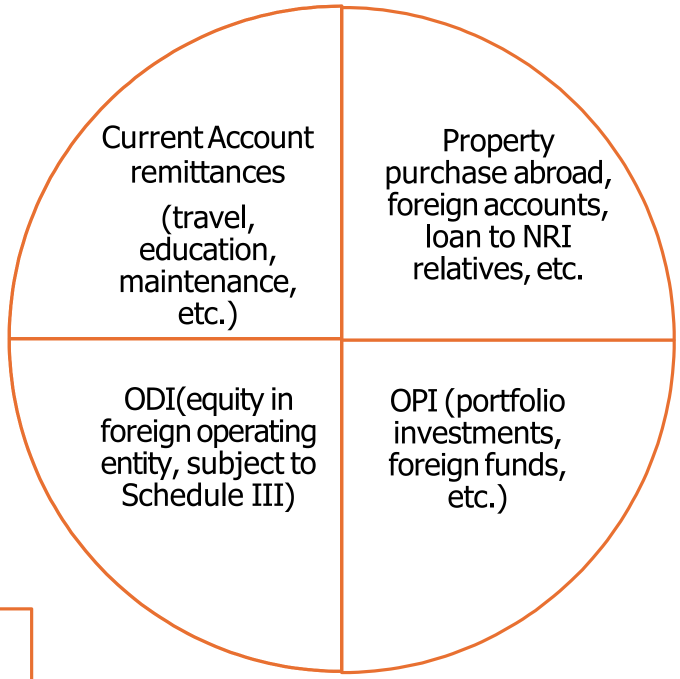
Not Permanently Resident under FEMA means a person who has come to India for employment of a specified duration (irrespective of period) or for a specific job or assignment not exceeding 3 years

Liberalised Remittance Scheme [LRS]

Liberalized Remittance Scheme (LRS)

Key aspects

- LRS facility - **available only to RESIDENT INDIVIDUALS** and **not to corporates, partnership firms, HUFs, trusts, etc.**
- Any permitted **CAPITAL and CURRENT account transactions** or a combination of both
- Remittance **upto USD 250,000 per FY**. Beyond limit, permissible in certain cases
- **No credit facilities for capital account remittances** under LRS by AD Banks
- AD bank to satisfy **source of funds**. Payment out of funds **belonging** to the RI / remitter
- **Minors** eligible to remit abroad under LRS - signing of declaration form by natural guardian
- Remittances by **sole proprietor** – no legal distinction with the individual – common LRS
- Limit applicable



USD 250,000 – Single Combined Limit

All permitted **current and capital account remittances** by a resident individual in a FY must **together not exceed USD 250,000**, subject to **EXCEPTIONS**.

Transactions prohibited under LRS

- Transactions specifically prohibited under Schedule I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or Schedule II of Current Account Rules
- Capital account remittances to non-co-operative countries identified by Financial Action Task Force (FATF) [e.g., DPRK, Iran, etc]
- Remittances directly or indirectly to individuals and entities posing significant risk of committing acts of terrorism [e.g. Pakistan]
- Remittance for margins or margin calls to overseas exchanges/ overseas counterparty (Thus, dealing in derivatives and options is not permitted)
- Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market.
- Remittance for trading in foreign exchange abroad
- Gifting by a resident to another resident, in foreign currency, for credit of latter's foreign currency account held abroad under LRS.

LRS – clubbing of remittances (1/2)

- **LRS Master Direction:**

Para 4 – Remittances under the Scheme **can be consolidated** in respect of family members subject to individual family members complying with its terms and conditions. However, **clubbing is not permitted by other family members for capital account transactions** such as opening a bank account/investment, **if they are not the co-owners/co-partners** of the overseas bank account/ **investment**. **Remittances for purchase of property** shall be **in accordance** with the provisions under paragraph 6(ii).

Para 6(ii) - The **permissible capital account transactions** by an individual under LRS are: ……… (ii) **acquisition of immovable property abroad,**……., in accordance with the provisions contained in Foreign Exchange Management (**Overseas Investment) Rules**, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022;

For current account transaction –consolidation of limits in respect of family members allowed For capital account transaction (other than immovable property) –Not allowed, unless co-owner For Immovable property –see next slide

LRS – clubbing of remittances (2/2)

- **Relevant extract of Rule 21 of OI Rules** - (2)(ii) a person resident in India may **acquire** immovable property outside India from a person resident outside India: …. (c) **by way of purchase out of the remittances sent under the Liberalized Remittance Scheme** instituted by the Reserve Bank: Provided that such remittances under the Liberalized Remittance Scheme may be **consolidated in respect of relatives if such relatives**, being persons resident in India, **comply** with the terms and conditions of the **Scheme**;

- **RBI's FAQs on LRS: Q 5. Can remittances under the LRS facility be consolidated in respect of family members?**

  Ans. Remittances under the facility **can be consolidated** in respect of family members subject to the individual family members complying with the terms and conditions of the Scheme. However, clubbing is not permitted by other family members for capital account transactions such as opening a bank account and investment, if they are not the co-owners/co-partners of the investment/ overseas bank account. **Remittances for acquiring immovable property outside India from a person resident outside India, may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme**.

Whether **co-ownership** required for acquisition of IMP outside India where limits of relatives are consolidated?

Case Study-3

- 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 Indian Branch of SBI. Mr. Anonymous, his brother will give guarantee on behalf of Mr. Hasmukh. Whether he is permitted to do so?
- What would be the position 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:4

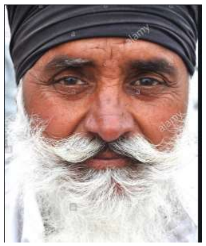
Ms. P wishes to acquire shares of a start-up company incorporated in Singapore for USD 450,000. She can remit only USD 250,000 under her own LRS limit during the financial year. She proposes that her husband and major son each remit USD 100,000 under their respective LRS limits and thereafter transfer beneficial ownership of the shares to her.

Issues for Discussion

- Whether family members can use their LRS limits for investment intended to be beneficially owned by Ms. P?
- Whether the shares can be registered solely in the name of Ms. P?
- Whether the transaction amounts to circumvention of the LRS ceiling?
- What are the FEMA implications if the shares are later transferred without consideration?

Case study :5

CHANGE IN RESIDENTIAL STATUS (RESIDENT TO NON-RESIDENT)



Sukhwinder was born and brought up in Amritsar. He is an agriculturist. He has got 100 acre of agricultural land and 5 farmhouses. He is also owning a huge residential bunglow and several commercial shops in India. Few of the shops are rented and he is fetching good rent.

He has negotiated a deal to buy 10 acres of an agricultural land in Jalandhar and he has given a token amount as well. He would like to spend his balance life with his son Balbir who is living in Canada. He decided to migrate to Canada. He has obtained necessary visa and he is leaving for Canada on **15 June 2022**.

He has following questions and has approached you for the advice:

1. Before leaving India, whether he should do anything about his property in India? Can he hold these properties and continue to earn rent and re-invest the money in other assets?

2. Once he starts living with his son in Canada, can he sell his property and repatriate money to Canada?

3. He has already given token for a proposed deal to buy 10 acres of agricultural land and given power of attorney to his nephew to complete the registration in the month of July 2022. Any issue about it?

Analysis

- **Section 6(5)** -A person resident outside India may hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India..
- An NRI can remit upto USD 1 million per year out of his NRO A/c in India.
- Buying agricultural land /plantation property/ farmhouse in India prohibited

Taxation on Saving/ Fixed Deposit Income from NRI

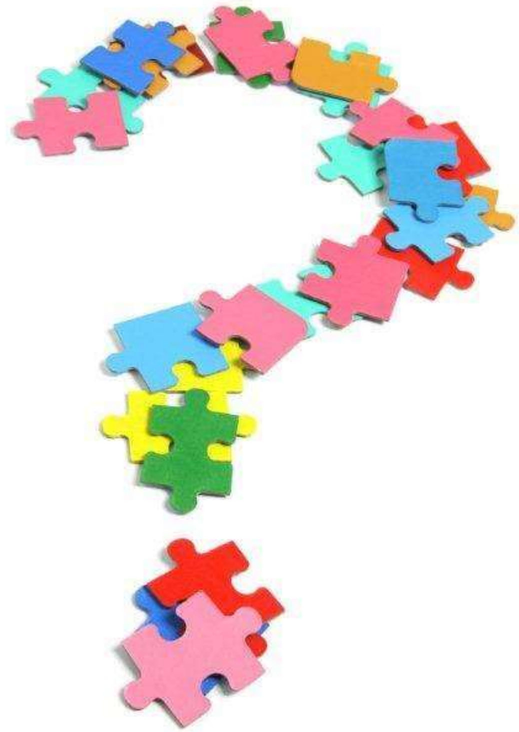
NRO Account Fixed Deposits:

- Interest earned on savings/ fixed deposits with NRO accounts is fully taxable in India.
- A TDS (Tax Deducted at Source) of 30% is applied on all interest earned - without any threshold exemption.
- Unlike resident Indians who enjoy a deduction threshold of 240,000, NRIs must pay TDS on the entire interest amount.

NRE Account Fixed Deposits:

- In contrast, interest earned on fixed deposits or savings in NRE accounts is completely tax-free in India.
- This makes NRE accounts a preferred choice for NRIs looking to invest in India with better tax efficiency.

Questions



Thank You

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