Deposits by Person Resident outside India

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1. Introduction

Deposits between a person resident in India (PRII) and person resident outside India (PROI) is a capital account transaction as per section 6(3)(f) of the Foreign Exchange Management Act, 1999 (FEMA). Non-Residents are permitted to invest their money in India with banks, companies, firms or proprietary concerns subject to certain conditions. Deposits between a PRII and PROI is governed by Notification No. FEMA 5(R)/2016-RB of FEMA,1999(herein after referred to as FEMA 5(R)).

2. Important Definitions

i. Deposit- It includes deposit of money with a bank, company, proprietary concern, partnership firm, corporate body, trust or any other person;

ii. Non-Resident Indian (NRI)- means a person resident outside India who is a citizen of India.

iii. Person of Indian Origin (PIO)- means a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:
   a. Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
   b. Who belonged to a territory that became part of India after the 15th day of August, 1947; or
   c. Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
   d. Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

3. Deposit by a PROI in India can be done through the following mediums:

i. Acceptance of Deposit by an AD bank is done through:
   a. Non-Resident External Account (NRE) – Permitted for NRI only
   b. Foreign Currency Non-Resident Account (FCNR) - Permitted for NRI only
   c. Non-Resident Ordinary Account (NRO) – Permitted for all PROI

ii. Acceptance of Non-Interest Bearing Deposits by an AD bank is done through:
   a. Special Non- Resident Rupee Account (SNRR)
   b. Escrow Account

iii. Acceptance of deposits by a company incorporated in India (including a non-banking finance company (NBFC)registered with RBI) on repatriation basis from an NRI or PIO. An Indian company is not allowed to accept fresh deposits from an NRI or PIO but is only permitted to renew the deposits

iv. Acceptance of deposits by Indian proprietorship concern/firm or company (including NBFC registered with RBI) on non-repatriation basis from an NRI or a PIO

v. Acceptance of deposit by an Indian company by issue of commercial paper to an NRI, PIO or Foreign Portfolio Investor (FPI) registered with the Securities and Exchange Board of India (SEBI) subject to conditions. (Though a PROI other than an NRI and PIO cannot deposit directly against issue of commercial paper, they can invest through an FPI)

4. <u>NRE Account</u>

An NRE account is an Indian rupee denominated account. The foreign currency deposited into the account is converted to Indian rupees. It is primarily used to deposit income originating outside India. Any amount credited to an NRE account is fully repatriable

i. Eligibility- It can only be opened by an NRI/PIO personally. Individual and Entities of Pakistan and Bangladesh shall require prior approval of RBI

ii. Types of Accounts- The account can be opened in any form eg: savings, current, recurring or fixed deposit account.

iii. Joint Accounts- NRE account can be held jointly in the name of two or more NRIs/PIOs or NRIs/PIOs can hold jointly with resident relative on former or survivor basis. The resident relative can operate the account as a Power of Attorney holder during the life time of the NRI/ PIO account holder

iv. Permissible Credits- Credits permitted to this account are inward remittance from outside India, interest accruing on the account, interest on investment, transfer from other NRE/ FCNR(B) accounts, maturity proceeds of investments (if such investments were made from this account or through inward remittance).Current income like rent, dividend, pension, interest etc. will be construed as a permissible credit to the NRE account. Any amount repatriable in nature can be credited to NRE account.

v. Permissible Debits- Permissible debits are local disbursements, remittance outside India, transfer to other NRE/ FCNR(B) accounts and investments in India.

vi. Taxability- Income earned on any amount in the NRE account is fully exempt from income tax.

vii. Loans in India - AD can sanction loans in India to the account holder/ third parties without any limit, subject to usual margin requirements.

    a. These can be used in India only for the following purposes:

- Personal purpose or for carrying on any business (except for real estate and agricultural activities
- Making direct investment in Indian companies on non-repatriation basis
- Acquisition of flat/house for own residential use

b. In case of loans sanctioned to a third party, there should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/ firm/ company to obtain such facilities.
c. In case of the loan sanctioned to the account holder, it can be repaid either by adjusting the deposits or through inward remittances from outside India through banking channels or out of balances held in the NRO account of the account holder.
d. The facility for premature withdrawal of deposits will not be available where loans against such deposits are availed of.
e. The term “loan” shall include all types of fund based/ non-fund-based facilities.
f. The loan amount cannot be credited to NRE account.

viii. Loans outside India – Loans outside India may be granted by branches /correspondents of AD bank outside India in favour of Non-resident depositor or third party at the request of the depositor for bona fide purpose against deposits in the NRE account.

ix. Change in residential status of account holder - NRE accounts should be designated as resident accounts or the funds held in these accounts may be transferred to the Resident Foreign Currency (RFC) accounts (discussed in the earlier article), at the option of the account holder, immediately upon the return of the account holder to India for taking up employment or on change in the residential status.

x. Power of Attorney - Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels. He cannot make gift to any resident or transfer funds from one account to another NRE account.

xi. Rate of Interest- SBI interest rate for NRE account is 3.25% p.a in case savings deposit balance is less than Rs one lakh and 3% p.a in case the deposit balance is more than Rs one lakh. NRE term deposit interest rate for tenure ranging from 1 year to ten years is 6.25% if deposit is less than Rs 2 crores and it is 5.25% for deposits of more than Rs 2 crores.

xii. Exchange Risk- Balances in NRE account is exposed to exchange risk because deposits are made in foreign currency but withdrawals are made in INR.

xiii. Nomination facility- Nomination facility is permitted in NRE accounts. Funds held in NRE account will be permitted to be repatriated back in case the nominee is a Non – Resident.

xiv. Temporary Over drawings- AD may at their discretion/ commercial judgement allow for a period of not more than two weeks, over drawings in NRE savings bank accounts, up to a limit of Rs.50,000 subject to the conditions.

5. **FCNR Account**

FCNR account is a Foreign currency account which can be maintained in any permitted freely convertible currency such as Pound Sterling, US Dollar, Japanese Yen, Euro etc.

i. Eligibility- FCNR account can be opened by NRI and PIO. Individual and Entities of Pakistan and Bangladesh shall require prior approval of RBI

ii. Types of Account- FCNR account can only be maintained in the form of term deposits (deposits ranging from 1year to 5 years)

iii. Funds to Open the Account- These accounts may be opened with funds remitted from outside India through banking channels or funds received in rupees by debit to the account of a non-resident bank maintained with AD in India or funds which are of repatriable nature. Accounts may also be opened by transfer of funds from existing NRE/ FCNR (B) accounts. Deposit in the account can only be made in any designated foreign currency in which the account is desired to be maintained.

iv. Change of Residential status- When an account holder becomes a PRII, the term deposit may be allowed to continue till maturity. However, such deposits will be treated as resident deposit from the date of return of the account holder to India, except for provisions relating to rate of interest and margin requirements. AD should convert the FCNR deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the account holder.

v. Exchange risk- Balances in FCNR account are not exposed to any exchange risk because the amount is deposited and withdrawn in foreign currency.

vi. Interest Rate – The interest rate will be as per the guidelines issued by the Department of Banking Regulations. The interest rate will vary depending on the designated currency.

vii. All other provisions with respect to Repatriation of funds, Joint Account, Permissible Debits and Credits, Taxability, Loans in and outside India, Power of attorney mentioned above in respect of NRE account shall apply mutatis mutandis to FCNR Account.

6. **NRO Account**

NRO is an Indian rupee denominated account primarily utilised to manage income earned in India by a PROI. Balance in NRO account is non repatriable.

i. Eligibility- Any PROI can open an NRO account for putting through bona fide transaction in rupees. Individuals/ entities of Pakistan nationality/ origin and entities of Bangladesh origin require the prior approval of RBI.

ii. Types of Accounts- The account can be opened in any form eg: savings, current, recurring or fixed deposit account.

iii. Joint Accounts- NRO account can be held jointly in the name of two or more NRIs/PIOs or NRIs/PIOs can hold jointly with resident on former or survivor basis.

iv. Permissible Credits- Inward remittances from outside India, legitimate dues in India and transfers from other NRO accounts are permissible credits to NRO account. Rupee gift/ loan made by a resident to an NRI/ PIO relative within the limits prescribed under the Liberalised Remittance Scheme may be credited to the latter's NRO account. Credits from inward remittance can not be used to create Fixed Deposits with the Bank.

v. Permissible Debits- The account can be debited for the purpose of local payments, transfers to other NRO accounts or remittance of current income abroad.
Apart from these, balances in the NRO account cannot be repatriated abroad except by NRIs and PIOs up to USD 1 million, subject to conditions specified in Foreign Exchange Management (Remittance of Assets) Regulations, 2016.
Funds can be transferred to NRE account within this USD 1 Million facility.
Fresh deposit can not be created from inward remittance

vi. Taxability- Income earned on any amount in the NRO account is taxable in India

vii. Loans in India - AD can sanction loans in India against the security of fixed deposit to the account holder/ third parties without any limit, subject to usual margin requirements and usual norms as are applicable to resident accounts. The loans can be used in India only for personal purpose or for carrying on any business (except for real estate and agricultural activities. The term "loan" shall include all types of fund based/ non-fund based facilities.

viii. Loans outside India- Not permitted against deposits in NRO account

ix. Change in residential status of account holder - NRO accounts should be designated as resident accounts immediately upon the return of the account holder to India for taking up employment or for any purpose indicating his intention to stay in India for an uncertain period or on change in the residential status

x. Power of Attorney - Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments in rupees, remittance of current income to the account holder outside India or remittance to the account holder himself through normal banking channels. While making remittances, the limits and conditions of repatriability will apply.

xi. Rate of Interest- SBI interest rate for NRO account is 3.25% p.a in case savings deposit balance is less than Rs one lakh and 3% p.a in case the deposit balance is more than Rs one lakh. NRO term deposit interest rate for tenure ranging from 7 days to ten years is 4.50% to 6.25% if deposit is less than Rs 2 crores and for deposit of more than R 2 crores the interest rate ranges from 4% to 5.25%.

xii. Repatriation of funds- Not repatriable except for all current income. Balances in an NRO account of NRIs/ PIOs cab be remitted up to USD 1 (one) million per financial year (April-March) along with their other eligible assets.

xiii. Nomination facility- Nomination facility is permitted in NRO accounts. The amount due/ payable to non-resident nominee from the account of a deceased account holder, shall be credited to NRO account of the nominee with an authorised dealer/ authorised bank in India.

xiv. A PROI other than NRI/PIO can invest in fixed deposit in India only through an NRO account only NRE and FCNR accounts can only be opened by NRI/PIO

xv. A foreign national of non Indian origin visiting India can open an NRO A/c with funds remitted from outside India for a period not exceeding 6 months

7. **Comparison between NRE, FCNR and NRO account**

Particulars	NRE	FCNR	NRO
Who can open the account	NRI and PIO. Individual/entities of Pakistan and Bangladesh shall require prior approval of RBI	NRI and PIO. Individual/entities of Pakistan and Bangladesh shall require prior approval of RBI	Any PROI. Individual/entities of Pakistan and Bangladesh shall require prior approval of RBI
Purpose	It is an account opened by an NRI to primarily transfer foreign earnings to India	It is a foreign currency account maintained in India where money can be retained in foreign currency	It is an account mainly used to manage Income earned in India
Repatriation of Funds	Permitted	Permitted	Not permitted. Other than Income on investments which can be repatriated.

Taxability	Income earned in the accounts is exempt from Income tax	Income earned in the account is exempt from Income tax	Income earned in the account is taxable
Currency	Indian Rupees	Any Permitted Foreign currency	Indian Rupees
Type of Account	Savings, Current, Recurring, Fixed Deposit	Term Deposit only	Savings, Current, Recurring, Fixed Deposit
Loans outside India against deposit in the account	Permitted	Permitted	Not Permitted
Exchange Risk	Exposed to Exchange Risk, since deposits are made in foreign exchange but withdrawals are done in INR	Relatively lower exchange risk than NRE account because deposit and withdrawals are made in foreign currency	Low exchange risk as deposits and withdrawals are done in INR

8. <u>Other Bank Accounts</u>

8.1. Special Non-Resident Rupee Account (SNRR) can be opened by those PROI having any business interest in India.

i. Any PROI, having a business interest in India, may open SNRR account with an authorised dealer for the purpose of putting through bona fide transactions in rupees, not involving any violation of the provisions of the Act, rules and regulations made thereunder.

ii. The SNRR account should carry the nomenclature of the specific business for which it is in operation.

iii. The operations in the SNRR account should not result in the account holder making available foreign exchange to any person resident in India against reimbursement in rupees or in any other manner.

iv. The SNRR account shall not bear any interest.

v. The debits and credits in the SNRR account should be specific/ incidental to the business proposed to be done by the account holder.

vi. Authorised dealers should ensure that the balances are commensurate with the business operations of the account holder.

vii. All the operations in the SNRR account should be in accordance with the provisions of the Act, rules and regulations made thereunder.

viii. The tenure of the SNRR account should be concurrent to the tenure of the contract/ period of operation/ the business of the account holder and in no case should exceed seven years. No operations are permissible in the account after seven years from the date of opening of the account.

ix. The balances in the SNRR account shall be eligible for repatriation.

x. Transfers from any NRO account to the SNRR account are prohibited.

xi. All transactions in the SNRR account will be subject to payment of applicable taxes in India.

xii. SNRR account may be designated as resident rupee account on the account holder becoming a resident.

xiii. The amount due/ payable to non-resident nominee from the account of a deceased account holder, shall be credited to NRO account of the nominee with an authorised dealer/ authorised bank in India.

xiv. The transactions in the SNRR accounts shall be reported to the Reserve Bank in accordance with the directions issued by it from time to time.

xv. Opening of SNRR accounts by Pakistan and Bangladesh nationals and entities incorporated in Pakistan and Bangladesh requires prior approval of Reserve Bank.

8.2. <u>Escrow Account</u>

i. An Escrow account in India can be opened in the following circumstances:

   a. By non-resident corporates for acquisition/transfer of capital instruments/convertible notes through open offers/delisting/exit offers. The escrow account will be closed immediately after completing the requirements for which it was opened.
   b. By resident and non-resident acquirers for acquisition/transfer of capital instruments/convertible notes. The escrow account shall remain operational only for six months.
   c. In case of transfer of capital instruments between a PRII and a PROI. If so agreed between the buyer and the seller, an escrow arrangement may be made between the buyer and the seller for an amount not more than twenty-five per cent of the total consideration for a period not exceeding eighteen months from the date of the transfer agreement.

ii. Balances in an Escrow account will be non-interest bearing

iii. No fund or non-fund based facilities would be permitted against the balances in the Escrow account

iv. Balances in an escrow account can be repatriated outside India at the then prevailing exchange rate (i.e., the exchange rate risk will be borne by the person resident outside India acquiring the capital instruments/convertible notes), after all the formalities in respect of the said acquisition are completed.

9. <u>Acceptance of deposits by a company incorporated in India on repatriation basis from an NRI/PIO</u>

A company incorporated in India is not permitted to accept any deposit on repatriation basis from an NRI or PIO. It is only permitted to renew the deposits it had accepted in accordance with Schedule 6 of Foreign Exchange Management (Deposit) Regulations), 2016, as amended from time to time subject to the following conditions:

i. The deposits should be received under a public deposit scheme.
ii. If the deposit accepting company is an NBFC, then it should be registered with RBI
iii. The maturity period of deposits shall not exceed 3 years.
iv. The amount of aggregate deposits accepted by the company shall not exceed 35% of its net owned funds
v. The amount of deposits so collected shall not be utilised by the company for re-lending (not applicable to an NBFC or for undertaking agricultural/ plantation activities or real estate business or for investing in any other concern, firm or a company engaged in or proposing to engage in agricultural/ plantation activities or real estate business.
vi. The amount of deposits accepted shall be allowed to be repatriated outside India.

10. <u>Acceptance of deposits by Indian proprietorship concern/firm or company on non-repatriation basis from NRI/PIO</u>

A proprietorship concern or a firm in India and a company incorporated in India may accept deposits on non-repatriation basis from NRIs or PIOs subject to the following conditions:

i. The deposits should be received under a public or private deposit scheme.
ii. If the deposit accepting company is an NBFC, then it should be registered with RBI
iii. The maturity period of deposits shall not exceed 3 years.
iv. The amount of deposit shall be received by debit to NRO account only, provided that the amount of the deposit shall not represent inward remittances or transfer of funds from NRE/ FCNR (B) accounts into the NRO account
v. The amount of deposits so collected shall not be utilised for re-lending (not applicable to an NBFC or for undertaking agricultural/ plantation activities or real estate business or for investing in any other concern, firm or a company engaged in or proposing to engage in agricultural/ plantation activities or real estate business.
vi. The amount of deposits accepted shall not be allowed to be repatriated outside India.

11. <u>Acceptance of deposit by an Indian company by issue of commercial paper</u>

An Indian company may accept deposits by issue of Commercial Paper (CP) to an NRI, PIO or FPI subject to the following conditions:

i. The deposit amount is non repatriable.
ii. The CP issued by the company is not transferable.
iii. Payment should be made by inward remittance from outside India through banking channels or out of funds held in a deposit account maintained by NRI or PIO in accordance with the Regulations made by Reserve Bank in that regard;

12. Conclusion

An NRI/PIO can choose from the various bank accounts based on their requirements. For an NRI mainly having income from employment and Investment abroad would open an NRE account. However, if NRI/PIOs significant chunk of the earnings are from investments and assets in India, one will only be able to deposit those earnings in NRO account. Lastly, if the funds are not required anytime soon, then an NRI/PIO would choose to lock the funds in an FCNR term deposit.