

NRI **Now Rigorous Investors**

Girija Gadre



**CENTRE FOR INVESTMENT
EDUCATION & LEARNING**

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Fifth Revised Edition – July 2016

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Printed by: Aagam Printers, Mumbai

Published in India by
Centre for Investment Education and Learning Pvt Ltd.
Unit 15, B Wing, Third Floor, Madhu Corporate Park Ltd.
P.B Marg, Worli, Mumbai-400013. India

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ISBN - (978-93-85685-03-3)

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**Lesson
1****NRI - Definitions and Examples**

1.1 NRI – Definition under FEMA

The term Non resident Indian (NRI) is defined differently under different statutes, rules and regulations applicable to NRIs. Though, plainly speaking, a Non resident Indian is an Indian citizen resident out of India, the rules and regulations under Foreign Exchange Management Act, 1999 (FEMA) which govern NRI investments and the Income Tax Act, 1961 (IT Act) which governs NRI taxation have laid down specific criteria for defining the term NRI.

Two basic aspects which guide the applicability of Foreign Exchange Management Act (FEMA) are the nature of transaction and residential status of a person.

Nature of transaction can be either of the following:

- Capital account transaction in the form of purchase or sale of shares or property
- Current account transaction in the form of remittance of income on shares, property.

There are certain types of transactions that do not require RBI permission under FEMA, while others either require prior approval of RBI/ Government or it is mandatory to inform RBI about the same.

The determination of residential status under FEMA is substantially different as compared to that under the Income Tax Act. Under the Income Tax Act, residential status is determined based only on the number of days of stay in India. Under FEMA, residential status is primarily determined based on the intention of the person. Under FEMA rules and regulations the term non resident Indian is defined as under:

“A person resident outside India means a person not resident in India.”

"A person resident in India" means-

- (a) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include-
- a person who has gone out of India or who stays outside India, in either case-
 - for or on taking up employment outside India, or
 - for carrying on outside India a business or vocation outside India, or
 - for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - a person who has come to or stays in India, in either case, otherwise than-
 - for or on taking up employment in India, or
 - for carrying on in India a business or vocation in India, or
 - for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- (b) any person or body corporate registered or incorporated in India,
- (c) an office, branch or agency in India owned or controlled by a person resident outside India,
- (d) an office, branch or agency outside India owned or controlled by a person resident in India;

Non Resident Indian under FEMA

In terms of Regulation 2 of FEMA Notification No.13 dated May 3, 2000, Non-Resident Indian (NRI) means a person resident outside India who is a citizen of India.

Non Resident foreign citizens of Indian origin are treated on par with Non Resident Indians. This includes persons of Indian origin (PIO) or Overseas Citizens of India (OCIs).