

**NRIs – FEMA and Tax Implications
post Finance Act, 2020
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Definitions

Residence – Section 6 of Income Tax Act – Pre amendment by Finance Act 2020

Resident (R)

(1) Stay in India of 182 days or more in a previous year

OR

(2) Stay in India of 60 / 182* days or more in a previous year
AND stay in India of 365 days or more in the preceding 4 years

Resident and Ordinarily Resident (R & OR)

(1) Resident in at least 2 out of the 10 preceding previous years,

AND

(2) Physical stay in India of at least 730 days in aggregate in the 7 preceding previous years

Resident but Not Ordinarily Resident (RNOR)

(1) Non-Resident for at least 9 out of 10 preceding previous years

OR

(2) Physical stay in India less than 730 days in aggregate in the 7 preceding previous years

*60 days criteria become 182 days in following cases:

- i. where a citizen of India is leaving India as member of crew of Indian ship or for employment purposes
- ii. Where citizen of India or PIO comes on visit to India

Amendment in section 6(1) by Finance Act

Amendment in Explanation to Section 6(1) – New category based on total income

“and in case of the citizen or person of Indian origin having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, for the words "sixty days" occurring therein, the words "one hundred and twenty days" had been substituted”

- Meaning of person of Indian origin (PIO) – Explanation to section 115C(e) – PIO means he or either of his parents or any of his grand parents were born in undivided India

Resident (R)

(1) Stay in India of 182 days or more in a previous year

OR

(2) Stay in India of 60 /120* / 182** days or more in a previous year
AND stay in India of 365 days or more in the preceding 4 years

*60 days criteria becomes 120 days in following cases:

- where a citizen of India or PIO having total income (excluding foreign sources income) in excess of Rs 15 lakhs

**60 days criteria becomes 182 days in following cases as earlier:

- where a citizen of India is leaving India as member of crew of Indian ship or for employment purposes

Insertion of section 6(1A) – Deemed Resident

New Category of Deemed Resident – section 6(1A) – Overriding existing definition

*“(1A) **Notwithstanding** anything contained in clause (1), an individual, being a **citizen of India**, having **total income**, other than the income from foreign sources, **exceeding fifteen lakh rupees** during the previous year shall be **deemed to be resident** in India in that previous year, if he is **not liable to tax in any other country or territory** by reason of his **domicile or residence** or any other criteria of similar nature”*

- Person will be deemed to be Indian resident irrespective of days spent in India if all of the following conditions are fulfilled:
 - **Condition 1** – Individual is citizen of India; **AND**
 - **Condition 2** – His total income (excluding income from foreign sources) exceeds Rs. 15 lakhs; **AND**
 - **Condition 3** – He is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria

Individual will be deemed to be resident even if he does not spend a single day in India during the previous year.

Amendment in section 6(6) – RNOR

Two additional categories of RNOR introduced in section 6(6)

- Citizen of India or PIO having total income (excluding foreign sources income) in excess of Rs. 15 lakhs and whose stay in India is more than 120 days but less than 182 days
- Citizen of India who is deemed to be resident in India under new section 6(1A)

Resident but Not Ordinarily Resident (RNOR)

(i-a) Non-Resident for at least 9 out of 10 preceding previous years

OR

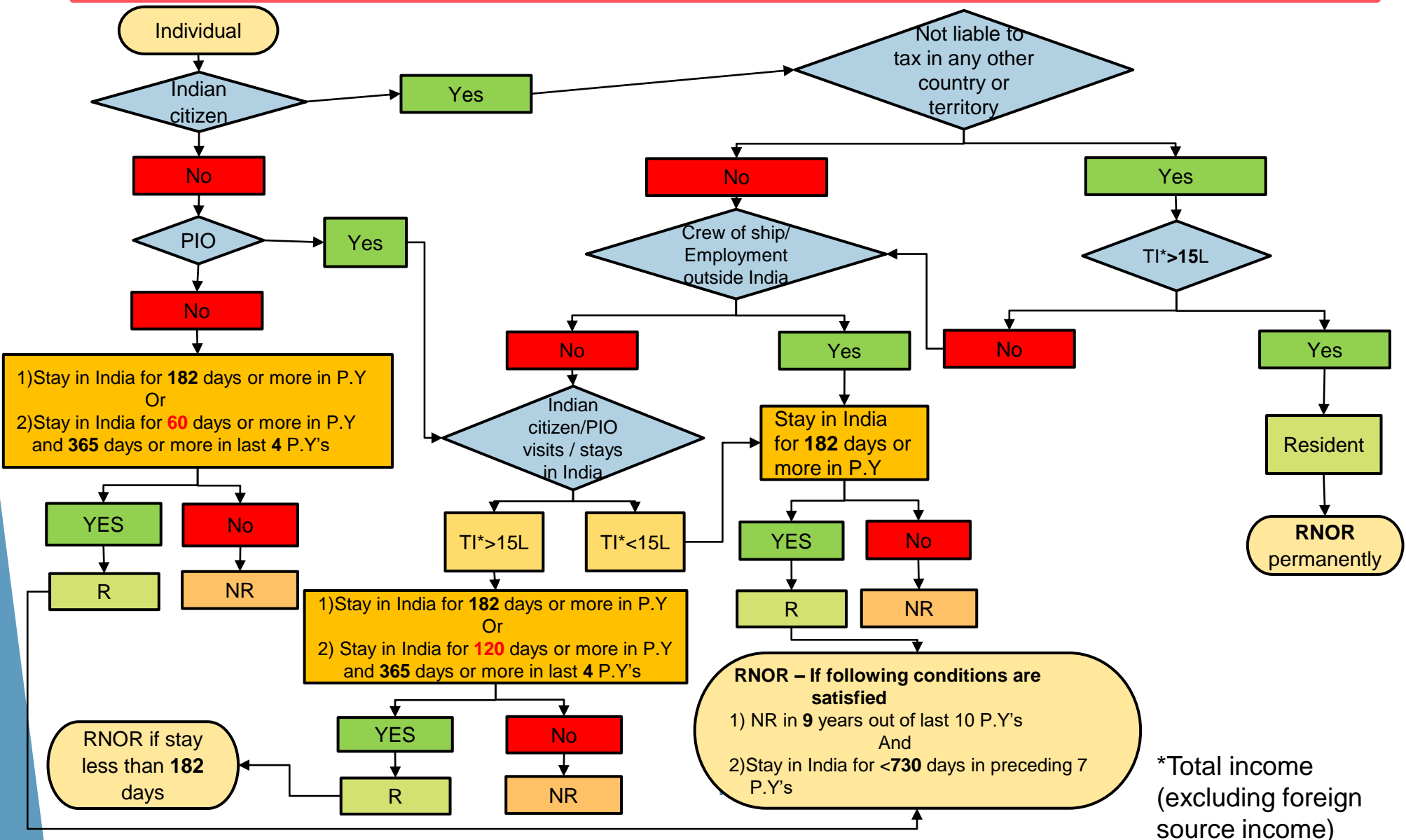
(i-b) Physical stay in India less than 730 days in aggregate in the 7 preceding previous years

(ii) Citizen of India or PIO having total income (excluding foreign sources) in excess of 15 lakhs and is in India for more than 120 days but less than 182 days

(iii) Citizen of India deemed to be resident under section 6(1A)

For persons falling under category (ii) and (iii), their status would be that of permanent RNOR

Flowchart for determining residential status



Issues in the amended provisions

Amendment in Section 6(1A)

➤ **Non obstante clause**

- Applicable to everyone
- Would also cover persons who are otherwise resident in India under section 6(1)
- Applicable only if your citizen of India.

➤ **Meaning of the phrase – Total income**

- Total income is defined under section 2(45) to mean total amount as referred to in section 5
- Section 5 provides that total income is to be computed based on residential status
- Total income to include exempt income like NRE interest, partner's share of profit etc. ?
- Total income is Gross Total Income ?
- Total income should be net off Chapter VIA deductions / brought forward losses ?
- Total income should be net taxable income which is subject to tax?

Issues in the amended provisions

➤ **Meaning of foreign income**

- Total income to exclude foreign income
- Foreign income means income which accrues or arises outside India (except foreign income derived from a business or profession in India)
- Meaning of income derived from business controlled in India or profession set up in India
- Is foreign income of an Indian company / entities included ?
- Can it include foreign income in nature of professional fees / interest / dividend of Indian entities ?
- Effectively, only Indian income of individual to be considered for determining limit of Rs. 15 lakhs

Issues in the amended provisions

- **Meaning of the phrase – Not liable to tax due to domicile, residence or any other criteria**
 - Difference between liable to tax v/s subject to tax
 - Liable to tax – Azadi Bachao Andolan (263 ITR 706) - SC
 - Residents of UAE and other countries where there is no income tax liability on individuals would be covered

If covered under section 6(1A), they will always be RNOR

Issues in the amended provisions

➤ Amendment in section 6(1)

- Earlier provision covered citizen of India or PIO coming to visit India
- New provision does not use the phrase, 'visit to India'
- Hence, any citizen of India or PIO coming to India having total income (excluding foreign income) greater than 15 lakhs will be covered under new provision of 120 days
- Thus, they can be resident if they fulfill any one of below two conditions:

- **Condition 1 – Presence in India for more than 182 days in previous year**

OR

- **Condition 2 – i) Presence in India for 120 days or more in previous year AND
ii) Presence in India for 365 days or more in preceding 4 years**

If covered under above section 6(1), they will always be RNOR irrespective of number of days spent in previous years

Impact in treaty scenario

- PIO / Indian citizen having total income (excluding foreign income) greater than 15 lakhs and staying in India for more than 120 days but less than 182 days – RNOR
- Indian citizen deemed to be resident under section 6(1A) - RNOR
- If a person becomes RNOR under either of the above two scenarios and is eligible for tax treaty, tie breaker test will need to be applied to determine his residential status under treaty
- Tie breaker test generally includes following criteria:
 - Permanent home;
 - Personal and economic interests - centre of vital interests;
 - Habitual abode;
 - Nationality;
 - Mutual Agreement Procedure (MAP)

Impact in treaty scenario

- **If under tie breaker test, he becomes resident of another country, following implications will arise**
 - He will become NR in India
 - Only his Indian income will be taxable and foreign income will not be taxable
 - Indian income will be taxable only at the treaty rates or Act rate whichever is more beneficial, eg. Dividend income / Royalty / FTS income
 - Need to file his return of income and furnish TRC
- **If under tie breaker test, he becomes resident of India, following implications will arise**
 - Status will be RNOR;
 - His Indian income including foreign income from business / profession based in India will be taxable
 - Foreign income not taxable
 - Indian income will be taxable at Indian rates applicable to residents, including surcharge and cess, eg. Dividend income

Implications of amendment

Implications

- Only Indian source income taxed and foreign source income excluded
- Slab rates as applicable to senior citizens. available
- TDS to be deducted as per normal rates which are mostly lower than that applicable under section 195
- Can claim foreign tax credit for doubly taxed income
- Not required to report foreign assets
- Continue to be RNOR even if his stay in India crosses 730 days

Disadvantages

- All investment income including capital gains / interest income will now be taxable at normal rates and not eligible for special rates applicable to Non-residents
- Higher rate of surcharge applicable
- Beneficial treaty rates not available
- RNOR will still be considered as NR for TP purposes
- Increase in compliances upon becoming resident

Summary of residential status

Applicable section	Description	Residential status	Status of RNOR / ROR
Section 6(1A)	Indian citizen not liable to tax and having Indian income > 15 Lakhs	Resident	RNOR
Explanation (a) to section 6(1)	Indian citizen leaving India as member of crew of Indian ship or employment purposes and stay in India is more than 182 days	Resident	RNOR / ROR*
Explanation (b) to Section 6(1)	Indian citizen / PIO having Indian income > 15 lakhs and stay in India is more than 120 days but less than 182 days	Resident	RNOR
Explanation (b) to Section 6(1)	Indian citizen / PIO having Indian income < 15 lakhs and visits India for more than 182 days	Resident	RNOR / ROR*

* Depending upon fulfilment of conditions prescribed under section 6(6), i.e. 9 out of 10 years and 729 days in previous 7 years

Case studies

Case Study 1 – Impact on NRIs visiting India

Facts

- Mr. A is a US citizen and PIO
- He regularly visits India for business and other purposes
- His stay in India in FY 2020-21 will exceed 120 days but less than 182 days
- On an average he has spent more than 150 days in each of the 10 years preceding FY 2020-21
- His total income is 50 lakhs comprising of Indian income of Rs. 20 lakhs and overseas income of Rs. 30 lakhs

Query

- What would be his residential status in FY 2020-21 ?
- What would be his residential status in FY 2020-21, if his total stay in India crosses 120 days due to flights cancelled because of Corona virus ?
- What would be his residential status if his stay in India crosses 182 days in FY 2020-21 ?

Case Study 2 – Impact on NRIs working outside India

Facts

- Mr. X is an Indian citizen and employed in a company based in UK
- He regularly visits India for his employment as well as to visit his family
- His stay in India in FY 2020-21 will exceed 100 days but less than 120 days
- On an average he has spent more than 150 days in each of the 10 years preceding FY 2020-21
- His total income is 40 lakhs comprising of Rs. 20 lakhs as UK salary income and balance Rs. 20 lakhs is his Indian income ?

Query

- What would be his residential status in FY 2020-21 under the provisions of Act?
- Determine his residential status if he visits India for more than 120 days but less than 182 days in FY 2020-21
- Will his residential status change if his Indian income is less than Rs. 15 lakhs ?
- Can he take benefit of India-UK DTAA ?

Case Study 3 – Impact on NRIs working outside India

Facts

- Mr. X is an Indian citizen and employed in a company based in UAE
- He regularly visits India for his employment as well as to visit his family
- His stay in India in FY 2020-21 will exceed 100 days but less than 120 days
- He will be spending more than 183 days in UAE
- On an average he has spent more than 150 days in each of the 10 years preceding FY 2020-21
- His total income is 40 lakhs comprising of Rs. 20 lakhs as UAE salary income and balance Rs. 20 lakhs is his Indian income ?

Query

- What would be his residential status in FY 2020-21 under the provisions of Act?
- Can he take benefit of India-UAE DTAA ?
- What happens if his total income is only Rs. 20 lakhs comprising of UAE salary income of Rs 15 lakhs and Indian income of Rs. 5 lakhs ?
- What would be his residential status if he does not visit India for a single day in FY 2020-21 and his stay in UAE is for less than 183 days

Case Study 4 – Impact on NRIs having investment income

Facts

- Mr. X is PIO, based in USA having investment in Indian shares as well as immovable property
- Hi stay in India in FY 2020-21 is for more than 120 days but less than 182 days
- His total Indian income comprising of taxable dividend and interest income exceeds Rs. 15 lakhs in FY 2020-21
- He has sold shares and wants to compute capital gains

Query

- What would be his residential status in FY 2020-21 under the provisions of Act?
- How to compute capital gains – Will first proviso to section 48 apply, i.e. will computation of capital gains be in foreign currency or it will be in Indian currency ?
- What will be the rate for taxing capital gains ? Will it be 10% as per section 112 or 20% ?
- What will be tax implications on sale of bonds or GDRs of Indian company sold outside India?
- Tax implications on sale of GDRs of Indian company or rupee denominated bond or other notified securities on stock exchange located in IFSC
- He has earned interest on NRE Account amounting to Rs 5 lakhs. What would be its status ?
- Can he take benefit of India-US DTAA ?

Case Study 5 – Impact on Indian citizens having overseas income

Facts

- Mr. A Salve is an Indian citizen, renowned lawyer and has set up his law firm in India
- He stays in India for more than 120 days but less than 182 days in a year
- His total income is Rs. 30 lakhs bifurcated as under:
 - Indian professional fees – Rs. 10 lakhs
 - Indian interest income – Rs 2 lakhs
 - US professional fees – Rs. 18 lakhs

Query

- What would be his residential status in FY 2020-21 under the provisions of Act?

Case Study 6 – Impact on Indian citizens having overseas income

Facts

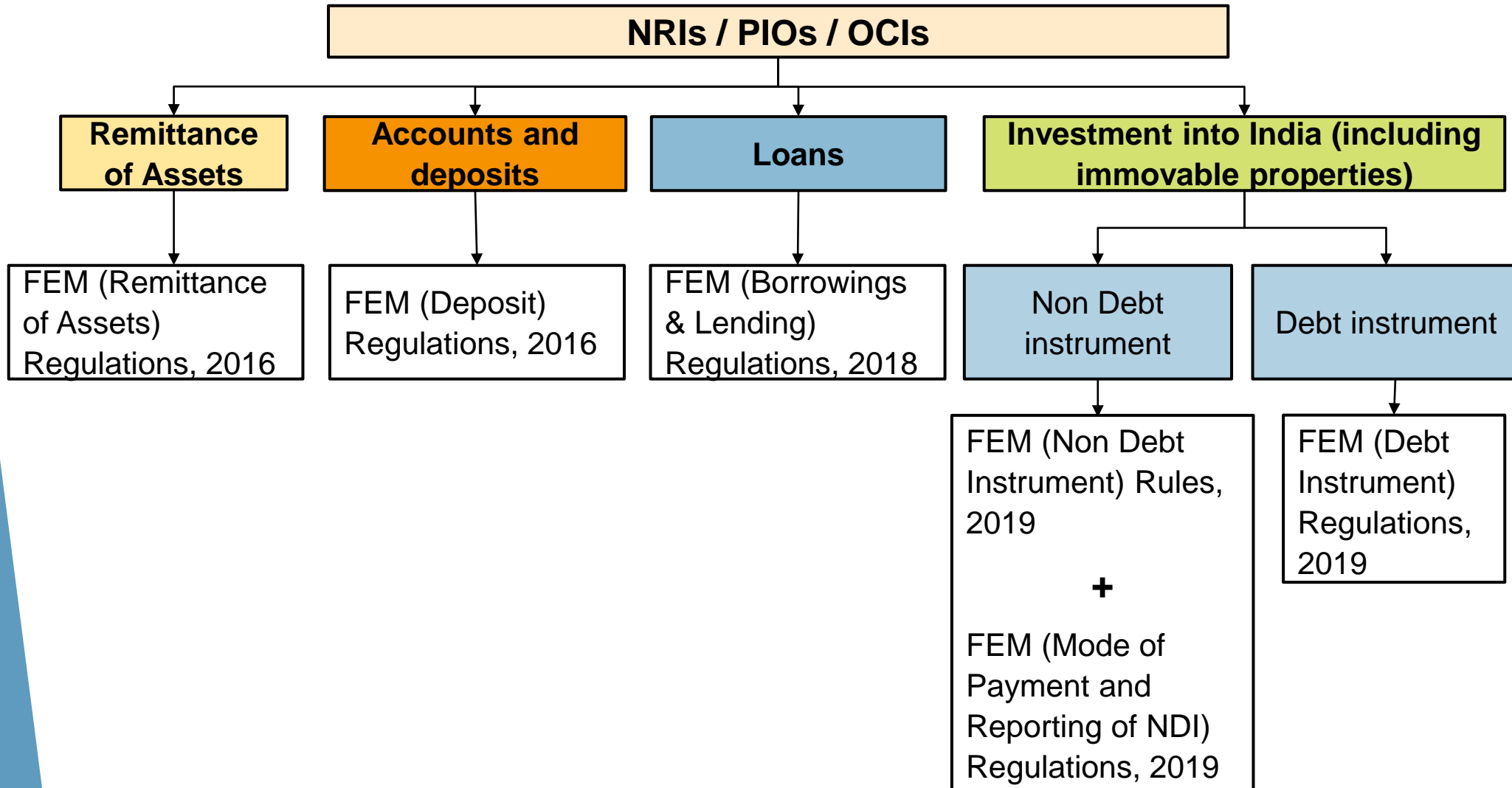
- Mr. Shah is an Indian citizen having its Indian sole proprietor business of diamond trading which has its office in Mumbai
- He keeps on travelling to Dubai, Singapore, Hong Kong, Antwerp for the purposes of diamond trading and has obtained business visa for all these countries
- His stay in India is for less than 182 days in a year
- His total income is Rs. 23 lakhs bifurcated as under:
 - Indian business income – Rs. 10 lakhs
 - Indian interest income – Rs 3 lakhs
 - Overseas business income – Rs. 10 lakhs

Query

- Ascertain residential status under the provisions of Act?
- What would be his residential status if Indian business is housed in an Indian company and he receives salary income from Indian company ?

FEMA Framework

Framework



Residential status under FEMA

Person Resident in India

Condition 1 – Stay in India - For more than 182 days in **previous financial year** but does not include

+

Condition 2 – Intention of stay in India

For persons leaving India **for**:

- Employment;
- Business / Vocation;
- Other purpose for stay outside India for an uncertain period

For persons visiting India **other than for**:

- Employment;
- Business / Vocation;
- Other purpose for stay in India for an uncertain period

Person Resident Outside India

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

Residential status for students

- **A.P.(DIR Series) Circular No. 45 dated 8 December 2003**
- RBI has through above Circular clarified that Indian students studying overseas stay abroad for more than 182 days in preceding financial year and their intention to stay outside India is for an uncertain period and hence, will be treated as 'person resident outside India'.

NRI – definition under FEMA

- FEM (Borrowing & Lending) Regulations, 2018
- FEM (Deposit) Regulations, 2016
- FEM (Remittance of Assets) Regulations, 2016
- FEM (Permissible Capital Account Transactions) Regulations, 2000

NRI means
“a person resident outside India
who is a citizen of India”

- FEM (NDI) Rules, 2019
- FEM (Debt Instruments) Regulations, 2019

NRI means
“an individual resident outside
India who is a citizen of India”

PIO – definition under FEMA

PIO as defined under:

- FEM (Deposit) Regulations, 2016
- FEM (Remittance of Assets) Regulations, 2016

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 Central Government, satisfying following conditions:

- Who was a citizen of India by virtue of Constitution of India or Citizenship Act, 1955 **OR**
- Who belonged to a territory that became part of India after 15 August, 1947 **OR**
- Who is a child or grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b)
- 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)

Explanation: for the purpose of this sub-regulation, the expression Section 7(A) of the Citizenship Act, 1955. 'Person of Indian Origin' includes an 'Overseas Citizen of India' cardholder within the meaning of

OCI – definition under FEMA

OCI as defined under:

- FEM (NDI) Rules, 2019
- FEM (Debt Instruments) Regulations, 2019
- FEM (Deposit) Regulations, 2016
- FEM (Borrowing & Lending) Regulations, 2018

OCI means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955*

PIO category is now only relevant for Deposits Regulations, for all other purposes OCI is relevant

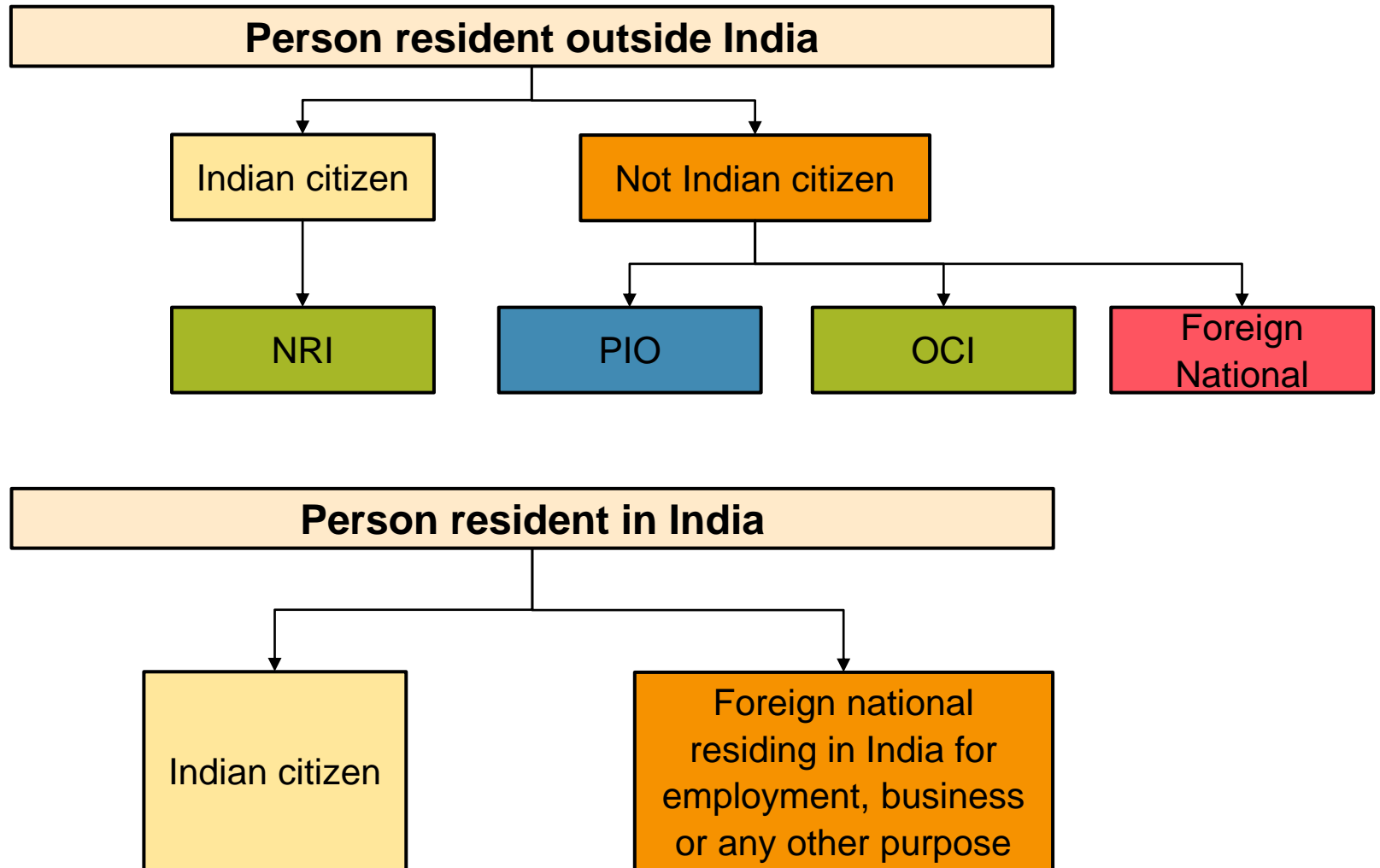
* Relevant extract given in Annexure 1

Distinction between NRI, PIO and OCI

Particulars	NRI	PIO	OCI
Definition	NRI means a person resident outside India who is a citizen of India	PIO means a person resident outside India who is a citizen of any country (excluding Bangladesh, Pakistan) and fulfills any of following conditions: i) Was citizen of India as per Indian constitution or Citizenship Act; or ii) Belonged to territory which became part of India after 1947; or iii) Who is a child or grandchild or a great grandchild of a citizen of India or person referred above; iv) Who is a spouse of foreign origin of a citizen of India or person referred above;	OCI means a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955
Citizenship	Indian	Any country (excluding Bangladesh and Pakistan)	Any country (excluding Bangladesh and Pakistan)
Includes	None	Includes OCI card holder	Existing PIO cardholders are deemed to be OCI card holders but separate OCI card to be obtained

As PIO card is now discontinued, only two categories remain, NRI and OCI card holder

Overview of NRIs / PIOs / OCIs



Bank Accounts maintained by NRI

Accounts maintained by NRI (1/5)

Particulars	NRE A/c	FCNR(B) A/c	NRO A/c
Who can open an account ?	NRI & PIO (includes OCI card holder) (Individual/entities of Pakistan & Bangladesh require prior approval of RBI)		Any Person resident Outside India
Type of Account	Savings, Current, Recurring, Fixed Deposit	Term Deposit Only	Savings, Current, Recurring, Fixed Deposit
Repatriability	Repatriable	Repatriable	<ul style="list-style-type: none"> ▪ Not repatriable except for all current income. ▪ Balances in an NRO account of NRIs/ PIOs are remittable up to USD 1 (one) million per financial year (April-March) along with their other eligible assets.

Accounts maintained by NRI (2/5)

Particulars	NRE A/c	FCNR(B) A/c	NRO A/c
Currency	INR	Forex (Any foreign currency which is freely convertible)	INR
Joint Accounts	<ul style="list-style-type: none"> ▪ Jointly with two or more NRIs/ PIOs ▪ Jointly with resident relative on 'former or survivor' basis (relative as defined in Companies Act, 2013) ▪ The resident relative can operate the account as a Power of Attorney holder during the life time of the NRI/ PIO account holder. 		
Rate of Interest	As per guidelines issued by the Department of Banking Regulations		
Taxability	Tax Exempt	Tax Exempt	Taxable

Accounts maintained by NRI (3/5)

Particulars	NRE A/c	FCNR(B) A/c	NRO A/c
Operations by Resident POA Holder	<p>Permitted</p> <ul style="list-style-type: none"> ▪ Withdrawal for local payments ▪ Make investments in India ▪ Remittance to account holder himself through banking channels <p>Prohibited</p> <ul style="list-style-type: none"> ▪ Remittance outside India to other than account holder himself ▪ Make payment by gift to resident ▪ Transfer funds to other NRE account 		<p>Permitted</p> <ul style="list-style-type: none"> ▪ Withdrawal for local payments ▪ Make investments in India ▪ Remittance outside India of current income, net of taxes <p>Prohibited</p> <ul style="list-style-type: none"> ▪ Remittance outside India to other than account holder himself ▪ Make payment by gift to resident ▪ Transfer funds to other NRO a/c`
Loans Outside India (Secured)	<ul style="list-style-type: none"> ▪ AD may allow their branches correspondents o/s India to grant loans to NRI/PIO or to Third Parties for bona fide purpose against the security of funds held in the NRE/ FCNR (B) accounts in India, subject to usual margin requirements. ▪ The term “loan” shall include all types of fund based / non-fund based facilities 		<ul style="list-style-type: none"> ▪ Not Permissible

Accounts maintained by NRI (4/5)

Particulars	NRE A/c	FCNR(B) A/c	NRO A/c
Loans In India	<ul style="list-style-type: none"> ▪ AD can sanction loans in India to NRI/PIO/ third parties without any limit, subject to usual margin requirements. ▪ These loans cannot be repatriated outside India ▪ Should be used only for personal purposes or business purposes (excluding relending, carrying on agricultural/ plantation activities or investment in real estate business) ▪ In case of loans sanctioned to a third party, there should be no direct/indirect forex consideration for NRI/PIO agreeing to pledge his deposits to enable the resident individual/firm/company to obtain such facilities ▪ In case of the loan sanctioned to the account holder, it can be repaid either by adjusting the deposits or through inward remittances from o/s India through banking channels or out of self NRO a/c ▪ The facility for premature withdrawal of deposits not be available in such cases ▪ The term “loan” includes all types of fund based/non-fund based facilities 		<ul style="list-style-type: none"> ▪ Loans against deposits can be granted in India to the account holder or third party subject to usual norms and margin requirement. The loan amount cannot be used for relending, carrying on agricultural/ plantation activities or investment in real estate business. ▪ The term “loan” includes all types of fund based/ non-fund based facilities

Accounts maintained by NRI (5/5)

Particulars	NRE A/c	FCNR(B) A/c	NRO A/c
Change in Residential Status from Non-Resident to Resident	<ul style="list-style-type: none"> NRE accounts should be designated as resident accounts OR Funds held in these accounts may be transferred to the RFC accounts immediately upon change of residential status 	<ul style="list-style-type: none"> FCNR (B) deposits allowed to continue till maturity at the contracted rate of interest AD should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account 	<ul style="list-style-type: none"> From PROI to PRI: Immediately designated as resident accounts From PRI to PROI: Immediately designated as NRO Account

Permissible Credits / Debits (1/3)

➤ NRE & FCNR (B) A/c

Permitted credits:

- a. Inward remittances from o/s India through banking channels
- b. Personal cheques of FCA outside India / travellers cheques / bank drafts deposited by the account holder in person during his temporary visit to India
- c. Tender of foreign currency / bank notes during his temporary visit to India
- d. Transfers from other NRE/ FCNR(B) accounts
- e. Interest accruing on the funds held in the account
- f. Current income in India due to the account holder, subject to payment of applicable taxes in India (like rent, dividend, pension, interest) (no qualification of earlier investment account source i.e. original investment could have been made from either NRE or NRO a/c)
- g. Maturity or sale proceeds of any permissible investment in India which was originally made from NRE/FCNR(B) a/c or out of inward remittances from o/s India through banking channels (*FEM NDI Rules – Chapter IX - Sale of immovable property in India: Credit to NRE a/c restricted to 2 residential properties during lifetime*)
- h. Refund of share/ debenture subscriptions to new issues of Indian companies or portion thereof, if subscription amount was paid from NRE/ FCNR(B) a/c of the account holder or out of inward remittances from o/s India thru banking channels

Permissible Credits / Debits (2/3)

➤ NRE & FCNR (B) A/c

Permitted credits:

- a. Refund of application / earnest money / purchase consideration made by the house building agencies / seller on account of non-allotment of flat / plot / cancellation of bookings / deals for purchase of residential / commercial property, together with interest, if any (net of income tax payable thereon), was paid from NRE / FCNR(B) a/c of the account holder or out of inward remittances from o/s India thru banking channels and AD is satisfied about the genuineness of the transaction

Permitted debits:

- a. Local disbursements
- b. Remittances outside India
- c. Transfer to NRE/ FCNR(B) accounts of the account holder or any other person eligible to maintain such account
- d. Investment in shares/ securities/ commercial paper of an Indian company or for purchase of immovable property in India provided such investment/ purchase is covered by the regulations made, or the general/ special permission granted by RBI

Permissible Credits / Debits (3/3)

➤ NRO A/c

Permitted credits:

- a. Inward remittances from o/s India through banking channels
- b. Tender of any permitted currency during his temporary visit to India
- c. Legitimate dues in India of the account holder
- d. Transfers from other NRO accounts
- e. Rupee gift / loan made by a resident to a NRI / PIO relative within the limits prescribed under LRS

➤ NRO A/c

Permitted debits:

- a. All local payments in rupees including payments for investments subject to compliance with the relevant regulations made by RBI
- b. Remittance outside India of current income in India of the account holder net of applicable taxes
- c. Transfers to other NRO accounts
- d. Balances in the NRO account cannot be repatriated abroad except by NRIs and PIOs up to USD 1 million, subject to conditions (Limit of \$1 million over and above current income repatriation – FAQ 3 of Accounts in India by NR) (Undertaking from remitter for own funds)
- e. Funds can be transferred to NRE account within this USD 1 Million facility
- f. Settlement of charges on International Credit Cards issued by AD in India to NRIs or PIOs, upto USD 1 Million per financial year

Case studies on Bank accounts

Case Study 7 –NRE Account for returning NRIs

Facts

- Mr. ABC, is a Indian citizen who went to US for the purpose of his employment on 1 January 2005. He left his job in December 2019 and returned to India permanently for setting up his business.
- During the period from January 2005 to December 2019, he was non-resident under FEMA. While in US, he had opened NRE Account in India and transferred his US salary income to his Indian NRE Account.
- During December 2019 to March 2020, he received interest income of Rs. 100,000 from his NRE Account in India.

Query

- Can he continue to keep his NRE A/c after returning to India ?
- Taxability of NRE interest income ?

Case Study 8 – Taxability of FCNR Interest income for returning NRIs

Facts

- Same facts as Case study 1.
- However, instead of NRE Account, Mr. ABC has deposited money in FCNR Deposits in Sept 2016 for 4 years and hence, it will mature in Sept 2020.

Query

- What would be status of FCNR deposits ?
- Whether interest income received on FCNR Deposits account of Mr. ABC would be taxable in India in FY 2020-21 under provisions of the Act?

Case Study 9 – Transfer from NRE Account to Savings Account

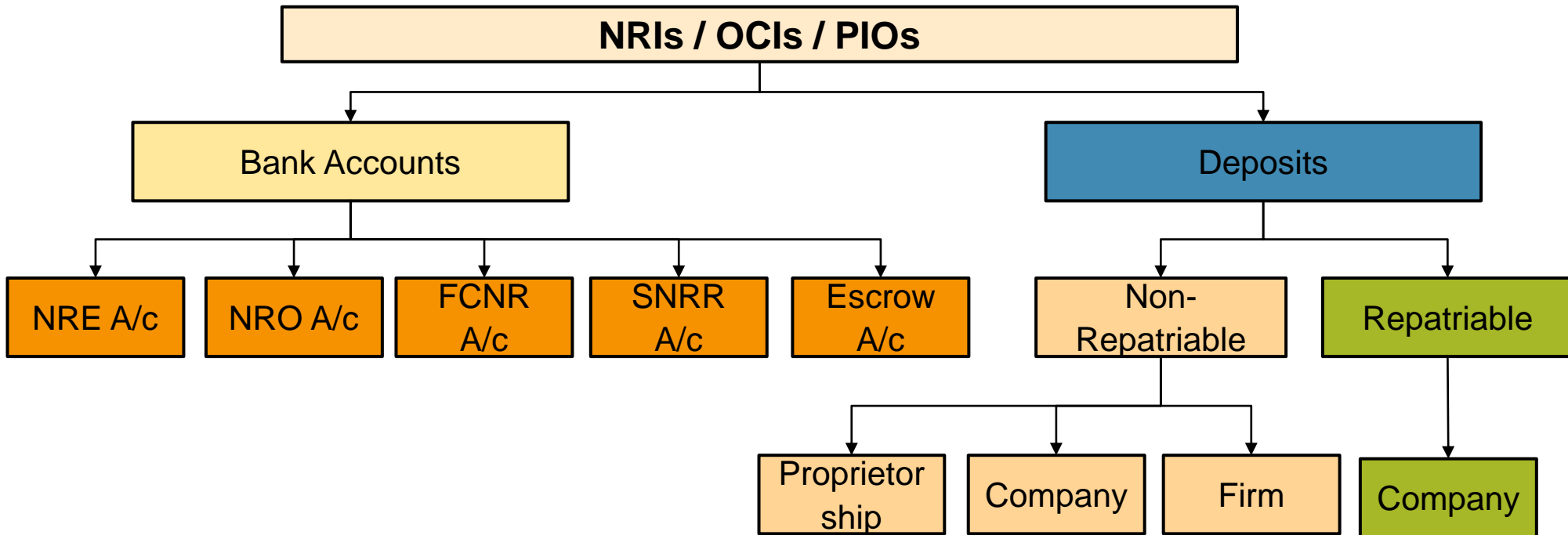
Facts

- Mr. XYZ, is a Indian citizen who went to US for the purpose of his employment on 1 January 2015.
- He opened NRE Account in December 2015 by remitting his funds from US
- He wishes to transfer funds from his NRE Account to his Indian savings bank account which existed before he moved to US for making some investments in India

Query

- Whether transfer of funds from NRE Account to his Indian savings bank account is permissible under FEMA ?

Summary of Bank accounts and deposits



Change in residential status

Change of Resident Status of Account holder

Section 6(4) of FEMA

A person resident in India may hold, own, transfer or invest in foreign currency, foreign 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

Section 6(5) of FEMA

A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if :

- ✓ such currency, security or 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

Returning Indians – section 6(4)

From Non-resident to Resident:

- Person can continue to hold his following overseas assets after becoming resident:
 - Assets, including investments, security
 - Immovable property;
 - Foreign bank accounts;
 - Gift or inheritance from person resident outside India;
 - Foreign income from business or vocation earned when was non-resident;
 - Accrual to his overseas income
- The same can also be transferred or invested in different assets from his overseas funds without any restrictions provided the new investment is not in contravention of any FEMA regulations
- However with regards to interest in firm / LLC abroad, no specific clarity provided and hence, advisable to obtain RBI approval
- Person resident in India inheriting above assets from a person resident outside India would also be permitted to hold above assets outside India

No loan can be taken in foreign country after returning Indian becomes resident

Resident Foreign Currency A/c

Particulars	RFC A/c
Who can open an account ?	Person resident in India
Purpose	For keeping foreign currency
Currency	Foreign currency
Permissible credits	<ul style="list-style-type: none">• Received as pension or superannuation or other benefits from his foreign employer;• Realised on conversion of his overseas assets referred to in section 6(4) and repatriated to India;• Received as gift or inheritance from person resident outside India as per section 6(4)• Transfer of balance from NRE A/c or FCNR deposits upon change in residential status from non-resident to resident• Maturity proceeds from insurance company in India
Permissible debits	No restrictions on utilisation of funds in India / outside India including restrictions provided in Schedule III of Current Account Rules
Joint holder	Resident relative can be joint holder. However, they cannot operate the account during lifetime of account holder

Change of Resident Status of Account holder – Steps to be undertaken

➤ From Non-resident to Resident:

- ✓ Inform AD banker about change in residential status;
- ✓ Convert NRE Account & NRO Account into normal bank account;
- ✓ Inform companies / partnership firm where he is shareholder / debenture holder / partner about change in his residential status;
- ✓ Continue to hold FCNR FD and NRE FD till its maturity and upon maturity convert the same into normal bank account;
- ✓ Continue to hold foreign bank accounts / immovable property / assets acquired when he was non-resident and also use foreign funds to make further investments

Emigrating Indians – section 6(5)

From Resident to Non-resident:

- Person can continue to hold his following Indian assets after becoming resident:
 - Assets, including investments, security
 - Immovable property;
 - Gift or inheritance from person resident in India;
- The same can also be transferred or invested in different assets from his Indian funds
- He can continue to hold interest in LLP / partnership even after becoming Non-resident
- However future investments would need to be made from NRO A/c
- No fresh loan can be given to partnership / LLP and existing loan should be repaid only in NRO A/c
- All existing investments would become on non-repatriable basis
- Cannot undertake agricultural activities after becoming resident even though he can continue to hold agricultural land acquired when he was resident
- Person resident outside India inheriting above assets from a person resident in India would also be permitted to hold above assets in India

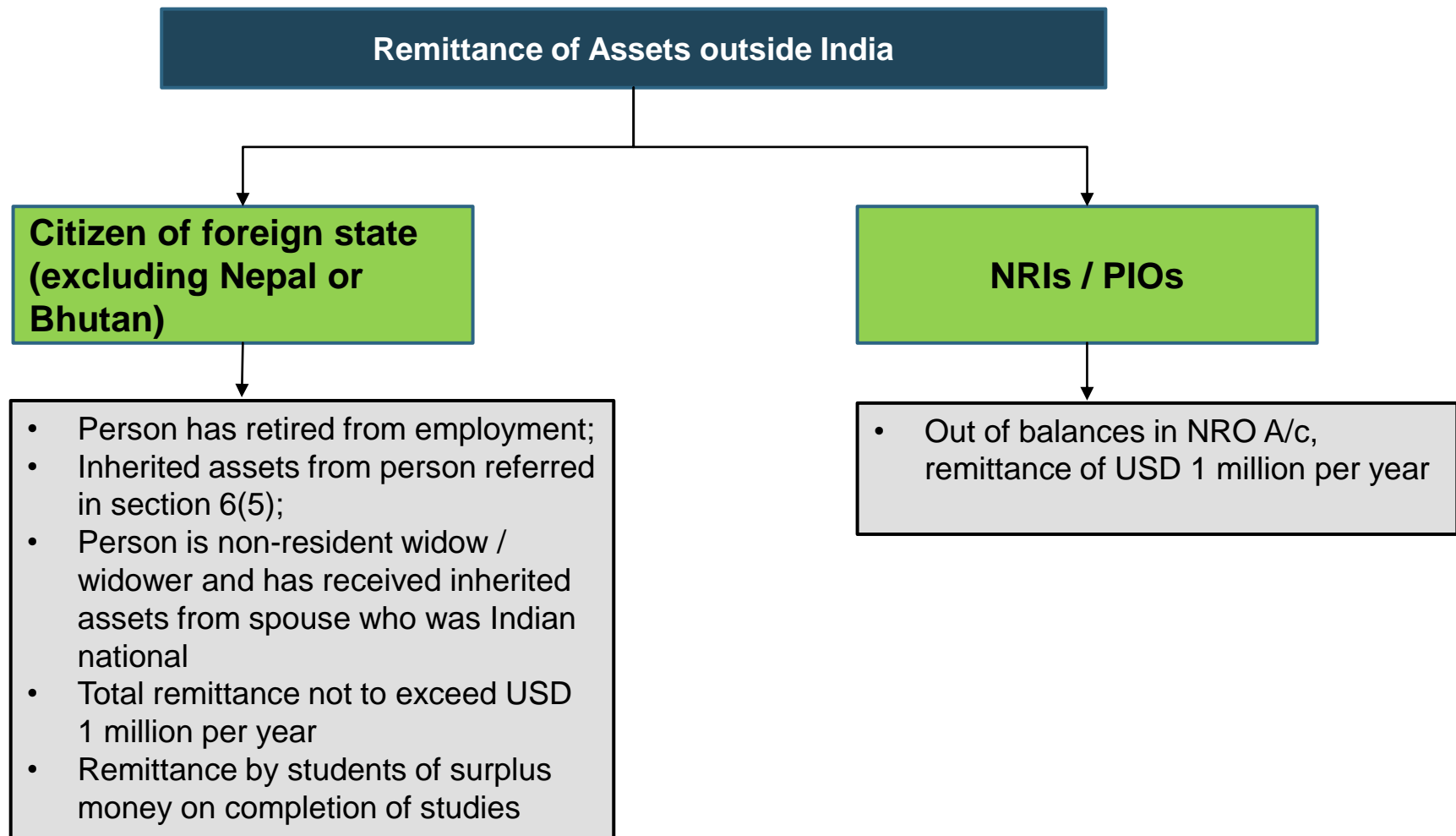
Change of Resident Status of Account holder – Steps to be undertaken

➤ From Resident to Non-resident:

- ✓ Inform AD banker about change in residential status;
- ✓ Convert existing savings account into NRO A/c;
- ✓ Continue to hold PPF Account but only till maturity;
- ✓ Inform companies / partnership firm where he is shareholder / debenture holder / partner about change in his residential status;
- ✓ Inform depository participant about his change in residential status
- ✓ Existing life insurance policies can be continued
- ✓ Partnership firm to deposit share of profit in NRO A/c
- ✓ Prohibition on undertaking existing proprietorship business of trading in real estate, chit fund, nidhi fund, agricultural / plantation activities etc.
- ✓ All overseas investments made under ODI or under LRS route can be continued. However, RBI would need to be informed for change in residential status and cancellation of UIN where investment was made under ODI route

Remittance of Assets outside India

Remittance of Assets outside India



All remittances should be undertaken through only one AD Bank & subject to payment of applicable taxes

Remittance of Assets Outside India

- Available to NRIs / PIOs
- AD Bank may allow to remit upto USD 1 million per year (popularly known as USD 1 million scheme) out of :
 - ✓ balances in NRO A/c
 - ✓ sale proceeds of assets
 - ✓ assets acquired in India by way of inheritance/ legacy
- In case of assets acquired under deed of settlement, made by parents or relatives, settlement should take effect on death of settler
- in case settlement is done during the lifetime of the owner/ parent, it would tantamount to regular transfer by way of gift. Remittance of sale proceeds of such property would be guided by instructions on remittance of balance in the NRO account mentioned above
- NRI / PIO to give a declaration that :
 - ✓ Remittance is out of balances held in the account arising from his / her legitimate receivables in India
 - ✓ Remittance is not by borrowing from any other person
 - ✓ Remittance is not a transfer from any other NRO account

Loans from NRIs / PIOs

Loans from NRIs / PIOs in foreign currency

Particulars	Borrowings by persons other than Cos
Eligible recipient	Receipt only by individual resident in India
Maximum amount	Not exceeding USD 250,000
Status of NRIs / PIOs payers	Close relatives of payees as per provisions of Companies Act, 2013
Other restrictions	As may be prescribed by RBI from time to time No conditions prescribed by RBI yet

Advisable to obtain prior RBI approval before obtaining any loan by an Indian individual from his overseas relatives

Loans from NRIs / PIOs in Indian currency by other than Cos

Particulars	Borrowings by persons other than Cos
Mode of acceptance	Directly
Relationship with borrower	Close relatives as per Companies Act, 2013
End-use restriction	Agricultural / plantation / real estate business / construction of farm houses / trading in TDRs / Nidhi / Chit Fund Company / Investment in market including margin trading and derivatives
Additional conditions	Not yet prescribed

Advisable to obtain prior RBI approval before obtaining any loan by an Indian individual from his overseas relatives

Loans from NRIs / PIOs by Cos

- Company can avail loan from NRI / PIOs / OCIs under the ECB route provided they are shareholders in the company
- Company to obtain LRN and comply with ECB provisions
- Apart from ECB route, company cannot obtain loan from NRI / PIO / OCI card holder

Case Study 10 – Loan by Indian company from NRI director

Facts

- Mr. XYZ, is a NRI director of an Indian company, XYZ Ltd.
- XYZ Ltd. wants to obtain loan in INR from its director, Mr. XYZ

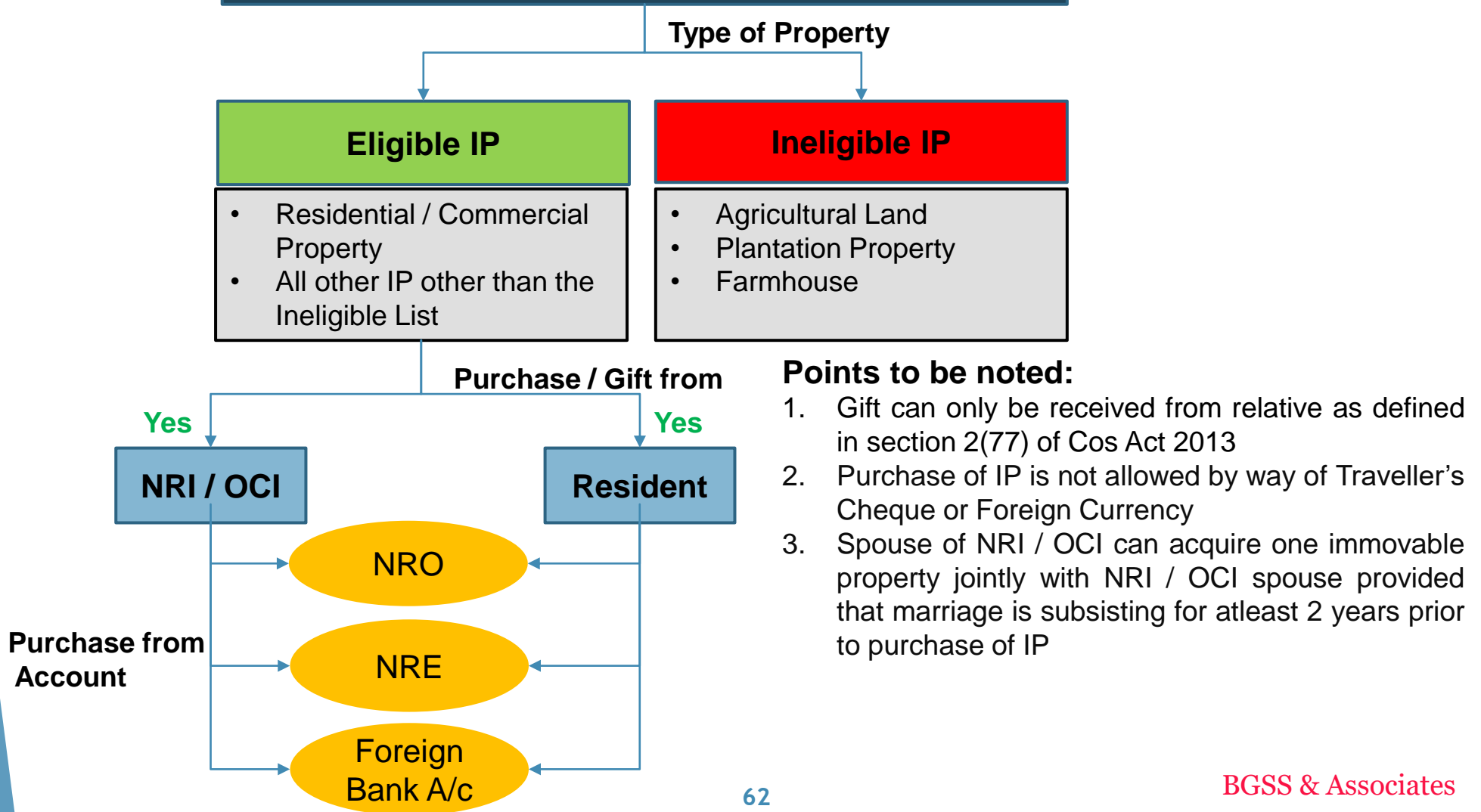
Query

- Whether XYZ Ltd. can obtain INR loan from his NRI director ?

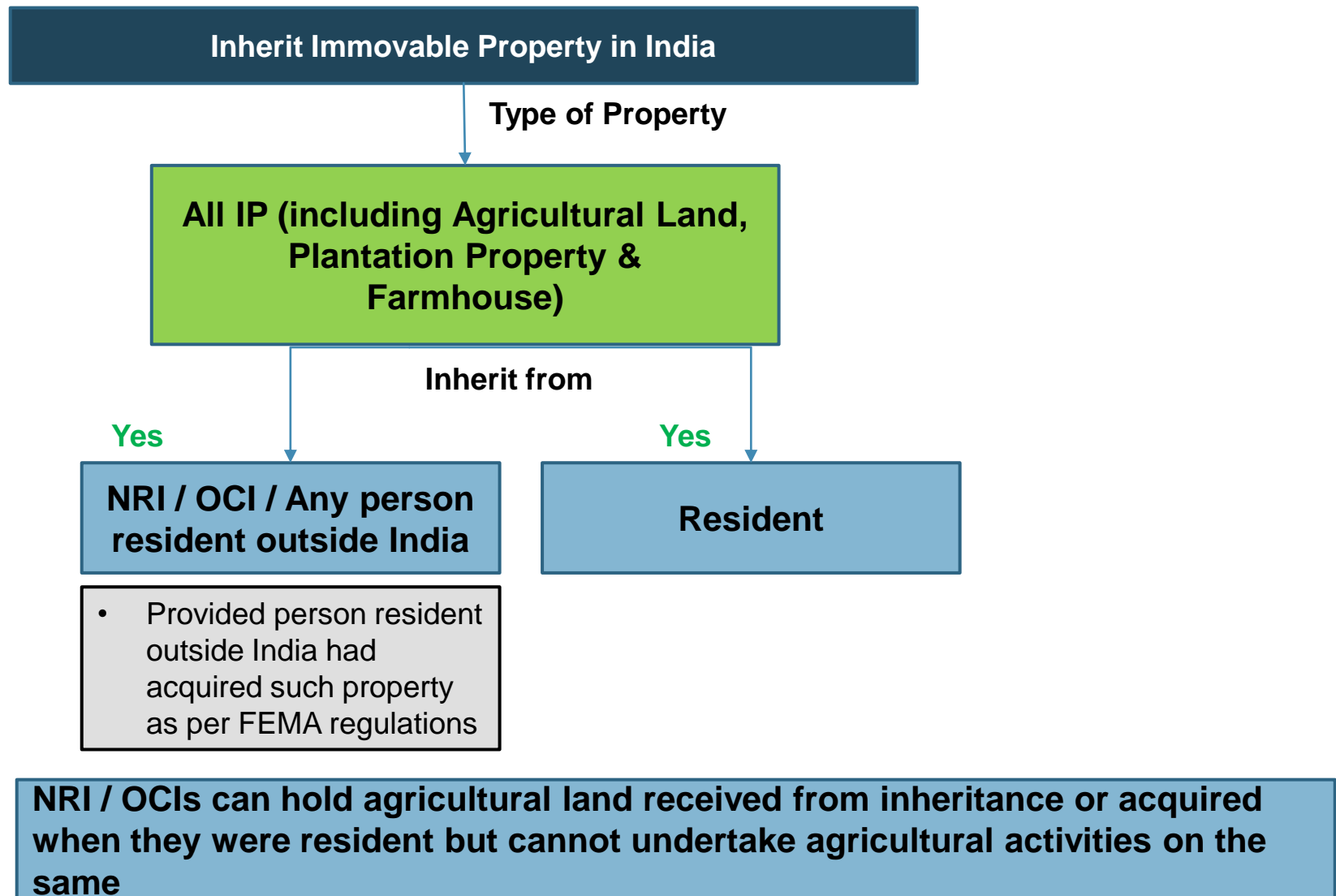
Purchase / Sale of Immovable Property by NRI

Purchase of Immovable property by NRI / OCI

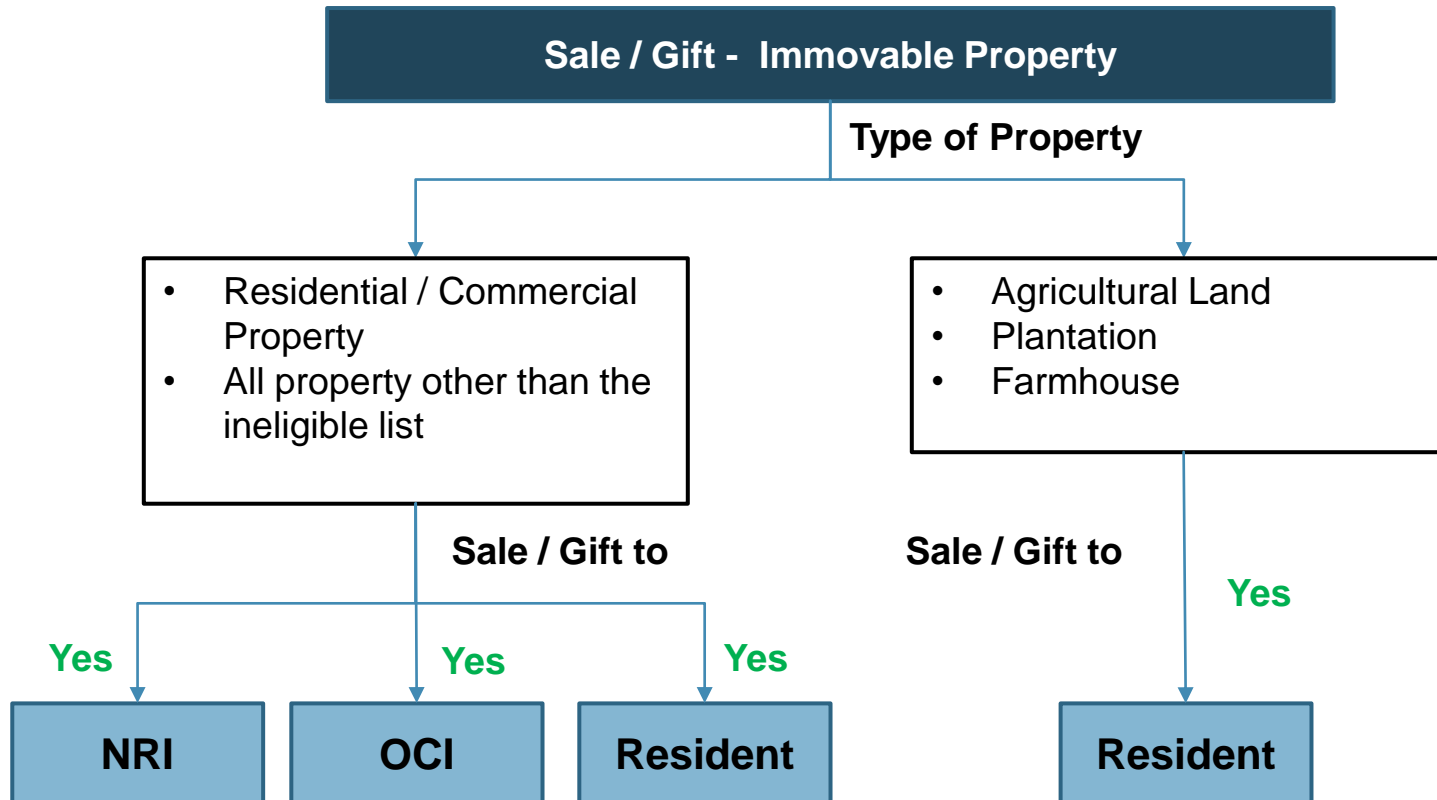
Purchase / Acquire as Gift - Immovable Property in India



Inheritance of Immovable property by NRI / OCI



Sale / Gift of Immovable property by NRI / OCI



Payment / Repatriation

➤ Payment for Acquisition of Immovable Property

- ✓ Out of funds received in India through normal banking channels by way of inward remittance from any place outside India or by debit to his NRE / FCNR (B) / NRO account
- ✓ Payments cannot be made by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned above

➤ Repatriation of Sale Proceeds of Immovable Property

- ✓ Property acquired by way of Sec 6(5) or his successor cannot repatriate outside India the sale proceeds of such immovable property without the prior permission of the RBI except by NRIs and PIOs up to USD 1 million
- ✓ Sale of IP (other than agricultural land/ farm house/ plantation property) in India by a NRI/ OCI provided:
 - ✓ IP acquired by the seller in accordance with FEMA
 - ✓ Amount for acquisition of IP has been paid in foreign exchange through normal banking channels or funds held in NRE Account or FCNR Account
 - ✓ In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties

NRI / OCIs have life time limit of repatriation from sale of two residential properties

Purchase of Immovable property by person resident outside India* (excluding NRI / OCI)

Purchase - Immovable Property in India

Eligible IP

- Any IP which is incidental to carrying on any permitted activity in India

Purchase from **Yes**

Resident

*** Persons resident of following countries not eligible to acquire IP without prior approval of RBI:**

- Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Hong Kong, Macau, Nepal, Bhutan, Democratic Republic of Korea
- However, above persons can acquire IP on lease for term not exceeding 5 years

Points to be noted:

1. Provided that person resident outside India has set up a branch office or liaison office as per applicable FEMA regulations
2. All applicable laws have been complied with for purchase of IP
3. Declaration in Form IPI has to be filed in prescribed form within 90 days of purchase of IP
4. Transfer by mortgage as security for any borrowing in favour of AD Bank permissible

Case Study 11 – Buying agricultural land by NRI

Facts

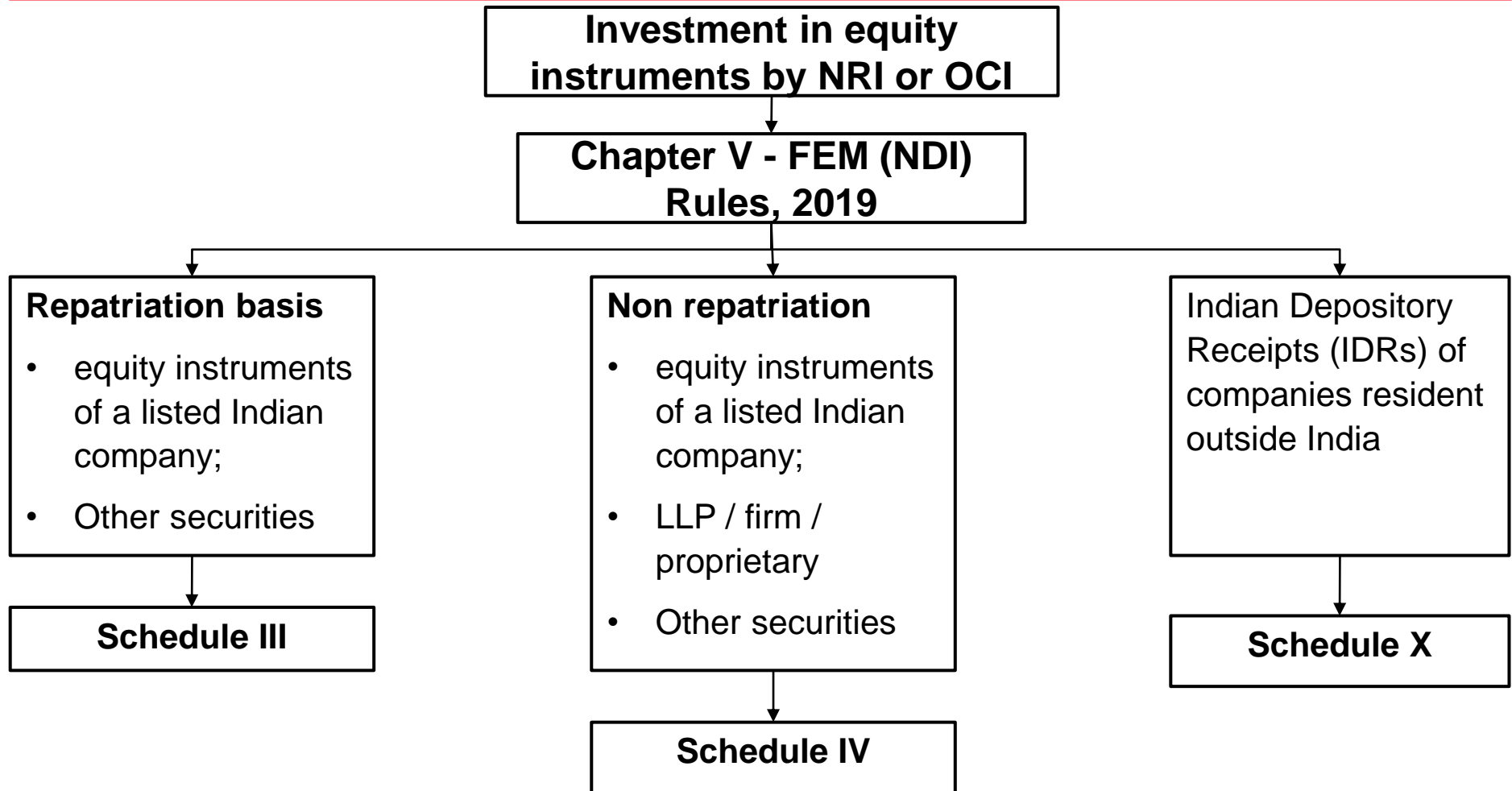
- Mr. X, NRI wants to purchase agricultural land on outskirts of Sanand
- Mr. X's father as well as grand father are all farmers holding agricultural land in Sanand
- Mr. X has transferred funds from US to his NRE A/c for purchasing above agricultural land

Query

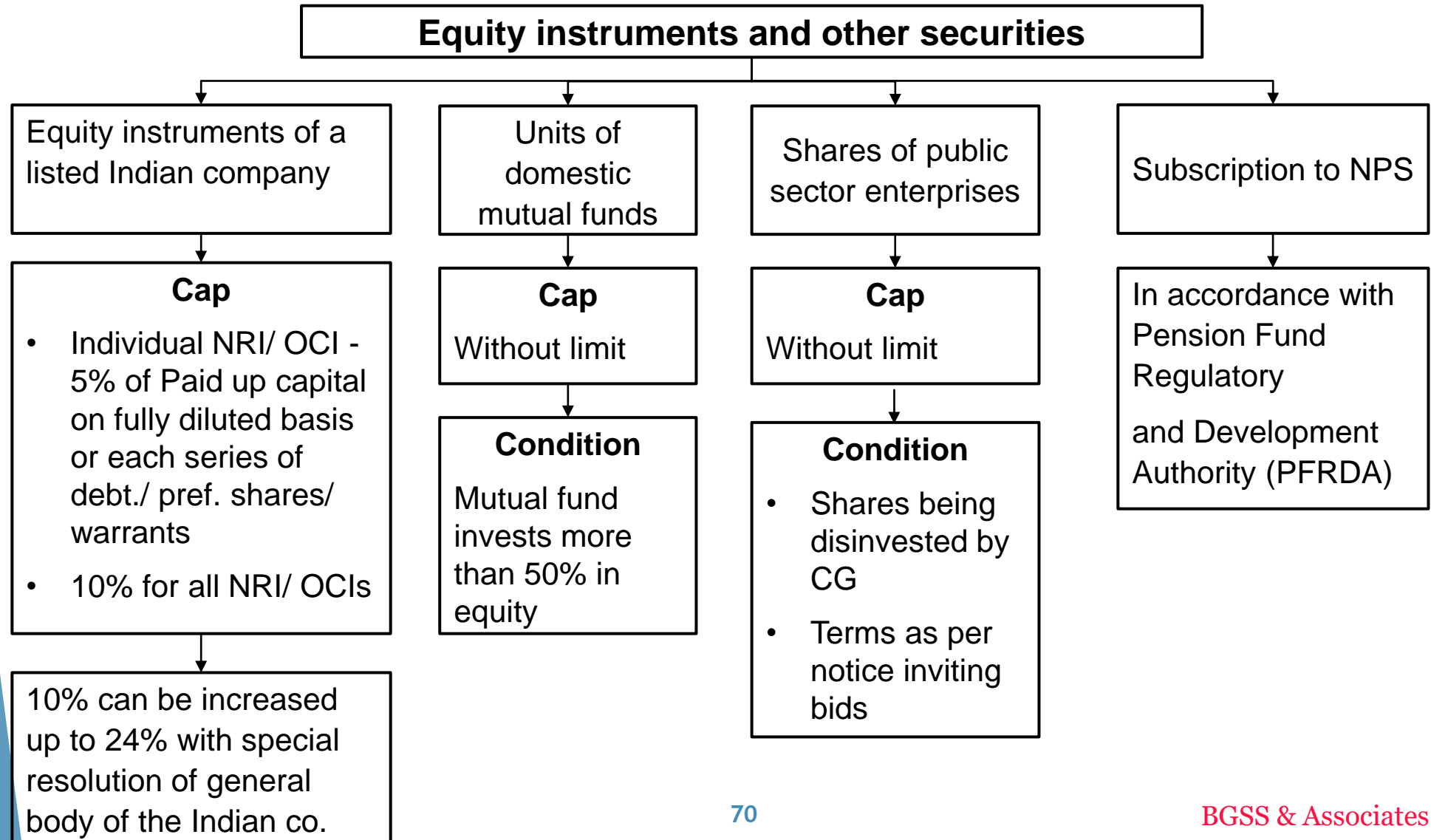
- Whether it is permissible for Mr. X to purchase agricultural land from NRE A/c ?
- Would answer be different if NRO A/c is utilised to purchase agricultural land

Investment in India by NRI

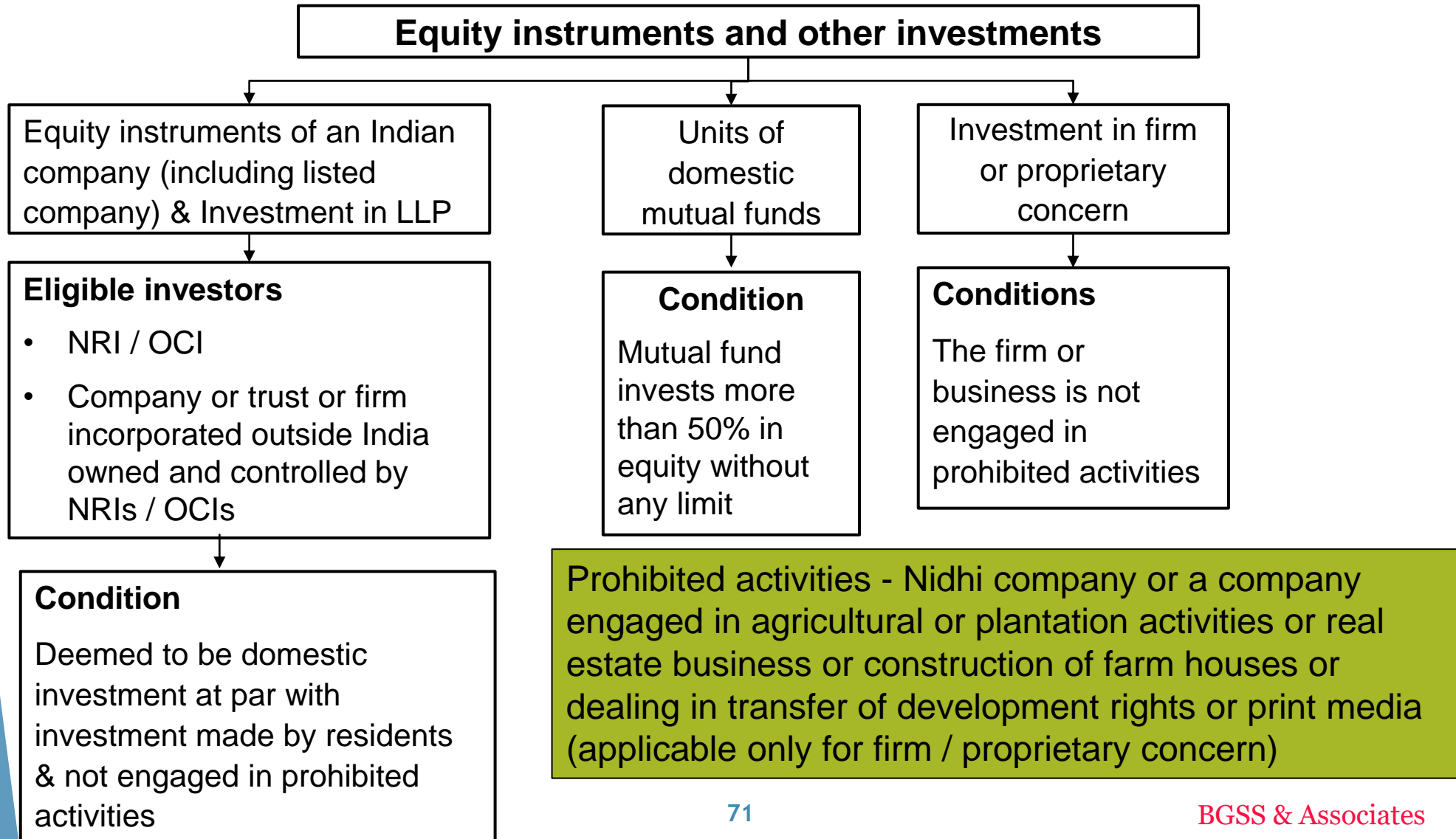
Investments in equity instruments by NRI or OCI



Schedule III – Investments by NRI / OCI on repatriation basis



Schedule IV – Investments by NRI / OCI on non-repatriation basis



Thank You

The background features abstract geometric shapes, primarily triangles, in various shades of blue and green. These shapes overlap and intersect, creating a dynamic, layered effect. The colors range from light, airy blues to deep, forest greens, with some areas appearing as darker, more saturated tones due to the overlapping nature of the shapes.

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Annexure 1 – Section 7A of Citizenship Act, 1955

Section 7A - Registration of overseas citizens of India

➤ The Central Government may, subject to such conditions and restrictions as may be prescribed, on an application made in this behalf, register as an overseas citizen of India:

(a) any person of full age and capacity,--

(i) who is citizen of another country, but was a citizen of India at the time of, or at any time after, the commencement of the Constitution; or

(ii) who is citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) who is a child or a grand-child of such a citizen; or

(b) a person, who is a minor child of a person mentioned in clause (a) :

Provided that no person, who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an overseas citizen of India