

REGULATIONS GOVERNING FOREIGN CURRENCY ACCOUNTS IN INDIA

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Introduction

Foreign Currency Account means an account held or maintained in currency other than the currency of India or Nepal or Bhutan.¹ Section 9 of the Foreign Exchange Management Act, 1999 (hereinafter referred to as 'the Act') read with Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 issued vide Notification No. FEMA 10(R)/2015-RB dated January 21, 2016 regulates opening, holding and maintaining foreign currency accounts by a person resident in India. Section 6(3) of the Act read with Foreign Exchange Management (Deposit) Regulations, 2016 issued vide Notification No. FEMA 5(R)/2016-RB dated April 1, 2016 regulates the maintenance of deposits/ accounts between a person resident in India and a person resident outside India.

In this article, the author has tried to explain main foreign currency accounts that can be operated by a resident or a non-resident Indian, or a foreign entity (person or company). Part I of this article deals with the foreign currency account that can be open and maintained by a person resident in India, whereas by Part II of this article the author has tried to explain few important foreign currency account that can be open by a person resident outside India.

Part I- Foreign currency accounts by a person resident in India

Following are the foreign currency accounts that a resident can open with their Authorized Dealer² Bank in India:

1) Exchange Earners Foreign Currency (EEFC) Account:

EEFC Accounts are maintained in foreign currency denomination by the foreign currency earners, including exporters and software companies, with their Authorized Dealer Category-

¹ [Notification No. FEMA 10\(R\)/2015-RB dated January 21, 2016.](#)

² Section 10(1) of FEMA 1999- Authorized person-The Reserve Bank may, on an application made to it in this behalf, authorize any person to be known as authorized person to deal in foreign exchange or in foreign securities, as an authorized dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

I Bank. Special Economic Zones (SEZ) units are not allowed to open this account. However, an EEFC account can be open by a unit located in SEZ subject to the conditions in Regulation 4 (D) of Foreign Exchange Management (Foreign Currency Accounts by a person Resident in India) Regulations dated January 21, 2016.³ The holder of this account can receive 100% of their foreign exchange earnings to the account by way of inward remittance, except foreign currency loan and foreign investments. This facility is subjected to the condition that all the credits so collected in a calendar month, must be converted into INR on or before the last day of the following month. With this account, the account holders are not required to convert their foreign exchange earning into INR and vice versa. This service has been provided to the EEFC Account holders to reduce the burden of transaction cost on them.

The credits permitted to this account are⁴:

- a 100 percent of the foreign exchange earnings by way of inward remittance through normal banking channel, (other than loans or investments);
- b payments received for the purpose of counter trade;
- c advance remittance received by an exporter towards export of goods or services;
- d professional earnings including director's fees, consultancy fees, lecture fees, honorarium and similar other earnings received by a professional by rendering services in his individual capacity;
- e interest earned on the funds held in the account;
- f Re-credit of unutilised foreign currency earlier withdrawn from the account;
- g repayment of trade related loans/ advances (which were granted to the account holder's importer customer out of balances held in the EEFC accounts);
- h disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/ GDRs under the DR Scheme, 2014; and
- i Payments received in foreign exchange by an Indian start-up arising out of sales/ export made by the start-up or its overseas subsidiaries.

The debits allowed in these accounts are⁵:

³ <https://rbi.org.in/scripts/FAQView.aspx?Id=21>

⁴ Master Direction- Deposits and Accounts issued vide FED Mater Direction No. 14/2015-16 dated January 1, 2016.

⁵ Ibid.

- a Payment outside India towards capital or current account transactions in accordance with the provisions of Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 or Foreign Exchange Management (Current Account Transactions) Rules, 2000, respectively;
- b payment in foreign exchange towards cost of goods purchased from a 100 percent Export Oriented Unit or a Unit in an Export Processing Zone/ Software Technology Park/ Electronic Hardware Technology Park;
- c payment of customs duty in accordance with the provisions of Export Import Policy;
- d trade related loans/ advances, by an exporter account holder to his importer customer outside India, subject to complying the provisions of FEMA and the rules/ regulations made thereunder;
- e Payment in foreign exchange to a person resident in India for supply of goods/ services including payments for air fare and hotel expenditure.

An EEFC account is allowed to be maintained only as current account. Cheque facility is also extended to its holders. In addition to this benefit, account holders of EEFC accounts do not have to pay any interest on this account. This account can also be held jointly by the resident individual and by his/her resident relative(s)⁶ on 'former or survivor' basis.

2) Resident Foreign Currency (RFC) Account:

RFC Account can be held by persons of Indian nationality or origin with their Authorized Dealer in India, who, were residing outside India for the continuous period of minimum one year, have become Indian resident on or after 18th April 1992.⁷

Person of Indian Origin⁸ is defined as 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

⁶ Section 2(77) of The Companies Act, 2013.

⁷ <https://www.rbi.org.in/scripts/ECMUserChapterDetail.aspx?Id=391&CatID=13>

⁸ Foreign Exchange Management (Deposit) Regulations, 2016 issued vide Notification no. FEMA 5(R)/2016-RB dated April 01, 2016

- 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)

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

A person resident in India is permitted to open a RFC account with an AD bank in India out of foreign exchange received or acquired by him:⁹

- a as pension or superannuation benefits or other monetary benefits from his overseas employer;
- b by converting assets which were acquired by him when he was a non-resident or inherited from or gifted by a person resident outside India and repatriated to India;
- c before July 8, 1947 or any income arising or accruing thereon which is held outside India in pursuance of a general or special permission granted by the Reserve Bank;
- d Received as proceeds of LIC claims/ maturity/ surrendered value settled in forex from an Indian insurance company permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.

RFC account holders can deposit funds from the following sources in their account:

- i Any balance received by the account holder from their overseas bank account through employment or any business taken up while he/she was a resident outside India.
- ii Any benefit received as pension or superannuation from his/her overseas employer.
- iii Any income that he/she can receive from the assets held overseas like dividends or interest, or by converting assets acquired when he/ was residing overseas, or inherited or gifted by a person resident outside India and repatriated to India.

⁹ *Supra* n. 4

- iv Any fund received as proceeds of LIC claims/ maturity/ surrendered value settled in forex from an Indian insurance company permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.
- v Foreign exchange acquired by the account holder before the July 8, 1947 or any income arising on it held outside India with RBI permission.
- vi The account holder can transfer the balance from his/her Non-Resident External (NRE) Account and Foreign Currency Non-Repatriable (FCNR) Account into the RFC account once the person becomes an Indian resident.

RFC accounts can be held as current, saving, or as term deposit account. Term deposit account can be maintained for the period of one to three years. Cheque book facility has not been extended to the account holder of this account. This account can also be held jointly by the resident individual and by his/her resident relative(s) on 'former or survivor' basis. However, the joint account holder cannot use or operate this account during the life time of the primary resident account holder. In RFC account, the account holder can also nominate a resident or non-resident as a nominee of their account. In the event of death of the account holder, Indian nominee shall receive the balance in the account in INR. However, if the nominee is an NRI such balance shall be remitted aboard.

3) Resident Foreign Currency (Domestic) Account – RFC (D) Account:

In RFC (D) account, a person resident can credit his/her foreign exchange earning acquired by him/her in the form of currency notes, bank notes and travellers cheques from overseas sources. RFC (D) account holders can deposit funds from the following sources in their account:

- a Payment received for services provided by the account holder while on visit to any place outside India, services not arising or connected to any business carried in Indian.
- b Payment received from any person not a resident in India or who is on a visit to India, in virtue of settlement of any legal obligation or for any service rendered to him by the account holder.
- c Payment received as honorarium or as gift by the account holder while on visit to any place out of India or by any person who is not a resident in India or who is on a visit to India.
- d Gift received from the relatives of the resident account holder.

- e The balance amount of unspent foreign exchange acquired from the Authorized Dealer to travel any place outside India.
- f Disinvestment proceeds on conversion of shares into American Depository Receipt/ Global Depository Receipt.
- g Foreign exchange received as earnings of LIC claims/ maturity/ surrendered value settled in forex from an Indian insurance company.

A RFC (D) account is allowed to be maintained only as current account. Cheque facility is also extended to its holders. Account holders of RFC (D) account do not have to pay any interest on this account. This account can also be held jointly by the resident individual and by his/her resident relative(s)¹⁰ on 'former or survivor' basis.

4) Diamond Dollar Account (DDA) Account:

DDA account can be opened and maintained by the companies and firms involved in the business of sale or purchase of rough or cut or polished diamonds. The said firms and companies have to comply with the eligibility criteria stipulated in Schedule II of Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2015 vide Notification No. FEMA 10 (R) /2015-RB dated January 21, 2016.

DDA has to be opened in the name of the exporter. DDA shall be maintained in US Dollar only. This account can only be maintained as current account and account holders of this account do not have to pay any interest on this account. An exporter firm or company are permitted to open maximum number of 5 DDAs and no inter-account transfer is allowed between the DDAs. The balances held in the DDAs needs to fulfil the requirements of Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR). Firms or companies, who are already maintaining foreign currency accounts (except EEFC account) with an Indian bank or with banks abroad, are no eligible to open DDAs.

Following are the other companies or person residents who can open a foreign currency account in India:

- i Indian agents/ subsidiaries of shipping or airline companies whose head office is incorporated outside India can open foreign company account in India for meeting

¹⁰ *Supra* n. 6

- overseas company's day-to-day expenses in India. The credits permitted to this account are Freight or passage fare collections in India or from his overseas principal.
- ii Ship manning agencies in India can held foreign currency accounts. This account will be a non-interest bearing foreign currency account in India. The permissible credit in this account is by way of inward remittance through normal banking channel. The account holder can debit in this account expenses related to the management of the ships/ crew in the ordinary course of its business.
 - iii Foreign companies through their project offices in India can hold one or more foreign currency accounts in India for the project to be executed in India. This account shall be closed after completion or termination of the project.
 - iv In case of disputes between the Project Office and the project sanctioning authority or other Government/ Non-Government agencies etc., the balance held in such account shall be converted into INR and credited to a special account which shall be dealt with as per the settlement of the dispute.
 - v If an Indian company receiving foreign exchange through FDI can open a foreign currency account in India subject to the condition that this account is closed after the completion of the requirement or within 6 months of its opening, whichever is earlier.

Part II- Foreign currency accounts by a person resident outside India:

Below are the few of the main foreign currency accounts are described which can be opened and maintained by a person resident outside India:

1) Non Resident External (NRE) account:

This account can be open and maintained by the Non-resident Indians (NRI) and Person of Indian Origin (PIO) with their authorized dealers and with banks authorized by RBI to open said account. This facility is available in form of saving, current, recurring, or fixed deposit account, etc. Joint account facility is also available to this kind of account holders, two or more NRIs and/or PIOs or by an NRI/PIO with an Indian resident relative(s) on 'former or survivor' basis. However, the Indian resident relative can operate the NRE account only as a Power of Attorney holder, during the life time of the NRI/PIO account holder.

In this account, permissible credits are by way of inward remittances and interest is accrued on these credits. On the other hand, local disbursements, investment in India, and transfer to other NRE/FCNR(B) are permissible credits. Loan facility is also available on this account, which can be granted by the authorized dealer against the security of funds held in this account or in

third party's account in India. When the loan is sanctioned against the security of funds held in this account, the account holder cannot avail the facility for premature withdrawal of deposits. NRE account shall be declared as resident account or the deposits in this account can be transferred to the RFC account, on the request of the account holder, upon the change in residential status of the account holder from NRI to Indian resident.

2) Foreign Currency (Non-resident) Account (Banks) - FCNR (B) Account:

This account can be open and maintained by the Non-resident Indians (NRI) and Person of Indian Origin (PIO) with their authorized dealers and with banks authorized by RBI to open said account. In FCNR (B) account deposits are accepted in any permissible currency. Permissible currency means foreign currency which is freely convertible.¹¹ This account is maintainable only as a fixed deposit account. Other features such as permissible credit and debit, loan, operation by power of attorney, etc. is same as NRE account in this account as well.

3) Non-Resident (Ordinary) Account - NRO account:

Any person who is not an Indian resident may hold a NRO account with an Authorised Dealer or an Authorised Bank for the purpose of bona fide transactions. This account shall be maintained only in Indian Rupees denomination. The facilities of NRO accounts are available in the form of savings, current, recurring or fixed deposit account. Post Offices in India also provide the service of maintaining a savings bank accounts in the names of persons resident outside India. NRO account can also be opened by a person who is of non-Indian origin travelling to India, in the form of current or saving, with funds received from outside India through banking channel or by sale of foreign exchange brought by him to India. The balance left in the NRO account will be given to the account holder at the time when he leaves India. The payment of the balance in NRO account of such person is subjected to the condition that the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon.

The permissible credits in this account are inward remittances from outside India, legitimate dues in India and transfers from other NRO accounts. On the other hand, permissible debits are transfers to other NRO accounts, debited for the purpose of local payments, or remittance of current income abroad. This account can also be held jointly by the resident individual and by

¹¹ *Supra* n. 4

his/her resident relative(s) on 'former or survivor' basis. This account can be held jointly by NRIs or/and PIOs. Loan facility is also available to this account holder.

4) Special Non-Resident Rupee Account - SNRR account

A SNRR account can be open and maintained by a person resident outside India, who has any special or specific business due to which opening of this account is required. The permissible credits and debits of this account must be in lieu of the specific business operations of the account holder. The tenure of this account can be maintained till the tenure of the operation of the specific business, and in no case can exceed 7 years. The account holder cannot make available foreign exchange to the person resident in India in exchange of rupees or reimbursement in any other manner. The balance available in this account cannot be transferred to NRO account. SNRR account may be declared as resident rupee account on changing of the residential status of the account holder from person resident outside India to person resident in India.

5) Escrow Account:

An escrow account is a temporary account. This account remains in operation only till the completion of the transaction. An escrow account can be open by resident or non resident corporate with an authorized dealer in India as an escrow agent. This account is only maintainable in Indian rupee and free from any taxes.

Conclusion

We have read about the different kinds of foreign currency accounts that can be open and maintained as per the guidelines given by Reserve Bank of India. The introduction of foreign currency account by Reserve Bank of India has given a new dynamic to Indian economy. This step of RBI has encouraged the inflow of foreign exchange in India and also attracted the foreign investors to invest in India. The foreign investors are in some cases able to repatriate their incomes through their investments, wherever they want. This service is still under development phase. On one hand, this facility has helped the import or export easier in India but still there are certain restrictions over investment or borrowing. Recent developments in FDI related laws and the recent amendments in the FEMA Act have seen India's ranking

improve on 'Ease of Doing Business' Index that rates countries/economies globally, but there's still a long way to go from where we are right now.

