PAGE NO.: DATE: / /

Chapter 14 ⇒ Foreign Exchange Management Act, 1999

Question	Section	
	Section 1	Applicability
	Section 2	Defination → Person [2(u)]
		Q1,5,8,9,10,27,32 → PRI [2(v)]
		→ PROI [2(w)]
		→ Authorised person [2(c)]
		→ foreign currency [2(m)]
		→ foreign exchange [2(n)]
		→ foreign security [2(o)]
Q28	Section 3	Dealing in forex, etc
	Section 4	Holding of forex
	Section 5	Current Account transaction [CUAT]
Q23-25, 15, 31	Section 6	Capital Account Transaction [CAT]
Q2-7, 11, Q13-21, 29, 30, 33, 34		• Foreign Exchange management [CUA] Rules 2000 :-
		Schedule I, II, III
Q34, 22		• Foreign Exchange management [permissible CAT] Regulations 2000

Lecture 14.1

PAGE NO.: DATE: / /

Purpose of the Act:

An Act to consolidate and amend laws relating to foreign exchange with an objective of :

- Facilitating external trade & payment

AND

- Promoting orderly development & maintenance of forex market

Enforcement of the Act :

Directorate of Enforcement [ED]

☆ FEMA v/s FERA : [4 marks]

	Basis	FEMA	FERA
1)	Enactment	1999	1973, 1947
2)	Objective	Promote & develop forex	Conserve forex
3)	Person Resident in india	Based on stay in india	Based on Citizenship
4)	Strictness ~~[presumption of guilty mind]~~	Transaction is Permitted unless restricted	Transaction is Prohibited unless Permitted
5)	Mens - rea [presumption of guilty mind]	Not presumed	Presumption of existence of mens-rea
6)	Compounding of offence	All offences are compoundable	Not allowed

Section 1 : Applicability

Extends to whole of India,

Also applies to all → Branch, → office, → Agency — outside india owned or controlled by Person resident in india [PRI]

Section 2 : Defination

- "Person" [Section 2(u)] includes :-

- Individual
- HUF
- Firm
- Company
- AOP / BOI
- AJP

- Branch, office or agency owned / controlled by such person

Person Resident in India [PRI] [Section 2(v)]

Person Resident outside india [PROI] [Section 2(w)]

⇓

Person who is Not a PRI

- Individual
- Artificial Person

Individual ⇒ A person residing in india for more than 182 days during the course of preceding F.Y but does not include

PRI नहीं बनेंगे

1) Person who has gone out of india for: [3 special case]

- taking up employment o/s india
  or
- For carrying on business or vocation o/s india
  or
- For any other purpose which indicates intention to stay o/s india for uncertain period

2) Person who has came to india in any case

---

2) Person who has came in india in any case:

⇒ However, if such person comes to india for any of the following purpose, he shall be considered as PRI: (irrespective of no. of days of stay in preceding F.Y.):

(3 special case)

- Employment
- Business / vocation
- uncertain period

→ अगर इन purpose के लिए india आते हैं तो PRI irrespective no. of days

Illustration (1)

24 —— 365 days —— 25 —— 26

Residential Status PRI ? ✓

2) 24 —— 182 days —— 25 —— 26

~~PRI~~ PROI ✓ >182d ✓ =182d ✗✗

3) 24 —— 25 PRI | PROI 26

1-7-25 → employment

PY 25-26 a) PRI
b) PROI
✓ c) 01.4 – 30.6 → PRI
01.7 – 31.3 → PROI

Note → Unlike Income Tax, residental status in FEMA can change during the year

4)

24 | 0 day | 25 | PROI | PROI | 30-6 | 26

01-6-25

↓

Employement → 30-6 → return vacation

25-26 → PROI

5)

24 | 0 days | 25 | 26

↓

01-6-25

India for employement

25-26 → 01-04-25 to 31-5-25 → PROI
→ 01-06-25 to 31-3-26 → PRI

6)

24 | >182 days | 25 | 26

↓

01-7-25

leaves india for higher education

25-26 → 01-4-25 to 30-6-25 → PRI
→ 01-7-25 to 31-3-26 → PROI

Note ⇒ RBI has clarified that students leaving india for higher education shall be considered as PROI

7)

24 | 0 days | 25 | come to india | 31-3-26

↓

1-7-25

↓

Business prospect

stay - uncertain period

25-26 → 1-4- to 30-6 → PROI
→ 01-7 to 31-3 → PRI

8) Residental status is Not Dependent on Citizenship (unlike FERA)

9) 24 | 25 | 26

1-7-25

mumbai

Air hostress eg → not residing, she is staying

25-26 → 1-4-25 to 30-6-25 → PROI
→ 1-7-25 to 31-3-26 → PROI

PRI in Case of Artificial Person :-

- If such person is Registered or Incorporated in india
  ↓
  e.g ⇒ TaTa motors
- BoA in india owned / controlled by PROI
  ↓
  Tesla motors (PROI)
  ↓
  Mumbai Branch
  ↓
  PRI
- BoA o/s india owned / controlled by PRI
  ↓
  TaTa motors → PRI
  ↓
  US Branch → PRI

* BoA ⇒ Branch
office
Agency

Eg Embassy LLC (singapore) → PROI

Embassy LLC (singapore) — own → Branch in dubai → PRI (3rd category)

Embassy LLC (singapore) — own → Branch in india → PRI (2nd category)

Branch in india — control → Branch in dubai

DPO → Read → 1, 5, 8, 9, 10, 27
→ Write → 32

- **Authorised Person [section 2(c)]**

  - Authorised Dealers [Banks]
  - Money Changer [₹ → $]
  - off shore Banking unit [HDFC (foreign branch)]
  - Any other person authorised u/s 10

- **Foreign Currency**

  Means any currency other than indian currency

- **foreign Exchange**

  Means foreign currency & include :

  - Deposits, Credits and balance payable in any foreign currency
  - Drafts, traveller cheques, Letter of credits or bills of exchange :
    - Draw in indian currency but payable in foreign currency
    - Drawn by PROI but payable in I.C. (indian currency)

PAGE NO. :
DATE : / /

- **Foreign Securities ⇒**

Any Security [Stock, bond, debentures, etc.]
denominated in foreign currency
It includes any security denominated
but redemption or returns payable in IC
↓
indian currency

- **Currency ⇒**

Includes -
- Currency notes
- Postal notes / order
- money order
- Cheque
- Draft
- Traveller's Cheque
- Letter of credits
- DoE
- Credit Cards
- other instrument notified by RBI

Current Account Transaction | Capital Account Transaction

PAGE NO. :
DATE : / /

Current Account Transaction [CUAT]

Means any transaction other than capital Account Transaction [CAT]

Without prejudice to the genrality of the above defination, CUAT includes :

- Payments w.r.t foreign trade or service and Short term credit facility in ordinary course of business (<6m)
- Payment w.r.t intrest on loan or net income on investment
- Remittance of living Expense abroad of
  - parents
  - spouce
  - children
- Expense w.r.t
  - Travel
  - Edu
  - Medical of

Capital Account Transaction [CAT]

Means a transaction which alters :

- Assets or liablity [including contingent liablity] outside india ⇓ of a PRI
- Asset or Liablity ~~[including CL]~~ in india ↓ of a PROI

PAGE NO. :
DATE : / /

Illustration

1. Hanock [PROI]

→ machine \$1mn Payment in cash

TaTa Ltd [PRI]

Capital account Transaction ⇒ ~~Yes~~ No

2. Hanock [PROI]

machine

TaTa Ltd [PRI]

→ supplier credit → CAT ⇒ Yes

2year

3 Hanock LLC [PROI]

machine \$1m

adani Ltd

\$0.4m → cash paid → CUAT

\$0.6m → 3m credit → CUAT

4. Tesla LLC [US] ← \$100mn JP MorGan [US]

Adani Ltd [PRI] → \$1mn Gurantee ⇓ Contingent liablity

CAT ⇒ Yes

PAGE NO. :
DATE : / /

5. Adani Ltd ← 100cr SBI

Tesla LLC [PROI] Guarentee 110cr → CAT ⇒ No

contingent liablity

6 Tesla LLC

import Payment → cash → CUAT

RonaK

7 Netflix INC

Dividend → CUAT

Shares → CAT

8 JP morgan

\$ mn Loan 3year

Sir → CAT

Intrest → CUAT

Section 3 : Dealing in Forex, etc.

No person shall :

Deal in or transfer forex or Forse to any person other than Authorised person [A.P]	Make any payment to Credit of PRO]	Recevie any payment from PRO] otherwise than through Authorised Person ⊛	Enter into Financial transaction in india as consideration for aquisition of asset outside india

⊛ Note ⇒ where any such payment is receiped w/o corresponding inward remittance it shall be deemed to be receviced through person other than A.P

illustration :

1) Rishab $\xrightarrow[\text{Directly}]{\text{£ X}}$ pizza hut

AP

2) Tauji $\xrightarrow[\text{Insaurance}]{\text{NO}}$ LIC

₹ 15000

3) Youtube [PRO] $\xrightarrow{\text{AP}}$ [PRI]

JP morgan → HDFC Bank A/C

$ 100

↓

₹ 10,000

+ Inward Remmitance

4)

Lecture 14.3

PAGE NO. :
DATE : / /

Section 4 : Holding of forex:

Except as provided in this Act:

Person resident in india shall not → Acquire / → Hold / → own / → posses / → Transfer — forex [s] / — forse [netflix] / — improvable property o/s india

Section 5 : Current Account Transaction [CUAT:]

A person may → Sell or → Draw — Forex to / From Authorised person for CUAT.

Note ⇒ CUAT is freely permitted unless specifically restricted.

(G (+ RBI) may impose resonable restriction

PAGE NO. :
DATE : / /

* Foreign Exchange Management [CUAT] :- Rules, 2000

- Shedule I → Prohibition
- Shedule II → Restriction [ie, approval of (G)]
- Shedule III → Transaction allowed upto certain limit Beyond which seek RBI is approval

Schedule 1 : Drawal of forex is prohibited for following transactions

- Remittance out of lottery winnigs
- Remittance of income from rasing, riding or other hobby
- Remittance for purchase of → lottery tickets → banned magazines → football pools → Sweep stakes
- Payment of commision on export made towards equity investment in joint venture or wholly own subsidary [WOS] outside india

- Payment of commission on export under rupee state credit Route except commission upto 10% of invoice value of export of → Tea, → Tobacco

- Remittance of dividend by any company to which divided balancing applies

- Payment w.r.t call back services of telephone

- Remittance of interest income of funds held in non resident special rupee [NRSR] A/c

Schedule II : Drawal of forex for following transaction requires prior approval of government of india:

- ☆ Cultural tours
  - Ministry of Humans Resource & Development (HRD) → Department of Education & Culture

- ☆ Advertisement by ⇒ State government / ⇒ its PSU in foreign print media > $ 10,000 (more than)

Exception :- Approval Not applicable where advertisement is to:
- T - promote tourism
- I - Foreign investment
- B - international bidding

- Ministry of finance [MoF] [Department of economic affairs]

- Remittance of freight of vessel chartered by a PSU
  - MO Surface Transport

PAGE NO.:
DATE: / /

- Payment of import through ocean by a PSU on CIF Basis

→ Mo Surface Transport

- ☆ Remittance of hiring charges of transponders

→ TV channels → Mo information & Brodcasting

→ Internet Service Providers → Mo communication & infotech

- Remittance of container detention charges > prescribed rate

→ Mo surface transport

- ☆ Remittance of → Prize money or → Sponsorship

of sports activity abroad

⇓

By person other than → International → National → State level] Sports bodies

⇓

amount > $ 100,000

→ Mo HRD - Department of youth affairs & sports

PAGE NO.:
DATE: / /

- Remittence of member ship of protection & indemnity clubs (P&I Club)

- Mo finance [insurance division]

- Multi modal transport operators making remittance to agents abroad

- Director General of shipping (DGS)

Summary ⇒

Ministry of Surface transport ⇒ • freight of vessel

PAGE NO.:
DATE: / /

Schedule III : Drawal of forex in excess of limits requires prior approval of RBI :

जितनी limit बताई उसके अंदर Transaction है तो default approve है और उससे ऊपर का है तो RBI permission

- Individual
- Other than individual

— Person other than individual

1] Donation :

Donation for :-

- Creation of chairs in reputed educational institute
- Contribution to funds promoted by educational institute

Limit ⇒ 1% of forex earning during last 3 years or \$5mn — Lower

2] Commission to agent abroad for sale of residental flats or commercial plots in india

Limit ⇒ 5% of inward remittance or \$25000 — Higher

PAGE NO.:
DATE: / /

3] Remittance for Consultancy :

- Infrastructure Projects → Limit : \$10mn per project
- Other projects → Limit : \$1mn per project

4] Pre-incorporation expense :

Reimbursement of pre-incorporation expense:

Limit :

5% of investment brought in or \$100,000 — higher

Lec 14.4

PAGE NO.:
DATE: / /

- For Individuals

limit per year $ 2,50,000

- Private visits to any country [except Nepal & Bhutan]
- Gift or donation
- Going abroad for ~~em~~employement
- Emigration ⇒ किसी दूसरे देश में जाना
- maintanence of close relatives abroad
- Travel for business
- Medical Treatment expenses
- Studies Abroad
- other CUAT

Note ⇒ Expenses in excess of $ 2,50,000 Shall requir prior approval of RBI

Note ⇒ In case of – Emigration
– Medical treatment
– studies abroad

Individual may avail forex > $ 2,50,000 if so require by
- country of emigration
- Medical institue
- university

PAGE NO.:
DATE: / /

Note ⇒ Where individual remits any amount in a FY, such amount is reduced from limit of $ 250000 [i.e, limit of $ 250K is aggregate in a F.Y]

Note ⇒ In case of PRI but not permanently resident in india, such person may make remmitance upto net salary [i.e, after deduction of Taxes & PF]

A person who has come to India for employement for not > 3 years

Note ⇒ 1 (14.5) Approval under ~~sche~~ schedule II & III shall not be required if remittance is from:

- Resident foreign currency A/c [RFC A/c]
- Exchange Earner's foreign currency A/c [EEFC A/c] ⇓ Except ⇒ P&I club ⇒ Commission for Sale ⇒ pre. inc. exp.

Note 2 ⇒ If a person is on visit abroad, he can incur expenses stated in schedule III through International credit card [ICC] to the extent of limit on card

irrespective of > 2,50,000 $

Section 6 : Capital Account Transaction

1 A person may → Sell / ↳ Draw] forex to / from Authorised person from CAT

2 RBI (+CG) may impose reasonable restriction on CAT involving debt instruments

RBI or CG shall not impose restriction for:

RBI / CG
Sch 42
restriction
नहीं लगा सकते

- Payment due on account of amortisation / repayment of loan (emi या loan दे)
- Depreciation of direct investment in OCB

CG (+RBI) may impose reasonable restriction on CAT involving non debt instruments

CAT

- Debt instrument → RBI [+CG]
- Non-debt instrument → CG [+RBI]

(3) Omitted

4 ★ PRI may → Hold → own – Transfer – Invest

- Foreign Currency
- Forex
- Imovable property outside india

↓

Provided that it was:

- Acquired by such person when he was PROI
- Inherited from PROI

5 PROI may ⇒ Hold ⇒ own ⇒ Transfer ⇒ Invest

- Indian Currency
- Indian Securities
- Imovable property in india

↓

Provided that it was:

- Acquired → PRI
- Inherited → PRI

Illustration 1) Rishabh ↳ PROI → $10 m → + rental $5m

india → PRI $15 m ↳ Business

Acquired when he was PROI

new house can buy of $15m without RBI permission

2) Rishab PROI   Ankit → Job - india PRI

Inherited from PROI

★ RBI's Clasification: ★

Following transactions are covered u/s 6 (4):

- Foreign Currency Accounts opened when he was a PROI

- Income from employment or business o/s india when he was PROI

- GIFT Received when he was PROI

★ • PRI may utilize assets abroad or income or sales proceeds thereof freely without RBI's approval, provided that cost of new asset are met out of eligible assets ⇒ Sales proceeds of income

★ **Note** ⇒ Current Account Transactions is freely permitted unless restricted

but

CAT is Restricted unless permitted

Regulation 4 : Prohibited Capital Account transacti

- No PROI shall invest in india in any entity engaged in:-

C – Business of Chit fund
N – Nidhi Company
A – Agricultural or plantation activities
R – Real estate business
F – Construction of farm house
T – trading in Transferable Development Rights [TDRS]

NCRAFT

Note ⇒ Real estate business shall not include:

– Development of township
– Construction of Residential, commercial premises roads or bridges
– Registered Real estate investment Trust [REITS]

- No PRI shall undertake CAT in north Korea [unless approved by CG)

Foreign Exchange Management [permissible CAT] Regulation 2000

Schedule I
Permissible CAT
for PRI
[Read from book
P.g 14.9

Schedule II
Permissible CAT
for PROI
Same]

Note ⇒ PRI may draw forex not > $250,000 per FY to schedule I

CAT Sch I + CUAT Sch III ⇒ $250,000
[indv.]

Note ⇒ No forex shall be used for remittance to NCLT
⇓
non co-operative countries / Territories
⇓
as notified by FATF