

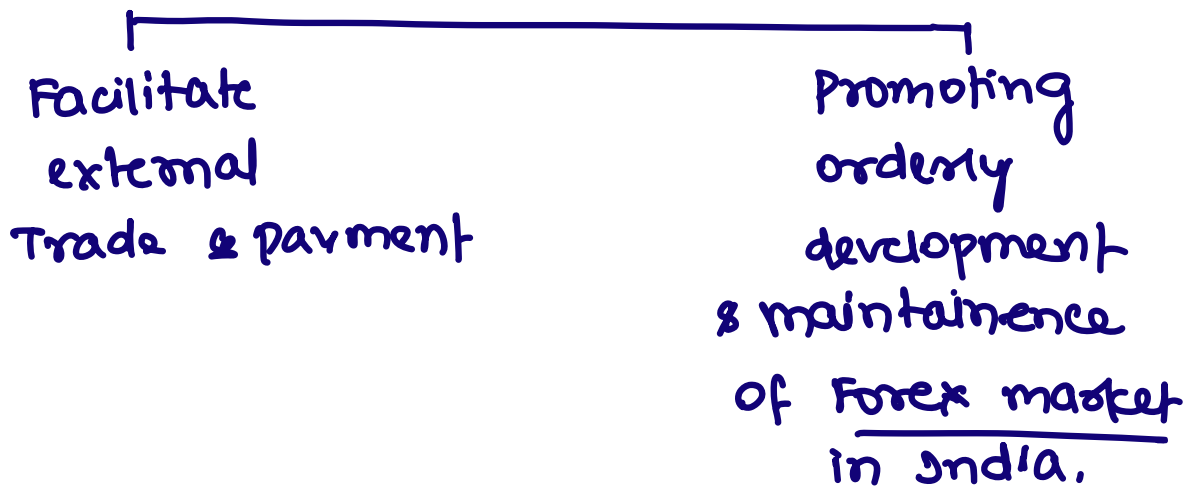
FOREIGN EXCHANGE MANAGEMENT Act 1999

(FEMA)

Enacted w.e.f. 1st June 2000

Preamble:

An act to CONSOLIDATE and amend law relating to foreign exchange (Forex) with the objective of:



Regulatory authority - RBI

FEMA enforce → ED. Enforcement Directorate

FEMA
Money
laundry
Act

FEBA vs FEMA → Read from book
(not relevant tho ∴ Not covered
in GCAI module)

Applicability:

- Whole of India.
 - ALSO applies to
 - Branch
 - office
 - Agency
- } → outside India → owned & controlled by PRI.

Illustration:

- 1 Tata Motors Ltd
- 2 Tesla Motors Inc.
- 3 Branch in Pune of Tesla Motors
- 4 Branch in US of Tata Motors
5. Office in US of Tesla Motors

Applicability

✓

X



✓

X

Section 2: Definition:

① Authorised Person means:

- Authorised dealer (Bank)
- Money changer (Albar travel, Ebix, etc.)
- Offshore banking unit. (Branch of SBI o/s India)
- Other person authorised ~~u/s 10~~.

② Foreign currency → Other than Indian currency.

③ Person:

- Indv.
- Huf.
- Firm
- company

- AOP / BOI
- Artificial Juridical person

- (BOA)
- Branch / office or Agency controlled by such person.

④ Person resident in India: (PRI) → for individual

A person ^{stay} residing in India for MORE THAN 182 days in preceding FY.

①

But does not include

②

Person who has gone out of India for following reasons:

Person who has come to India in any case.

- For taking up employment o/s India.
- For carrying on business / vocation o/s India.
- For any other purpose,

↓

Exception: If such person comes to India for following reasons:

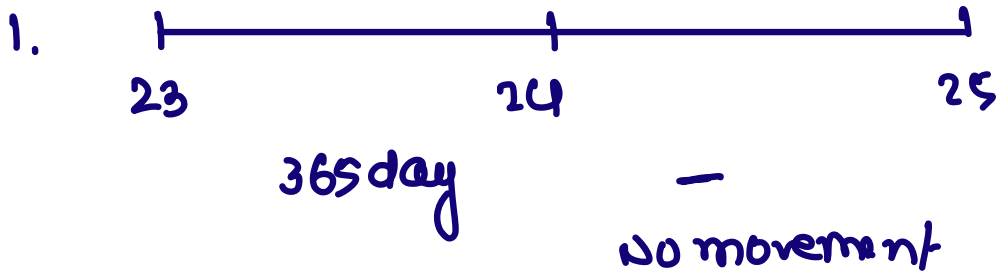
(a) Employment

③

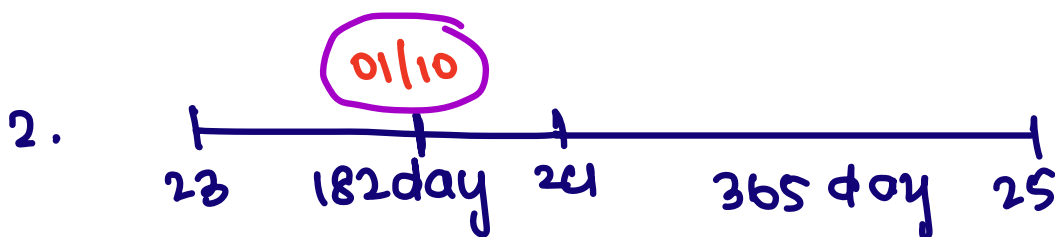
in such circumstances
which shows intention
to stay for UNCERTAIN
PERIOD.
↓
o/s india

(b) Business / vocation
(c) other purpose.
[Irrespective of no. of
days in previous FY]

Illustration:



FY 23-24 = No sufficient data of FY 22-23.
FY 24-25 = PRI

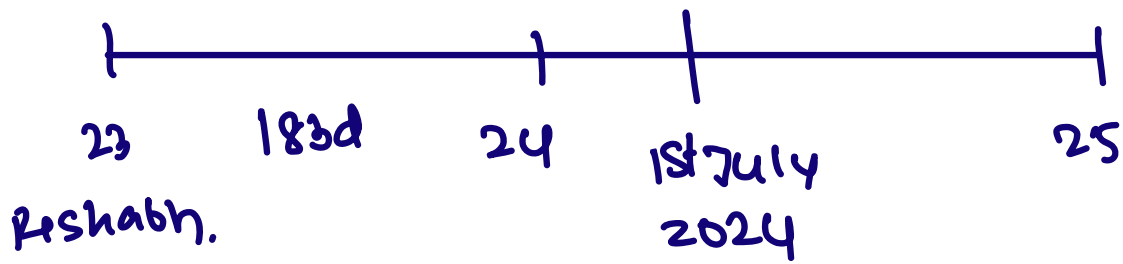


FY 24-25 PRO I (exact 182 day is NOT ok)
FY 25-26 PRI ✓.

 (provided no movement)

·
·
·
·

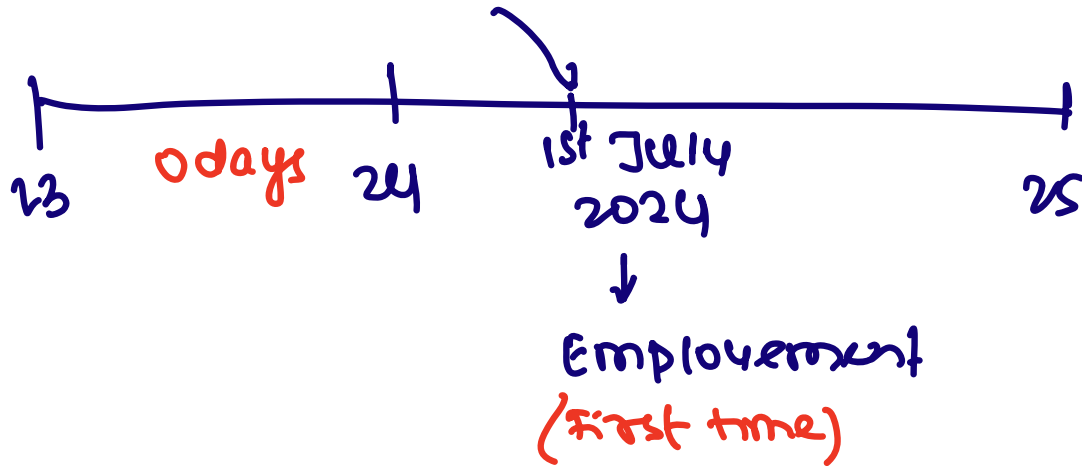
3.



↓
VS → Employment

FY 24-25 → upto 30/06/2024 → PRI (PY > 182d)
→ 1st July onward → PRI (o/s India for employment)

4.



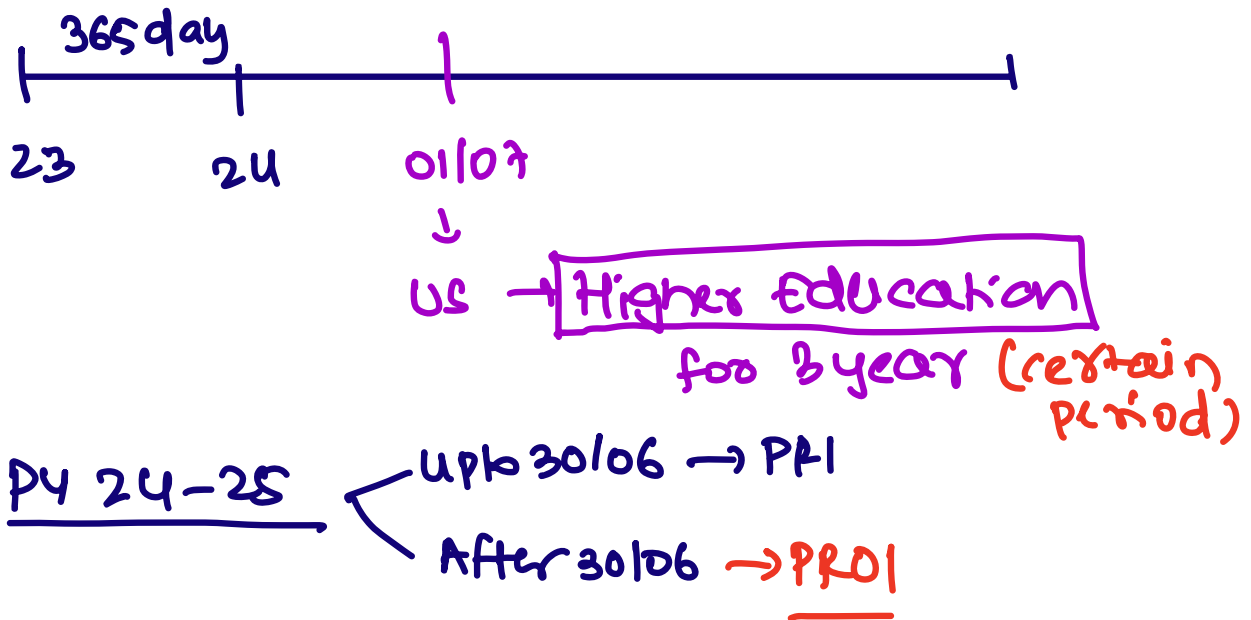
FY 24-25

- 01.04. → 30.06.2024 → PRI
- 01.07.2024 → PRI

(irrespective of no. of days)

5. In FEMA, residential status is of a particular day and not for the whole fy.

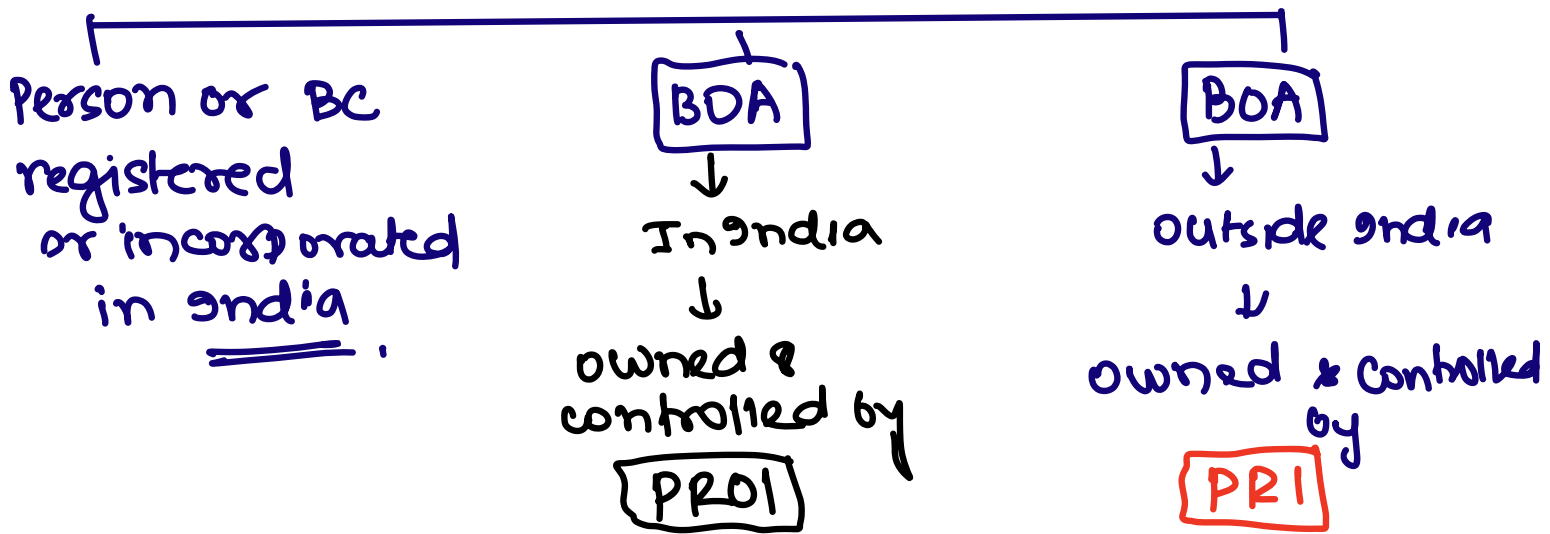
6.



Note: PRI has clarified that student leaving India for higher education shall be treated as PRI

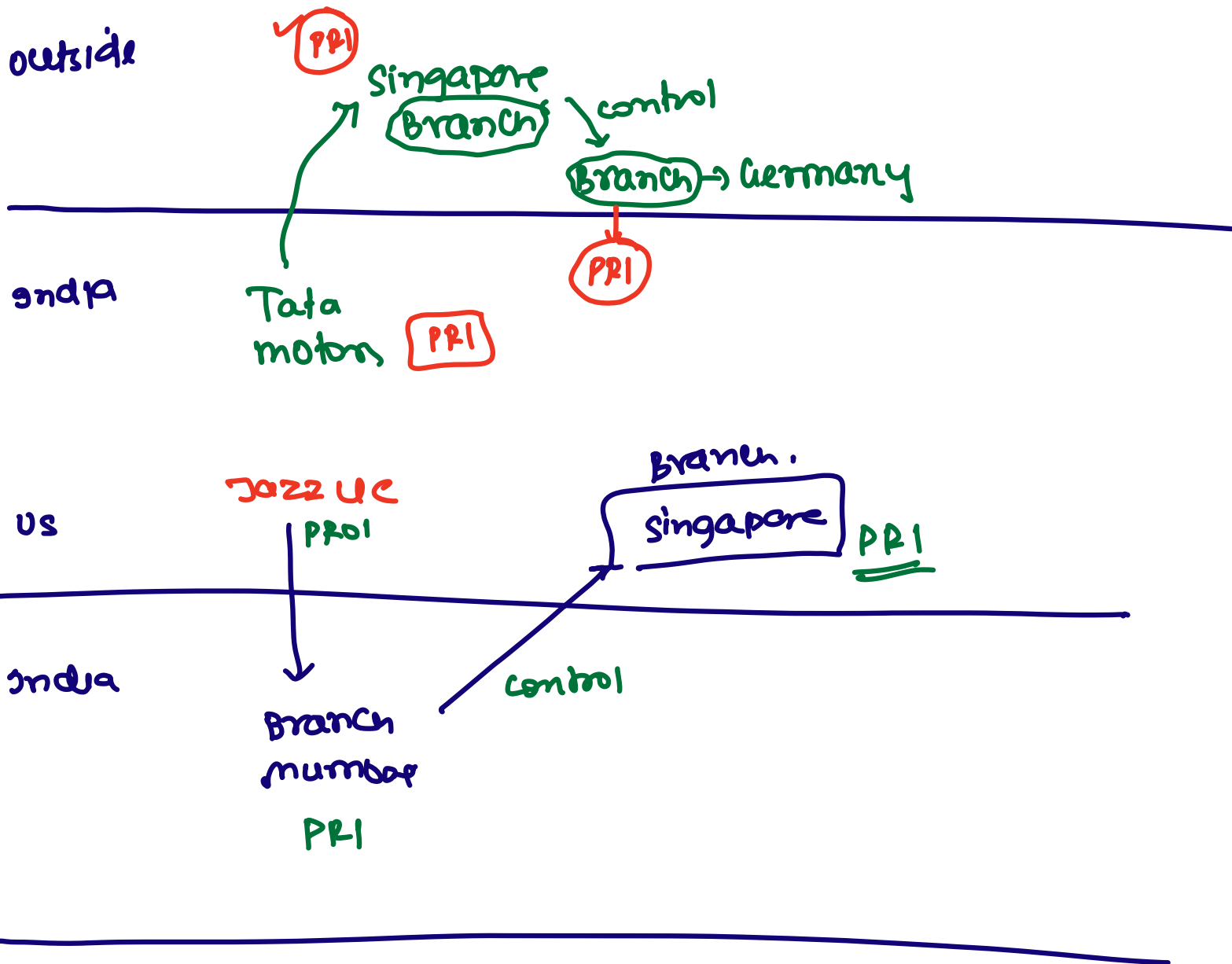
7. Residential status is not dependent on citizenship.

* PRI in case of Artificial Person:

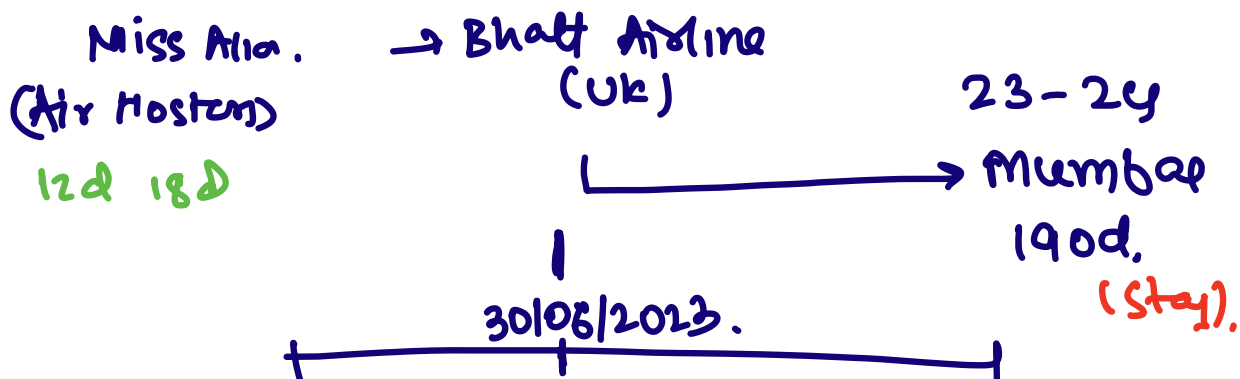


↓
Branch in Pune
of Tesla

↓
Branch in US
of Tata motors



India:



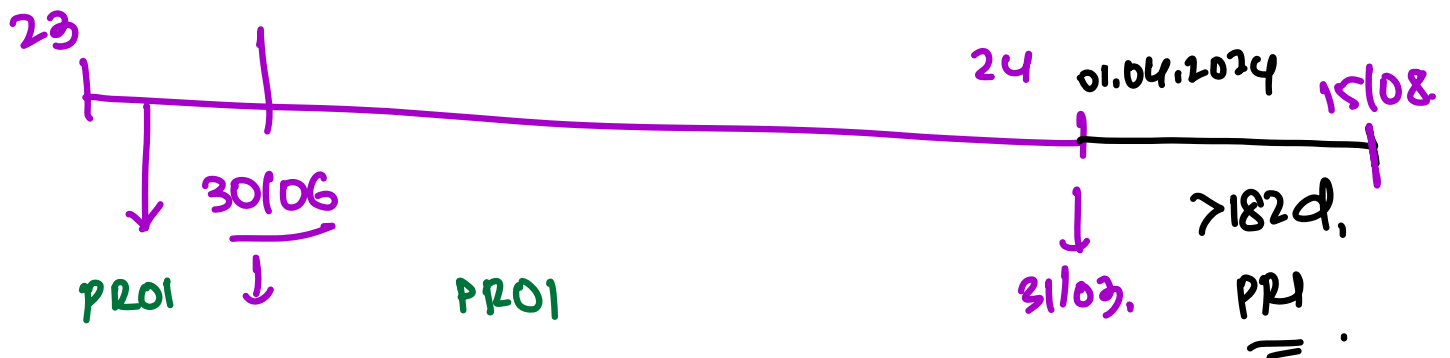
FY 23-24:

upto 30/06 → PROI

After 30/06 PROI (not PRI)

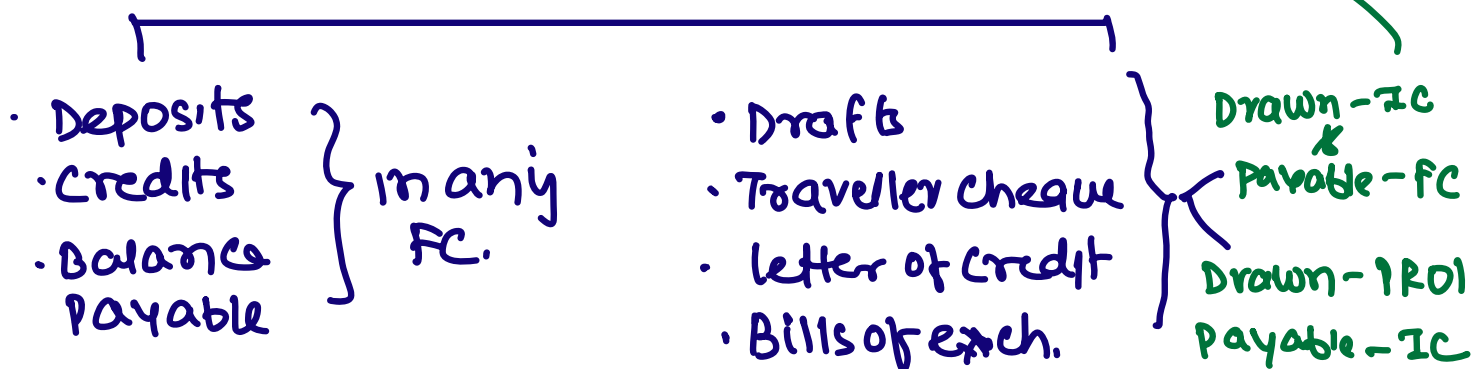
∴ she is still employed under UK branch. so this is not a case of employment in India.

Note: However, if Miss Alla was transferred to Mumbai branch of Bhart Airlines, it can be considered as employment in India and hence she would become PRI from 1st July.

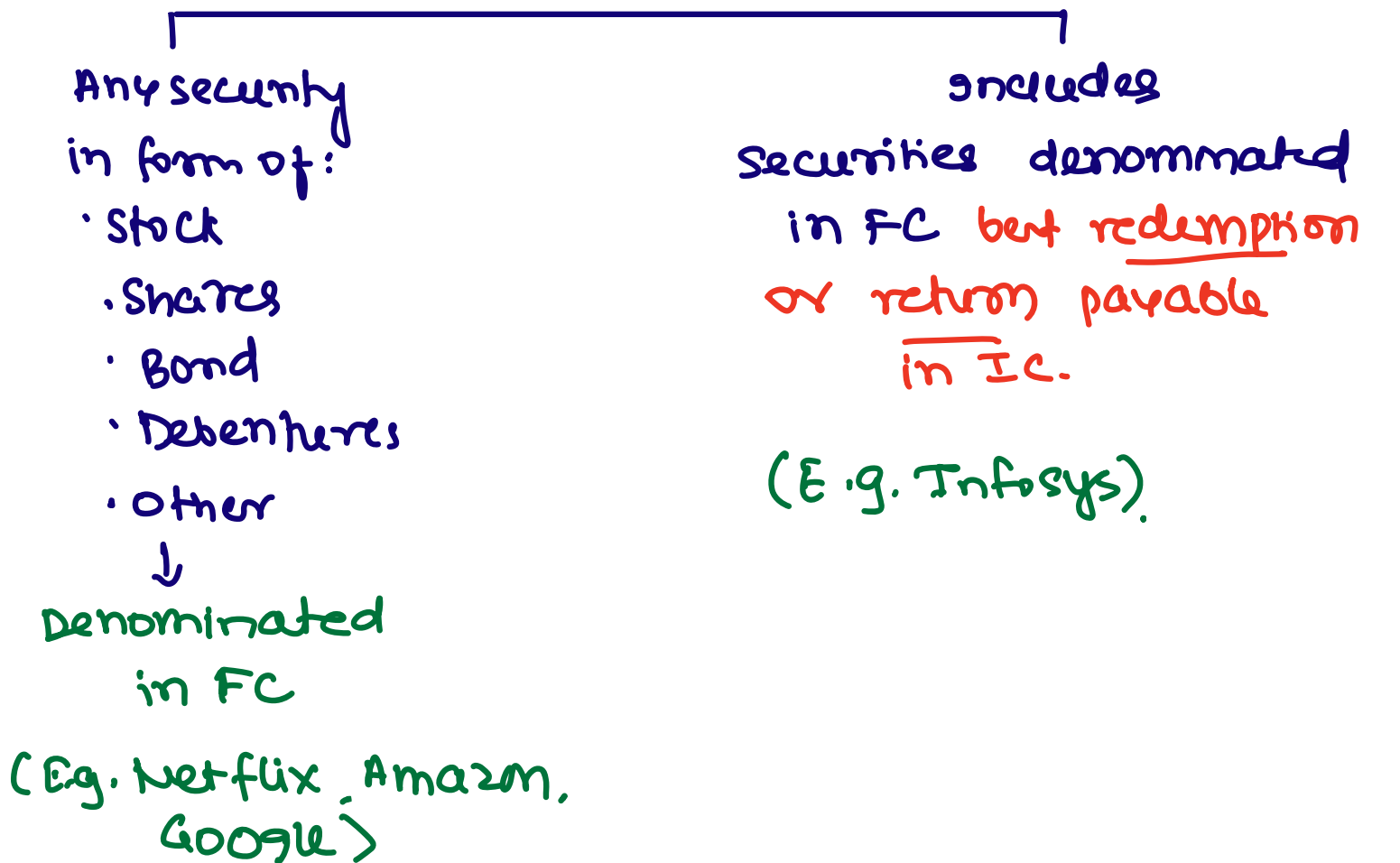


⑤ Foreign exchange: means foreign currency (FC)

and includes:



⑥ Foreign security: means:



⑦ Capital Ac Transaction means a transaction which alters:

PRI |-----| PROI

- Assets
- Liability
- including cont. liabilities



o/s India

⇓
of a PRI

- Assets
- Liabilities
- ~~• incl. cont liab.~~



on India

⇓
of a PROI

⑧ Current Account Transaction: (CUAT).

Transaction other than CAT.

Without prejudice to the generality of the above definition, CUAT includes:

① Payments w.r.t. Foreign trade (import export).
%

Short term banking & credit facility in OCOB.

② Payment w.r.t <div>gift. on loan</div> or
income from investment (Dividend)

③ Remittance for living expense <div>spouse</div><div>Parents</div><div>children</div>
↓
Residing abroad,

④ Expenses <div>Foreign travel</div><div>Education</div><div>medicare</div> } spouse, parents, children.

CRUX OF FEMA

CUAT is permitted
unless specifically
restricted/prohibited

CAT is prohibited
unless specifically
permitted.

* Currency

* Currency note:

Section 3: Dealing in Forex or Foreign Securities Forex (Forese).

No person shall:
(PRI / PRO)

Deal in forex or Forese or <u>transfer</u> to any person Other than AP.	make any payment to / for credit of PRO.	Receive any payment from PRO otherwise than through AP (✳) (see note below).	Enter into financial transactions in India as consideration for acquisition of <u>asset of India.</u>
↓ Parr chune ka pose	↓ insurance	↓ Restaurant ka pose	↓ Hawala.

However, the above ^{restricted} transaction may be carried on:

if otherwise
provided in
Act

(or)

with permission
of

RBI

Ⓢ Note: Where payment is received without
corresponding inward remittance → Deemed
received through
other than AP.

Note: Financial transaction means:

- Payment to any person or
- Receiving payment or
- Draw or issue → BoF or
- Transfer Securities

Section 4: Holding of forex.

Except as provided in this Act:



NO RBI shall

HA (TOP.

Acquire
Hold
own
possess
Transfer

Forex (\$100)
Forex (₹100)
Immovable
prop. o/s
(UK, India).

Section 5: Current Account Transaction

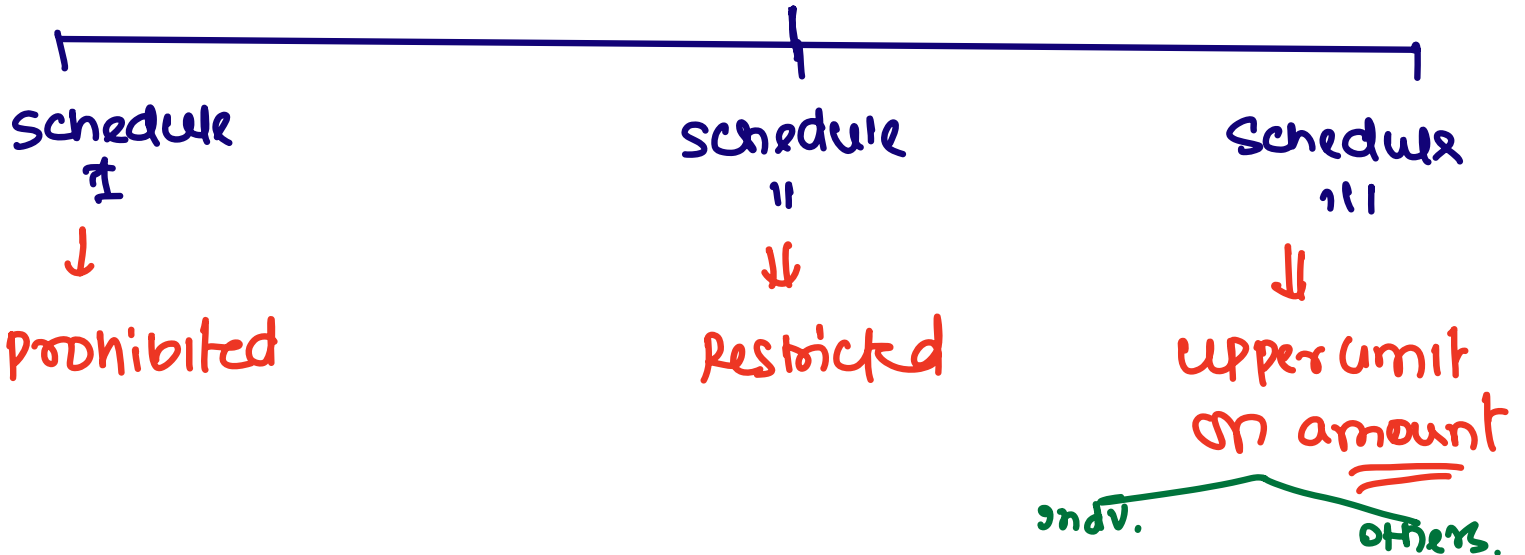
Any person may $\left\{ \begin{array}{l} \text{sell} \\ \text{or} \\ \text{draw} \end{array} \right\} \text{Forex} \equiv \left\{ \begin{array}{l} \text{to} \\ \text{or} \\ \text{from} \end{array} \right\} \text{AP}$

↓

If such sale or drawal is a **CUAT**.

CG + RBI → impose restrictions

FEM (CUAT) Rules 2000



Schedule I: Drawal of Forex is **Prohibited** for following.

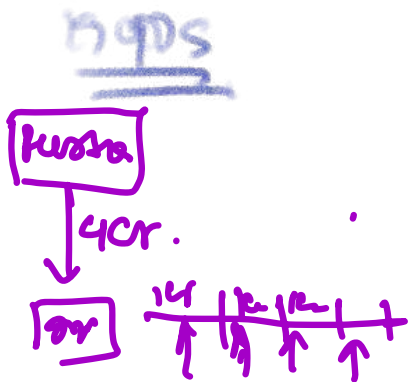
1. Remittance out of **lottery** winnings.
2. Remittance of income from **racing or riding or other hobby.**
3. Remittance for purchase of
 - Lottery tickets
 - Banned magazines
 - Football pools
 - Sweepstakes

4. Payment of commission → on export
↓
Towards equity investment in JV/WOS abroad of Indian cos.

5. Remittance of dividend to which dividend balancing applies.

6. Payment of commission → on export under
↓
Rupee State Credit Route.
↓

Except up to 10% of invoice value on export of
Tea & Tobacco.
[Chai & Sutta]



7. Payment related to Call back service

8. Remittance of interest income on Funds held in
NR special Rupee A/c Scheme.

Schedule II: Drawal of Forex for following trans.
requires prior approval of Govt. of India:

1. Cultural tour → Ministry of HR Development.
(Now - Ministry of Education)

2. Advt. → In Foreign Print media } MOF
By $\begin{cases} \text{SG} \\ \text{or} \\ \text{Its PSU} \end{cases}$ } > \$10K

Except: Advt. for promotion of $\begin{cases} \text{TOURISM} \\ \text{Foreign invt.} \\ \text{International bidding.} \end{cases}$

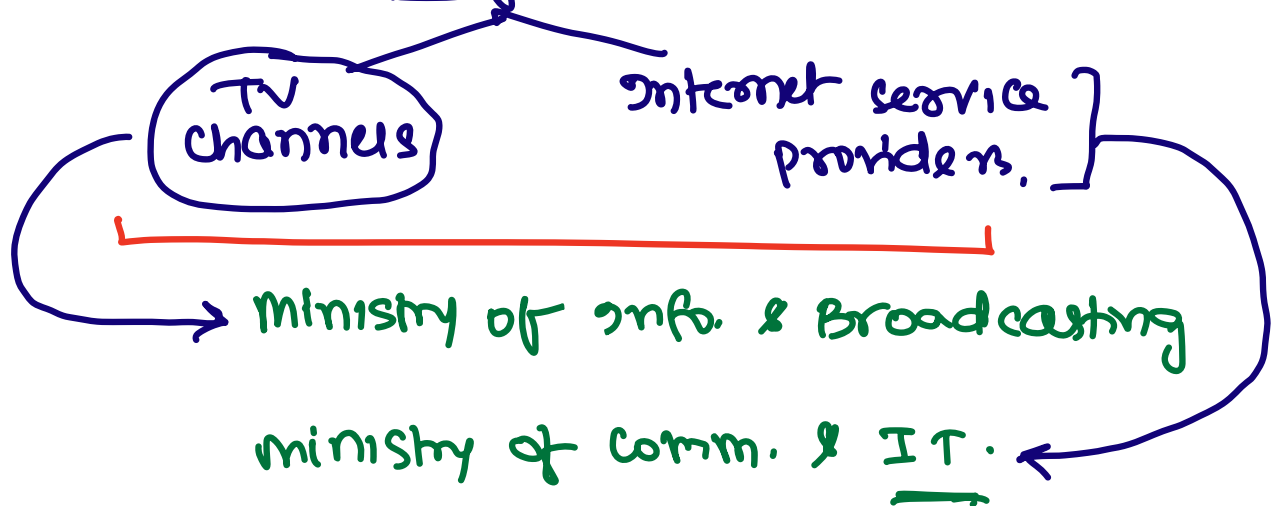
3. Remittance of freight of vessel chartered by PSU
→ MO Surface Transport.

4. Payment of import (through ocean) by a
- Govt. department or } on CIF basis } no surface transport.
- PSU } [cost insurance freight]

5. Multi-modal transport operators making remittance to agents abroad. (Blue dot)
vs. FOB → Free on Board

↓
Registration certificate from Director General of Shipping. (DGS)

6. Remittance of hiring charges of transponders



7. Remittance of container detention charges exceeding rate as per DGS.

→ ministry of surface transport.

##

8. Remittance of { prize money or sponsorship } of sports activity abroad

By - persons other than → international or national or state level sport bodies

↓
Amount > \$100k

ministry of Youth Affairs & Sports.

9. Remittance of membership of P&I club.

→ MOF (insurance division)

Schedule III: Transactions where drawal in excess of limits requires prior approval of RBI.

liberalised Remittance Scheme (LRS)

\$250,000 { per year
per PR
individual

1. Individual may draw forex upto \$250K only.

Excess of limit requires prior approval of RBI

Transactions covered:

- a. Private visits to country o/s India.
- b. Gift or donation
- c. Employment
- d. Emigration (permanently settling in a country)
- e. maintenance of close relatives abroad
- f. Travel for
 - Business
 - conference
 - Specialized training
 - medical / checkup abroad

→ Accompanying a patient.

g. Medical treatment abroad

h. Studies abroad

i. Other CUAT.

Provided that: → For (d), (g), (h),

avail > \$250k if so required by:

- country of emigration
- medical institute
- university.

(without approval of PRI)

##

→ Duration < 3 years

Provided that: A PRI but not permanently resident in India AND:

Citizen of
Foreign state
(other than
Pakistan).

(or)

Citizen of India
↓
on deputation
to BOA of foreign
Co.

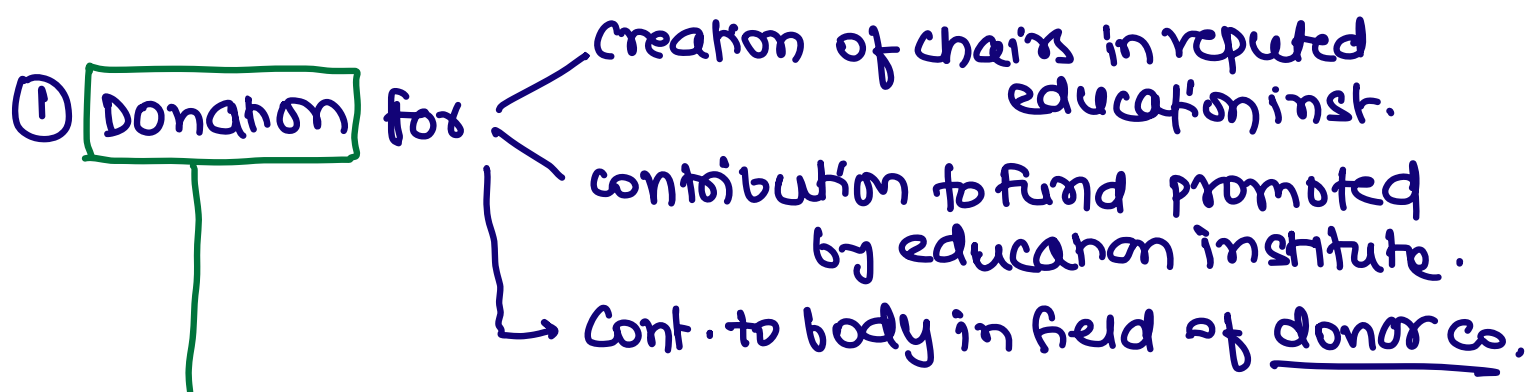
may make remittance upto his NET SALARY
(after deduction of taxes, PF, etc.)

Illustration:

Mr. Ray is a citizen of India. He is employed with Apple Inc., US. On 1st April 2024, he was deputed to Indian branch of Apple to survey the Indian market for 2 years. He earned a net salary of \$1 million ^{per year}. How much amount can he remit each year under the LPS? [6m]

- Person includes individual
- PRI → Mr. Ray PRI.
- Schedule PRI → but not promoter → Citizen
↳ net salary
→ \$250K x \$1mn ✓.

② Facilities for other than individual: (special case).



Lower of $\rightarrow$ 1% of Forex earning in last 3 years
or
 $\rightarrow$ \$5mn.

Donation exceeding above limit $\rightarrow$ RBI approval.

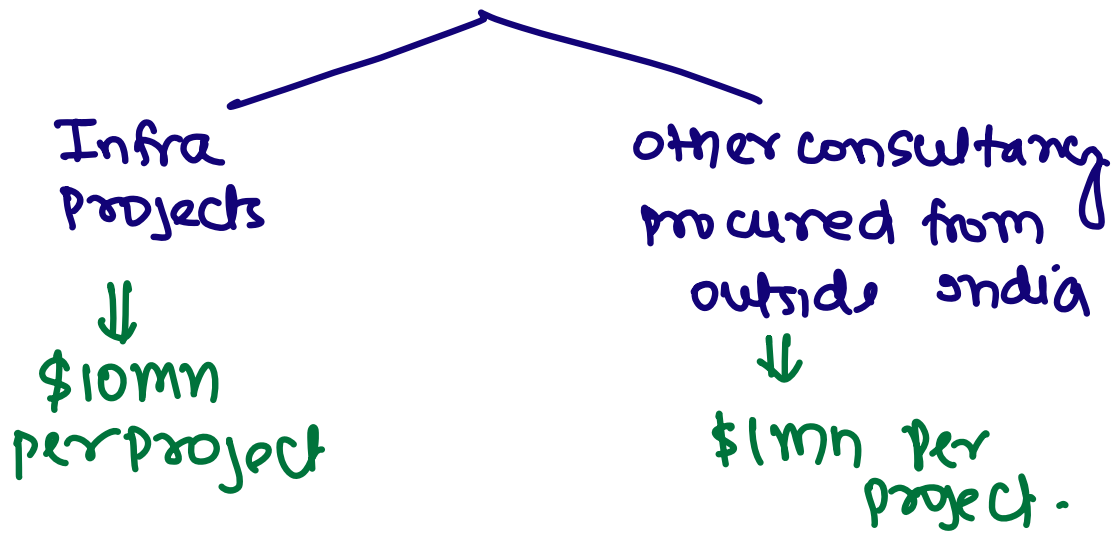
RIL Ltd $\xrightarrow{\text{Donation/Contribution}}$ Education / own field.

② Commission $\rightarrow$ to agent (abroad)
 $\downarrow$
for sale of $\begin{cases} \text{Residential flats} \\ \text{or} \\ \text{Commercial Plots} \end{cases}$
 $\downarrow$
IN INDIA.

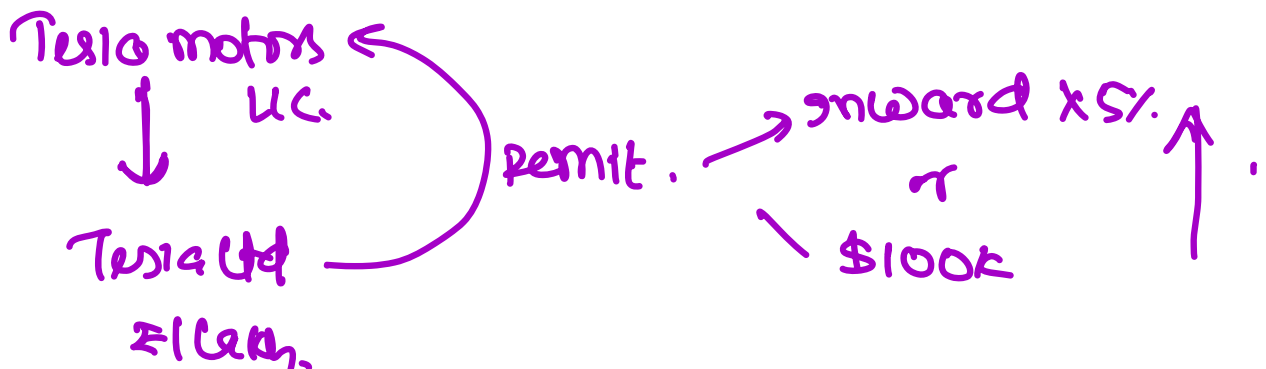
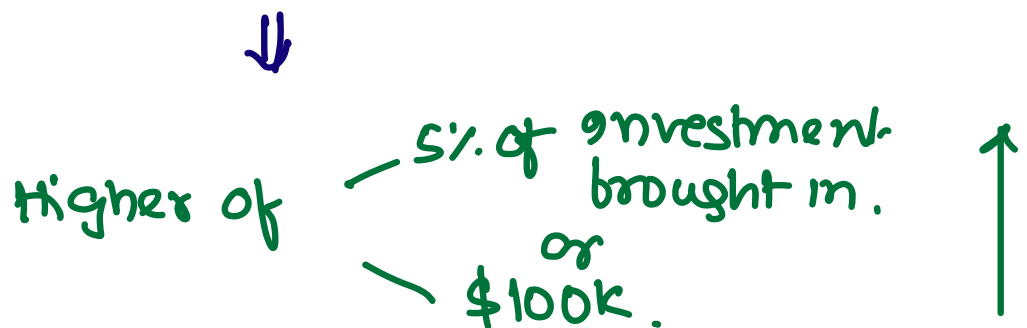
Limit $\rightarrow$ Higher of $\begin{cases} \$25000 \\ \text{or} \\ 5\% \text{ of inward remittance} \end{cases}$

Ranveer Singh Ltd. $\xrightarrow{\text{Bandra}}$ Prabhadani Uoer.
 $\uparrow$
Agent $\rightarrow$ PROI

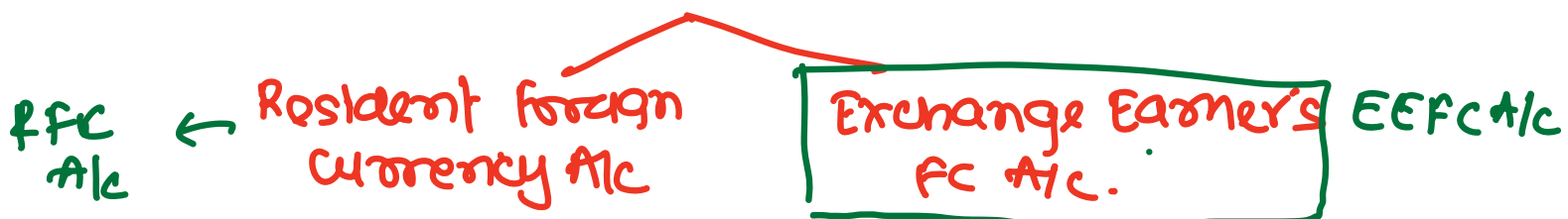
③ Remittance for any consultancy:



④ Remittance as reimbursement of pre-incorporation expense



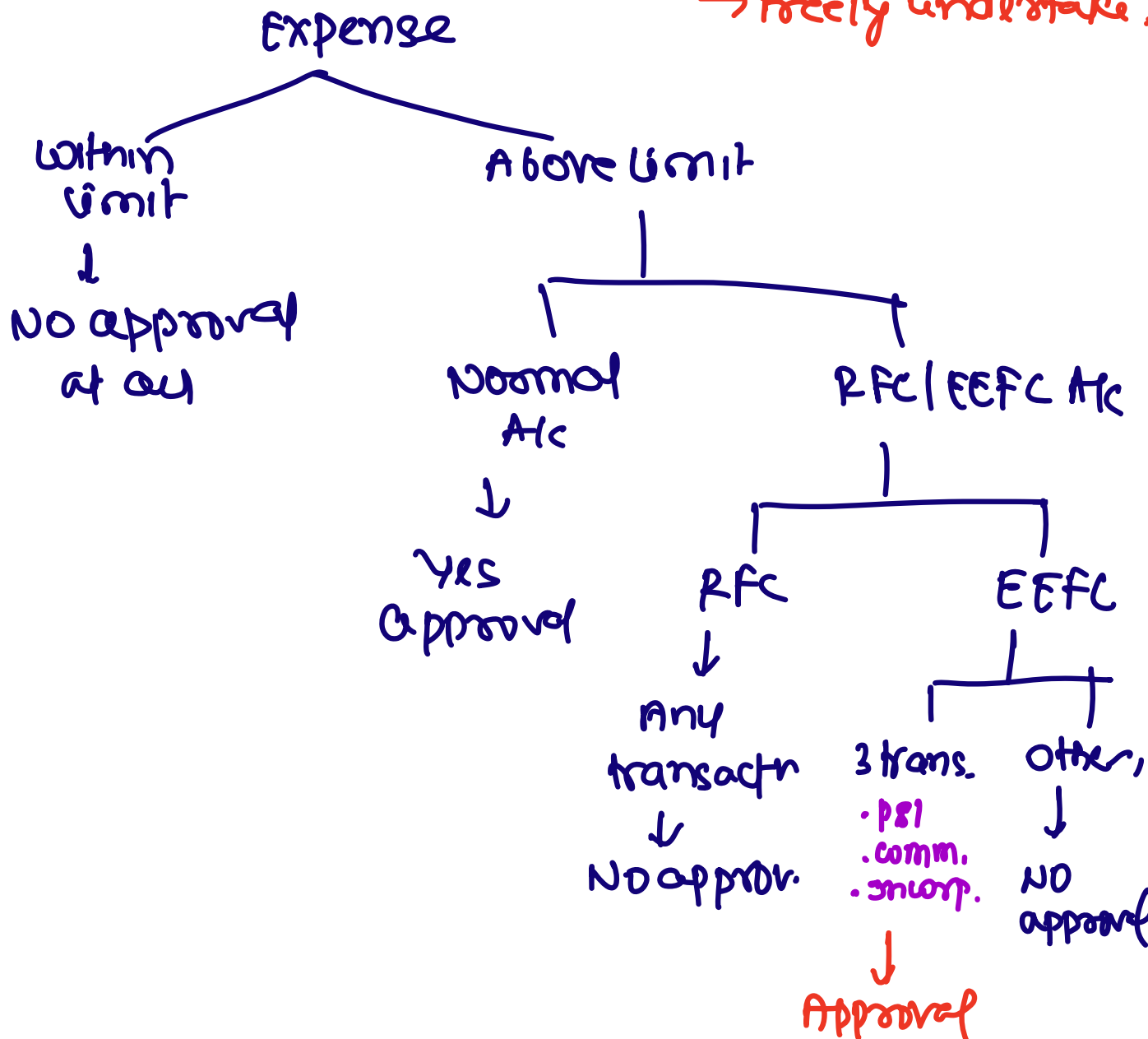
Exception: Approval under Sch II or III shall not be required where remittance is from:



↓
Except remittance
for P&I Club and
Sch III. [commission/pre-incorp.
expense]

International credit card used by a person on
visit abroad → No limit of Sch III applies.

If any transaction is not listed in above schedules
→ freely undertake.



CAPITAL ACCOUNT TRANSACTION (CAT)

Debt
instrument

Non-debt
instruments
(Equity)

	Debt	non-debt	
PR1 (Adani Ltd)	RB1	CQ (Rupee)	outside
PRO1 (Tata Motors)	RB1	RB1	in India

↓
Regulatory

(1) Subject to (2), a person may $\left. \begin{array}{l} \text{sell} \\ \text{or} \\ \text{draw} \end{array} \right\} \text{forex}$ FOR CAT.

2) RB1 shall (+CQ) specify:

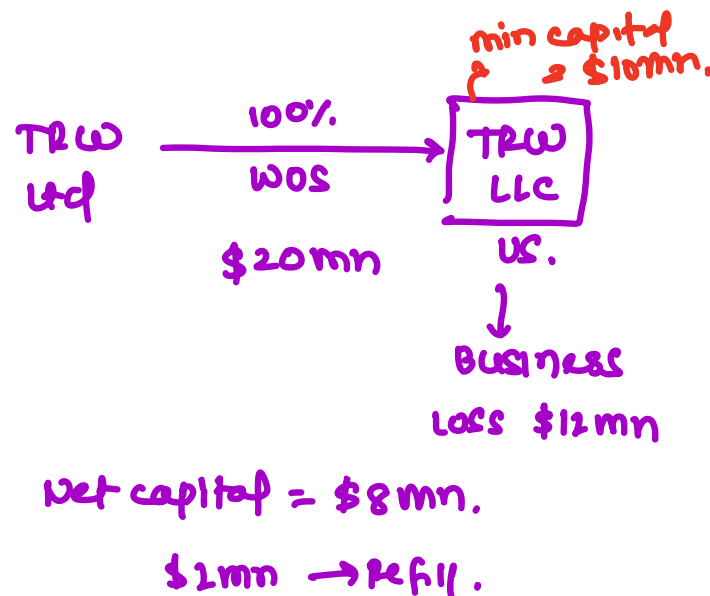
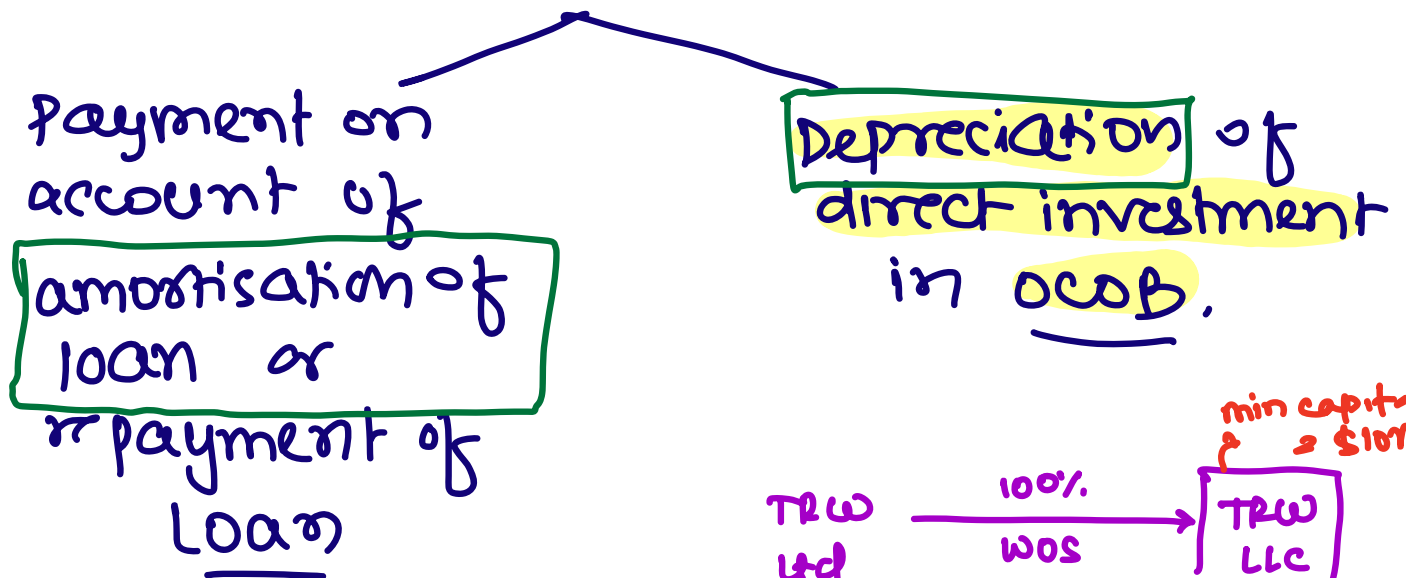
— Permissible CAT involving debt instrument.

- limits of such CAT
- conditions on such CAT

CG (+ RBI) specify:

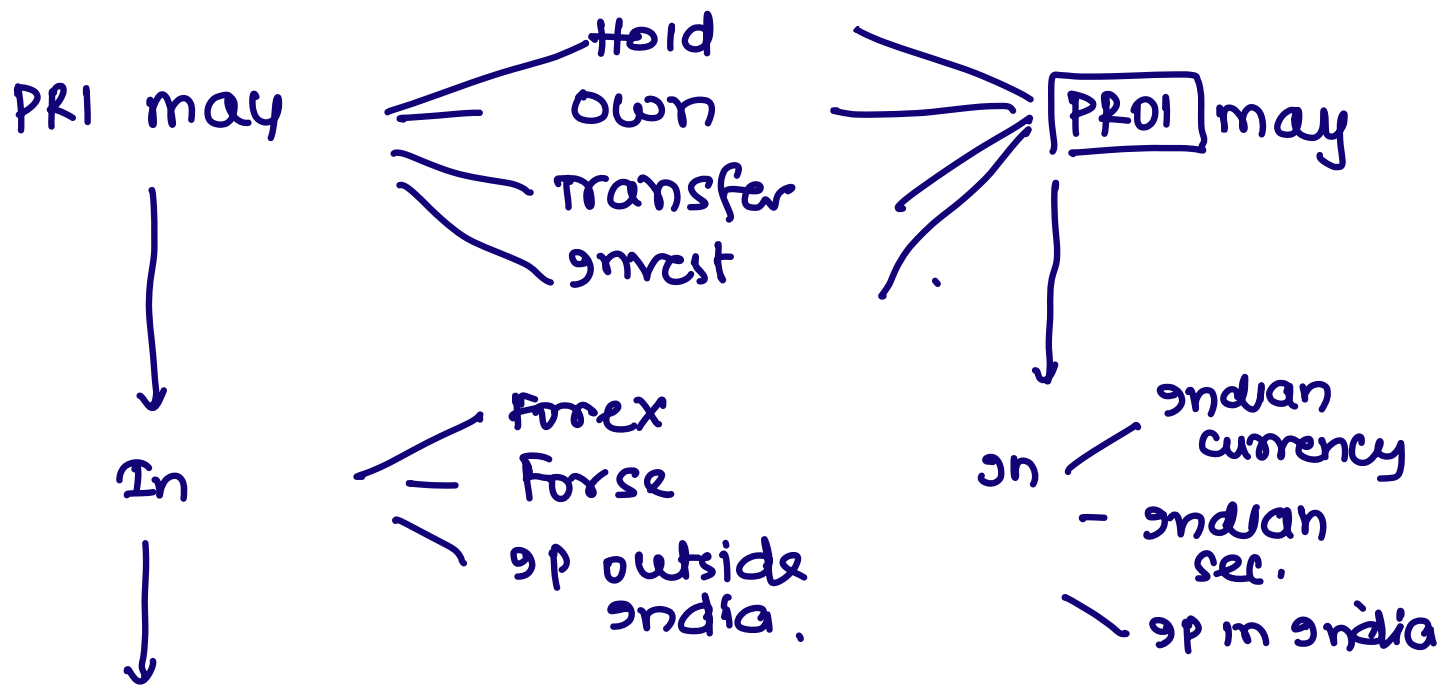
- Permissible CAT involving non-debt instruments
- limits
- conditions

~~##~~ Provided that → RBI or CG shall not impose restriction on drawal of forex for:



(3) Omitted.

(4) (5).



provided that:



- it was acquired, held or owned when he was PPOI.
- or
- Inherited from a PPOI.

provided:

Acquired when PRI or inherited from PRI.



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

① FC account opened by PRI when he was PPOI.

② Income from employment/business, etc.
when he was a PROI
or
from investment when he was PROI
or
Gift/inheritance received when PROI

③ Forex held o/s India by a PRI
↳ Acquired by inheritance from PROI.

④ PRI may FREELY UTILIZE eligible asset abroad
for making payments or fresh investments
w/o approval of RBI.

provided that cost of investment is met
completely out of such asset.

Prohibited CAT :

1. NO PROI shall make investment in India in
any Co./firm, etc. which is engaged in
following business:

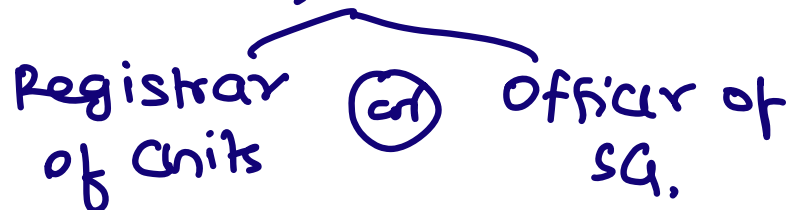
- Chit Fund

- Nidhi company
- Agricultural or Plantation activity.
- Real estate business
- Construction of farm house
- Trading in Transferable Development Rights (TDR).

Note: Real estate business shall **NOT** include:

- Development of township.
- Construction of
 - Residential or commercial premises
 - Road
 - Bridges
- Registered **REITs**.

Note 2: PRI are prohibited from investing in business of chit fund but they may become a subscriber thereof subject to approval of



(2) NO PRI shall undertake CAT with



Citizen of Democratic People's Republic of Korea (North Korea).

↓
UNLESS CG approves.

(3) Settle existing investments → within 180 days.

(unless special approval
of CA)

Read Sch 1 & 11 from summary notes
pg 14.9