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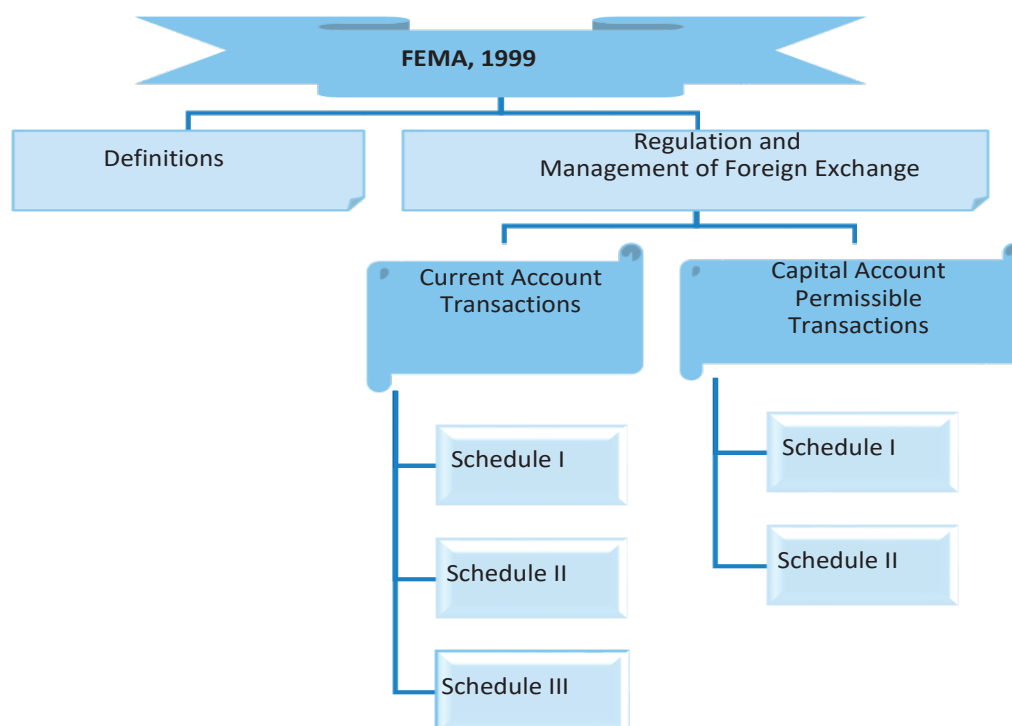
Chapter XV

The Foreign Exchange Management Act, 1999

OVERVIEW OF THE CHAPTER

BROAD STRUCTURE OF FEMA -

Chapters	Matters	Sections
I	Preliminary	1 – 2
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1. INTRODUCTION

NEED FOR THE ACT

- **Economic Changes:** Globalization, free trade, and cross-border capital flows created a need for organized foreign exchange management.
- **Exchange Control Law:** Introduced initially through the Defense of India rules by the British in 1939.
- **FERA Enactments:**
 - 1947: Foreign Exchange Regulation Act (FERA) enacted.
 - 1973: Revised and replaced by an updated FERA
- **1991 Liberalization:**
 - Allowed free movement of foreign exchange for trade-related receipts and payments.
 - Encouraged foreign investments in various sectors.
 - Led to an increase in foreign exchange inflows and reserves.
- **FEMA Enactment:**
 - Foreign Exchange Management Act (FEMA), 1999, replaced FERA.
 - Came into effect on 1st June 2000.
 - Focuses on the management of FOREX reserves for the country.

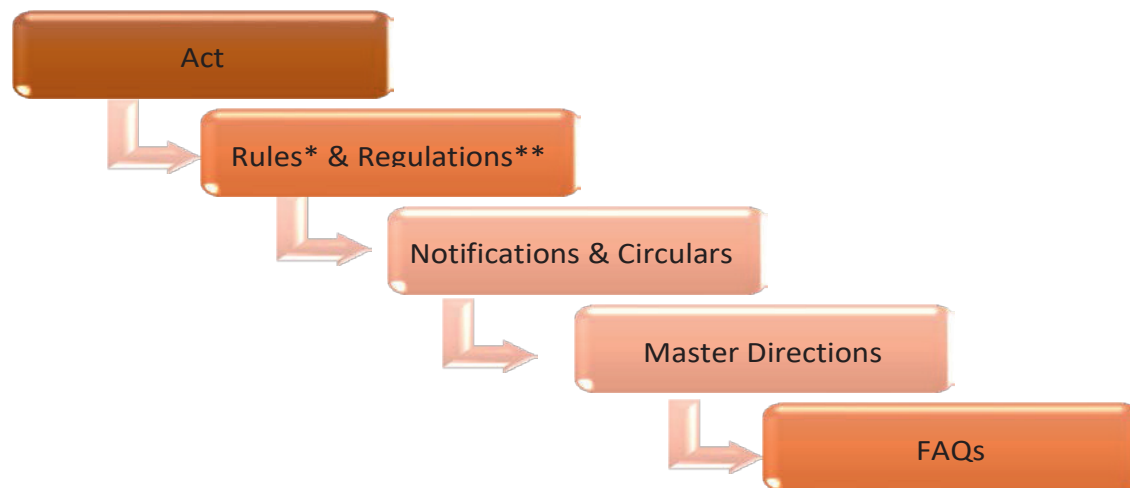
SALIENT FEATURES OF THE ACT

1. Regulation of **transactions** between residents and non-residents
2. **Investments** in India by non-residents and overseas investments by Indian residents
3. Freely permissible transactions on **current** account subject to reasonable restrictions that may be imposed
4. RBI and CG control over **capital** account transactions
5. Requirement for **realization** of **export** proceeds and **repatriation** to India
6. **Dealing in foreign exchange** through 'Authorised Persons' like Authorised Dealer/ Money Changer/ Off-shore banking unit
7. **Adjudication** and Compounding of Offences
8. **Investigation** of offences by Directorate of Enforcement
9. **Appeal** provisions including Special Director (Appeals) & Appellate Tribunal

Enforcement of FEMA - Section 36

- Though RBI exercises overall control over foreign exchange transactions,
- Enforcement of FEMA has been entrusted to a separate '**Directorate of Enforcement**' formed for this purpose

How to Read FEMA



- Rules are notified by the Ministry of Finance, Government of India
- Regulations are notified by the Reserve Bank of India

2. PREAMBLE, EXTENT, APPLICATION, AND COMMENCEMENT OF FEMA, 1999

Preamble

This Act aims to consolidate and amend the law relating to foreign exchange with the objective of —

- facilitating external trade and payments and
- for promoting the orderly development and maintenance of foreign exchange market in India

Extent and Application [Section 1]

- FEMA, 1999 extends to the whole of India.
- Also applies to branches, offices, and agencies outside India owned or controlled by Indian residents.
- Covers contraventions outside India by persons subject to this Act.
- Emphasis on ownership or control makes the scope broad.

Commencement: The Act, 1999 came into force with effect from 1st June, 2000 vide Notification G.S.R. 371(E), dated 1.5.2000.

3. DEFINITIONS - Section 2

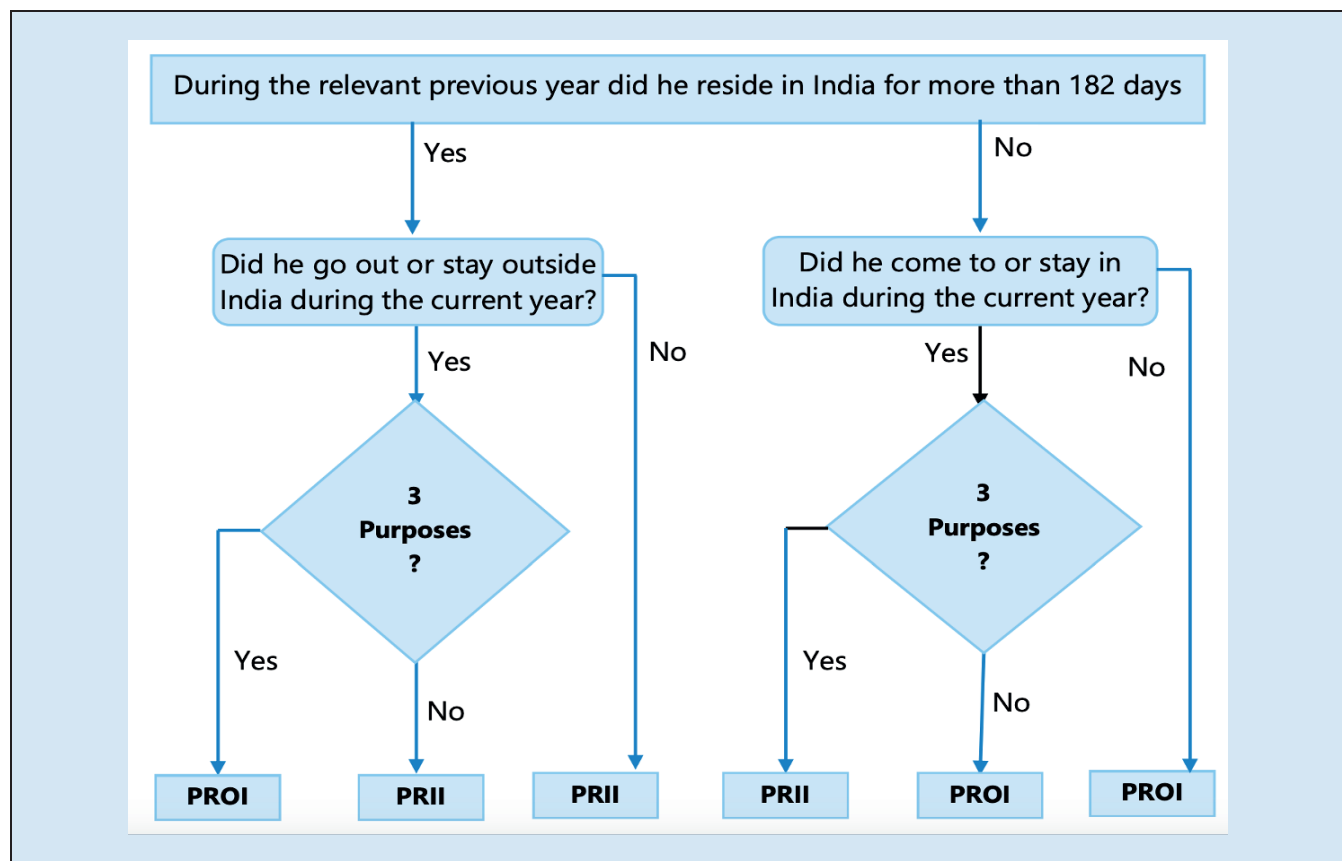
Section	Term	Meaning
2(c)	Authorised Person	<ul style="list-style-type: none"> ● An authorised dealer, money changer, offshore banking unit, or any person authorised under Section 10(1) to deal in foreign exchange or securities.
2(h)	Currency	<ul style="list-style-type: none"> ● Includes currency notes, postal notes/orders, money orders, cheques, drafts, traveler's cheques, letters of credit, bills of exchange, promissory notes, credit cards, or other instruments notified by RBI.
2(i)	Currency Notes	<ul style="list-style-type: none"> ● Cash in the form of coins and bank notes.
2(l)	Export	<ul style="list-style-type: none"> ● Taking goods out of India to a foreign country ● Providing services from India to a person outside India
2(m)	Foreign Currency	<ul style="list-style-type: none"> ● Any currency other than Indian Rupees.
2(n)	Foreign Exchange	<p>Includes: -</p> <ul style="list-style-type: none"> ● Deposits, credits and balances payable in any foreign currency, ● Drafts, travelers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, ● Drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

Section	Term	Meaning
2(o)	Foreign Security	<ul style="list-style-type: none"> Securities like shares, stocks, bonds etc., denominated or expressed in foreign currency. Includes those where interest/dividends are in INR.
2(p)	Import	<ul style="list-style-type: none"> Bringing goods or services into India.
2(w)	Person Resident Outside India	<ul style="list-style-type: none"> A person not qualifying as “resident in India”.
2(ze)	Transfer	<ul style="list-style-type: none"> Includes sale, purchase, exchange, mortgage, pledge, gift, loan, or any other form of transferring rights or ownership.

4. RESIDENTIAL STATUS

<p>PERSON – Section 2(u)</p> <p>Includes:</p> <ol style="list-style-type: none"> 1. An individual, 2. A Hindu undivided family, 3. A Company, 4. A Firm, 5. An association of persons (AOP) or a body of individuals, whether incorporated or not, 6. Every artificial juridical person, not falling within any of the preceding sub-clauses, and; 7. Any agency, office or branch owned or controlled by such person 		
2(v)	Person Resident in India	<p>A person staying in India >182 days in previous FY, but does not include :-</p> <ul style="list-style-type: none"> A person who has gone out of India or who stays outside India, in either case— <ul style="list-style-type: none"> for or on taking up employment outside India, or for carrying on outside India a business or vocation outside India, or

		<ul style="list-style-type: none">○ for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;● A person who has come to or stays in India, in either case, otherwise than:<ul style="list-style-type: none">○ for or on taking up employment in India, or○ for carrying on in India a business or vocation in India, or○ for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period <p>Also includes: -</p> <ul style="list-style-type: none">● Any person or body corporate registered or incorporated in India,● An office, branch or agency in India owned or controlled by a person resident outside India,● An office, branch or agency outside India owned or controlled by a person resident in India
<p>Remember !</p> <p>FEMA requires Resident Status and not CITIZENSHIP. As it is not the criteria for determining whether or not a person is resident in India</p>		



REFER Concept Clarity Slide (CC Slide) on - PERSON RESIDENT IN INDIA (PRI) - Section 2(v)

Some pointers worth considering -	
1	A person's residential status is not for a year but for a particular date unlike Income Tax Act
2	When left India for the 3 purposes – Status will change from the NEXT days (PRI to PROI)
3	When came to India for the 3 purposes – Status will change from the SAME days (PROI to PRI)
4	Visiting parents who are sick and stayed for more than 182 days. But it is certain that the person will leave so still - PROI

5	Green card holder will be considered as PROI
6	Student leaves India for studies – considered as PROI only as eventually he/she will end up working under internship / part time job etc.
Applicability to Individuals vs. Non-Individuals	
<ul style="list-style-type: none"> → The conditions about going out of or coming into India apply only to individuals. → These conditions do NOT apply to entities like: <ul style="list-style-type: none"> → HUF (Hindu Undivided Family) → AOP (Association of Persons) → BOI (Body of Individuals) → Artificial Juridical Persons → Because such entities cannot be employed or physically move in or out of India. 	
Legal Gaps for Non-Individual Entities	
<ul style="list-style-type: none"> → The legal definition of PRII fails for HUF, AOP, BOI, etc. These entities: <ul style="list-style-type: none"> → Are not required to register/incorporate like companies. → Can't be interpreted using "owned or controlled" tests. → Practical Understanding:- <ul style="list-style-type: none"> → If such entities exist and operate in India, they are generally treated as Persons Resident in India (PRII). 	
Special Cases under PRII Definition -	
<ul style="list-style-type: none"> → Person or Body Corporate <ul style="list-style-type: none"> → Any person or body corporate registered or incorporated in India = PRII. → Again, excludes AOP, BOI, etc., as they don't fit this clause neatly. <p>Office, Branch, or Agency</p> <ul style="list-style-type: none"> → Branch/agency outside India, but owned or controlled by PRII = still considered PRII. It prevents misuse of foreign branches to bypass FEMA rules → Branch/agency inside India, but owned or controlled by PROI = still considered PRII. <ul style="list-style-type: none"> → Indian residents can deal freely with such branches without FEMA restrictions. → If treated as PROI, many domestic transactions would become complicated under FEMA 	

Illustration:

Mr. X had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India on April 1, 2020 for carrying on business. He intends to leave the business on April 30, 2021 and leave India on June 30, 2021. Determine his residential status for the financial years 2020-2021 and 2021-2022 up to the date of his departure?

Answer:

As explained in the above illustration, Mr. X will be considered as a 'person resident in India' from 1st April 2020. As regards, financial year 2021-2022, Mr. X would continue to be an Indian resident from 1st April 2021.

If he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure. It may be noted that even if Mr. X is a foreign citizen, has not left India for any of these purposes, he would be considered, 'person resident in India' during the financial year 2021-2022. Thus, it is the purpose of leaving India which will decide his status from 1st July 2021.

Illustration:

Mr. Z had resided in India during the financial year 2019-2020. He left India on 1st August, 2020 for United States for pursuing higher studies for three years. What would be his residential status during financial year 2020-2021 and during 2021- 2022?

Answer:

Mr. Z had resided in India during financial year 2019-2020 for more than 182 days. After that he has gone to USA for higher studies. He has not gone out of or stayed outside India for or on taking up employment, or for carrying a business or for any other purpose, in circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2020-2021. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

For the financial year 2021-2022, he would not have been in India in the preceding financial year (2020-2021) for a period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2021-2022.

Illustration:

Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarters in Mumbai and has a branch in Singapore. The Headquarters at Mumbai controls the Singapore branch of the robotic unit. What would be the residential status of the robotic unit in Mumbai and that of the Singapore branch?

Answer:

Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) thereof 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

The robotic unit headquartered in Mumbai, which is a person resident in India as discussed above, controls the Singapore branch, Hence, the Singapore branch is a 'person resident in India'.

Illustration:

Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Answer:

Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.

If however she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

1. Mr. Ram had resided in India during the Financial Year 2017-2018 for less than 183 days. He again came to India on 1st May, 2018 for higher studies and business and stayed upto 15th July, 2019. State the correct answer as to the residential status of Mr. Ram in the light of the given fact as per the Foreign Exchange Management Act, 1999.
 - 1) Mr. Ram can be considered as 'Person resident in India' during the financial year 2018-2019
 - 2) Mr. Ram cannot be considered as 'Person resident in India' during the financial year 2018.2019
 - 3) Mr. Ram can be considered as 'Person resident in India' during the financial year 2019.2020
 - a. Both the statement (1) & (3) are correct
 - b. Both the statement (2) & (3) are correct
 - c. Only statement (1) is correct
 - d. Only statement (2) is correct

2. Person in India in India for than 182 days during the resident means a person residing more course of the _____.
 - a. Preceding Financial year
 - b. Current financial year
 - c. Assessment year
 - d. Calendar year

3. Srihari had resided in India during the financial year 2017-2018 for less than 183 days. He had come to India on April 1,2018 for employment. What would be his residential status during the Financial Year 2018-2019?
 - a. Person Resident in India
 - b. Person Resident outside India
 - c. Person Ordinary Resident in India
 - d. Person Not Ordinary Resident in India

4. Aruna had resided in India during the Financial Year 2016-2017. She left India on 1st August 2017 for USA for pursuing higher studies for 3 years. What would be her residential status during the Financial Year 2017-2018 and during 2018-2019?
 - a. RFY-2017-18 PRII, RFY-2018-19 PROI
 - b. RFY-2017-18 PROI, RFY-2018-19 PRII
 - c. RFY-2017-18 PRII, RFY-2018-19 PRII
 - d. RFY-2017-18 PROI, RFY-2018-19 PROI

5. Mr. Pankaj born and brought up in India, goes to USA on 10.04.2017 to look after his son, Alok, who is suffering from chronic disease, with the intention to stay over there till his son, Alok recovers completely. Determine his residential status under FEMA for the financial years 2017-2018 and 2018-2019?
 - a. RPY-16-17- PROI, RPY-17-18- PRII
 - b. RPY-16-17- PRII, RPY-17-18- PRII
 - c. RPY-16-17- PRII, RPY-17-18- PROI
 - d. RPY-16-17- PROI, RPY-17-18- PROI

6. Printex Computers is a Singapore based Company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under FEMA, of the Printer Unit in Pune & that of Dubai Branch?
 - a. Person Resident In India
 - b. Person Resident outside India
 - c. Person Ordinary Resident in India
 - d. Person Not Ordinary Resident in India

7. After five years of stay in USA, Mr. Umesh came to India at his paternal place in New Delhi on October 25, 2021, for the purpose of conducting business with his two younger brothers Rajesh and Somesh and contributed a sum of ₹ 10,00,000 as his capital. Simultaneously, Mr. Umesh also started a proprietary business of selling artistic brass ware, jewellery, etc. procured directly from the manufacturers based at Moradabad. Within a period of two months after his arrival from USA, Mr. Umesh established a branch of his proprietary business at Minnesota, USA. You are required choose the appropriate option with respect to residential status of Mr. Umesh and his branch for the financial year 2022-23 after considering the applicable provisions of the Foreign Exchange Management Act, 1999:
- For the financial year 2022-23, Mr. Umesh and his branch established in Minnesota, USA, are both persons resident outside India.
 - For the financial year 2022-23, Mr. Umesh is a resident in India, but his branch established in Minnesota, USA, is a person resident outside India.
 - For the financial year 2022-23, Mr. Umesh and his branch established in Minnesota, USA, are both persons resident in India.
 - For the financial year 2022-23, Mr. Umesh is a person resident outside India, but his branch established in Minnesota, USA, is a person resident in India.

5. CAPITAL AND CURRENT ACCOUNT TRANSACTIONS

2(e)	Capital Account Transaction	<ul style="list-style-type: none"> ● A transaction that alters assets or liabilities (including contingent ones) ● outside India of residents or ● in India of non-residents. ● Includes those under deleted Section 6(3). 									
		<table border="1" data-bbox="718 1605 1479 1875"> <thead> <tr> <th data-bbox="718 1605 1078 1661">CAT which</th> <th data-bbox="1078 1605 1277 1661">OF</th> <th data-bbox="1277 1605 1479 1661">IN</th> </tr> </thead> <tbody> <tr> <td data-bbox="718 1661 1078 1765">Alters / Changes ASSETS & LIABILITY</td> <td data-bbox="1078 1661 1277 1765">PROI</td> <td data-bbox="1277 1661 1479 1765">India</td> </tr> <tr> <td data-bbox="718 1765 1078 1875">or Contingent Liability</td> <td data-bbox="1078 1765 1277 1875">PRI</td> <td data-bbox="1277 1765 1479 1875">Outside India</td> </tr> </tbody> </table>	CAT which	OF	IN	Alters / Changes ASSETS & LIABILITY	PROI	India	or Contingent Liability	PRI	Outside India
CAT which	OF	IN									
Alters / Changes ASSETS & LIABILITY	PROI	India									
or Contingent Liability	PRI	Outside India									

		<p>Basically, these two transactions must be understood as being like -</p> <ul style="list-style-type: none"> • The concepts of items relating to the profit and loss account or revenue items (with respect to current account transactions) and • of Balance Sheet or capital items (with respect to capital account transactions) • Cross-border transactions including investments, loans, immovable property, transfer of assets are CAT
2(j)	Current Account Transaction	<p>Any transaction other than capital account transactions.</p> <p>Includes:</p> <ul style="list-style-type: none"> • Payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business. • Payments due as interest on loans and as net income from investments. • Remittances for living expenses of parents, spouse and children residing abroad, and • Expenses in connection with foreign travel, education and medical care of parents, spouse and children

Example:

An Indian resident imports machinery from a vendor in UK for installing in his factory. As per accounts and income-tax law, machinery is a "capital expenditure". However, under FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor is owed anything in the other country. Hence it is a Current Account Transaction.

Example:

An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months. As per accounts and income-tax law, for the credit period of 3 months, there is a liability of the Indian importer to the UK vendor. Technically under FEMA also, it is a liability outside India. However, under definition of Current Account Transaction [Section 2(j)(i)], "short-term banking and credit facilities in the ordinary course of business" are considered as a Current Account Transaction. Hence, import of machinery on credit terms is Current Account Transaction.

Example:

A Person Resident in India transfers US\$ 1,000 to his NRI brother in New York as “gift”. The funds are sent from the PRII’s Indian bank account to the NRI brother’s bank account in New York. Under accounts and income-tax law, gift is a “capital receipt”. However, under FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA. The transaction is over. Hence, it is a Current Account Transaction.

He is supposed to bring back the funds as provided in section 8.

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE**DEALING IN FOREIGN EXCHANGE, ETC. [SECTION 3]**

Clause	Prohibited Activity	Explanation	Example
(a)	Dealing in or transferring foreign exchange or foreign security to anyone other than an Authorised Person (AP)	Only Authorised Persons like banks or licensed dealers can legally deal in foreign exchange	A PROI sells USD 1,000 to an Indian friend at a better rate than banks. ✗ Not allowed. It’s an unauthorised forex transaction.
(b)	Making any payment to or for credit of a PROI in any manner	Indian residents cannot make direct payments to non-residents unless permitted	An Indian pays insurance premium for his NRI brother's policy in India. ✗ Not allowed. It’s a payment for credit of a PROI.
(c)	Receiving payment from or on behalf of a PROI otherwise than through an AP	All receipts from non-residents must go through Authorised Persons	A restaurant accepts USD 20 in cash from a foreign tourist. ✗ Not allowed. Must be routed through an authorised money changer.
	Explanation	If someone in India receives payment on behalf of a PROI without actual foreign remittance coming in, it's treated as unauthorised	Even if routed through an AP, if no inward remittance exists, it's considered unauthorised.

(d)	Entering into financial transactions in India in connection with acquiring or creating any asset outside India	Such cross-border transactions must be permitted by FEMA or RBI	A resident gives 70,000 to a dealer in India. His brother receives USD 1,000 in Dubai. ✗ Not allowed. This is a hawala transaction.
<p>Permitted When: These transactions may be allowed:</p> <ul style="list-style-type: none"> ● As provided in FEMA, or ● With general/special permission of RBI 			
<p>Meaning of Financial Transaction (Explanation to clause d):</p> <p>Includes:</p> <ul style="list-style-type: none"> ● Making/receiving payments ● Drawing/issuing bills of exchange or promissory notes ● Transferring securities ● Acknowledging debts 			
<p>Purpose of this Section:</p> <ul style="list-style-type: none"> ● Regulates foreign exchange inflow/outflow ● Ensures that only Authorised Persons handle foreign exchange ● Applicable to Persons Resident in India (PRII) and Persons Resident Outside India (PROI) 			

7. HOLDING OF FOREIGN EXCHANGE [SECTION 4]

Except as provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

This section prevents Indian residents to acquire, hold, own, possess or transfer any foreign exchange, foreign security or immovable property abroad. Then through separate notifications, acquisition of these assets has been permitted subject to certain conditions and compliance rules.

Example: *If an Indian resident receives bank balance of US\$ 10,000 from his uncle in London, the Indian resident cannot hold on to the foreign funds. He is supposed to bring back the funds as provided in section 8.*

8. CURRENT ACCOUNT TRANSACTIONS [SECTION 5]

Heading	Explanation
Definition	<ul style="list-style-type: none"> Defined negatively – A transaction other than a Capital Account Transaction.
Section 5	<ul style="list-style-type: none"> Allows any person to sell or draw foreign exchange from an Authorised Person for a current account transaction.
Restrictions and CG's power	<ul style="list-style-type: none"> Though generally permitted, reasonable restrictions can be imposed by the Central Government in public interest, in consultation with RBI, via rules.
Rules Applicable	<ul style="list-style-type: none"> Foreign Exchange Management (Current Account Transactions) Rules, 2000
General Rule	
General Rule for Transactions	<ul style="list-style-type: none"> Current Account Transactions: Freely permitted unless specifically prohibited. Capital Account Transactions: Prohibited unless specifically or generally permitted.
Includes	<ul style="list-style-type: none"> Payments in foreign trade, services, short-term banking/credit facilities in ordinary business. Interest on loans and income from investments. Remittances for living expenses of parents, spouse, children living abroad. Expenses on foreign travel, education, and medical care.
Gift as a Current Account Transaction	

<p>Gifts are generally treated as current account transactions, but reasonable restrictions can be imposed to prevent misuse, Otherwise, people may transfer funds abroad under the garb of current account transactions</p>	
<p>Gift by PRII to PROI in India (INR)</p>	<p>PRII gives a PROI a gift in India in Indian currency -</p> <ul style="list-style-type: none"> ● For the PROI it will result in funds lying in India (alteration of Indian asset). ● For PRII, there is no creation of asset or a liability. As this transaction creates an asset in India for the PROI, it is a Capital Account transaction.
<p>Gift by PROI to PRII in India (INR)</p>	<ul style="list-style-type: none"> ● If a PROI gives a gift to a PRII via inward remittance of funds in India, there is no restriction. ● However, if the PROI gives the funds abroad, the resident cannot keep it abroad. He has to bring it to India.

9. SCHEDULES - CURRENT ACCOUNT TRANSACTIONS

SCHEDULE - 1	RULE 3	Transactions for which drawal of foreign exchange is prohibited
SCHEDULE - 2	RULE 4	Transactions, which require prior approval of the Government of India for drawal of foreign exchange
SCHEDULE - 3	RULE5	Facilities for individuals and other than individuals who can avail foreign exchange facility for the following purposes within the limit of USD 250,000 only.

Prohibited Transactions for Drawal of Foreign Exchange

Schedule I – Rule 3

1	Remittance out of lottery winnings.
2	Remittance of income from racing/riding , etc., or any other hobby.
3	Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.
4	Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
5	Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
6	Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco .
7	Payment related to " Call Back Services " of telephones.
8	Remittance of interest income on funds held in Non-resident Special Rupee Scheme account.

Key to remember Schedule I

- Purchase of **Lottery** tickets करोगे
- banned/prescribed **magazines** खरीदोगे और
- **Racing/Riding** में पैसा लगाओगे तो यही होगा
- इससे अच्छा तो - **Commission** कमाओ **equity** investment करके
- और **Dividend** भी आयेगा
- और जो Commission से **Rupee** आयेगा **exports** करके उसका **10%** **tea and tobacco** के जैसा business करो
- तब लोग तुम्हें **Call Back** करेंगे
- और **Interest** लेंगे **Non-resident**.

Transactions which require prior approval of the Government of India for drawal of foreign exchange

Schedule II – Rule 4

CG

Purpose of Remittance	Ministry of Human Resources Development
<ul style="list-style-type: none"> ● Cultural Tours 	<p style="text-align: center;">Department of Education and Culture</p>
<ul style="list-style-type: none"> ● Remittance of prize money/ sponsorship ● Of sports activity abroad ● by a person other than – ● International/ National/State Level sports bodies, ● if the amount involved exceeds US \$ 100,000 	<p style="text-align: center;">Department of Youth Affairs and Sports</p>
<ul style="list-style-type: none"> ● Advertisement in foreign print media ● for the purposes other than ● Promotion of tourism, foreign investments and international bidding ● exceeding US\$ 10,000 ● by a State Government and its Public Sector Undertakings. 	<p style="text-align: center;">Department of Economic Affairs</p>
<ul style="list-style-type: none"> ● Remittance for membership of P & I Club 	<p style="text-align: center;">Insurance Division</p>
<ul style="list-style-type: none"> ● Remittance of container detention charges ● exceeding the rate prescribed by Director General of Shipping 	<p style="text-align: center;">Director General of Shipping</p>
<ul style="list-style-type: none"> ● Remittance of freight of vessel chartered by a PSU 	<p style="text-align: center;">Chartering Wing</p>
<ul style="list-style-type: none"> ● Payment of import through ocean transport ● by a Govt. Department or a PSU on CIF basis ● i.e., other than FOB and FAS. basis 	<p style="text-align: center;">Chartering Wing</p>
<ul style="list-style-type: none"> ● Multi-modal transport operators making remittance to their agents abroad 	<p style="text-align: center;">Registration Certificate from the Director General of Shipping</p>
<ul style="list-style-type: none"> ● Remittance of hiring charges of transponders by <ul style="list-style-type: none"> ○ TV Channels ○ Internet service providers 	<p style="text-align: center;">Ministry of Information and Broadcasting</p> <p style="text-align: center;">Ministry of Communication and Information Technology</p>

Transactions which require RBI's prior approval for drawal of foreign Exchange
<div style="display: flex; justify-content: center; gap: 10px;"> <div style="background-color: #003366; color: white; padding: 5px 15px; border-radius: 5px;">Schedule III – Rule 5</div> <div style="background-color: #663399; color: white; padding: 5px 10px; border-radius: 5px;">RBI</div> </div>
Facilities for Individuals – As per LRS Scheme (Up to USD 2,50,000 per year)
RBI approval IS Required > More than USD 2,50,000
1. Private visits to any country (except Nepal and Bhutan)
2. Gift or donation
3. Going abroad for employment
4. Maintenance of close relatives abroad
5. Travel for business, attending a conference, specialized training, or meeting medical expenses/check-ups abroad.
6. Accompanying a patient going abroad for medical treatment/check-up
7. Any other current account transaction
RBI approval is NOT required (If Proof given) even if more than USD 2,50,000
8. Emigration - If the country of emigration requires more funds, you may send extra.
9. Expenses for medical treatment abroad - If the medical institute asks for more than USD 250,000, it can be remitted.
10. Studies abroad - If the university demands higher payment, it can be remitted beyond the limit.

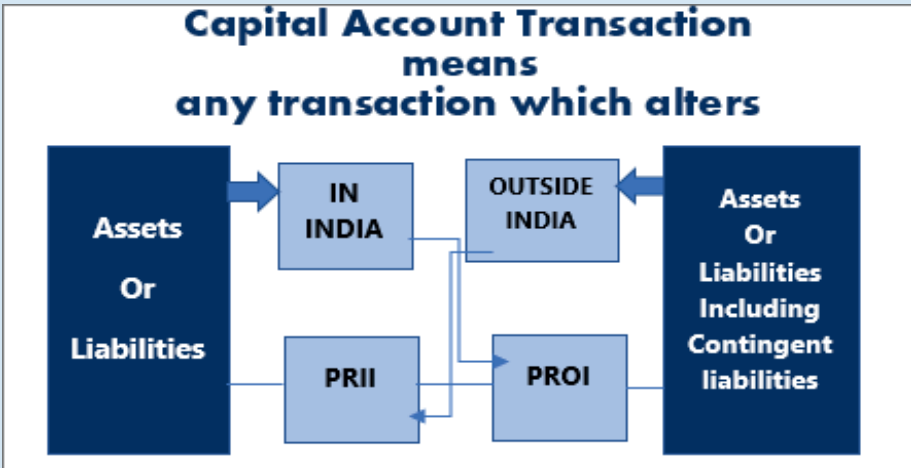
10. EXEMPTIONS RELATED TO CURRENT ACCOUNT TRANSACTIONS

1	No approval required for transactions listed in Schedule II and Schedule III if payment is made from an RFC account.					
Resident Foreign Currency (RFC) AND Exchange Earners' Foreign Currency (EEFC) REFER Concept Clarity Slide (CC Slide) on Types of Accounts						
	Exception for RFC	Remittance for membership of P & I Club				
	Exceptions for EEFC	Approval is required for the following – <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">Commission to Agents Abroad (For Sale of Residential / Commercial Property in India)</td> <td style="text-align: center;">Exceeds the higher of :- USD 25,000 per transaction OR 5% of the inward remittance</td> </tr> <tr> <td style="text-align: center;">Reimbursement of Pre-incorporation Expenses</td> <td style="text-align: center;">Exceeds the higher of – 5% of investment brought into India OR USD 100,000</td> </tr> </table>	Commission to Agents Abroad (For Sale of Residential / Commercial Property in India)	Exceeds the higher of :- USD 25,000 per transaction OR 5% of the inward remittance	Reimbursement of Pre-incorporation Expenses	Exceeds the higher of – 5% of investment brought into India OR USD 100,000
Commission to Agents Abroad (For Sale of Residential / Commercial Property in India)	Exceeds the higher of :- USD 25,000 per transaction OR 5% of the inward remittance					
Reimbursement of Pre-incorporation Expenses	Exceeds the higher of – 5% of investment brought into India OR USD 100,000					
2	EXEMPTION FOR Residents Not Permanently Resident (RNPR)					
	WHO IS RNPR ? A person residing in India temporarily for employment or deputation for a specific duration/job not exceeding three years is considered Resident but not Permanently Resident (RNPR).					
	Adjustment To LRS Limit	<ul style="list-style-type: none"> ● If an individual remits any amount under the LRS in a financial year, the applicable limit of USD 250,000 will be reduced by the amount so remitted – Net Salary ● Citizens of foreign states (except Pakistan). ● Indian citizens deputed to a foreign company's office/branch, or to its subsidiary/joint venture in India. ● They can remit up to net salary (after taxes, provident fund, and other deductions). 				
	International credit card	<ul style="list-style-type: none"> ● No LRS permission is required if a person making expenses in schedule III with International Credit card 				

3	Liberalised Remittance Scheme (LRS) EXEMPTION points -	
	<ul style="list-style-type: none"> ● Limit: Up to USD 250,000 per financial year (April–March) ● For resident individuals (Including minors) <ul style="list-style-type: none"> ○ For permissible current (SCH III) or ○ Capital account (SCH I) or ○ A combination of both. 	
	LRS – Exclusions	Not available to corporates, partnership firms, HUFs, or Trusts.
	LRS – Minor Specific Rule	<ul style="list-style-type: none"> ● If the remitter is a minor, the LRS declaration form must be countersigned by the natural guardian.
	Consolidation of Family Remittance	<ul style="list-style-type: none"> ● Permitted for family members under the Scheme, subject to individual compliance with its terms and conditions.
	Clubbing is also allowed Except -	<ul style="list-style-type: none"> ● Clubbing of remittances is not allowed for capital account transactions (e.g., opening a bank account, investment, or property purchase) ● unless the family members are co-owners/co-partners in the overseas bank account, investment, or property.

11. CAPITAL ACCOUNT TRANSACTIONS [SECTION 6]

<p>Definition – Capital Account Transaction [Section 2(e)]</p>	<ul style="list-style-type: none"> ● A capital account transaction is one that alters the assets or liabilities (including contingent liabilities) outside India of a person resident in India, or in India of a person resident outside India. ● Transactions related to cross-border investments, loans, immovable property, and transfer of assets fall under capital account transactions.
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<p style="text-align: center;">Capital Account Transaction means any transaction which alters</p>  <p>The diagram illustrates the components of a capital account transaction. It features four boxes: 'Assets Or Liabilities' (dark blue), 'IN INDIA' (light blue), 'OUTSIDE INDIA' (light blue), and 'Assets Or Liabilities Including Contingent liabilities' (dark blue). Arrows indicate the flow: from 'Assets Or Liabilities' to 'IN INDIA', from 'IN INDIA' to 'OUTSIDE INDIA', from 'OUTSIDE INDIA' to 'Assets Or Liabilities Including Contingent liabilities', from 'Assets Or Liabilities Including Contingent liabilities' to 'PROI', from 'PROI' to 'PRII', and from 'PRII' back to 'Assets Or Liabilities'.</p>	
<p>Definition – Current Account Transaction [Section 2(j)]</p>	<ul style="list-style-type: none"> Current account transactions are other than capital account transactions. They include payments related to foreign trade, services, travel, education, medical care, etc.
<p>Nature</p>	<ul style="list-style-type: none"> These two categories form the core of FEMA. Capital transactions are like Balance Sheet items Current account ones are like P&L items. They are mutually exclusive.
<p>Capital A/c transactions allowed only if permitted</p>	<ul style="list-style-type: none"> A person can undertake a capital account transaction only to the extent permitted under FEMA. Since the Indian Rupee is not fully convertible, these transactions are regulated.
<p>General Permission [Section 6(1)]</p>	<ul style="list-style-type: none"> Any person may sell or draw foreign exchange from an authorized person for capital account transactions, but subject to rules under sub-sections (2) and (2A).
<p>RBI's Power [Section 6(2)]</p>	<ul style="list-style-type: none"> RBI may, in consultation with the Central Government, specify: <ul style="list-style-type: none"> (a) Which classes of debt-related capital transactions are allowed (b) Foreign exchange limits for them, and (c) Conditions applicable.
<p>Central Government's Power [Section 6(2A)]</p>	<ul style="list-style-type: none"> Central Government may, in consultation with RBI, prescribe <ul style="list-style-type: none"> (a) Which non-debt capital transactions are allowed, (b) Limits applicable, (c) Any conditions for them.

What are debt instruments?	<ul style="list-style-type: none"> • ‘Debt instruments’ shall mean instruments as notified by the Central Government in consultation with RBI.
Residents vs Non-Residents	<ul style="list-style-type: none"> • For non-residents, transactions altering assets/liabilities in India are capital account transactions. • For residents, transactions altering contingent liabilities outside India are also considered capital account transactions.
Capital A/c Transactions for Resident Individuals	<ul style="list-style-type: none"> • Resident individuals may draw up to USD 250,000 per financial year for capital account transactions listed in Schedule I, subject to FEMA rules.
If exceeds USD 250,000	<ul style="list-style-type: none"> • If remittance exceeds USD 250,000, then specific limits under applicable regulations shall apply.
Assets acquired while NRI [Section 6(4)]	<ul style="list-style-type: none"> • A person who became resident in India can continue to hold, own, transfer, or invest in foreign currency/assets if: <ul style="list-style-type: none"> (a) Acquired when he was resident outside India, OR (b) Inherited from a non-resident.
Clarification by RBI (2014 Circular)	<p>Section 6(4) covers: -</p> <ul style="list-style-type: none"> • Foreign accounts opened as NRI - • Income earned or assets acquired abroad while NRI - • Inheritance/gifts from non-residents.
Use of such assets	<ul style="list-style-type: none"> • These eligible foreign assets/income can be used freely for investment, payments, or reinvestment without RBI approval, if not violating FEMA.
NR holding assets acquired in India	<ul style="list-style-type: none"> • A person resident outside India may hold, own, transfer, or invest in Indian currency/assets/property if acquired: <ul style="list-style-type: none"> (a) When he was resident in India, OR (b) Inherited from a resident.
Restriction on establishment in India by non-residents	<ul style="list-style-type: none"> • RBI may prohibit, restrict, or regulate any branch, office, or place of business set up in India by a person resident outside India.

12. SCHEDULES - CAPITAL ACCOUNT TRANSACTION

Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000 -

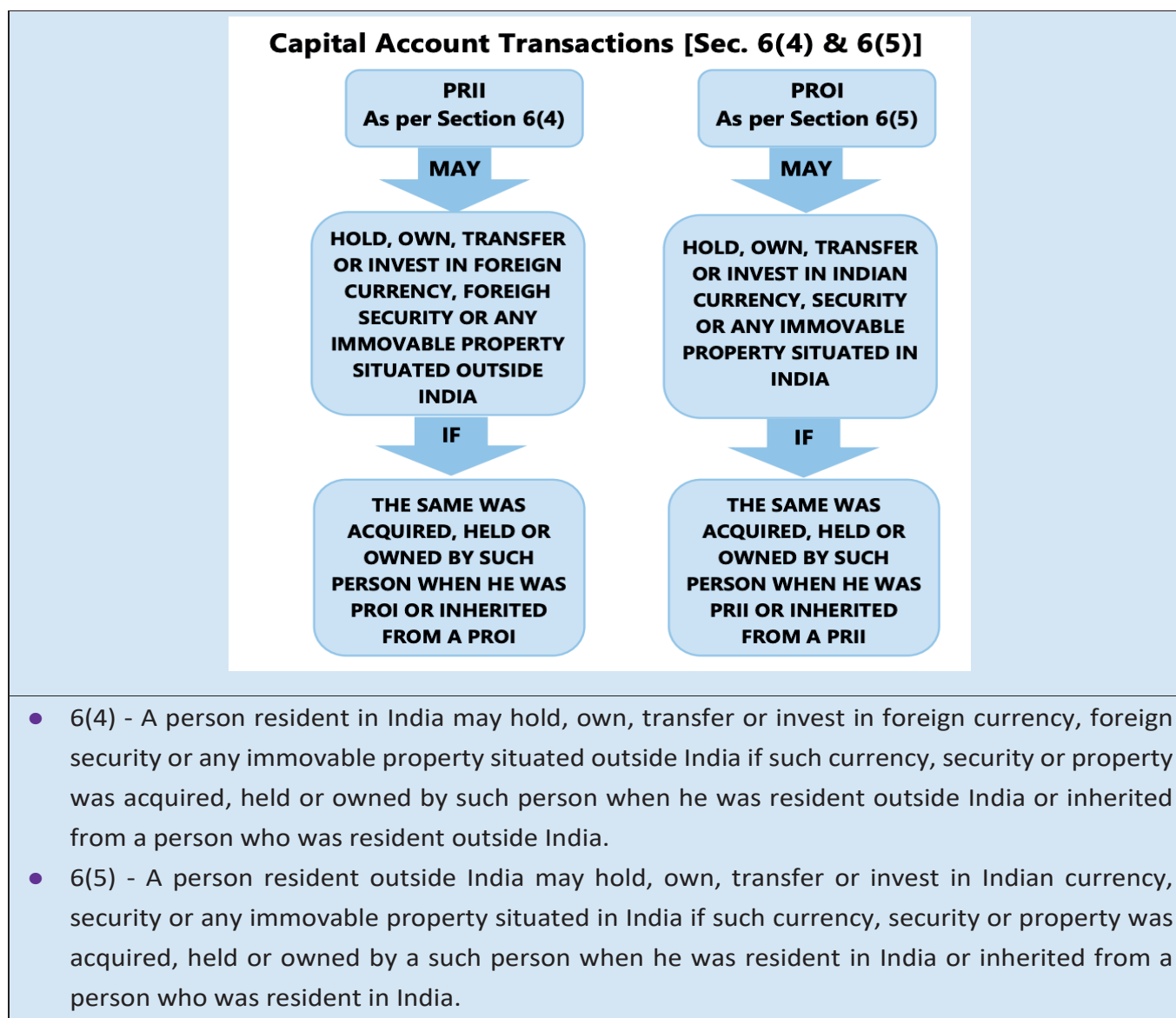
1. Transaction, which are **permissible** in respect of persons resident in India (SCH I) and outside India (SCH II)
2. Transaction on which **restrictions cannot** be imposed; and
3. Transactions, which are **prohibited**.

PERMISSIBLE CAPITAL Account Transactions SCHEDULE - I AND II	
Facilities for Individuals – As per LRS Scheme (Up to USD 2,50,000 per year)	
RBI approval IS Required > More than USD 2,50,000	
Schedule I - Permissible Transactions for PRI Schedule I PRI	Schedule II - Permissible Transactions for PROI Schedule II PROI
(a) Investment by a person resident in India in foreign securities.	(a) Investment in India by a person resident outside India like issue of securities etc.
(b) Foreign currency loans raised in India and abroad by a person resident in India .	(e) Deposits between a person resident in India and a person resident outside India.
(c) Transfer of immovable property outside India by a person resident in India.	(b) Acquisition and transfer of immovable property in India by a person resident outside India.

(d) Guarantees issued by a person resident in India in favour of a person resident outside India.	(c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
(e) Export, import, and holding of currency/currency notes.	(d) Import and export of currency/currency notes into/from India by a person resident outside India.
(f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.	-
(g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.	(f) Foreign currency accounts in India of a person resident outside India.
(h) Taking out of an insurance policy by a person resident in India from an insurance company outside India.	-
(i) Loans and overdrafts by a person resident in India to a person resident outside India.	-
(j) Remittance outside India of capital assets of a person resident in India.	(g) Remittance outside India of capital assets in India of a person resident outside India.
(k) Undertake derivative contracts.	(h) Undertake derivative contracts.

TRANSACTIONS WITH NO PROHIBITIONS

- For Payments on Amortization of Loan | No restrictions on foreign exchange drawal for payments due on amortization of loans. Also, restrictions cannot be imposed when drawal is of the purpose of repayments of loan installments
- Depreciation of direct investments in ordinary course of Business



PROHIBITED TRANSACTIONS	
Prohibition on Remittance	<ul style="list-style-type: none"> ● The foreign exchange drawn under the USD 250,000 limit cannot be used for remittance to (Financial Action Task Force) FATF designated non-cooperative countries and territories.
<p>Investments by Non-Residents in India - Persons residing outside India are prohibited from investing in India in certain businesses, such as:</p>	

Chit Fund	<ul style="list-style-type: none"> Generally No but Non-Resident Indians (NRIs) can invest in chit funds through banking channels on a non-repatriation basis, subject to RBI conditions.
Nidhi Companies	<ul style="list-style-type: none"> Investment in Nidhi companies is prohibited.
Agricultural and Plantation Activities	<ul style="list-style-type: none"> Investment in agricultural or plantation activities is prohibited.
Real Estate Business	<ul style="list-style-type: none"> Investment in real estate, construction of farmhouses, or in the real estate business is prohibited (excluding development of townships, residential/commercial premises, roads, bridges, and REITs regulated by SEBI).
Trading in Transferable Development Rights (TDRs)	<ul style="list-style-type: none"> Trading in TDRs is prohibited.
Investment with DPRK Nationals or Entities	<ul style="list-style-type: none"> No capital account transaction can be made with citizens or entities of North Korea Democratic People's Republic of Korea (DPRK) unless approved by the Government of India.
Existing Investments in DPRK	<ul style="list-style-type: none"> Investments, representative offices, or assets in DPRK must be closed/liquidated within 180 days unless specific approval is granted to continue.
NOTES TO REMEMBER -	
<ul style="list-style-type: none"> General Rule - No one can buy/sell/draw foreign exchange for capital account transactions unless allowed by FEMA or RBI. Core Rule of Capital A/c Transactions - Capital account transactions are allowed only if specifically permitted. If not mentioned = needs prior approval. 	

1. X, a Film Star, requires USD 20,000 to perform along with his associates in New York on the occasion of Diwali, for Indians residing at New York
 - a. Prior approval of Central Government required
 - b. Prior approval of RBI required
 - c. Prohibited Transaction
 - d. Permissible Transaction

2. Mr. Shah proposes to visit United States on a business tour and for this purpose he wants to draw foreign exchange USD 40,000 for meeting expenses
 - a. Prior approval of Central Government required
 - b. Prior approval of RBI required
 - c. Prohibited Transaction
 - d. Permissible Transaction

3. Remittance of USD 10,000 for payment of goods purchased from a party in Nepal
 - a. Prior approval of Central Government required
 - b. Prior approval of RBI required
 - c. Prohibited Transaction
 - d. Permissible Transaction

4. Payment of commission on exports made towards Equity Investment in wholly owned Subsidiary abroad of an Indian Company:
 - a. Prior approval of Central Government required
 - b. Prior approval of RBI required
 - c. Prohibited Transaction
 - d. Permissible Transaction

5. R wants to draw USD 20,000 to make Donation to a Charitable Trust situated in South Korea.
 - a. Prior approval of Central Government required
 - b. Prior approval of RBI required
 - c. Prohibited Transaction
 - d. Permissible Transaction

6. Drawal of Foreign Exchange for Payment related to Call Back Services of Telephones
 - a. Prior approval of Central Government required
 - b. Prior approval of RBI required
 - c. Prohibited Transaction
 - d. Permissible Transaction

7. Under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, prior approval of the Central Government is required for drawal of foreign exchange in respect of Remittance of Prize Money | Sponsorship of sports activity abroad by a person other than International | National | State Level Sports Bodies, where the amount exceeds USD 1 Lakh.
 - a. Ministry of Surface Transport (Chartering Wing)
 - b. Ministry of Human Resources Development (Department of Youth Affairs and Sports)
 - c. Ministry of Human Resource Development (Department of Education and Culture)
 - d. Ministry of Finance (Department of Economic Affairs)

8. Under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, prior approval of the Central Government is required for drawal of foreign exchange in respect of Remittance for membership of P & I Clubs.
 - a. Ministry of Finance (Insurance Division)
 - b. Ministry of Finance (Department of Economic Affairs)
 - c. Ministry of Information & Broad—casting, Ministry of Communication & Information Technology.
 - d. Ministry of Human Resource Development (Department of Education and Culture)

9. Lifesys Limited, a billion dollar, Indian Company wishes to create a Chair in a Reputed University in the U.S. This Chair is for the Department of Computer Science. Is such "Chair" creation permissible?
 - a. Prohibited Transactions
 - b. Permissible with RBI approval
 - c. Permissible with Central Govt. approval
 - d. Permissible Transaction

10. Drawal of foreign exchange for payments due on account of amortisation of loans is
 - a. Current Account Transactions
 - b. Capital Account Transaction with RBI Approval
 - c. Permissible Capital Account Transactions
 - d. Capital Account Transaction with No RBI restriction

11. Taking out of insurance policy by a person resident in India, from Insurance Company outside India.
 - a. Current Account Transactions
 - b. Capital Account Transaction with RBI Approval
 - c. Permissible Capital Account Transactions
 - d. Capital Account Transaction with No RBI restriction

12. In September, 2021, Mr. Purshottam Saha visited Atlanta as well as Athens and thereafter, London and Berlin on a month-long business trip, for which he withdrew foreign exchange to the extent of US\$ 50,000 from his banker State Bank of India, New Delhi branch. In December, 2021 he further, withdrew US\$ 50,000

from SBI and remitted the same to his son Raviyansh Saha who was studying in Toronto, Canada. In the first week of January, 2022, he sent his ailing mother Mrs. Savita Saha for a specialised treatment along with his wife Mrs. Rashmi Saha to Seattle where his younger brother Pranav Saha, holder of Green Card, is residing. For the purpose of his mother's treatment and to help Pranav Saha to meet increased expenses, he requested his banker SBI to remit US\$ 75,000 to Pranav Saha's account maintained with Citibank, Seattle. In February, 2022, Mr. Purshottam Saha's daughter Devanshi Saha got engaged and she opted for a 'destination marriage' to be held in August, 2022 in Zurich, Switzerland. While on a trip to Dubai in the last week of March, 2022, he again withdrew US\$ 35,000 to be used by him and Devanshi Saha for meeting various trip expenses including shopping in Dubai. Later, the event manager gave an estimate of US\$ 2,50,000 for the wedding of Devanshi Saha at Zurich, Switzerland. Which option do you think is the correct one in the light of applicable provisions of Foreign Exchange Management Act, 1999 including obtaining of prior approval, if any, from Reserve Bank of India since Mr. Purshottam Saha withdrew foreign exchange on various occasions from his banker State Bank of India.

- (a) In respect of withdrawal of foreign exchange on various occasions from his banker State Bank of India and remitting the same outside India during the financial year 2021-22, Mr. Purshottam Saha is not required to obtain any prior approval.

- (b) In respect of withdrawal of US\$ 35,000 in the last week of March, 2022, for a trip to Dubai, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India since the maximum amount of foreign exchange that can be withdrawn in a financial year is US\$ 1,75,000.
- (c) After withdrawing US\$ 1,00,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2021-22, otherwise SBI would not have permitted further withdrawals.
- (d) After withdrawing US\$ 50,000, Mr. Purshottam Saha must have obtained prior approval of Reserve Bank of India for the remaining remittances made during the financial year 2021-22, otherwise SBI would not have permitted further withdrawals.
13. M/s. Kedhar Sports Academy, a private coaching club, provides coaching for cricket, football and other similar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25th year of its operation, a cricket tournament (akin to the format of T-20) is being organized by M/s. Kedhar Sports Academy in Lancashire, England, in the first half of April. The prize money for the 'winning team' is fixed at USD 40,000 whereas in case of 'runner-up', it is pegged at USD 11,000. You are required to choose the correct option from the four given below which signifies the steps to be taken by M/s. Kedhar Sports Academy for remittance of the prize money of USD 51,000 (i.e. USD 40,000+USD 11,000) to England keeping in view the relevant provisions of Foreign Exchange Management Act, 1999:
- (a) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Human Resource Development (Department of Youth Affairs and Sports).
- (b) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Reserve Bank of India.
- (c) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.
- (d) For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Finance (Department of Economic Affairs).
14. Akash Ceramics Limited, an Indian company, holds a commercial plot in Chennai which it intends to sell. M/s. Super Seller, a real estate broker with its Head Office in the USA, has been appointed by Akash Ceramics Limited to find some suitable buyers for the said commercial plot in Chennai which is situated at a prime location. M/s. Super Seller identifies Glory Estate Inc., based out of USA, as the potential buyer. It is to be noted that Glory Estate Inc. is controlled from India and hence, is a 'Person Resident in India' under the applicable provisions of Foreign Exchange Management Act, 1999. A deal is finalised and Glory Estate Inc. agrees to purchase the commercial plot for USD 600,000

(assuming 1 USD = ₹ 70). According to the agreement, Akash Ceramics Limited is required to pay commission @ 7% of the sale proceeds to M/s. Super Seller for arranging the sale of commercial plot to Glory Estate Inc. and commission is to be remitted in USD to the Head Office of M/s. Super Seller located in USA. Considering the relevant provisions of Foreign Exchange Management Act, 1999, which statement out of the four given below is correct (ignoring TDS implications arising under the Income-tax Act, 1961):

- (a) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 25,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 17,000, prior permission of RBI is required to be obtained.
 - (b) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 30,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 12,000, prior permission of RBI is required to be obtained.
 - (c) There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.
 - (d) It is mandatory to obtain prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.
15. Mohita Periodicals and Mags Publications Limited, having registered office in Chennai, has obtained consultancy services from an entity based in France for setting up a software programme to strengthen various aspects relating to publications. The consideration for such consultancy services is required to be paid in foreign currency. The compliance officer of Mohita Periodicals and Mags Publications Limited, Mrs. Ritika requires your advice regarding the foreign exchange that can be remitted for the purpose of obtaining consultancy services from abroad without prior approval of Reserve Bank of India. Out of the following four options, choose the one which correctly portrays the amount of foreign exchange remittable for the given purpose after considering the provisions of the Foreign Exchange Management Act, 1999 and regulations made thereunder:
 - (a) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 50,000,000.
 - (b) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 10,000,000.
 - (c) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 5,000,000.
 - (d) Permissible amount of foreign exchange that can be remitted by Mohita Periodicals and Mags Publications Limited for obtaining consultancy services from an entity based in France without prior approval of RBI is US\$ 1,000,000.

PERSON RESIDENT IN INDIA (PRI) - Section 2(v) FOR AN INDIVIDUAL GOING OUT OF INDIA

- I. A person residing in India for more than 182 days during the course of the preceding financial year but does not include—
- A. A person who has gone out of India or who stays outside India, in either case—
- for or on taking up employment outside India, or
 - for carrying on outside India a business or vocation outside India or
 - for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period

Who ?	Gone For ? -	Status
Person who goes / stays Out of India	Employment / BIZ / Vocation / Intention to stay for uncertain period (लंबा गया ये तो)	PROI (Ignore 182 days status)
	Other purpose than the above then ? (आ जाएगा ये तो)	PRI only

PERSON RESIDENT IN INDIA (PRI) - Section 2(v) FOR AN INDIVIDUAL COMING INTO INDIA

- I. A person residing in India for more than 182 days during the course of the preceding financial year but does not include—
- B. A person who has come to or stays in India, in either case, otherwise than:
- for or on taking up employment in India, or
 - for carrying on in India a business or vocation in India, or
 - for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period

Who ?	Came For ? -	Status
Person comes to / stays in India	Employment / BIZ / Vocation / Intention to stay for uncertain period (लंबा रहेगा ये तो)	PRI (Ignore 182 days status)
	Other purpose than the above then ? (जल्दी चला जाएगा ये तो)	PROI only

PERSON RESIDENT IN INDIA (PRI) - Section 2(v) OTHER THAN INDIVIDUAL

Who ?		Owned / Controlled by	Status
Any Person	Registered / Incorporated In India	-	P R I
	Office, Branch or Agency in India	PROI	
BC	Office, Branch or Agency Outside India	PRI	

PERSON RESIDENT IN INDIA (PRI) – Section 2(w) Means a person who is not resident in India

Account Type (RBI)	Resident Foreign Currency A/C (RFC)	Exchange Owners/Earner's Foreign Currency A/C (EEFC)	Foreign Currency Non-Resident A/C (FCNR)
Eligibility	Resident Indians who were non-residents and have returned to India.	Indian residents dealing with foreign exchange (e.g., exporters).	Non-resident Indians (NRIs) and Persons of Indian Origin (PIOs).
Purpose	To hold foreign earnings or assets acquired during non-residence.	To hold foreign exchange from legitimate earnings like exports.	To hold foreign earnings in a foreign currency.

Currencies Allowed	Any foreign currency.	Permissible foreign currencies (as specified by RBI).	Only specified foreign currencies (USD, GBP, EUR, etc.).
Source of Funds	Income from:	Earnings from:	Earnings from:
	<ul style="list-style-type: none"> • Employment or business abroad. 	<ul style="list-style-type: none"> • Export of goods or services. 	<ul style="list-style-type: none"> • Income earned abroad.
	<ul style="list-style-type: none"> • Gifts or inheritance during non-residence. 	<ul style="list-style-type: none"> • Exchange earnings from permitted activities. 	<ul style="list-style-type: none"> • Savings, investments, or property sales abroad.
Repatriation	Freely repatriable.	Repatriable for approved purposes (Export expenses)	Fully repatriable (principal and interest).

Feature	NRE Account	NRO Account
	Non-Resident External Account	Non-Resident Ordinary Account
Eligibility	Opened by NRIs (Non-Resident Indians) and PIOs (Persons of Indian Origin).	Opened by NRIs and PIOs to manage income earned in India.
Purpose	To park foreign earnings in Indian currency.	To manage income earned in India, such as rent, dividends, etc.
Currency	Maintained in Indian Rupees (INR).	Maintained in Indian Rupees (INR).
Source of Funds	Funds remitted from abroad or transferred from another NRE account.	Income earned in India, e.g., rent, pension, dividends, etc.
Taxability	Interest is tax-free in India.	Interest is taxable in India.
Deposit & Withdrawal	Funds can be deposited in foreign currency and withdrawn in INR.	Funds can be deposited and withdrawn in INR only.
Suitability	Ideal for NRIs wanting to save foreign income in India.	Ideal for managing income or assets earned within India by NRI

Problem Kya Hai? Question Bank

ICAI Module Descriptive Questions

Section 2(v) Residential Status

1. 'Printex Computer' is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch?

Solution :

Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)]. Section 2 (u) defines 'person' under clause (viii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi). Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'.

Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'

However, Dubai Branch though not owned is controlled by the Printer unit in Pune which is a person resident in India. Hence, the Dubai Branch is a person resident in India.

Section 5 Current Account Transactions

2. Mr. Sane, an Indian National desires to obtain Foreign Exchange for the following purposes:

(i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.

(ii) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.

Advise him whether he can get Foreign Exchange and if so, under what conditions?

Solution :

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

- (i) In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane cannot withdraw Foreign Exchange for this purpose.

- (ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c).

Section 5 Schedule II Transactions Require Prior Approval of CG

3. State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:
- (i) X, a Film Star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing at New York. Foreign Exchange drawal to the extent of US dollars 20,000 is required for this purpose.
 - (ii) R wants to get his heart surgery done at United Kingdom. Up to what limit Foreign Exchange can be drawn by him and what are the approvals required?

Solution:

Approval to the following transactions under FEMA, 1999:

- (i) Foreign Exchange drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required. Therefore, in the given case X, the Film Star is required to seek permission of the said Ministry of the Government of India.
- (ii) Individuals can avail of foreign exchange facility within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the expenses requires an approval from RBI. However, in connection with medical treatment abroad, no approval of the Reserve Bank of India is required. Therefore, R can draw foreign exchange up to amount estimated by a medical institute offering treatment.

Section 5 Current Account Transactions

4. Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:

Solution:

- (i) M requires U.S. \$ 5,000 for remittance towards hiring charges of transponders.
- (ii) P requires U.S. \$ 2,000 for payment related to call back services of telephones.

Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions. Accordingly,

- (i) It is a current account transaction, where M is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.
- (ii) Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. P cannot obtain US \$ 2,000 for the said purpose.

Section 5 Schedule III Transactions Require Prior Approval of RBI

5. Suresh resided in India during the Financial Year 2020-2021. He left India on 15th July 2021 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2021-2022 and 2022-2023?

Mr. Suresh requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. Suresh to get the required Foreign Exchange and, if so, under what conditions?

Solution:

Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. Suresh who resided in India during the financial year 2020-2021 left on 15.7.2021 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

Mr. Suresh will be treated as person resident in India for Financial Year 2021- 2022 till 16th July 2021 and from 17th July 2021, he will be considered as person resident outside India.

However, during the Financial Year 2022-2023, Mr. Suresh will be considered as person resident outside India as he left India on 15th July 2021.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

Section 5 Schedule III Transactions Require Prior Approval of RBI

6. (i) Mr. P has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.
- (ii) Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the formalities required and the amount that can be drawn as foreign exchange for the medical treatment abroad.

Solution:

Remittance of Foreign Exchange (Section 5 of the Foreign Exchange Management Act, 1999): According to section 5 of the FEMA, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and
3. Transactions which require RBI's prior approval for drawl of foreign exchange.

(i) Mr. P wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in USA. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Hence Mr. P cannot withdraw foreign exchange for this purpose.

(ii) "Remittance of foreign exchange for medical treatment abroad" requires prior permission or approval of RBI where the individual requires withdrawal of foreign exchange exceeding USD 250,000. The Schedule also prescribes that for the purpose of expenses in connection with medical treatment, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalized Remittance Scheme, if so required by a medical institute offering treatment.

Therefore, Mr. Z can draw foreign exchange up to the USD 250,000 and no prior permission/ approval of RBI will be required. For amount exceeding the above limit, authorised dealers may release foreign exchange based on the estimate from the doctor in India or hospital or doctor abroad.

Section 5 Schedule III Transactions Require Prior Approval of RBI

7. Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:

- (A) US\$ 120,000 for studies abroad on the basis of estimates given by the foreign university.
- (B) Gift Remittance amounting US\$ 10,000.

Advise him whether he can get Foreign Exchange and if so, under what condition(s)?

Solution :

- (A) Remittance of Foreign Exchange for studies abroad: Foreign exchange may be released for studies abroad up to a limit of US \$ 250,000 for the studies abroad without any permission from the RBI. Above this limit, RBI's prior approval is required. Further proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad. In this case since US \$ 120,000 is the drawal of foreign exchange, so permission of the RBI is not required.
- (B) Gift remittance exceeding US \$ 10,000: Under the provisions of section 5 of FEMA 1999, certain Rules have been made for drawal of foreign exchange for current account transactions. Gift remittance is a current account transaction. Gift remittance exceeding US \$ 250,000 can be made after obtaining prior approval of the RBI. In the present case, since the amount to be gifted by an individual, Mr. Rohan is USD 10,000, there is no need for any permission from the RBI.

RTP, MTP and PYQ Descriptive Questions

Section 2 Definitions

1. Explain the meaning of the following terms as defined under the Foreign Exchange Management Act, 1999:
 1. Authorised person
 2. Currency

(MTP Jan 25)

Solution:

1. Authorised person

According to section 2(c) of the Foreign Exchange Management Act, 1999, Authorised person means an authorised dealer, money changer, off- shore banking unit or any other person for the time being authorised under section 10(1) to deal in foreign exchange or foreign securities.

2. Currency

According to section 2(h) of the Foreign Exchange Management Act, 1999, Currency includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank.

Section 2 Definitions

2. Explain the meaning of term 'Foreign Exchange' as per the provisions of the Foreign Exchange Management Act, 1999.

Solution:

According to section 2(n) of the Foreign Exchange Management Act, 1999, 'foreign exchange' means foreign currency and includes:

- (i) deposits, credits and balances payable in any foreign currency,
- (ii) drafts, travelers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
- (iii) drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

Section 2(v) Residential status

3. Ravi, an Indian citizen, works as a software engineer for an international company. During the previous financial year (2023-2024), Ravi resided in India for 200 days. However, in April of the current financial year, he accepted a job offer in Canada and left India with a long-term work visa, planning to settle in Canada indefinitely.

Analyse the residential status of Ravi for the financial year 2024-2025, as per the provisions of the Foreign Exchange Management Act, 1999.

(RTP Jan 25)

Solution:

Law: As per section 2(v) of the Foreign Exchange Management Act, 1999, the term 'person resident in India' means the following entities:

A person who resides in India for more than 182 days during the preceding financial year.

The following persons are not persons resident, in India even though they may have resided in India for more than 182 days.

A. A person who has gone out of India or stays outside India for any of the three purposes given below,

B. A person who has come to or stays in India otherwise than for any of the three purposes given below;

Three Purposes

(1) For or on taking up Employment

(2) For carrying on a business or Vacation

(3) For any other purpose in such circumstances as would indicate stay for an uncertain period.

Conclusion:

Ravi's Residential Status: Ravi resided in India for more than 182 days in the preceding financial year, which would typically qualify him as a "person resident in India." However, his decision to leave India for long-term employment in Canada changes his status. According to the provision, a person who has left India for the purpose of employment abroad is not considered a "person resident in India" even if they meet the 182-day requirement. Thus, Ravi does not qualify as a resident for the current financial year.

Section 2(v) Residential Status

4. Mr. P resided in India during the Financial Year 2023-2024. He left India on 15th July 2024 for Switzerland for pursuing higher studies in Biotechnology for 2 years. What would be his residential status under the Foreign Exchange Management Act, 1999 during the Financial Years 2024-2025 and 2025-2026?

Mr. P requires every year USD 25,000 towards tuition fees and USD 30,000 for incidental and stay expenses for studying abroad. Is it possible for Mr. P to get the required Foreign Exchange and, if so, under what conditions?

Give your answer as per the provisions of the Foreign Exchange Management Act, 1999.

(MTP May 25)

Solution:

Law: Residential Status: According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)]. However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an

uncertain period.

Generally, a student goes out of India for a certain period. In this case, Mr. P who resided in India during the financial year 2023-2024 left on 15.7.2024 for Switzerland for pursuing higher studies in Biotechnology for 2 years, he will be resident as he has gone to stay outside India for a 'certain period'. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

Conclusion:

Mr. P will be treated as person resident in India for Financial Year 2024-2025 till 16th July 2024 and from 17th July 2024, he will be considered as person resident outside India.

However, during the Financial Year 2025-2026, Mr. P will be considered as person resident outside India as he left India on 15th July 2024.

Foreign Exchange for studies abroad: According to Para I of Schedule III to Foreign Exchange Management (Current Account Transactions), Amendment Rule, 2015 dated 26th May, 2015, individuals can avail of foreign exchange facility for the studies abroad within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit shall require prior approval of the RBI. Further proviso to Para I of Schedule III states that individual may be allowed remittances (without seeking prior approval of the RBI) exceeding USD 2,50,000 based on the estimate received from the institution abroad. In this case the foreign exchange required is only USD 55,000 per academic year and hence approval of RBI is not required.

Section 2(j) Current Account Transactions

5. Explain the meaning of term 'Current Account transactions' as defined under the Foreign Exchange Management Act, 1999.

(MTP Jan 25)

Solution:

According to section 2(j) of the Foreign Exchange Management Act, 1999, 'Current Account transaction' means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,

- (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
- (ii) payments due as interest on loans and as net income from investments.
- (iii) remittances for living expenses of parents, spouse and children residing abroad, and
- (iv) expenses in connection with foreign travel, education and medical care of parents, spouse

and children.

Section 7 Designated Partners

6. (i) Mr. Amrish has been admitted to a postgraduate program at a foreign university and intends to join soon. The annual course fee is approximately ₹ 3,50,000. Kindly advise his parents on how they can make the remittance for the fees under the provisions of the Foreign Exchange Management Act (FEMA), 1999.
- (ii) After completing his studies, Mr. Amrish is employed by a joint venture of a foreign company in India. The company intends to send him on deputation to handle business operations abroad. His family resides in India, and he would like to know if he can remit his salary to support their maintenance in India. Advise Mr. Amrish as per the provisions of the Foreign Exchange Management Act, 1999.

(RTP May 25)

Solution:

Law:

- (i) Under the Foreign Exchange Management Act (FEMA), 1999 read with the Schedule III of the FEM (Current Account Transactions) Rules, 2000, the overall limit prescribed is generally USD 250,000. Any additional remittance in excess of such limit shall require prior approval of the RBI.
- (ii) Under the Foreign Exchange Management Act (FEMA), 1999, Mr. Amrish can remit his salary earned abroad to his family in India, subject to the following regulations:
A person (who is resident but not permanently resident in India) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

Conclusion:

- (i) In the given case, the remittance of fees of Amrish for pursuing education abroad, may avail exchange facility for an amount in excess of the limit prescribed under the LRS in a Financial Year. In such a case, the applicable limit for such an individual would be reduced from USD 250,000 by the amount so remitted.
- (ii) As per the stated law, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident.

Section 5 Prohibited Current Account Transactions [Schedule I]

7. Mr. Shivesh, an Indian National desires to obtain Foreign Exchange for the following purposes:
- (i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
- (ii) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.
- Advise him whether he can get Foreign Exchange and if so, under what conditions?

(RTP May 24)

Solution:

Law: Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

1. Remittance out of lottery winnings is prohibited as the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Shivesh cannot withdraw Foreign Exchange for this purpose.
2. Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Shivesh can withdraw the Foreign Exchange after obtaining such permission.

Conclusion: In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c).

Section 5 Schedule III Transactions Require Prior Approval of RBI

8. Mitali Diamonds Limited is a company engaged in the business of cutting, polishing and trading of diamonds in and outside India. The company exports the diamonds to USA. For the last five financial years, the foreign exchange earned by the company in exporting diamonds is as under:

FY 2023-24	USD 1,25,000
FY 2022-23	USD 1,10,000
FY 2021-22	USD 95,000
FY 2020-21	USD 98,000
FY 2019-20	USD 93,000

The company wants to give donation of USD 10,000 to an institution situated in USA which provides technical support and training in the field of cutting and polishing of raw diamonds. This will help the company in guiding its own employees, posted in USA to get the requisite training. Referring to the provisions of the Foreign Exchange Management Act, 1999, state whether the company can give donation to such institution in USA?

(PYQ Sep 24)**Solution:**

Law: As per Schedule III to the Foreign Exchange Management Act, 1999, remittances by persons other than individuals shall require prior approval of the Reserve Bank of India, for donations exceeding 1% of their foreign exchange earnings during the previous three financial years or USD

5,000,000, whichever is less, for:

- Creation of Chairs in reputed Educational Institutes,
- Contribution to Funds (not being an investment fund) promoted by Educational Institutes; and
- Contribution to a Technical Institution or Body or Association in the field of activity of the Donor Company.

Conclusion: In the given question, Mitali Diamonds Limited can donate lower of USD 3,300 [1% of (1,25,000 + 1,10,000 + 95,000)] or USD 5,000,000.

Thus, Mitali Diamonds Limited can give a donation of USD 3,300 without RBI approval and for USD 10,000 it shall require prior approval of the Reserve Bank of India to the said institution as this institution is a Technical Institution or Body or Association in the field of activity of the Donor Company.

Section 5 Prohibited Current Account Transactions [Schedule I]

9. Analyse the below mentioned situation in the light of the provisions of the Foreign Exchange Management Act, 1999.
1. Mr. New has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in Singapore.
 2. Mr. Manoj requires US Dollar 5,000 for remittance towards hiring charges of transponders.

(MTP May 25)

Solution:

Law: According to section 5 of the Foreign Exchange Management Act, 1999, any person may sell or draw foreign exchange to or from an authorized person if such a sale or drawal is a current account transaction. Provided that Central Government may, in public interest and in consultation with the reserve bank, impose such reasonable restrictions for current account transactions as may be prescribed.

As per the rules, drawal of foreign exchange for current account transactions are categorized under three headings-

1. Transactions for which drawal of foreign exchange is prohibited,
2. Transactions which need prior approval of appropriate government of India for drawal of foreign exchange, and
3. Transactions which require RBI's prior approval for drawal of foreign exchange.

Conclusion:

- (1) Mr. New wanted to remit US Dollar 20,000 out of his lottery winnings to his son residing in Singapore. Such remittance is prohibited and the same is included in the Foreign Exchange Management (Current Account Transactions) Rules, 2000.
Hence Mr. New cannot withdraw foreign exchange for this purpose.
- (2) In the given situation, it is a current account transaction, where Mr. Manoj is required to take approval of the Central Government for drawal of foreign exchange for remittance of

hire charges of transponders.

Section 5 Schedule III Transactions Require Prior Approval of RBI

10. Examine the given situations in the light of the FEMA, 1999:

1. LMN Ltd. had total foreign exchange earnings of USD 600 million in the last three financial years. What is the maximum amount the company can donate without RBI approval?
2. STU Ltd. had foreign exchange earnings of USD 250 million over the last three financial years. It plans to donate USD 3 million to a university fund. Does it need RBI approval?

(MTP May 25)

Solution:

Law: The given situations can be examined in the light of the Schedule III of the FEM (Current Account Transactions) Rules, 2000. According to the Regulation, wherever, Donations exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, it shall require prior approval of RBI.

Conclusion: Accordingly, following shall be the answers:

1. $1\% \text{ of Foreign Exchange Earnings} = (1/100) \times 600 \text{ million} = \text{USD } 6 \text{ million}$ USD 5 million limit (whichever is less) applies.
Since USD 5 million is less than USD 6 million, LMN Ltd. can donate up to USD 5 million without RBI approval.
2. $1\% \text{ of Foreign Exchange Earnings} = (1/100) \times 250 \text{ million} = \text{USD } 2.5 \text{ million}$
Maximum limit before requiring RBI approval = Lesser of USD 2.5 million or USD 5 million = USD 2.5 million
Since USD 3 million exceeds the limit of USD 2.5 million, STU Ltd. needs RBI approval.

Section 5 Transactions Require Prior Approval of CG [Schedule II]

11. Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for the following transactions:

1. A requires U.S. \$ 5,000 for remittance towards hiring charges of transponders.
2. B requires U.S. \$ 2,000 for payment related to call back services of telephones.

(MTP Jan 25)

Solution:

Law: Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

Conclusion: Accordingly,

1. It is a current account transaction, where A is required to take approval of the Central

Government for drawal of foreign exchange for remittance of hire charges of transponders.

2. Withdrawal of foreign exchange for payment related to call back services of telephone is a prohibited transaction. Hence, Mr. B cannot obtain US \$ 2,000 for the said purpose.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person.

Section 5 Prohibited Current Account Transactions [Schedule I]

12. Mr. A, an Indian National desires to obtain Foreign Exchange for the following purposes:

1. Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
2. US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.

Advise him whether he can get Foreign Exchange and if so, under what conditions?

Solution:

Law: Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

Conclusion:

- (1) In respect of item No.(i), i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. A cannot withdraw Foreign Exchange for this purpose.
- (2) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India, Ministry of Human Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item (ii), Mr. A can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person.

Section 5 Current Account Transaction

13. Mr. Pravesh, an Indian National desires to obtain Foreign Exchange for the following purposes:

- 1) US\$ 140,000 for studies abroad on the basis of estimates given by the foreign university.
- 2) U.S. \$ 10,000 for remittance towards hiring charges of transponders. Advise him whether he can get Foreign Exchange, as per the provisions of the Foreign Exchange Management Act, 1999.

(MTP May 24)

Solution:**Law:**

- (i) Remittance of Foreign Exchange for studies abroad: According to the provisions of the Foreign Exchange Management Act, 1999, foreign exchange may be released for studies abroad up to a limit of US \$ 250,000 for the studies abroad without any permission from the Reserve Bank of India (RBI). Above this limit, RBI's prior approval is required. Further, proviso to Para I of Schedule III states that individual may be allowed remittances exceeding USD 250,000 based on the estimate received from the institution abroad.
- (ii) Under section 5 of the Foreign Exchange Management Act, 1999, and Rules relating thereto, some current account transactions require prior approval of the Central Government, some others require the prior approval of the Reserve Bank of India, some are freely permitted transactions and some others are prohibited transactions.

Conclusion:

- (i) In this case since US \$ 140,000 is the drawal of foreign exchange, so permission of the RBI is not required by Mr. Pravesh.
- (ii) This is a current account transaction, where Pravesh is required to take approval of the Central Government for drawal of foreign exchange for remittance of hire charges of transponders.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person as defined in Section 2(c).

Section 5 Current Account Transaction

14. Ms. Prabha, a classical dancer of Bharatnatyam, wants to go to the USA for a performance. In this connection she requires foreign exchange drawal of US\$ 50,000. Explain Ms. Prabha, the provision of the Foreign Exchange Management Act, 1999, in respect of permission required for such drawal of foreign exchange.

(MTP May 24)

Solution:

Law: According to the provisions of the Foreign Exchange Management Act, 1999 read with respective Rules and Schedule, foreign exchange drawals for cultural tours require prior permission/approval of the Ministry of Human Resources Development (Department of Education and Culture) irrespective of the amount of foreign exchange required.

Conclusion: Therefore, in the given case, Ms. Prabha is required to seek permission of the said

Ministry of the Government of India.

Section 5 Current Account Transaction

15. Mr. Rohan Sharma, an international cricket player has started its cricket academy, namely, Rohan Sharma Cricket Academy, a private coaching club, which provides coaching for cricket. The Academy has a cricket team which participates in cricket matches all over India as well as outside India.

Rohan Sharma Cricket Academy in a collaboration with Melbourne Cricket Academy is organizing a cricket event in Melbourne, Australia in the month of May 2024 and June 2024. Rohan Sharma Academy is required to remit USD 200,000 to Melbourne Cricket academy as a part of its share for organizing the cricket event in Melbourne. Advise whether it can get Foreign Exchange and if so, under what conditions?

(MTP May 24)

Solution:

Law: Section 5 of the Foreign Exchange Management Act, 1999 provides that any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. The Central Government in consultation can, in public interest and in consultation with Reserve Bank of India, impose reasonable restrictions for such transactions.

Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 provides that no person shall draw foreign exchange for a transaction without approval of the Central Government. One of the transaction included in Schedule II is remittance of prize money/sponsorship of sports activity abroad by a person other than International/ National/ State level sports bodies, if the amount involved exceeds USD 100,000.

Conclusion: Accordingly, Rohan Sharma Cricket Academy can withdraw foreign exchange of USD 100,000 as participation fee after obtaining permission from Ministry of Human Resource Development (Department of Youth Affairs and Sports) as prescribed in Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Section 5 Current Account Transaction

16. University of Oxford is one of the leading institutes of UK. In the month of May 2024, they are planning a cultural event in UK. The University has invited Ms. Kanika Tripathi and her group, an Indian artist to perform in the event.

Ms. Kanika Tripathi needs to withdrawal foreign exchange of USD 75,000 for the purpose of visit to UK for performing at cultural event of University of Oxford in UK. Advise whether she can withdraw Foreign Exchange and if so, under what conditions?

Solution:

Law: Section 5 of the Foreign Exchange Management Act, 1999 provides that any person may sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction. The Central Government in consultation can, in public interest and in

consultation with Reserve Bank of India, impose reasonable restrictions for such transactions.

Schedule II of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 provides that no person shall draw foreign exchange for a transaction without approval of the Central Government. One of the transaction included in Schedule II is 'cultural tours'.

Conclusion: Accordingly, Ms. Kanika Tripathi can withdraw foreign exchange of USD 75,000 for meeting expenses of cultural tour after obtaining permission from Ministry of Human Resource Development (Department of Education and Culture) as prescribed in Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Section 5 Current Account Transaction

17. Referring to the provisions of the Foreign Exchange Management Act, 1999, state the kind of approval required for Payment of commission of U.S. \$ 20,000 on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.

Solution:

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

Accordingly, Payment of commission on exports made towards equity investment in Joint Ventures/ Wholly Owned Subsidiaries abroad of Indian companies, is a transactions for which drawal of foreign exchange is prohibited.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorised Person.

Section 6 Capital Account Transactions

18. List any seven permissible classes of Capital account transactions that a person resident in India can undertake, under the Foreign Exchange Management Act (FEMA), 1999.

(MTP May 25)

Solution :

Solution: The list of permissible classes of transactions made by persons resident in India is:

1. Investment by a person resident in India in foreign securities.
2. Foreign currency loans raised in India and abroad by a person resident in India.
3. Transfer of immovable property outside India by a person resident in India.
4. Guarantees issued by a person resident in India in favour of a person resident outside India.

5. Export, import and holding of currency/currency notes.
6. Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
7. Maintenance of foreign currency accounts in India and outside India by a person resident in India.
8. Taking out of insurance policy by a person resident in India from an insurance company outside India.
9. Loans and overdrafts by a person resident in India to a person resident outside India.
10. Remittance outside India of capital assets of a person resident in India.
11. Undertake derivative contracts

Section 6 Capital Account Transactions

19. Analyse the following situations and comment upon the legal validity of the transactions in the light of the FEMA, 1999.
1. John, a foreign national (not of Indian origin), wants to buy agricultural land in India.
 2. An NRI wants to open a fixed deposit account in an Indian bank using foreign currency.

(MTP May 25)

Solution:

- (1) No, said transaction cannot take place being invalid in nature. As per the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, the person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage in agricultural. Therefore, John cannot buy an agricultural land in India.
- (2) Yes, the given statement or act of a NRI is valid under Schedule II(e) of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. According to which deposits between a resident and a non-resident are permitted. So, NRI can open NRE (Non- Resident External) or FCNR (Foreign Currency Non-Resident) deposit accounts in India, which allow foreign currency deposits.

Section 6 Capital Account Transactions

20. Mr. Arjun, an Indian resident, had been working abroad for the past 10 years. During his tenure abroad, he acquired foreign currency and held investments in foreign securities. He also inherited a property located in New York from his late grandfather, who was a non-resident Indian. After returning to India permanently, Mr. Arjun wishes to understand the provisions under the Foreign Exchange Management Act, 1999 (FEMA) regarding the ownership and utilization of his foreign assets.

Solution:

Law: Under the provisions of the Foreign Exchange Management Act, 1999 (FEMA), Mr. Arjun, being a resident in India, can hold, own, transfer, or invest in foreign currency, foreign securities, or immovable property situated outside India under certain conditions. These conditions are clarified by the RBI through A.P. (DIR Series) Circular No. 90 dated 9th January, 2014, which elaborates on section 6(4) of the Act.

Clarifications under section 6(4) of FEMA

1. Foreign Currency Accounts

- Mr. Arjun can maintain foreign currency accounts that were opened and maintained by him when he was resident outside India.

2. Income and Investments

- Income earned through employment, business, or vocation outside India while Mr. Arjun was a non-resident.
- Investments made abroad during his non-resident status.
- Gifts or inheritance received from a non-resident Indian.

3. Foreign Exchange and Income therefrom

- Foreign exchange holdings, including income arising from them, held outside India by Mr. Arjun, acquired through inheritance from a non-resident Indian.

4. Utilization of Assets After Return to India

- Mr. Arjun may freely utilize all eligible assets abroad, including the income on such assets or sale proceeds received after his return to India.

He can make payments or fresh investments abroad without the approval of the Reserve Bank of India, provided the funds used are from eligible assets held by him abroad and the transaction complies with FEMA provisions.

Conclusion:

Therefore, Mr. Arjun is eligible to hold and utilize his foreign assets as per the provisions outlined in section 6(4) of FEMA and the RBI circular. These provisions allow him to manage his foreign currency, securities, and inherited property located outside India in compliance with the regulations governing residents' dealings in foreign assets under FEMA.

Section 6 Capital Account Transactions

21. Ms. Rose was an Indian citizen who got a job in a software company in USA. She went to USA and stayed there for 12 years. During her stay, she purchased a house in USA for her residence. Then due to some personal issues she moved back to India and joined a software company in India. As she had moved back to India, she let out her house in USA and deposited the rent in her account

in USA. Out of that amount, she purchased another house in USA.

Based on the above facts, answer the following referring to the provisions of the Foreign Exchange Management Act, 1999.

1. Whether Ms. Rose can purchase the house in USA and continue to retain it even after returning to India?
2. Whether Ms. Rose can purchase another house in USA after returning to India?

(PYQ Sep 24)

Solution:

Law: (1) Can Ms. Rose purchase the house in USA and continue to retain it even after returning to India?

According to section 6(4) of the Foreign Exchange Management Act, 1999, (the Act) 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.

(2) Can Ms. Rose purchase another house in USA after returning to India?

Ms. Rose deposited the amount of rent from the house to her account in USA. Out of that amount she purchased another house in USA after returning to India. Ms. Rose is a person resident in India due to joining an employment in India.

As per section 6(4)(iv) of the Foreign Exchange Management Act, 1999 (FEMA), a person resident in India may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by her and the transactions is not in contravention to extant FEMA provisions.

Conclusion:

(1) Ms. Rose stayed in USA for 12 years, hence she must have become a non-resident for those years. She purchased a house during this time.

As per the above provisions, Ms. Rose can rightfully purchase the house in USA and continue to retain it after returning to India.

(2) In view of the above, Ms. Rose can rightfully purchase another house in USA after returning to India.

