

# 15

## CHAPTER

# The Foreign Exchange Management Act, 1999

### LDR Questions



Q. 5 Q. 7 Q. 15 Q. 17 Q. 18 Q. 26 Q. 30

### 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

**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

**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

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

**8. Explain the meaning of the followings terms as defined under the Foreign Exchange Management Act, 1999:** (MTP Jan 25)

1. Authorised person
2. Currency

#### **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

**9. 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

**10. 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)

- 11.** 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

12. 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 5 Schedule III

13.

- (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]**

**14.** 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**

**15.** 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]

16. 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 drawl 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

17. 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% of Foreign Exchange Earnings =  $(1/100) \times 600$  million = USD 6 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% of Foreign Exchange Earnings =  $(1/100) \times 250$  million = USD 2.5 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]

18. 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

**19. 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

**20. 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

### 21.

- (i) Mr. Arjun Verma, a resident individual in India, intends to obtain foreign exchange US \$2,00,000 for pursuing higher education abroad, based on the estimated expenses provided by the foreign institution.
- (ii) Mr. Narain Sharma, a resident individual in India, intends to obtain foreign exchange for a gift remittance of US \$25,000 to a relative living overseas.
- Advise Mr. Arjun Verma and Narain Sharma whether they can get Foreign Exchange and if so, under what condition(s) as per the provisions of the Foreign Exchange Management Act, 1999?

### Solution:

- (i) 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. In this case since US \$ 2,00,000 is the drawal of foreign exchange, so permission of the RBI is not required. Hence, Mr. Arjun Verma can get the foreign exchange for the said purpose.
- (ii) Under the provisions of section 5 of Foreign Exchange Management Act (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. Narain Sharma is USD 25,000, there is no need for any permission from the RBI.

## Section 5

22. 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

23. 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

**24.** 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 transactions 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

**25.** 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 5**

 **26. Mr. Arman has been diagnosed with a rare cardiac condition and plans to travel to USA for a specialized heart surgery. He seeks guidance regarding the necessary formalities and the maximum amount of foreign exchange he is permitted to draw for this medical treatment under the Foreign Exchange Management Act, 1999. (MTP Sep 25)**

**Solution:** Remittance of Foreign Exchange: According to section 5 of the Foreign Exchange Management Act (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 Reserve Bank of India's (RBI's) prior approval for drawl of foreign exchange.

“Remittance of foreign exchange for medical treatment abroad” requires prior permission or approval of the 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. Arman can draw foreign exchange up to 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 6 Capital Account Transactions**

**27. 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:** 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

**28.** 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

**29.** 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.

**(RTP Sep 24)**

### 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

 **30.** 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, RTP Sep 25)

### 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.

## Section 6

- 31. As per the provisions of the Foreign Exchange Management Act, 1999, a person resident in India is allowed to hold, own, transfer, or invest in foreign currency, foreign security, or immovable property situated outside India. List the transactions that are covered/ allowed to undertake. Support your answer with any clarifications issued by the Reserve Bank of India. (MTP Sep 25)**

**Solution:**

As per section 6(4) of the Foreign Exchange Management Act (FEMA), 1999, 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.

The RBI vide A.P. (DIR Series) Circular No. 90 dated 9th January, 2014 has issued a clarification on section 6(4) of the Act. This circular clarifies that section 6(4) of the Act covers the following transactions:

- (i) Foreign currency accounts opened and maintained by such a person when he was resident outside India.
- (ii) Income earned through employment or business or vocation outside India taken up or commenced which such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India.
- (iii) Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.
- (iv) 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 them and the transactions is not in contravention to extant FEMA provisions.

