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FEMA Master Questions

Question 1: Current Account Transaction

Advise whether in the following questions, we can get Foreign Exchange and if so, under what conditions? And Approval from which Ministry, if required.

- (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 \$20,000 is required for this purpose.
- (ii) M requires U.S. \$ 5,000 for remittance towards hiring charges of transponders.
- (iii) P requires U.S. \$ 2,000 for payment related to call back services of telephones
- (iv) 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.
- (v) 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.
- (vi) US\$ 120,000 for studies abroad on the basis of estimates given by the foreign university.
- (vii) Gift Remittance amounting US\$ 10,000 by Mr.Rohan
- (viii) 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.
- (ix) Payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company
- (x) 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 require to remit USD 200,000 to Melbourne Cricket academy as a part of its share for organizing the cricket event in Melbourne.
- (xi) Payment of US \$ 10,000 as commission on exports under Rupee State Credit Route.
- (xii) US \$ 30,000 for a business trip to U.K.
- (xiii) X wants to draw USD 20,000 to make donation to a charitable trust situated in South Korea.
- (xiv) 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. The company wishes to obtain your advice in regard to the following with reference to the FEMA, 1999.
 - (a) Is such "chair" creation permissible?
 - (b) What is the maximum amount that can be donated for such chair?
 - (c) Any formalities to be complied with?

- (xv) ABC Limited hired the services of Mr. Taylor, a technician from Germany for the installation of a machinery. The company paid USD 40,000 for the services rendered by Mr. Taylor.
- (xvi) Commission to the agents abroad for sale of residential flats or commercial plots in India.
- (xvii) Remittances for consultancy services procured from outside India.
- (xviii) Remittances by way of reimbursement of pre-incorporation expenses.

Answer

Definition of current account transaction [Section 2(j)]

Current account transaction means a transaction **other than a capital account transaction** and without prejudice to the generality of the foregoing such transaction includes

- A. payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business;
- B. payments due as interest on loans and as net income from investments;
- C. remittances for living expenses of parents, spouse and children residing abroad; and
- D. Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

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

- A. Transactions for which drawal of foreign exchange is **prohibited**,
- B. Transactions which need prior approval of **appropriate govt. of India** for drawal of foreign exchange, &
- C. Transactions which require **RBI's prior approval** for drawal of foreign exchange.

Rule 3 read with Schedule I prohibits drawal of foreign exchange (by any person) for the following purposes:

- A. Remittance out of **lottery winnings**.
- B. Remittance of income from **racings/riding**, etc., or any other hobby.
- C. Remittance for **purchase of lottery tickets**, banned/prescribed magazines, football pools, sweepstakes. Etc.
- D. Payment of **commission on exports** made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
- E. Remittance of dividend by any company to which the requirement of **dividend balancing** is applicable.
- F. Payment of commission on exports under **Rupees State Credit Route**, except payment of commission up to **10% of the invoice** value of export of tea and tobacco.
- G. Payment related to **'Call Back Services' of telephones**.
- H. Remittance of interest income on funds held in **Non-resident Special Rupee Scheme** Account.

- (i) Foreign Exchange drawal 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) 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.
- (iii) 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.

- (iv) 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.
- (v) "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
- (vi) 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**.
- (vii) 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.
- (viii) 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**'.
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.
- (ix) As per Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000, payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company is **prohibited**
- (x) 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 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. 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.
- (xi) As per Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000, payment of **commission on exports** under Rupees State Credit Route (except commission up to 10% of invoice value of exports of tea and tobacco) is **prohibited**. Therefore, payment of US \$ 10,000 as commission on exports under Rupee State Credit Route is **prohibited** unless such commission is paid for export of tea and tobacco, and the commission does not exceed 10% of invoice value of exports.

- (xii) As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to \$ 2,50,000 for **travel for business** under the Liberalized Remittance Scheme. Drawal of foreign exchange in **excess of US Dollar 2,50,000** shall require **prior approval** of the Reserve Bank of India. Therefore, Mr. F **can obtain** US Dollar 30,000 for business tour to U.K. without any approval of the Reserve Bank of India.
- (xiii) As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules 2000 individuals can draw foreign exchange **up to \$2,50,000 for gift or donation** (referred to as the Liberalized Remittance Scheme'). Therefore, Mr. X **can obtain** US Dollar 20,000 for making donation to a charitable trust situated in South Korea **without any approval of the Reserve Bank of India**.
- (xiv) As per Schedule III of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, read with section 5 of the Foreign Exchange Management Act, 1999 **donations exceeding 1%** of their foreign exchange earnings during the **previous 3 financial years** or **\$ 5,000,000**, whichever is **less, can be remitted** by persons other than individuals for **creation of Chairs** in reputed educational institutes with the prior approval of the Reserve Bank of India. Considering the above provision:
- In the first case, "chair" creation for the department of computer science in reputed university in the U.S. is **permissible**.
 - Maximum amount that can be donated for such chair will be one per cent of their foreign exchange earnings during the previous 3 FY or USD 5,000,000, whichever is less without prior approval of the Reserve Bank of India.
 - In case where donations **exceed** one per cent of their foreign exchange earnings during the previous three financial years or USD 5,000,000, it shall **require prior approval** of Reserve Bank of India.
- (xv) Remuneration payable to a foreign technician is a **current account transaction**. According to Section 5 of the Foreign Exchange Management Act, 1999 any person can sell or draw foreign exchange to or from authorized person if such sale or drawal is a current account transaction. Reasonable restrictions on current account transactions can be imposed by the Central Government. Basically, all current account transactions are free unless specifically restricted by the Central Government. Hiring of foreign national as technicians is **permissible without restriction**. There is **no ceiling** on salary which can be paid as per contract. Their salary can be **remitted abroad after-tax deductions, contribution to provident fund and other deductions at source**.
- (xvi) **Commission**, per transaction, to agents abroad for **sale** of residential flats or commercial plots in India **exceeding USD 25,000 or five percent** of the **inward remittance whichever is more**.
- (xvii) Remittances **exceeding USD 10,000,000 per project** for any **consultancy services** in respect of infrastructure projects and **USD 1,000,000 per project**, for **other consultancy services** procured from outside India.
- (xviii) Remittances **exceeding five per cent** of investment brought into India or **USD 100,000 whichever is higher**, by an entity in India by way of **reimbursement of pre-incorporation expenses**.

Question 2: Capital Account Transaction

Examine whether the following transactions are permissible or not under the above Act as Capital Account Transactions and state whether there are restrictions in respect of following transactions:

- (i) Investment by person resident in India in Foreign Securities.
- (ii) Foreign currency loans raised in India and abroad by a person resident in India.
- (iii) Export, import and holding of currency/currency notes.
- (iv) Trading in transferable development rights.
- (v) Investment in a Nidhi Company.
- (vi) Drawal of foreign exchange for payments due on account of amortization of loans in ordinary course of business.
- (vii) Purchase by a person resident outside India of shares of a company in India engaged in plantation activities.
- (viii) A person, who was resident of U.S.A. for several years, is planning to return to India permanently. Can he continue to hold the investment made by him in the securities issued by companies in U.S.A.?
- (ix) Mrs. Chandra, a resident outside India, is likely to inherit from her father some immovable property in India. Are there any restrictions under the provisions of the Foreign Exchange Management Act, 1999 in acquiring or holding such property?
- (x) Ruchika got an employment opportunity in a UK based IT company. She moved to UK and remained there for 10 years. During her tenure she purchased a small flat in UK for the residential purpose. After returning to India, she joined another IT company and let out her flat situated in UK. The rental income of UK flat was deposited by her in the bank account of UK. A good amount was accumulated in her UK bank account, so she planned to purchase a second flat in the UK. Whether Ruchika can purchase the first flat in UK and continue to retain even after returning to India?

Answer:

- (i) Investment by person resident in India in Foreign Securities is a capital account transaction. It is permitted within the limit, subject to the compliance of **conditions** and if **declaration** is made as per the provisions contained in the Regulations relevant to the transaction.
- (ii) Foreign currency loans raised in India and abroad by a person resident in India is a capital account transaction. It is **permitted within the limit, subject to the compliance** of conditions and if declaration is made as per the provisions contained in the Regulations relevant to the transaction.
- (iii) Export, import and holding of currency /currency notes is a capital account transaction. It is **permitted within the limit, subject to the compliance** of conditions and if declaration is made as per the provisions contained in the Regulations relevant to the transaction.
- (iv) Trading in transferable development rights is **prohibited** since no person resident outside India shall make investment in India in any entity which is engaged, or proposes to engage in trading in Transferable Development Rights (TDRs) (Regulation 4 of Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000).
- (v) Investment in a Nidhi Company is **prohibited** since no person resident outside India shall make investment in India in any entity which is engaged, or proposes to engage as Nidhi Company [Regulation 4 of Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000].
- (vi) Amortization of loans is permitted
Section 6 specifically mentions that the Reserve Bank **shall not impose any restriction** on the drawal of foreign exchange for payments due on account of -
 - (a) **amortization** of loans in the ordinary course of business; or
 - (b) **Depreciation** of direct investments in the ordinary course of business.

Thus, there is **no restriction** on drawal of foreign exchange for payments due on account of amortization of loans in ordinary course of business.

(vii) Investment in plantation activities is prohibited

The Reserve Bank of India has framed Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. As per these Regulations, **no person resident outside India** shall make investment in India in any entity which is engaged, or proposes to engage in agricultural or plantation activities.

Thus, a person resident outside India **cannot** purchase shares of a company in India engaged in plantation activities.

(viii) As per **Section 6(4)**, 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.

Hence, the USA Resident **shall be entitled** to hold the foreign securities even after he becomes a person resident in India

(ix) As per **section 6(5)**, a person resident outside India may hold, own, transfer or invest in India currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

Thus, a person resident outside India may hold, own or transfer any immovable property situated in India if such property is inherited from a person resident in India.

Accordingly, Mrs. Chandra is **entitled to acquire as well as hold the immovable property in India inherited by her.**

Author's Note: Please note that in this question, assumption is that his **father** is a **PRI**.

(xi) Purchase of First Flat in UK

Section 6(4) of the FEMA, 1999 provides that 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.

Ruchika purchased the first flat when she residing in UK and was resident outside India. After returning to India and after becoming the resident in India, **she can continue** to hold such flat.