



THE CHAMBER OF
TAX CONSULTANTS

Intensive Study Course on FEMA

Capital & Current Account Transactions, Liberalized Remittance Scheme for Residents & Repatriation facilities for Non-residents under US\$ 1 Million Scheme

Natwar G. Thakrar
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Agenda

- Overview Of Current And Capital Account Transactions
- Capital Account Regulations
- Regulation of Debt/Non Debt Instruments- Recent amendments
- Current Account Transaction Rules
- Use of ICC/IDC
- Liberalized Remittance Scheme (LRS)
- Remittance facilities for Non NRIs / PIO / Foreign Nationals

SECTION-1

**Overview Of Current And Capital Account
Transactions**

Definition- Capital & Current Account Transactions

2(e) "CAPITAL ACCOUNT TRANSACTION"

- 2(e) "capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub- section (3) of section 6

2(j) "CURRENT ACCOUNT TRANSACTION"

- S. 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,-
 - (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

Capital & Current Account Transactions

Section 2(e) – Capital Account Transaction

A transaction which alters the assets or liabilities

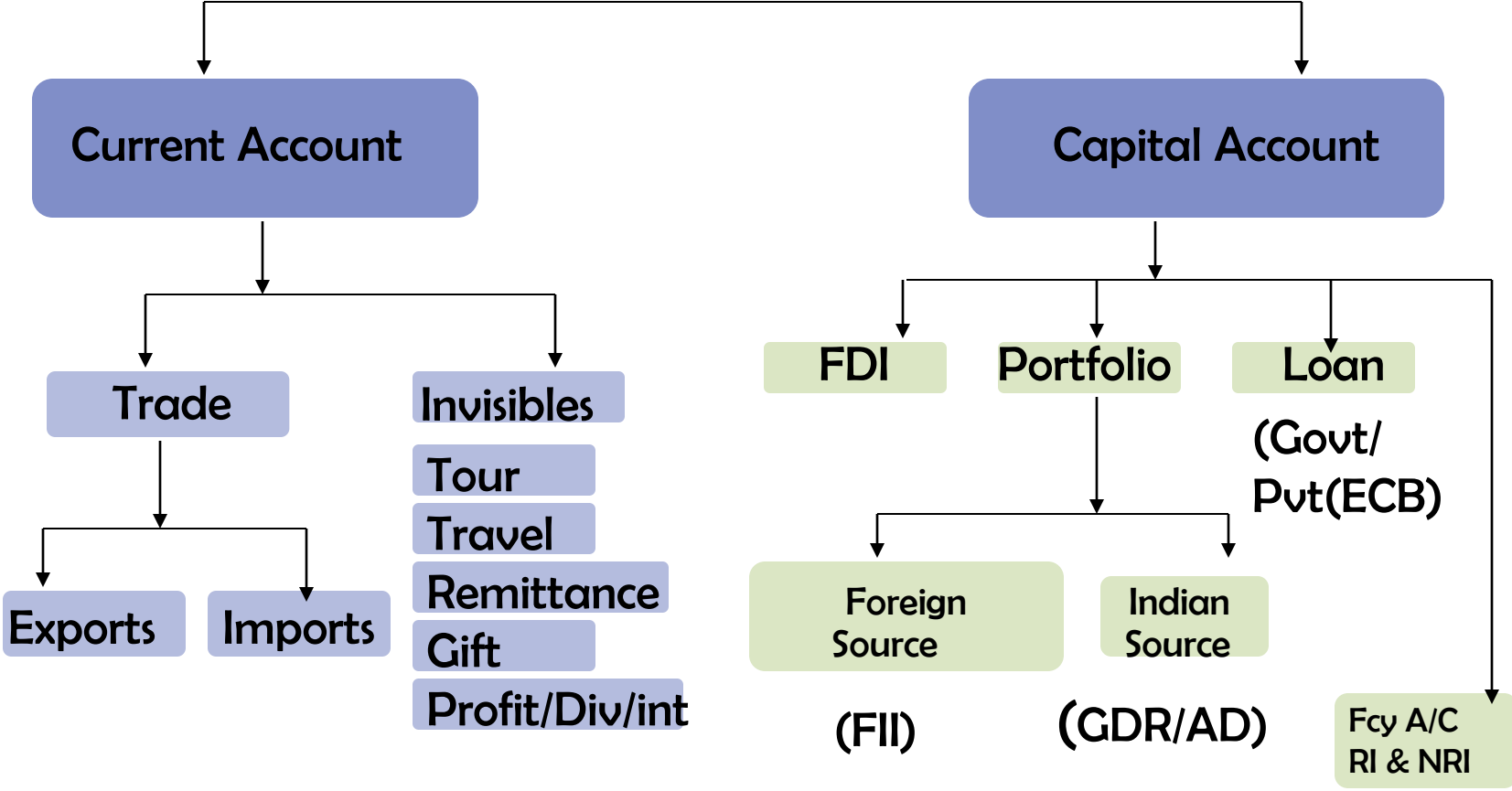
- Outside India of persons resident in India, (including Contingent Liabilities);
- In India of persons resident outside India; and
- Includes transactions specified in Section 6(3).*
 - Foreign security by resident;
 - Any Security by non-resident;
 - Debt Instruments by non-resident;
 - Transfer or issue of any security or foreign security by any branch, office or agency in India of a non-resident;
 - Borrowing / Lending between residents and non-residents;
 - Deposits between residents and non residents;
 - Holding of currency or currency notes;
 - Acquisition / transfer of immovable property in India / outside India (except those on lease for less than five years);
 - Giving of guarantee / surety by resident / non-residents.

Section 2(j) – Current Account Transaction

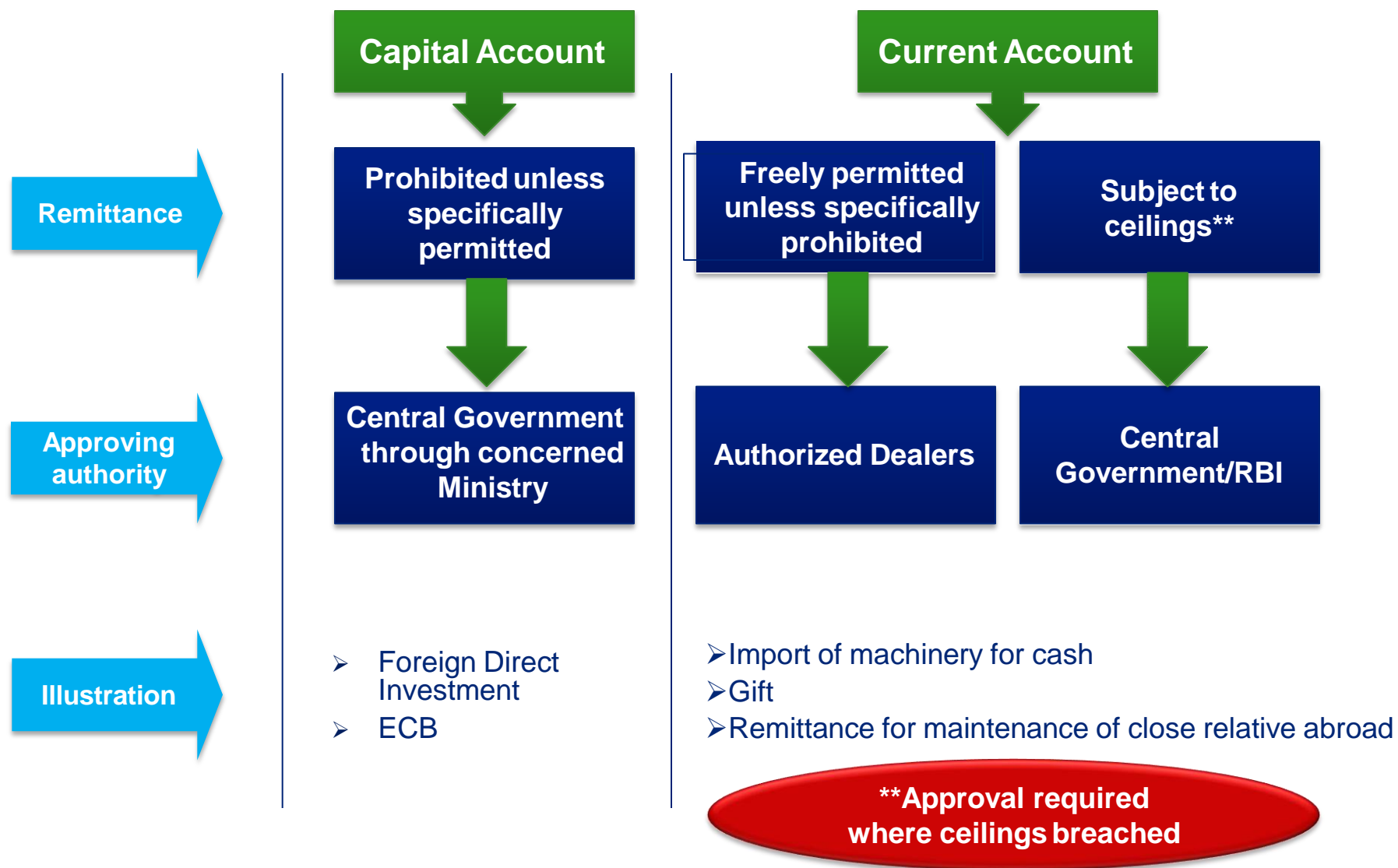
A transaction other than a capital account transaction which include:

- Payments due in connection with foreign trade, other current business, services, 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 on foreign travel, education and medical care of parents, spouse and children.

Overview Of Current And Capital Account Transactions



Overview Of Current And Capital Account Transactions



SECTION-2

Capital Account Transaction Regulations

Capital Account Transactions

- S. 6 of FEMA empowers RBI to **specify** class or classes of **permissible capital account transactions** and to **frame regulations** to set up limits for the drawal of foreign exchange in consultation with GOI.
- Finance Act 2015 has made certain amendments in S.6
 - S. 6(2) modified- RBI to regulate only debt instruments. GOI to notify other capital account transactions in consultation with RBI
 - S. 6(3) – Omitted.
 - New sub-section (7) inserted as follows- For the purposes of this section, the term “**debt instruments**” shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.
 - In exercise of these powers, Notification No. S.O. 3732(E) dated 17th October, 2019 issued by the Central Government suppressing Notification 20(R)/ 21(R) & Non-Debt instrument rules, 2019



Capital Account Regulations

- Permissible Capital Account Transactions – **Para 3** of the Capital Account Regulations
 - (A) transactions of a person resident in India specified in Schedule I
 - (B) transactions of a person resident outside India specified in Schedule II
- Prohibited Capital Account Transactions – **Para 4** of the Capital Account Regulations
 - Business of chit fund
 - Nidhi Company
 - Agricultural or plantation activities
 - Real estate business**, or construction of farm houses,
 - Trading in Transferable Development Rights (TDRs)

****Does not include development of townships,
construction of residential/commercial premises, roads
or bridges.**

Classes of Capital Account Transactions by Residents

- **Notification No.1- Schedule I [Regulation 3(1)(A)]:**
 - Investment by a person resident in India in foreign securities
 - Foreign currency loans raised in India and abroad by a person resident in India
 - Transfer of immovable property outside India by a person resident in India
 - Guarantees issued by a person resident in India in favour of a person resident outside India
 - Export, import and holding of currency/currency notes
 - Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India
 - Maintenance of foreign currency accounts in India and outside India by a person resident in India
 - Taking out of insurance policy by a person resident in India from an insurance company outside India.
 - Loans and overdrafts by a person resident in India to a person resident outside India.
 - Remittance outside India of capital assets of a person resident in India.
 - Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

Classes of Capital Account Transactions by Non- Residents

- **Notification No. 1- Schedule II [Regulation 3(1)(B)]:**
 - Investment in India by a person resident outside India, that is to say,
 - Issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; &
 - Investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.
 - Acquisition and transfer of immovable property in India by a person resident outside India.
 - Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
 - Import and export of currency/currency notes into/from India by a person resident outside India.
 - Deposits between a person resident in India and a person resident outside India.
 - Foreign currency accounts in India of a person resident outside India.
 - Remittance outside India of capital assets in India of a person resident outside India.

Capital Account Transactions

- **General Exceptions:**

- 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 “
- Section 6(5) – “A person resident outside India can hold, own, transfer or invest in immovable property situated in India if such property was acquired, held or owned by such person when he was a resident in India or inherited from a person who was a resident in India”

Capital Account Transactions

- **General Exceptions:**
- **RBI has vide its A.P. (DIR Series) Circular No. 90 dated January 9, 2014 clarified that the following transactions shall be covered under section 6(4) of FEMA, 1999:**
 - Foreign currency accounts opened and maintained by such a person when he was resident outside India;
 - Income earned through employment or business or vocation outside India taken up or commenced, or from investments made, or from gift or inheritance received while such a person was resident outside India;
 - Foreign exchange including any income arising there from, and conversion or replacement or accrual to the same, held outside India acquired by way of inheritance from a person resident outside India;
 - 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 RBI.

Debt and Non-Debt Instruments

- **Notification No. S.O. 3732(E) dated 17th October, 2019 issued by the Central Government:**
 - Issued in exercise of powers conferred under Section 6(7) of FEMA through Finance Act, 2015
 - Suppresses following two Notifications-
 - **Notification No 20(R) : Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017** and
 - **Notification No 21(R) : Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018**
 - Also Notified new **Foreign Exchange Management (Non-debt Instruments) Rules, 2019.**
 - **Deals with**
 - FDI Policy
 - Investment in Immovable Properties in India

- **Para-1 : Instruments determined as debt instruments**
 - (i) Government bonds;
 - (ii) corporate bonds;
 - (iii) all tranches of securitisation structure which are not equity tranche;
 - (iv) borrowings by Indian firms through loans;
 - (v) depository receipts whose underlying securities are debt securities. Resident in India
- Continues within the domain of RBI

Debt and Non-Debt Instruments

- **Para – 2 : Instruments which are to be considered as non-debt instruments-**
 - (i) all investments in equity in incorporated entities (public, private, listed and unlisted);
 - (ii) capital participation in Limited Liability Partnerships (LLPs);
 - (iii) all instruments of investment as recognised in the FDI policy as notified from time to time;
 - (iv) investment in units of Alternative Investment Funds (AIFs) and Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts (InVITs);
 - (v) investment in units of mutual funds and Exchange-Traded Fund (ETFs) which invest more than fifty per cent in equity;
 - (vi) the junior-most layer (i.e. equity tranche) of securitisation structure;
 - (vii) acquisition, sale or dealing directly in immovable property;
 - (viii) contribution to trusts;
 - (ix) depository receipts issued against equity instruments.

- **Para – 3 : All other instruments which are not specified in paragraphs (1) and (2) above, shall be deemed as debt instruments.**

Debt and Non-Debt Instruments

- **RBI Notification No. 395**
- Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 dealing with –
 - Mode of Payment and Remittance of sale proceeds
 - Reporting Requirements

- **RBI Notification No. 396**
- Purchase or sell debt instruments in the manner and subject to the terms and conditions specified in Schedule 1.
 - By Foreign Portfolio Investors (FPIs)
 - By NRI/OCIs on Repatriation basis
 - By NRI/OCIs on Non-Repatriation basis
- Trade in all exchange traded derivative contracts approved by Securities and Exchange Board of India from time to time subject to the limits prescribed by Securities and Exchange Board of India and conditions specified in Schedule 1.
- Enter into contract in any derivative transaction subject to conditions laid down by the Reserve Bank from time to time.

SECTION-3

Current Account Transactions Rules

Current Account Transaction Rules

- S. 5 authorises any person to freely undertake **Current Account Transactions** .
- However, GOI is authorised to impose reasonable restrictions in public interest.
- AD banks to be guided by **the Foreign Exchange Management (Current Account Transactions) Rules, 2000** notified vide Notification No. G.S.R.381 (E) dt. May 3, 2000, as amended.
 - Transactions expressly prohibited – [Schedule I read with Rule 3](#)
 - Transactions which require prior approval of Government of India – [Schedule II read with Rule 4](#)
 - Transactions which require prior approval of RBI – [Schedule III read with Rule 5](#)
 - [Relaxations](#) from Rule 4 and 5 for many items paid from Resident Foreign Currency (RFC) Account and Exchange Earners Foreign Currency (EEFC) Accounts.
- WTO Agreement in terms of Article VIII - “.....no member shall, without the approval of the Fund (IMF), impose restrictions on the making of payments and transfers for current international transaction.”



Current Account Transaction Rules

Transactions Expressly Prohibited (Schedule I read with Rule 3)

1. Remittance out of lottery winnings;
2. Remittance of income from racing / riding or any other hobby;
3. Remittance for purchase of lottery tickets, banned/prescribed products;
4. Payment of commission on exports made towards equity investment in Joint Venture / Wholly Owned Subsidiary abroad of Indian companies;
5. Remittance of dividend by any company where dividend balancing is applicable;
6. Payment of commission on exports under Rupee state credit route, except commission up to 10 percent 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 (Account) Scheme.

Prior approval of Government of India – (Schedule II read with Rule 4)

1. Cultural Tours
2. Advertisement in foreign print media exceeding USD 10,000 except for promotion of tourism, foreign investments and international bidding
3. Remittance of freight of vessel chartered by a Public Sector Unit
4. Payment for import by a Government Department on C.I.F. basis
5. Multi- modal transport operators making remittance to their agents abroad
6. Remittance of hiring charges of transponders by TV channels, Internet service providers
7. Remittance of container detention charges exceeding the rate prescribed
8. Remittance of prize money / sponsorship of sports activity abroad exceeding USD 1,00,000 by person other than International / National / State Level sports bodies
9. Remittance for membership of P & I Club

Current Account Transactions – Schedule III read with Rule 5 (As amended by AP Dir Circular 106 dated June 1, 2015)

Transactions Permissible without RBI approval for Resident Individuals (Para I of Schedule III read with Rule 5)

1. A resident individual can remit up to USD 250,000 per financial year for any permitted current or capital account transaction or a combination of both for-
 - i. Private visits to any country (except Nepal and Bhutan).
 - ii. Gift or donation.
 - iii. Going abroad for employment.
 - iv. Emigration.
 - v. Maintenance of close relatives abroad.
 - vi. Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
 - vii. Expenses in connection with medical treatment abroad.
 - viii. Studies abroad.
 - ix. Any other current account transaction

2. For item nos. (iv) emigration, (vii) expenses in connection with medical treatment abroad and (viii) studies abroad in Para 1 of Schedule III, individuals may avail of exchange facility for an amount in excess of the overall limit prescribed under the LRS, if it is so required by a country of emigration, medical institute offering treatment or the university respectively.

3. A person who is resident but not permanently resident in India and (a) is a citizen of a foreign State other than Pakistan; or (b) 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).

Use of ICC/IDC

Purpose	Foreign Exchange Compliance
<p>Use of International Credit Card (ICC) / ATM / Debit card (IDC) for undertaking foreign exchange transactions</p>	<ul style="list-style-type: none">• Can be used for travel abroad in connection with various purposes and for making personal payments like subscription to foreign journals, internet subscription, etc.• With ICCs one can (i) meet expenses/make purchases while abroad (ii) make payments in foreign exchange for purchase of books and other items through internet in India.• Not permitted for prohibited transactions such as purchase of lottery tickets, banned magazines etc• Payment in foreign exchange in Nepal and Bhutan through ICC / ATM / Debit card is not permitted• Limits under Schedule III do not apply to ICC while they apply to IDC

SECTION-4

LIBERALISED REMITTANCE SCHEME FOR RESIDENT INDIVIDUALS

Liberalized Remittance Scheme ('LRS')

Authority for LRS

- Section 4 of FEMA: Blanket prohibition on a person resident in India to acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India **except** as permitted under the Act, Rules or Regulations made thereunder – Except exceptions provided under [Section 6\(4\)](#) and for [Person Not Permanently Resident in India](#).
- Section 5 of FEMA: Current Account Transactions
 - Permissible subject to reasonable restrictions under FEM (Current Account Transaction) Rules, 2000
- Section 6 of FEMA: Capital Account Transitions
 - S. 6(2) modified- RBI to regulate only debt instruments. GOI to notify other capital account transactions in consultation with RBI and set the limit up to which remittance for such transactions are permissible.
- Section 6(3) deleted post Finance Act 2015
- Notifications now issued by Central Government - First such notification issued in 2019.
- Legislated by Ministry of Finance, Regulated by RBI & Enforced by ED

Liberalized Remittance Scheme

- LRS available to all Resident individuals (RI) including minors up to USD 250,000 per financial year for any permitted current or capital account transaction or a combination of both.
- Consolidation of remittance facility permissible in respect of family members, subject to compliance with the terms and conditions of the scheme

Permissible usage of LRS (Illustrative)	Usage prohibited (Illustrative)
<ul style="list-style-type: none"> ✓ Current account transactions ✓ Permitted capital account transactions ✓ Remittance for purchase of objects of art subject to other relevant regulations ✓ Remittance of funds for acquisition of ESOP (this is in addition to acquisition of ESOPs linked ADR / GDR) ✓ Repayment of loan availed abroad as an NRI 	<ul style="list-style-type: none"> • ✗ For any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any restricted items; • ✗ For purchase of FCCBs issued by Indian companies in the overseas secondary market; • ❓ Remittances directly or indirectly to countries identified by the FATF as 'non co-operative countries and territories' • ❓ Remittances directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan

No need to repatriate to India the income generated from property acquired abroad out of LRS

Liberalized Remittance Scheme ('LRS')

- LRS available to all Resident individuals (RI) including minors up to USD 250,000 per financial year for any permitted current or capital account transaction or a combination of both.
- The permissible capital account transactions by an individual under LRS are:
 - i. opening of foreign currency account abroad with a bank;
 - ii. purchase of property abroad;
 - iii. making investments abroad;
 - i. Acquisition and holding of shares of listed / unlisted companies abroad
 - ii. Debt Instruments
 - iii. Acquisition of ESOPs, ESOPs linked ADR/GDR
 - iv. Acquisition of qualification shares
 - v. Investment in Mutual Funds, VCFs, unrated debt securities and promissory notes
 - iv. setting up Wholly owned subsidiaries and Joint Ventures abroad;
 - v. extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.
- All the facilities (including private/business visits) for release of exchange/remittances for current account transactions available to resident individuals under Para 1 of Schedule III as amended from time to time, shall now be subsumed under the overall limit of USD 250,000.
- Acquisition of immovable property outside India by resident individual is permitted under the LRS.
- Income and sum remitted need not be brought back into India and can be reinvested overseas.

Liberalized Remittance Scheme ('LRS')

Issues under LRS

- **Overseas Direct Investment (ODI):**
- Whether Individuals are allowed to invest in shares of an overseas company –Whether listed or unlisted?.
- Whether LRS can be used to set up a company abroad?
- Whether an overseas SPV can be incorporated under LRS for acquisition of immovable property?
- What are the implication on LRS Scheme of Notification No. 263/RB-2013 amending Notification No.120 allowing ODI by individuals?
- Whether investment is allowed only in equity or other capital instruments as well?
- Whether a step-down subsidiary is allowed to be formed by Overseas entity having LRS in India?
- **Immovable Property:**
- Can Investment in immovable property abroad be made under LRS jointly by close relatives?
- Can immovable property be purchased in Installments? Can property so acquired be mortgaged abroad for housing loan?
- **Miscellaneous:**
- Whether any reporting is required for investments made under the LRS?
- Can remittances under the LRS facility be consolidated in respect of family members?

SECTION-5

REMITTANCE FACILITIES BY NRI/OCIS/FOREIGN NATIONALS

Remittance of Current Income

- Remittance outside India of current income (like rent, dividend, pension, etc.)
 - is a permissible debit to the NRO account, if the NRI has an NRO account;
 - if the NRI does not have an NRO account, certificate of a Chartered certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid / provided
 - Could be credited to the NRE account

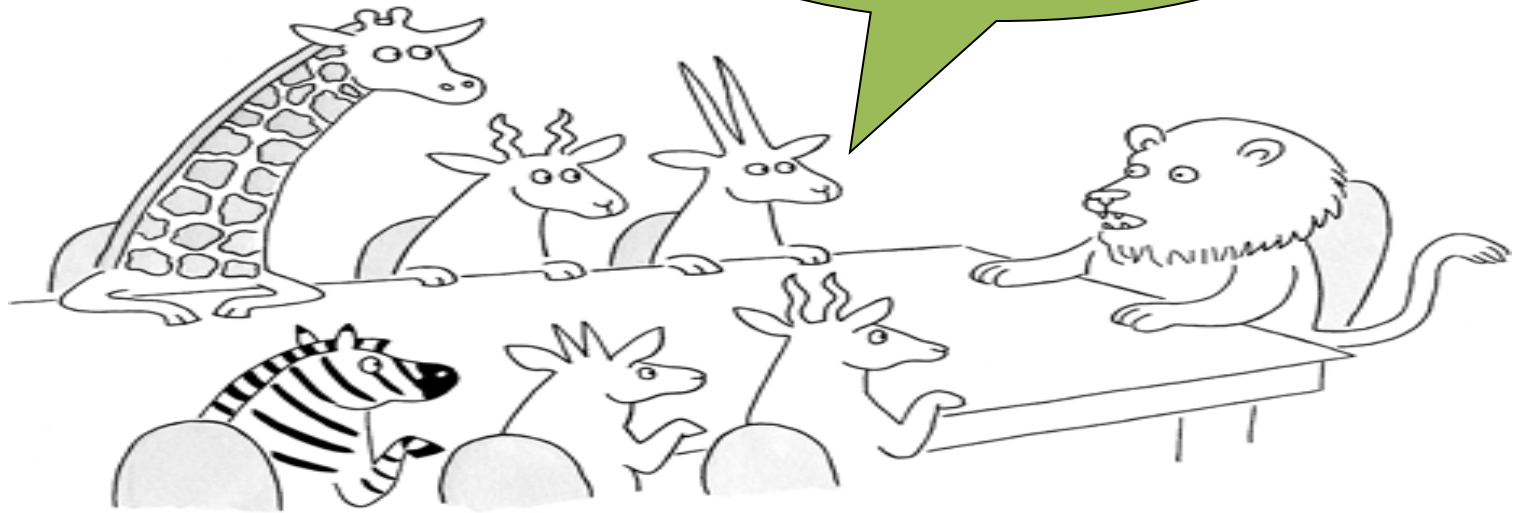
Remittance of Assets

- Remittance under Notification No. 13 allowed up to USD one million, per financial year:
- **Meaning** : Remittance outside India of funds in a deposit with a bank/ firm/ company, provident fund balance or superannuation benefits, amount of claim or maturity proceeds of insurance policy, sale proceeds of shares, securities, immovable property or any other asset held in India in accordance with the provisions of the Foreign Exchange Management Act, 1999 (FEMA) or rules/ regulations made under FEMA.
- **Remittances by individuals not being NRIs/ PIOs where-**
 - the person has retired from employment in India;
 - the person has inherited from a person referred to in section 6(5) of the Act;
 - the person is a non-resident widow/⁴widower and has inherited assets from her/his deceased spouse who was an Indian national resident in India.
- **Remittances by NRIs/ PIOs**
 - out of balances in NRO accounts/ sale proceeds of assets/ assets acquired by way of inheritance/ legacy;
 - in respect of assets acquired under a deed of settlement made by either of his/ her parents or a relative as defined in Companies Act, 2013 to be effected on the death of the settler;
- Remittance of contribution towards the provident fund/ superannuation/ pension fund in respect of their expatriate staff resident but “not permanently resident” in India.

Remittance of Assets

- **Settlement of asset without retaining any life interest in the property i.e. during the lifetime of the owner/ parent:** Would tantamount to regular transfer by way of gift and the remittance of sale proceeds of such property would be guided by the extant instructions on remittance of balance in the NRO account;
- **Remittances in excess of US\$ 1 Million with prior RBI approval:** (i) on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India; (ii) by NRIs/ PIOs out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy, (iii) Hardship will be caused to a person if remittance from India is not made to such a person.
- **Documentary evidences-**
 - Documentary evidence in support of the purchase, inheritance or legacy of the asset
 - An undertaking by the remitter
 - Certificate by a CA in the formats prescribed by the CBDT
- **The remittance facility in respect of sale proceeds of immovable property not available to citizens of-**
 - Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan
- **The facility of remittance of sale proceeds of other financial assets is not available to citizens of -**
 - Pakistan, Bangladesh, Nepal and Bhutan

Questions???



Thank You

**Natwar Thakrar
N. G. Thakrar & Co
Chartered Accountants**

Email: natwarthakrar@gmail.com

Mobile : 98210-21841

