

FOREIGN EXCHANGE MANAGEMENT Act 1999

(FEMA)

Enacted w.e.f. 1st June 2000

Preamble:

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

Facilitate
external
Trade & payment

Promoting
orderly
development
& maintenance
of Forex market
in India.

Regulatory authority - RBI

FEMA enforce

→ ED.

Enforcement
Directorate

FEMA

money
laundering
Act

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

Applicability:

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

Illustration:

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

Applicability

✓

✗



✓

✗

Section 2: Definition:

① Authorised Person means:

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

② Foreign currency → Other than Indian currency,

③ Person:

- Indv.
- HUF.
- Firm
- company

- AOP / BOI
- Artificial Judicial Person

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

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

A person ^{stay} residing in India for MORE THAN 182 days in preceding FY. ①

But does not include

② Person who has gone out of India for following reasons:

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

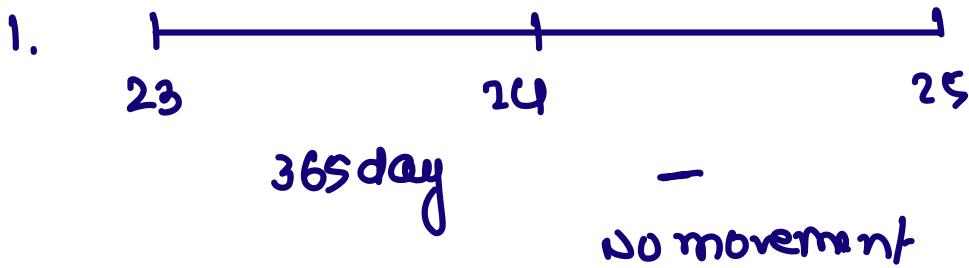
Person who has come to India in any case.

↓
Exception: If such ③ person comes to India for following reasons:
(a) Employment

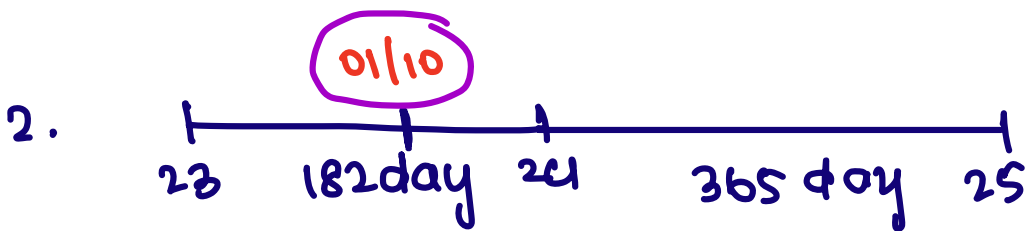
in such circumstances
 which shows intention
 to stay for UNCERTAIN
PERIOD.
 ↓
 o/s india

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

Illustration:



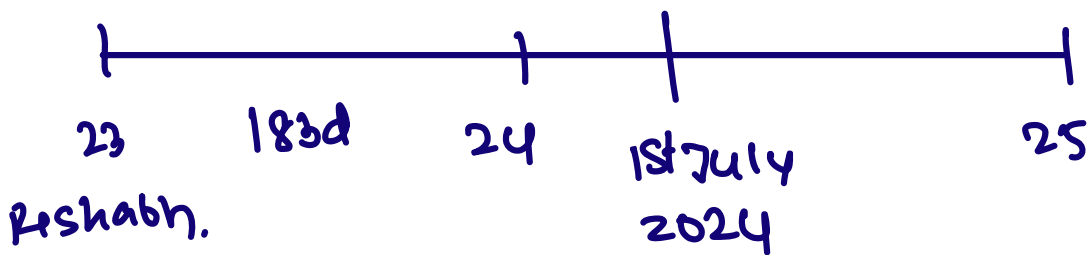
FY 23-24 = No sufficient data of FY 22-23.
 FY 24-25 = PRI



FY 24-25 PRO I (exact 182 day is NOT OK)
 FY 25-26 PRI ✓.
 (provided no movement)

⋮
 ⋮
 ⋮
 ⋮

3.

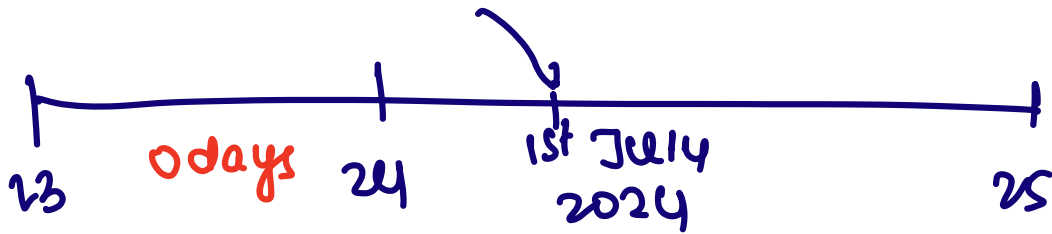


US → Employment

FY 24-25 → upto 30/06/2024 → PPI (PY > 182d)

→ 1st July onward → PPI (o/s india for employment)

4.



Employment (first time)

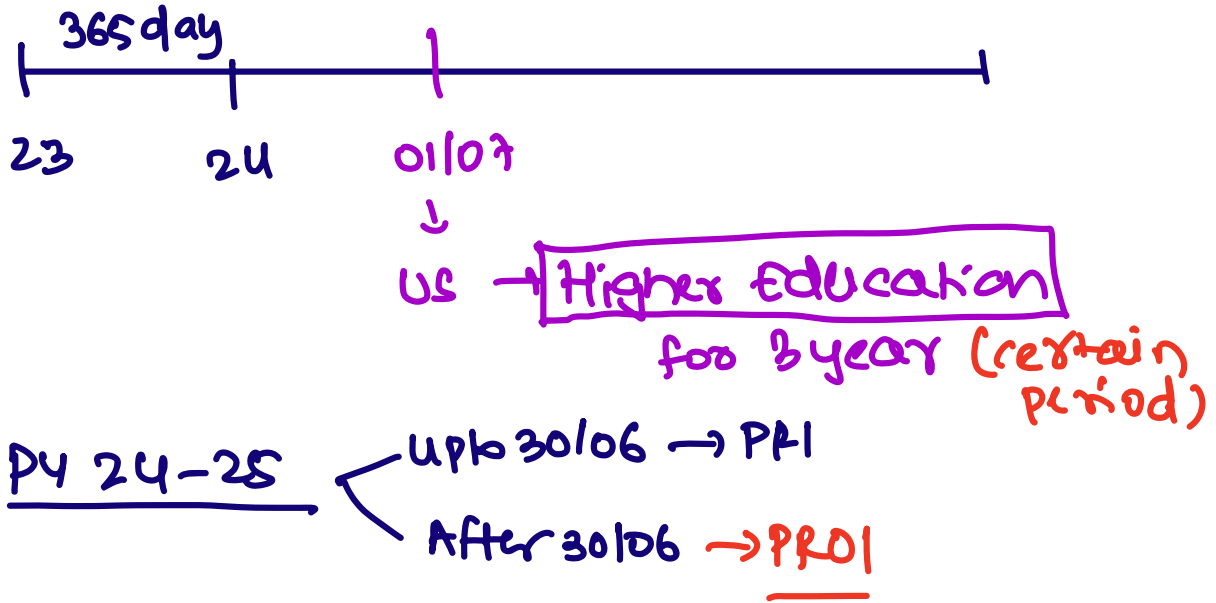
PY 24-25 { 01.04. → 30.06.2024 → PPI

01.07.2024 → PPI

(irrespective of no. of days)

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

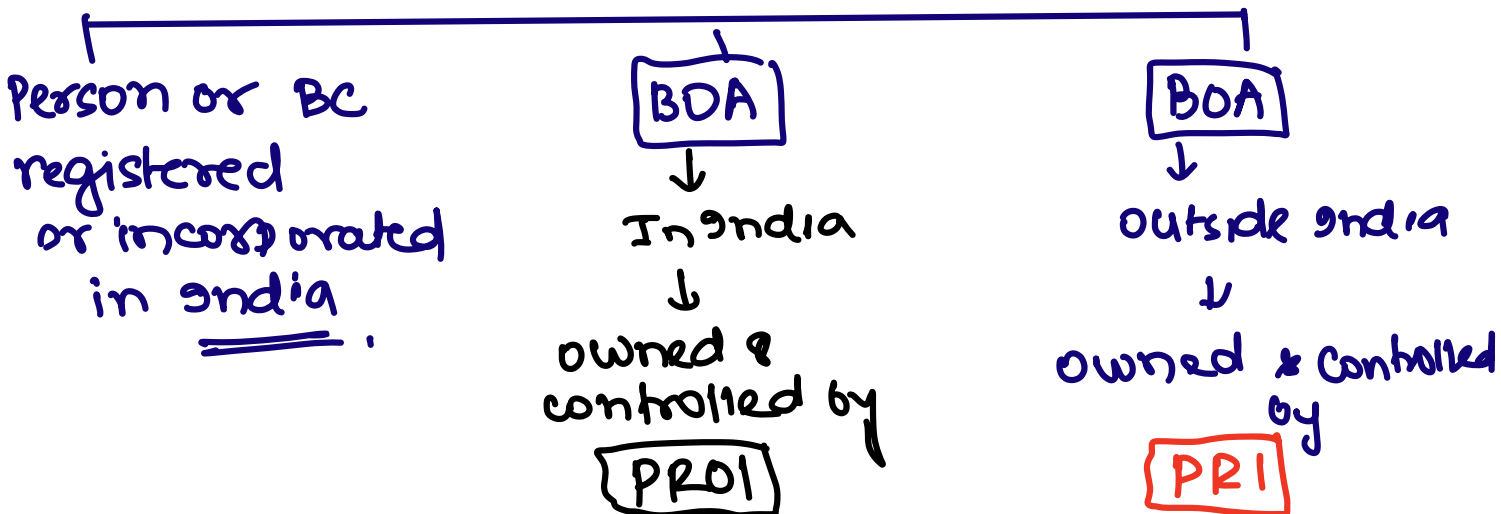
6.



Note: PFI has clarified that student coming to India for higher education shall be treated as PROI

7. Residential status is not dependent on citizenship.

* PRI in case of Artificial Person:



↓
Branch in PUNE
of Tesla

↓
Branch in US
of Tata motors

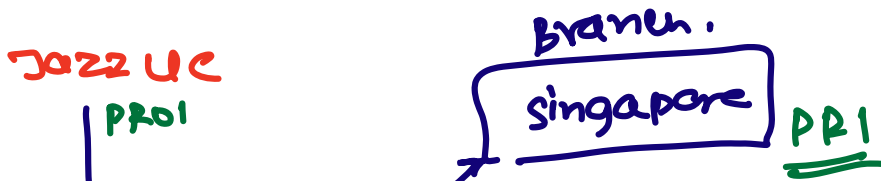
outside



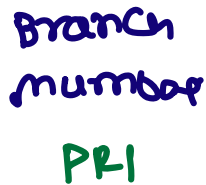
India



US



India



India:

Miss Alia.
(Air Hostess)
12d 18d

→ Bhatt Airline
(UK)

23-24

→ Mumbai

190d.

(stay).

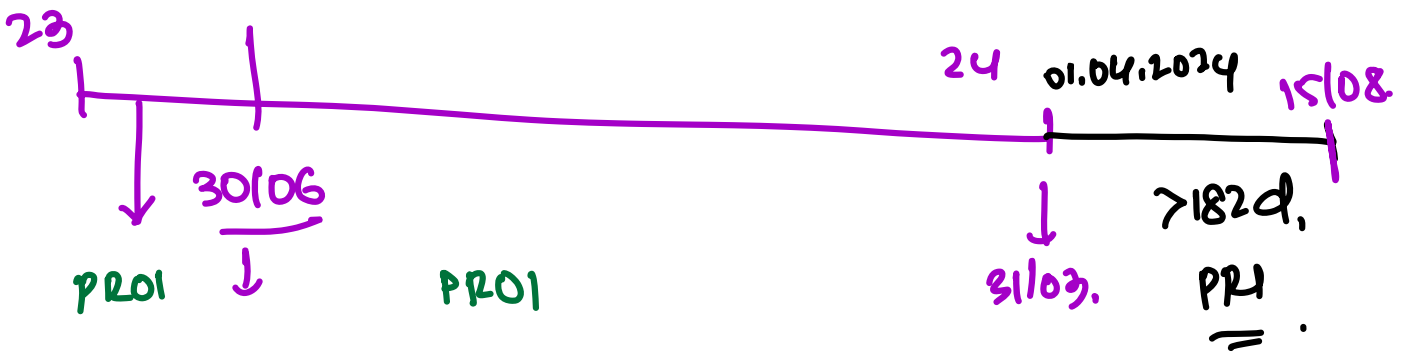
30/06/2023.



FY 23-24:
 upto 30/06 → PPOI
 After 30/06 PPOI (not PFI)

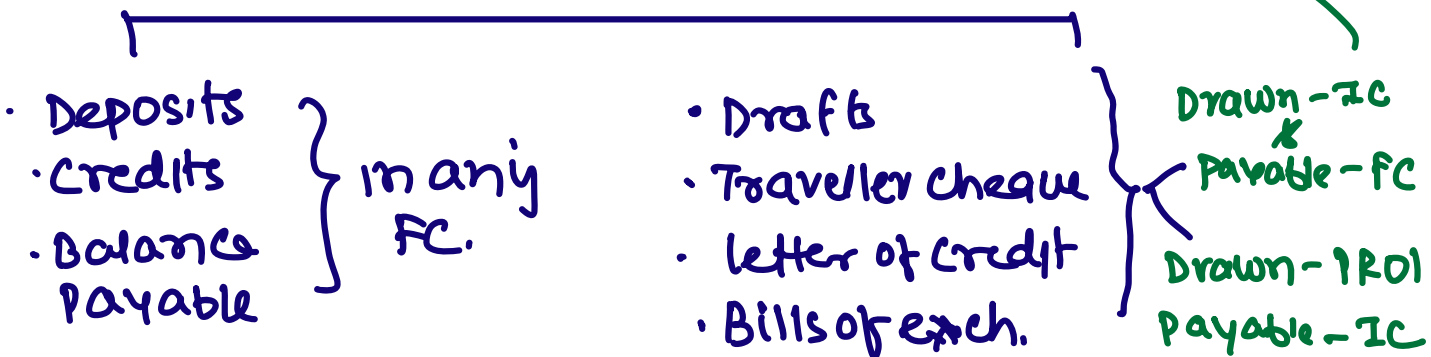
∴ she is still employed under UK branch. so this is not a case of employment in India.

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

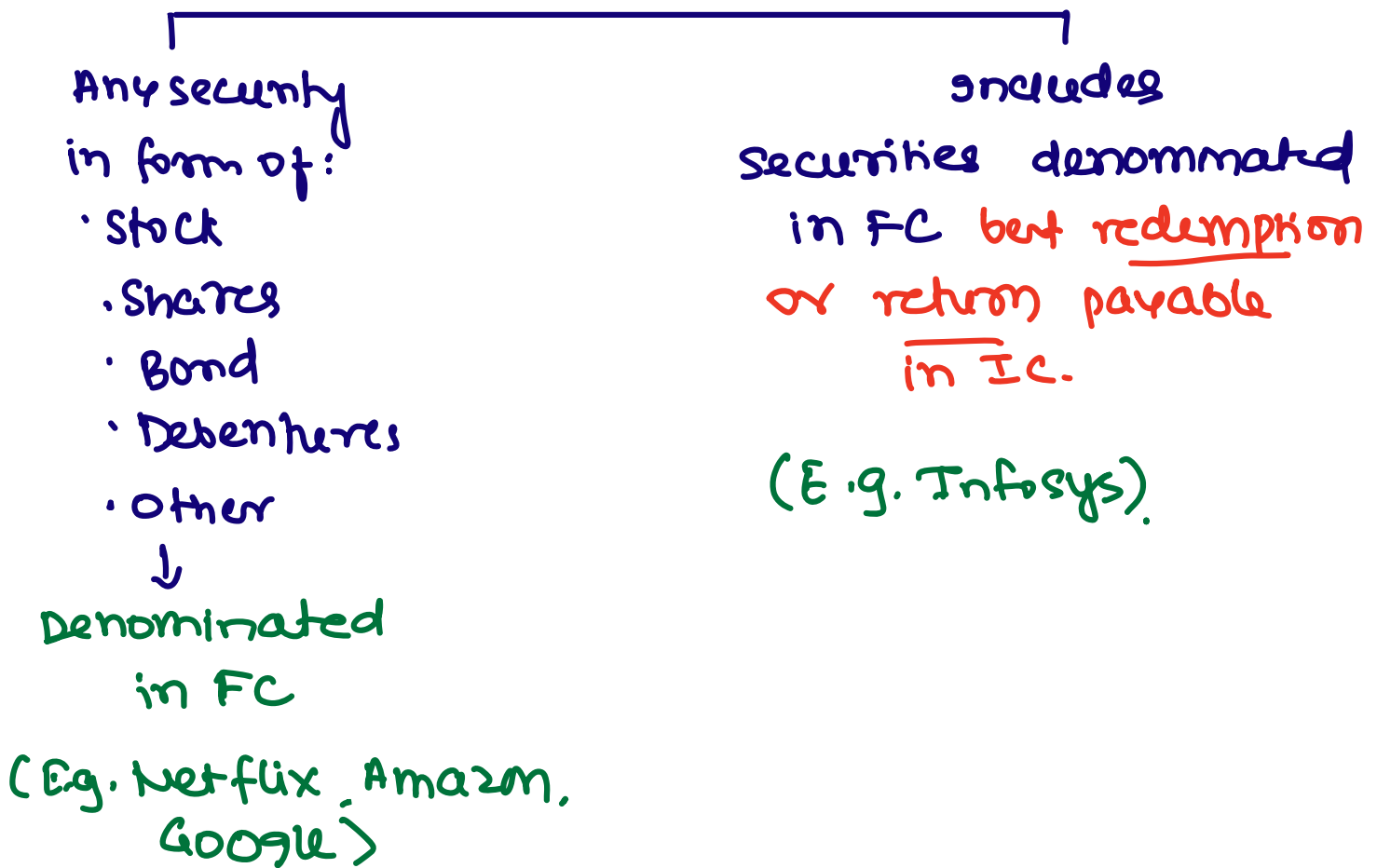


⑤ Foreign exchange: means Foreign currency (FC)

and includes:



⑥ Foreign security: means:



⑦ Capital A/c Transaction means a transaction which **alters** :

PRI |-----| PROI

- Assets
- Liability
- including cont. liabilities



o/s India

↓
of a PRI

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



on India

↓
of a PROI

⑧ Current Account Transaction: (CUAT).

Transaction other than CAT.

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

① Payments w.r.t. foreign trade (import export).

Short term banking & credit facility in OCOB.

② Payment w.r.t { gift. on loan or income from investment (Dividend)

③ Remittance for living expense { spouse, parents, childrens
↓
Residing abroad,

④ Expenses { Foreign travel, Education, medicare } spouse, parents, childrens.

CRUX OF FEMA


CUAT is <u>permitted</u> unless specifically <u>restricted/prohibited</u>	CAT is <u>prohibited</u> unless specifically <u>permitted</u> .
---	---

* Currency

* Currency note:

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

No person shall:
(PRI / PRO)

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

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

if otherwise provided in Act

or

with permission of RBI

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

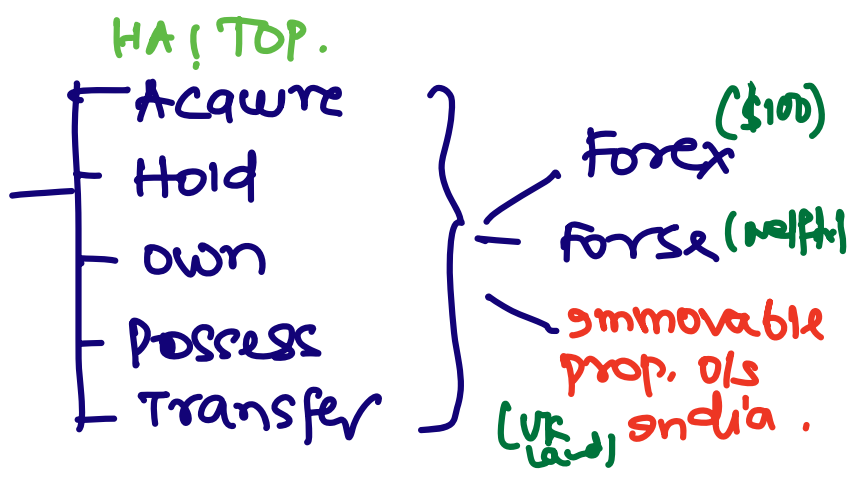
Note: Financial transaction means:

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

Section 4: Holding of forex.

Except as provided in this Act:

↓
NO PRI shall



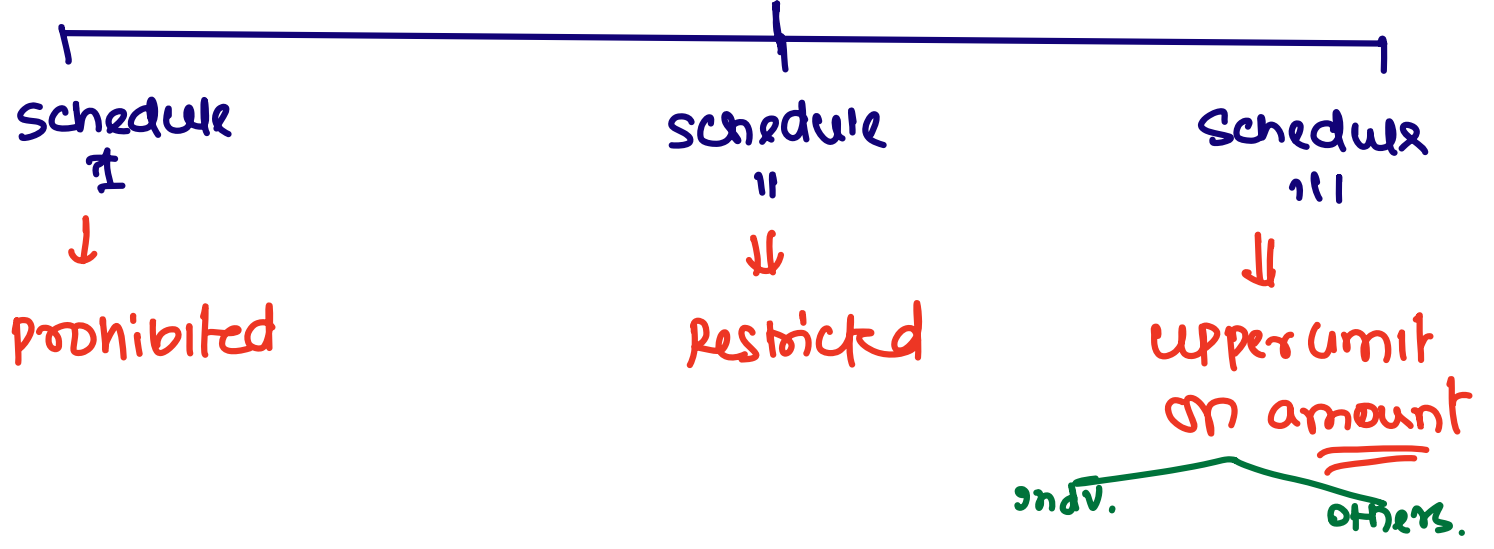
Section 5: Current Account/ Transaction

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

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

CG + RBI → impose restrictions

FEM (CUAT) RULES 2000



Schedule I: Drawal of forex is Prohibited for following.

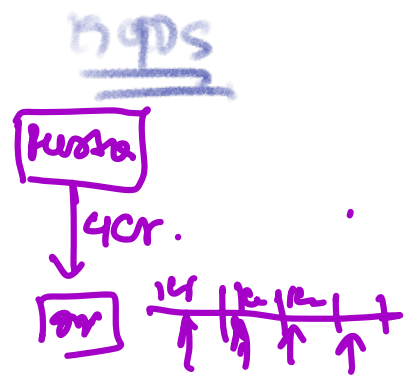
1. Remittance out of **lottery** winnings.
2. Remittance of income from **racing or riding or other hobby.**
3. Remittance for purchase of
 - lottery tickets
 - Banned magazines
 - Football pools
 - Sweepstakes

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

5. Remittance of dividend to which dividend balancing applies.

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

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



7. Payment related to call back service

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

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

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

₹

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

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

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

₹

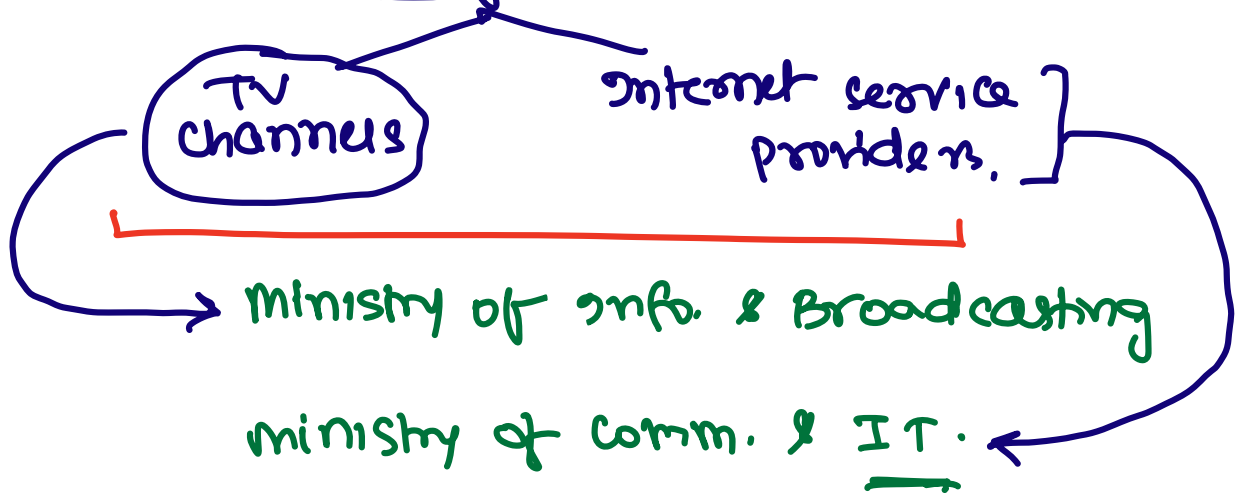
4. Payment of import (through ocean) by a
- Govt department or } on CIF basis } no surface transport.
- PSU } [cost insurance freight]

vs. FOB → free on Board

5. Multi-modal transport operators making remittance to agents abroad. (Blue dot)

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

6. Remittance of hiring charges of transponders



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

→ ministry of surface transport.

##

8. Remittance of $\left. \begin{array}{l} \text{prize money} \\ \text{or} \\ \text{sponsorship} \end{array} \right\}$ of sports activity abroad

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

Amount > \$100k

ministry of Youth Affairs & Sports.

9. Remittance of membership of PSI club.

→ MOF (insurance division)

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

liberalised Remittance Scheme (LRS)

\$250,000
individual

per year
per PR1

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

Excess of limit requires prior approval of RBI

Transactions covered:

a. Private visits to country o/s India.

b. Gift or donation

c. Employment

d. **Emigration** (permanently settling in a country)

e. maintenance of close relatives abroad

f. Travel for

- Business
- conference
- Specialized training
- medical / checkup abroad

→ Accompanying a patient.

g. Medical treatment abroad

h. Studies abroad

i. Other CUAT.

Provided that: → For (d), (g), (h),

avail > \$250k if so required by:

- country of emigration
- medical institute
- university.

(without approval of RBI)

→ Duration < 3 years

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

Citizen of
Foreign state

(other than
Pakistan).

(or)

Citizen of India

↓

On deputation
to BOA of Foreign
Co.

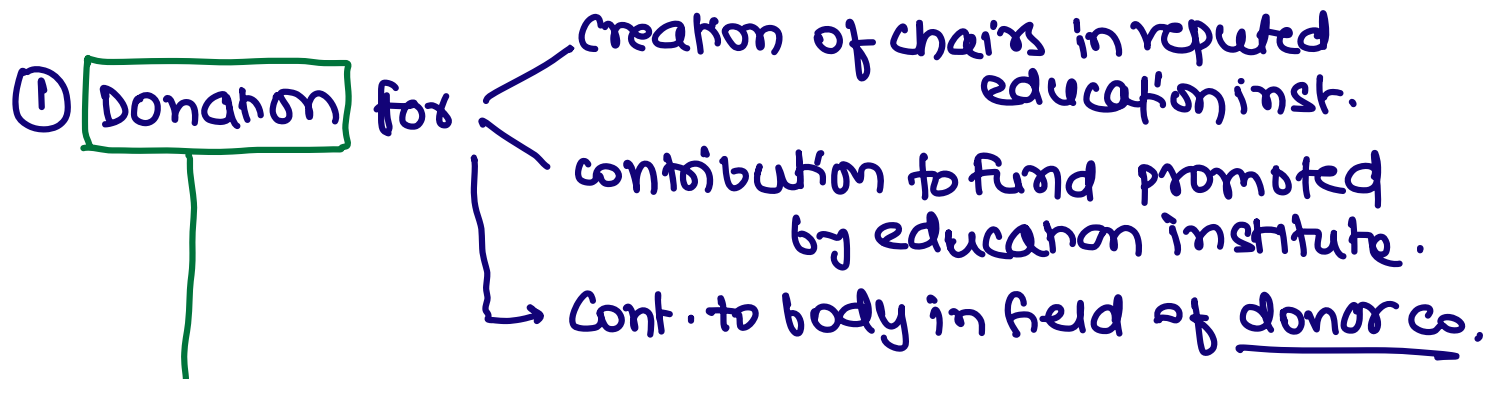
may make remittance upto his NET SALARY
(after deduction of taxes, PF;

Illustration:

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

- Person includes resident
- PRI → Mr. Ray PRI.
- Schedule PRI → but not person → citizen
↳ net salary
→ \$250K x \$1mn ✓.

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



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

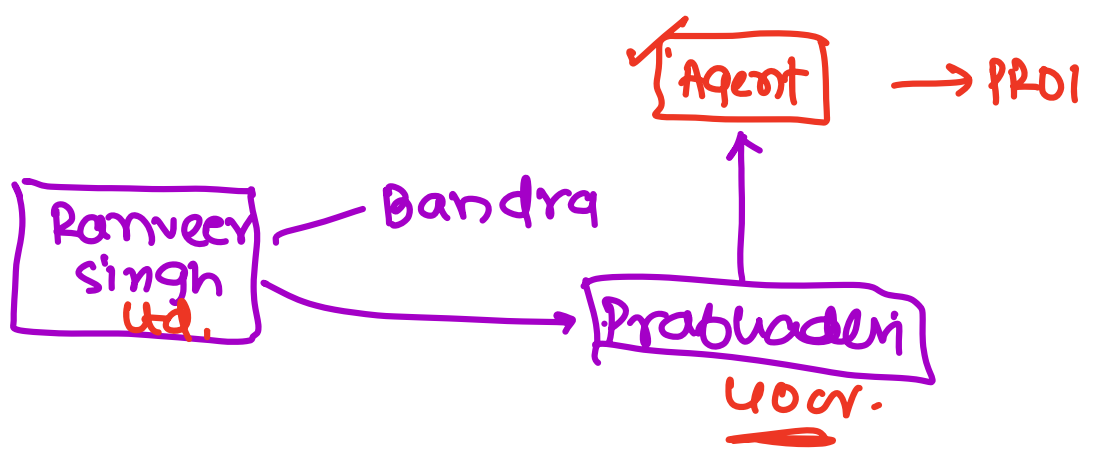
Donation exceeding above limit \rightarrow RBI approval.

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

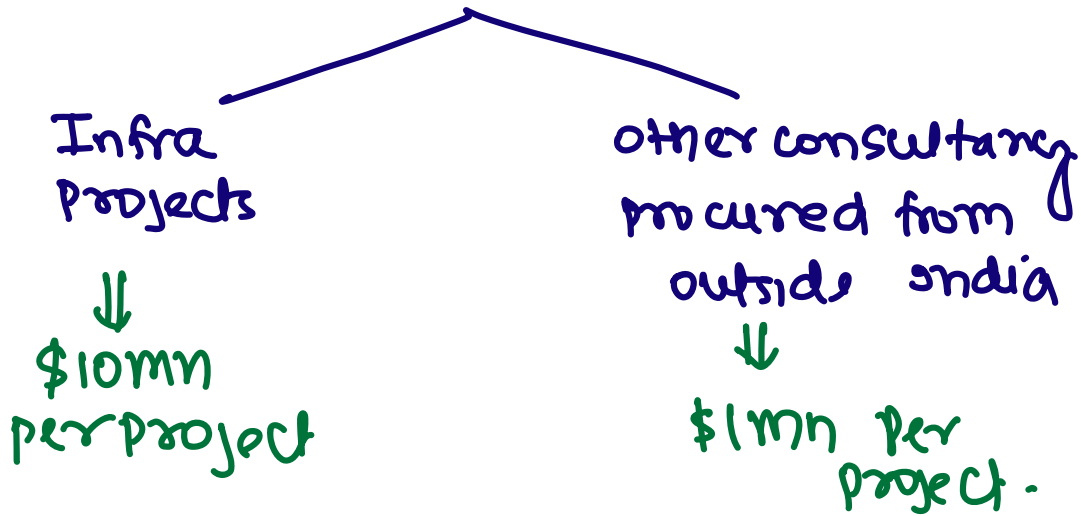
② Commission

\rightarrow TO agent (abroad)
 \downarrow
 for sale of Residential flats or commercial plots
 \downarrow
 IN INDIA.

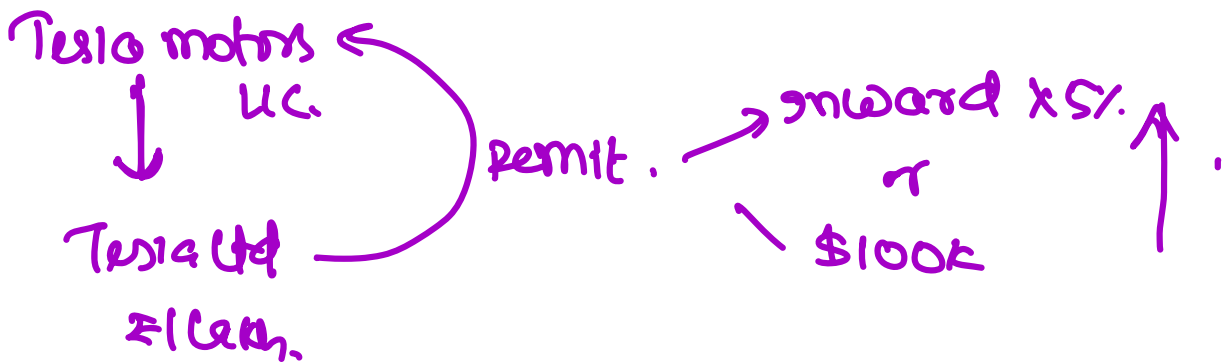
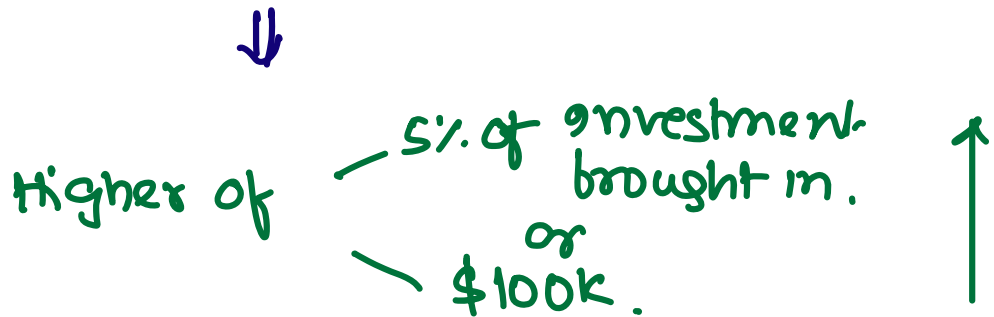
limit \rightarrow higher of \$25000 or 5% of inward remittance \uparrow



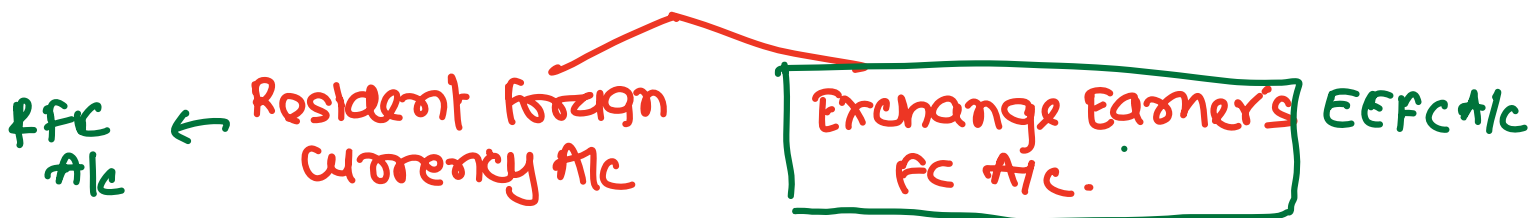
③ Remittance for any consultancy:



④ Remittance as reimbursement of pre-incorporation expense



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

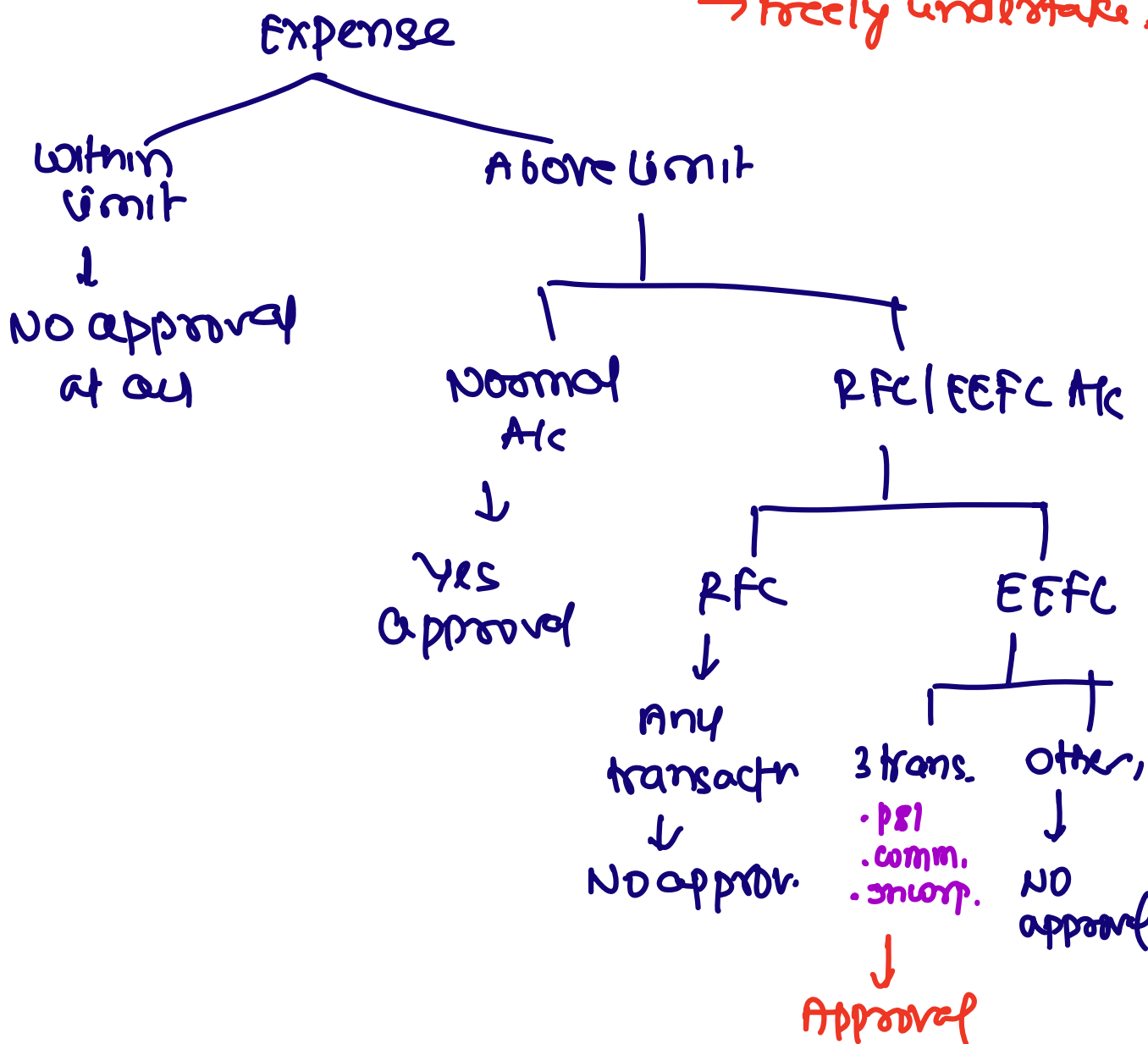


↓

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

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

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

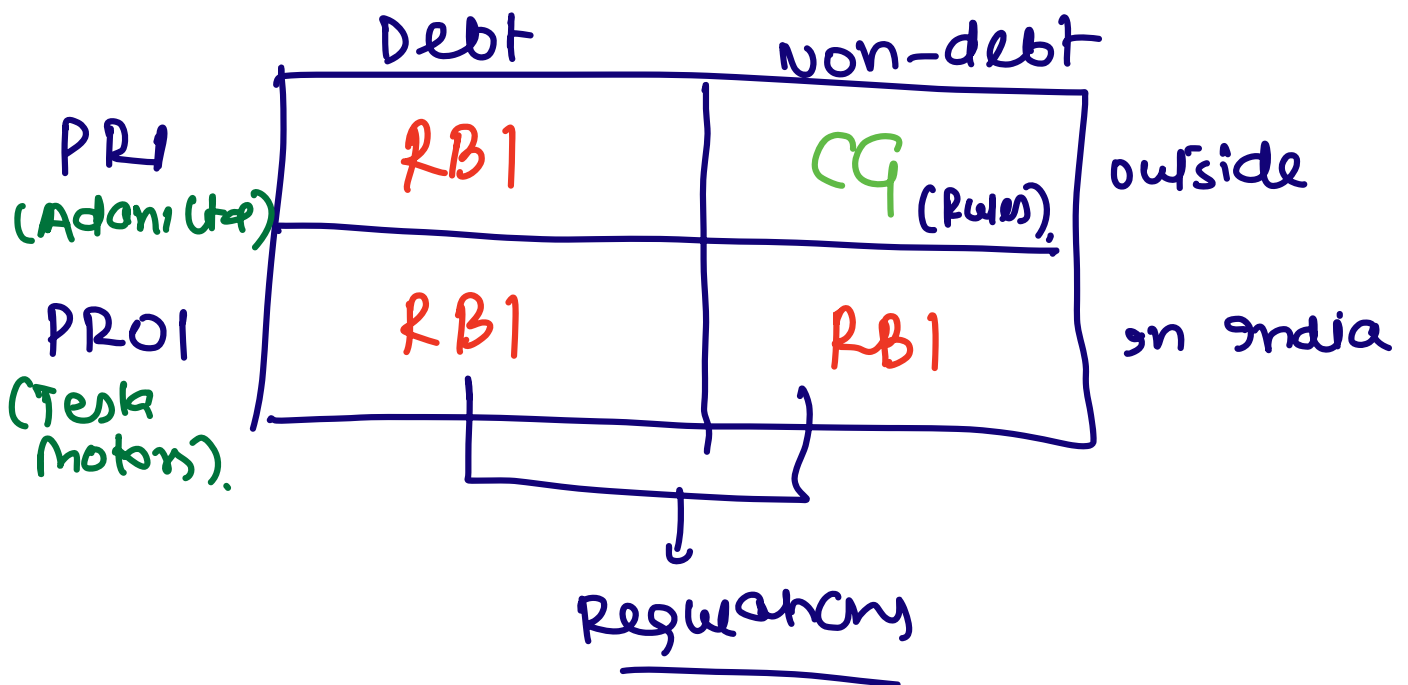


CAPITAL ACCOUNT TRANSACTION

(CAT)

Debt instrument

Non-debt instruments
(Equity)



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

2) RBI shall (+CQ) specify:

- Permissible CAT involving debt instrument.

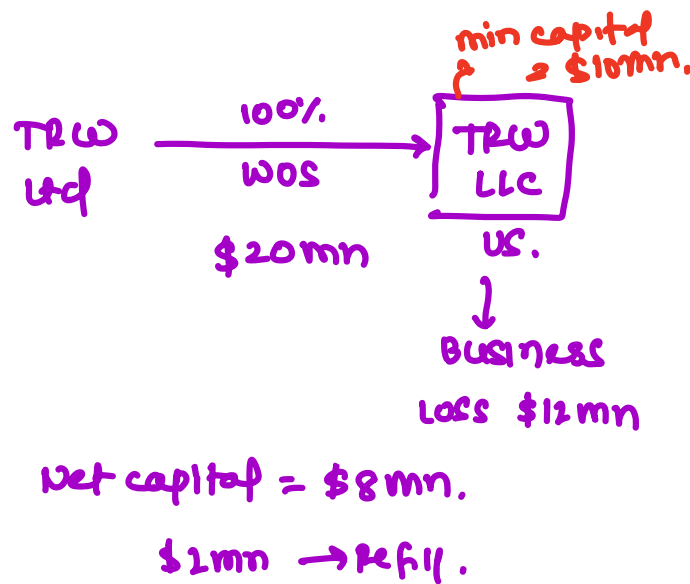
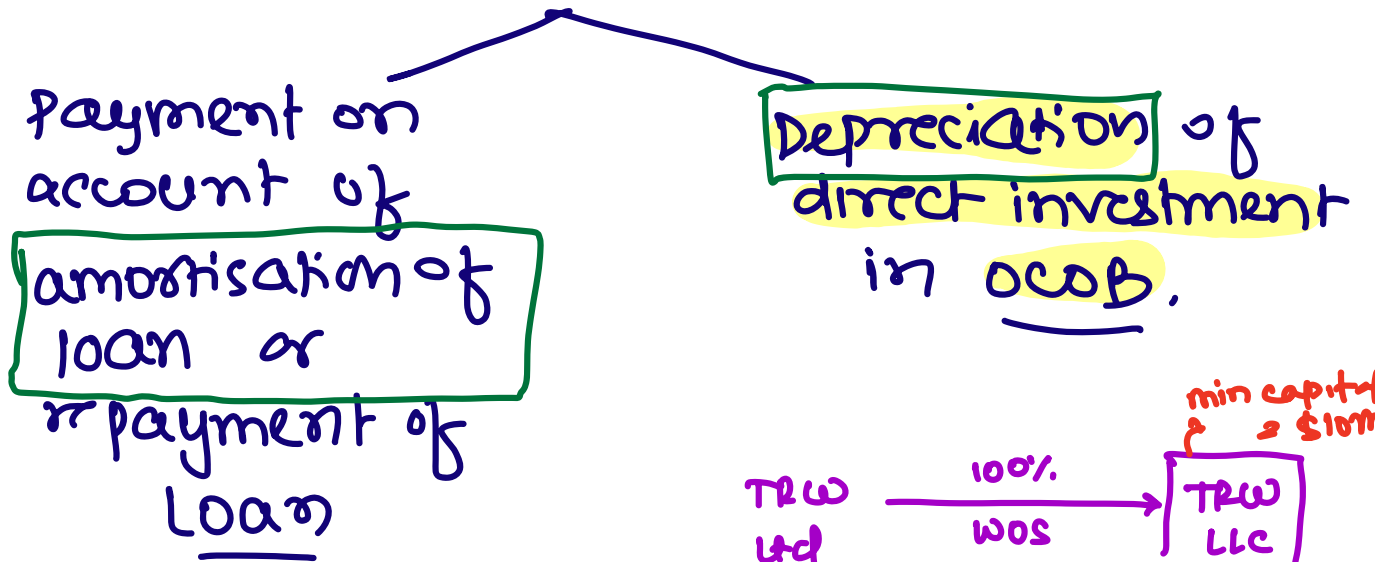
- limits of such CAT
- conditions on such CAT

CG (+ RBI) specify:

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

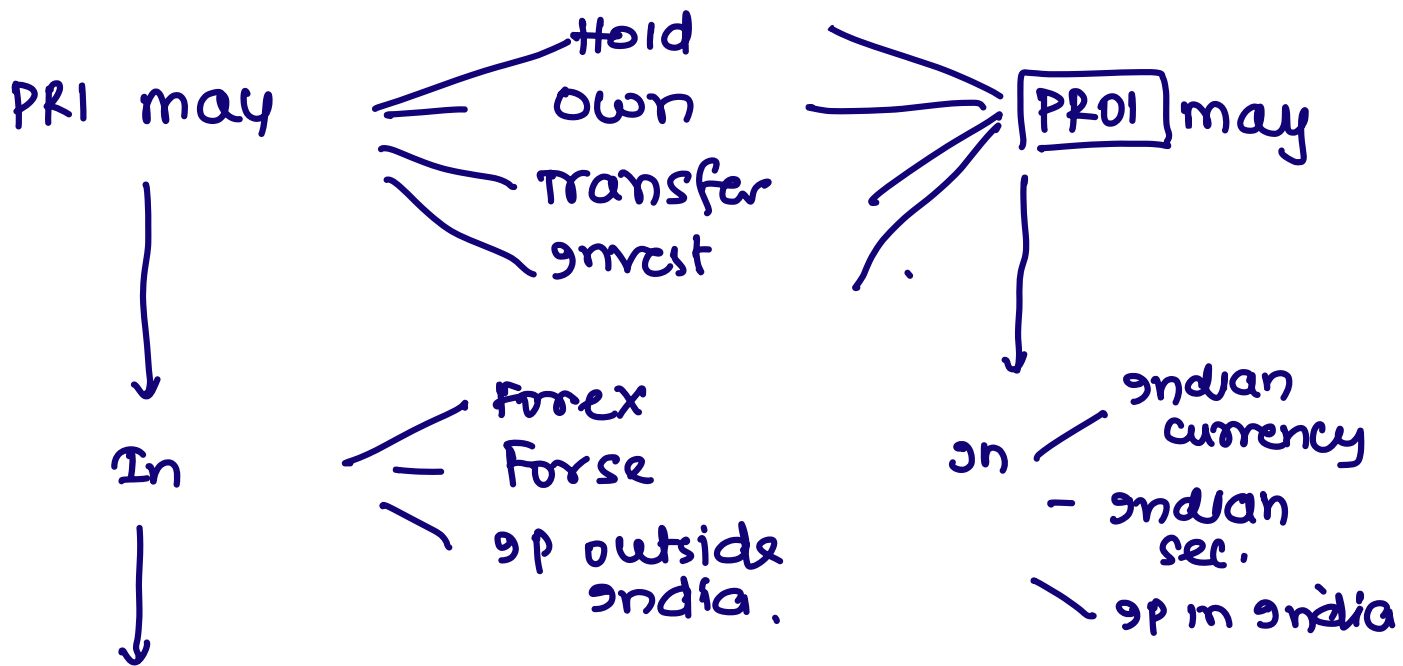
#

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



(3) Omitted.

(4) (5)



provided that:

↓

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

provided:

Acquired when PFI or inherited from PFI.

⇓

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

① FC account opened by PFI when he was PFOI.

② Income from employment/business, etc.
when he was a PDI

or

from investment when he was PDI

or

Gift/inheritance received when PDI

③ Forex held o/s India by a PDI

↳ Acquired by inheritance from PDI.

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

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

Prohibited CAT:

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

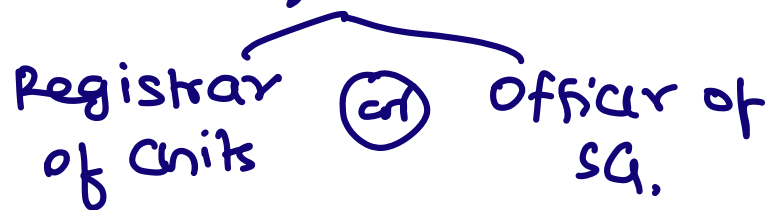
- Chit Fund

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

Note: Real estate business shall NOT include:

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

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



(2) NO PRI shall undertake CAT with

↓
 Citizen of Democratic People's Republic of Korea (North Korea).
 ↓
 unless CG approves.

(3) Settle existing investments → within 180 days.

(unless special approval
of CA)

Read sch 1 & 11 from summary notes
p 149