FEMA, 1999

210

Foreign Exchange Management Act, 1999

8-12 Marks

GC Act, 1897 {8 Marks} | Interpretation of statutes {8 Marks} | FEMA, 1999 {8 Marks}

- Economic Reforms → LPG, 1991

Foreign Exchange Regulation Act — Foreign exchange Management Act

previous Act :- FERA, 1973 → Now :- FEMA, 1999

1973 — FERA, 1973

1991 — Economic Reforms — LPG, 1991
- ↪ Liberlisation
- ↪ Privatisation
- ↪ Globalisation

1999 — FEMA, 1999

- FEMA, 1999 :-

→ History :- FEMA, 1999

Britishers $\xrightarrow{\text{Replace}}$ FERA 1947 $\xrightarrow{\text{change}}$ FERA 19[illegible]

↓ Exchange control law ~~of India~~ in 1939

FERA ↓ FEMA 19[illegible]

- why Foreign exchange law :-

→ To facilitate free cross border transacti[illegible]

→ Due to change in economic conditions.

→ due to globilisation of capital.

→ To promote cross Broder trade.

- FERA, 1973 → FEMA, 1999

→ The Economic reforms in 1991 which leads the permission of free trade in the whole world.

→ Through those reforms, there is free movement of foreign exchange in India, so due to huge increase in foreign exchange, A need is felt by Govt. to manage the foreign exchange reserve rather than reguate.

→ FEMA, 1999 has been commenced in India from 1/06/2000

• This Act deals in :- FEMA, 1999

→ Transactions occured between Resident & Non-Resident

→ Investment in India from overseas Non-Resident / Resident

→ current Account transactions.

→ capital Account transactions.

→ Foreign exchange must be dealt By AD (Authorised Dealer), money exchangers, off shore BU (Banking Unit)

→ Investigation by Authorities related to foreign exchange.

→ Adjurdication, Appeals, Tribunal related provision.

→ proceeds from export & repartriation in India
Registration of foreign exchange

- Special Note :-

→ current A/C Transactions → "Freely permissible" → except some Restrictions.

→ capital A/C Transactions → prohibited except some After getting sanction from RBI & CG

→ RBI has sole authority to control on the Foreign exchange transactions but Investigation of offence related to Foreign exchange management Act, 1999 has been entrusted to a seperate authority named as "Directorate of Enforcement" → FEMA Investigation Authority.

- For this Act :- FEMA, 1999 Act ✓ parliment

Rules → Notified by Ministry of finance (MOF) → GOI (GOVt. of India)

Reguations → Notified by RBI (Reserve bank of India) preamble :- This act aims to

consolidate & Ammend

the law related to the FE (foreign exchange) with the objective of

TO facilitate external trade & payment AND promote/ Develop/ maintain

India ⟷ Trade ⟷ outside

FE Market in India

Section 1 : Short Tittle, Extent & Application, commencement

Foreign exchange Management Act, 1999

scope

01/06/2000

whole of India + This act will also apply on all the Branches, offices & Agencies which are outside India But owned & controlled by Person Resident in India

PRII → Person Resident in India

PROI → Person Resident outside India

Section 2 :- Definitions

1. Authorised person
- Authorised Dealer
- Money exchanger
- Off-shore Banking Unit
- Any other person who is authorised by RBI

2. Foreign exchange means foreign currency :- Inclusive Defination

Deposits, credits & bal. payable in any foreign currency

- Currency Notes — cash in form Bank Notes & coins
- Promissory Notes
- Postal order
- Money order
- cheques, Draft (Demand Draft)
- ~~te~~ Traveler's cheque
- Letter of credit (LC)
- credit cards or any other such instrument notified by RBI
- Bills of Exchange (BOE)

3. Export

Taking out of India to a place outside India

Goods OR services

Import

Bringing into India from a place outside India

Goods OR services

Render to a person from India to outside India

4. Foreign security :- Any security either

shares Debentures Stock Bond Any other such Instrument

which are expressed or Denominated in foreign currency

+

It also Includes all those securities which are expressed in foreign currency But ~~those~~ Redemption (Repayment) in India currency or any $\underbrace{\text{return in}}_{\text{Dividend OR Interest}}$ Indian currency

5. Transfer :- sale
:- purchase
:- Gift
:- Pledge
:- Mortgage
:- loan
:- Any other form of transfer

Right
Tittle
↓
ownership
possession
Lien
↓
lawful

Residential status | current A/C Transactions
OR
capital A/C transactions

case study

conceptual

straight forward questions OR case study

6. Residential status :-

Person | Resident in India | Resident outside India

7. Person :- Inclusive Definition
:- Individual
:- Companies
:- Firm (partnership)
:- HUF (Hindu undivided family)
:- AOP (Association of person whether incorporated or not)
:- AJP (Artificial judicial person)
:- All Agencies, Branches, offices which are situated outside India which are owned & controlled by person Resident in India

Now this person has been bifurcated into 2 parts

person Resident in India | person Resident outside India

8. person Resident in India :-

* Individual *

A person who resides in India for more than 182 Days in India During the preceeding financial year.

person who has gone out of India or stays outside India for the following 3 Reasons.

(i) For taking Employment
(ii) For carrying any Business outside India including vocation
(iii) For any other purpose in which circumstances indicate that stay outside India for an uncertain period.

such person will not be called as person Resident In India.

A person who has cause in India or stays in India for the Reason other than these 3 Reasons

(i) For taking employment
(ii) For carrying Business OR vocation
(iii) For uncertain period

such person is not to be called as Resident in India

so, If a person who even doesn't Reside in India for more than 182 Days in preceeding F.Y. But he has come in India for:- employment, B/S OR vocation, uncertain period

such person is Resident in India

If a person Reside more than 182 Days in India in preceeding F.Y. } But he has gone outside India for

employ ment | B/S or vocation | for incertain period

such person is not person Resident in India

* For Artical person *

A company incorporated in India
↓
PRI

Branch, Agency, office in India
owned & controlled
By a PROI
↓
~~PROI~~ PROI
PR II

Branch, Agency office outside India
owned & controlled
By a PRII
↓
~~PROI~~ PRII
PROI

Example :-

Japan → Singapore (Branch)
↓
Headquarter
control → Mumbai
↓
PRI

control

Singapore (Branch)
↓
PRI

- Individual :-

(1) person Reside in India in the P.F.Y for more than 182 days ?

yes NO

Don't Decide the Residential status at this level.

(2) If answer of above Question is 'yes' ?

check whether he has gone out of India in CY ?

yes

Reasons for going outside of India

3 Reasons

employment B/S OR vocation Uncertain Period

PROI

other than 3 Reasons

PRII

NO

PRII

(3) If the person has not resided in India for more than 182 Days in the P.F.Y. ?

Now check whether he has come in India in CFY ?

yes

NO

PROI

Now check the 3 Reasons of coming into India

↓

Employment
B/S or vocation
~~Ind~~ Indefinite uncertain period

↓

PRII

other than These 3 Reasons

↓

PROI

Example :- 1/04/21 — more than 182 Days — 31/03/22 — 1/11/22 — 31/03/23

1) yes
2) Is he gone out of India in C.F.Y.

yes → Reasons → 3 → PROI
other than → PRII

Example :- If a person who has gone out of India and holds green card of US, so after having green card he will become US citizen and now their are no chances of return to India (so indefinite period out of India)

↓

so, This is one of 3 Reasons & he will become PROI.

⇒ Residential status is to be checked for a particular Date

→ Not for a particular Year.

Residential status in Income Tax Act, 1961 is to be checked for a particular year to check the Taxability on Income of previous year.

⇒ The status of HUF, Association of person is generally & practically will be PRII as they can not go outside India. So, there is no Question of checking the No. of days in such case.

• Special Note :-

→ If a person who has gone out of India as a student & in previous even if he resides for more than 182 Days, still he is considered as PROI, even if he has not gone out from India for
- → employment
- → Business or vocation
- → For Indefinite period

But as per circular issued by RBI these student work in foreign for take care of their studies finance, they will be treated as person Resident outside India (PROI).

Section 3 :- Dealing in Foreign Exchange

NO person shall

(i) Deal in foreign exchange or foreign securities otherwise than through AP

(ii) Make payment or to the credit of any person resident outside India

(iii) Recieve on the order or on the behalf PROI otherwise than through AP.

Special Note :- If any person who is PRII recieves any money on the Behalf of PROI, shall payment is prohibited u/s 3 of FEMA, 1999

↓

But yes, payment may be recieved by PRII on behalf of PROI through an Authorised person is allowed.

Example :-

Rohan (PRII) — Rohan recieves money on behalf of PROI — from USA — Rozer Elberts (PROI)

↓

AND Rohan Does not have Inwards Remittance, then it is Deemed Rohan has Recieved money on behalf of PROI without Authorised person.

such Reciept of money by Rohan is prohibited U/S 3 of FEMA, 1999

(iv) No person shall enter into financial Transaction in India as a consideration for acquiring or creation any assets outside India. (CHAWALA TRANSACTION)

→ So, this sec. 3 Basically Regulates — Inflow / outflow → foreign Exchange ↓ without Authorised person

→ This section applicable on Both — PROI / PRII

Special Note :- All these 4 transactions are generally prohibited by section 3 of FEMA, 1999 But they can be allowed after the special permission of RBI.

Section 4 :- Holding of Foreign Exchange

Any person who is Resident in India → can not — hold / possess / own / acquire / Transfer

foreign exchange / foreign security / Any Immovable property — outside India

Exceptions (allowed) :-
- Any other prov. of this act allows.
- If any notification published by RBI / CG with some Rules & conditions.

Section 5 :- Current A/C Transactions
↓
Allowed ⟶ freely allowed

Except some → list
- RBI
- CG

Current A/C transactions
- Prohibited Transactions
- Transactions for which approval of RBI is required
- Transaction for which approval of CG is required

Section 2 of FEMA → capital A/C Transactions

Rohan → PRII → Indian assets or liability

Shehzan → PROI → Foreign assets or liability

capital A/C Transaction

capital A/C transactions

Alteration

Definition u/s 2

Capital A/C Transaction — list — Current A/C Transactions

Capital A/C Transaction: u/s 6

Any Transactions which alters assets, liability, contingent liability outside India for person Resident in India (Rohan)

& Any transactions which alters assets, liability in India for person Resident outside India (shezaan)

(CAT)
Capital A/C Transaction

- PRII — Asset, liability, contingent liability — outside India — Alteration
- OR
- PROI — Assets, liability — In India — Alteration

Current A/C Transactions: u/s 5

Any Transaction which is not capital A/C Transactions & It Includes:-

(i) Payment made for ordinary course of B/s, availibity short term loan or Banking facility.

(ii) Int. paid on loans & Dividend recieved on Investment

(iii) Remittance for living expenses — parents, spouse, children — Living O/S India

(iv) Remittance for — foreign travel, Medical exp., Education exp. — parents, spouse, children

Current A/C Transactions

↓

Which are not capital A/C Transaction.

Includes :-

- short term loan / facility avail for B/S.
- Int. on loan or Dividend on Investment
- Remittance for living exp. — spouse, parents, children
- Remittance for travel, medical, Edu. — spouse, parents, children

Current A/C Transactions (CUAT)

- Transactions which are prohibited for which Drawl of foreign exchange → schedule : 1
- Transactions for which approval of GOI is Required for Drawl of foreign exchange → schedule : 2
- Transactions for which approval of RBI is required for Drawl of foreign exchange → schedule : 3

schedule : 1 → CUAT → prohibited Transactions

(I) Remittance of lottery winnings

Example :-

Warren Buffer → Visit Travelling (GOA) → Goa

Goa ↓ Casino ↓ Lottery winning

Warren Buffer ↓ USA ↓ PRO I

Authorised person

Current A/C Transaction → prohibited

(2) Remittance from Income of Riding / Racing or any such Kind of Activity / hobby.

(3) Remittance for purchase of

↓ Lottery Ticked ↓ Banned Magazine ↓ football pools ↓ Swepstakes.

(4) Reliance (Indian co.) → foreign (USA) (Joint venture / WOS)

Reliance (Indian co.) → equity Investment → (Joint venture / WOS)

Reliance (Indian co.) → Goods export → money → (Joint venture / WOS)

Goods export ↓ commission

A payment of commission on export made towards as an equity Investment in JV or WOS of Indian company in abroad.

(5) Indian co. — Export → Russia
Indian (₹) (Rupee state credit Route)
commission paid in foreign exchange
But Goods — Tea & Tabbaco — allowed foreign exchange — 10% of Invoice

(6) payment Related to call Back services
in case of International calling
for reduction of calling charges

(7) Remittance of Interest Income on Non-Resident special Rupee scheme.

(8) Dividend Balancing

schedule 2 :→ CUAT → permission of GOI
Ministry of finance & ECO. Affairs

Advertisement in foreign print Media — voice / T.V.
Tourism, foreign investment, Inter. Bidding. — Exempt
other than these — State Govt. (PSU) — other than
voice / T.V. → Exempt → NO permission

> 10,000 $ — No permission Required

↓

permission of MOF.

:- As per Ministry :-

Ministry	Activity which permission ✓
(1) Human Resource Development	1) cultural Tour
	2) price Money / sponsership of any sport Activity
	other than sports Body ↓ > 1,00,000 $
	sports Body ↓ No permission required
(2) Ministry of Finance	1) Advance in foregin print media By PSU / SG exceeding $10K
	2) Remittance for membership of P & I club.
(3) Ministry of surface Transport	1) payment of foreign from vessal by PSU
	2) payment of Import on C/F

	Basis by PSU / Govt. Depart.
	3) Detention charges payable exceeding the rate prescribed by DG of shipping.
(4) Department shipping (Reg. certificate)	1) multimodal transport paying commission to agent at abroad.
(5) Department of Information Technology Broad castly	Hiring charges payable to transponder T.V. channel . . ISP (Internet service provider)

CUAT

Schedule 3 :- ↑ Permission Require from RBI

(Limit of $ 250,000)

For Individuls

1) private visit (Nepal / Bhuttan) ⓧ
2) Gift / Donation
3) Employment
4) Emmigration (higher limit all) as per country of emmigration
5) Maintainance of close Relative
6) Business purpose Trip

For other than Indi's.

1) Donation
educ. Insti o/s India
• for creation of chairs
• Fund managed by ✗ educ. Insti.
• Techn. Insti. in the filed of Donor co.
WEL

7) Medical expenses
(Higher limit as per
doctor's estimation)

Attendent limit is seperate

1% of foreign earning
of last 3 year
OR
$ 50 lakh

8) Education Expenses
(Higher limit all as per
estimation of schol/college/
University)

Any amt in excess of this
Amt require the permission of
RBI

2) For sale of

Resedent flats commercial plot
in India

commission
to agent
abroad

US $ 25000
WEH
OR
5% of
Inward
Remittance

3) consultancy
services

Infrastructure → $ 1 Cr
other than → $ 10 lakh

4) Pre Incorporation Expenses
reimbursement

5% of Investment
Brought in India
OR
US $ 1,00,000
Higher

If want to withdraw more than limit then
the permission of RBI is required.

Capital A/C Transactions

schedule 1 → Permissible capital A/C Transactions in case of PRII

schedule 2 → Permissible capital A/C Transactions in case of PROI

schedule 3 → Prohibited Transactions only for PROI

• Special Note :-

(1) Capital A/C Transactions which are permissible by RBI either under sch. I or sch. 2

↓

Any person can Draw or sell foreign exchange for such CAT from A.P. or to A.P.

(2) CG In consultation with RBI
→ which type of CAT which involves Debt
→ Amt upto which Drawl of foreign exchange
→ Any other condition

(3) RBI In consultation with CG

- class of capital A/C Transaction which Don't involve Debt Instruments
- upto which Amt foreign exchange can be drawn
- Any other conditions.

schedule 1 :- Permissible Trans. for PROI
schedule 2 :- Prohibited Transa. for PROI

- NIDHI co.
- chit fund
- Agriculture & plantation
- Real estate
- TDR (Transferrable Dev. Rights)

Township, comm. plots & Residential Roads & Bld

PROI → permissible → RBI