

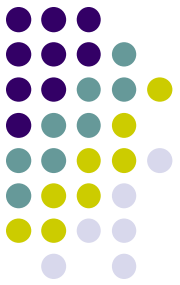
AICAS

WORKSHOP ON FEMA

Presentation by
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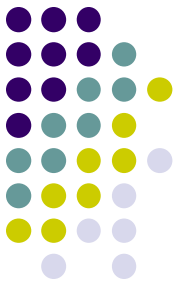
FEMA: TOPICS



OVERVIEW

- Remittance facilities for Individual residents including remittance under LRS
- On current and capital account including ODI under LRS
- Immovable property outside India
- TCS on remittances

FOREIGN EXCHANGE MANAGEMENT ACT 1999



STATUTE:

- **FEM (overseas investment) Rules 2022**
- **The rules: FEM Current account transaction rule 2000**
 - **Master Directions:**
 - 7/2015-16 LRS updated**
 - 8/2015-16 Other remittances updated**
 - Notification 263 of 05/03/2013**
 - **CBDT Cir. 10/2023 dated 30/06/2023 on TCS**

Remittances facilities for Residents-

The statute:



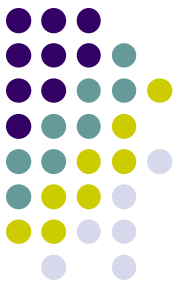
Section 4:

Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess, or transfer any Foreign exchange, Foreign Security, or any Immovable property outside India

Current account transactions rules

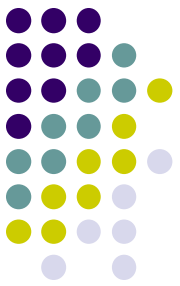


- Schedule I prohibited items
- Schedule II with prior permission
- Schedule III generally allowed subject to limits prescribed.



PROHIBITED REMITTANCES

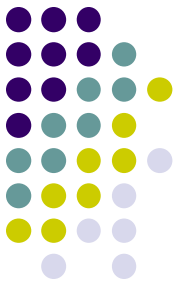
- Remittance out of lottery winnings.
- Remittance for trading in foreign exchange abroad
- **Remittance for purchase of lottery tickets, banned /proscribed magazines, football pools, sweepstakes, etc.**
- Payment of commission on exports made towards equity investment in Joint Ventures / Wholly Owned Subsidiaries abroad of Indian companies.
- Gifting by a resident to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS



Schedule II

- Cultural tours- Ministry of HRD
- Advertisement in foreign media by PSU- MoF
- Freight payment to foreign vessels by PSU- Mo surface transport
- Hiring charges of transponders by TV channels and Internet providers- Ministry of Info n Tech
- Prize money/ sponsorship fee in sports by other than international national or state sports bodies above 100000 USD by MoHRD

Current account :



- Private visits to any country (except Nepal and Bhutan).
- Gift or donation.
- Going abroad for employment.
- **Emigration. (excess allowed but only towards meeting incidental exp and not for gaining eligibility points)**
- Maintenance of close relatives abroad.
- Travel for business or attending a conference or specialized 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. (excess allowed)
- **Studies abroad.(excess allowed)**
- VISA fee, subscriptions admission fee, examination fee, assessment fee, consultancy for migration etc

Liberalized Remittance Scheme(LRS)



- The limit is subsumed with other permitted current account transactions listed in schedule III of rules
- **Transactions otherwise prohibited under FEMA not available under the scheme.**
- **Banks** not to extend credit facility for remittance under this scheme for capital account transactions.

Liberalized Remittance Scheme(LRS)



- Liberalised scheme of remittance up to 2.5 Lac USD per FY by individuals (only) including minors(PAN Mandatory)
- Eligible for current account/capital account transactions
- Immovable property, shares, donations, gifts and other permissible transactions
- Opening of bank account outside India
- To Pak, Bhutan, Nepal not permitted

Liberalized Remittance Scheme



- Investment ODI in WoS/JV (not OI)
- Investment OPI
- Loan to NRI relatives including Rupee loan

Liberalized Remittance Scheme



- **“Overseas Direct Investment (ODI)”** means (i) acquisition of any unlisted equity capital or subscription as a part of the Memorandum of Association of a foreign entity, or (ii) investment in 10% or more of the paid-up equity capital of a listed foreign entity, or (iii) investment with control where investment is less than 10% of the paid-up equity capital of a listed foreign entity.

Liberalized Remittance Scheme



- **“Overseas Direct Investment (ODI)” by Individuals:**

ODI in an **operating foreign entity** not engaged in financial services activity and which does not have subsidiary or stepdown subsidiary where the resident individual has control in the foreign Entity

Liberalized Remittance Scheme



- **“Overseas Direct Investment (ODI)” by Individuals: (Other Modes)**

a. capitalization, within the time period, if any, specified for realisation under the Act, of any amount due from the foreign entity the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank

Liberalized Remittance Scheme



- **“Overseas Direct Investment (ODI)” by Individuals: (Other Modes)**

(b) swap of securities on account of a merger, demerger, amalgamation or liquidation;

(c) acquisition of equity capital through rights issue or allotment of bonus shares;

(d) gift as per the conditions laid down under this Schedule;

Liberalized Remittance Scheme



- “Overseas Direct Investment (ODI)” by Individuals: (Other Modes)

(e) inheritance;

(f) acquisition of sweat equity shares;

(g) acquisition of minimum qualification shares issued for holding a management post in a foreign entity;

(h) acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme:

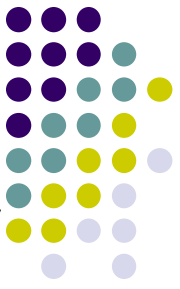
Liberalized Remittance Scheme



- **“Overseas Direct Investment (ODI)” by Individuals: (Other Modes)**

Provided that ODI in respect of clauses (e), (f), (g) and (h) may be made in a foreign entity whether or not such foreign entity is engaged in financial services activity or has subsidiary or step down subsidiary where the resident individual has control:

Liberalized Remittance Scheme



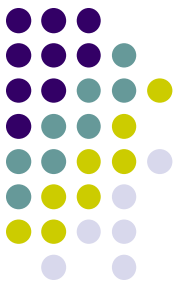
- “Overseas Direct Investment (ODI)” by Individuals: (Other Modes)

Provided further that the acquisition of less than ten per cent. of the equity capital, whether listed or unlisted, of a foreign entity without control under clauses **(f)**, **(g)** and **(h)**, shall be treated as OPI.

LRS- Control defined



- “control” means the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders’ agreements or voting agreements that entitle them to ten per cent. or more of voting rights or in any other manner in the entity;



LRS- OPI defined

- “Overseas Portfolio Investment” or “OPI” means investment, (other than ODI) in **foreign securities**, but not in any **unlisted debt instruments** or any security issued by a person resident in India who is not in an IFSC:

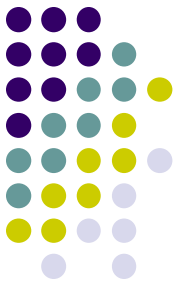
LRS- Foreign security defined

Section 2(o) of FEMA



- “Foreign security” means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;”

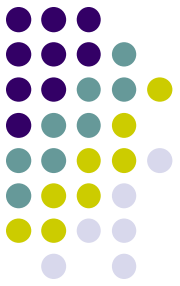
LRS- Foreign security (Acquisition through Gift/ inheritance)



A resident individual may, without any limit, acquire foreign securities

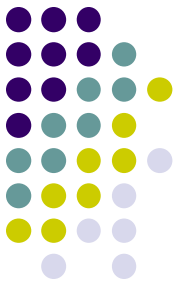
- by way of **inheritance** from a person **resident** in India who is holding such securities in accordance with the provisions of the Act or from a person **resident outside** India.

LRS- Foreign security (Acquisition through Gift/ inheritance)



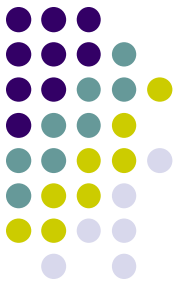
A resident individual, without any limit, may acquire foreign securities by way of gift from a person **resident in India who is a relative** and holding such securities in accordance with the provisions of the Act.

LRS- Foreign security (Acquisition through Gift/ inheritance)



A resident individual may acquire foreign securities by way of gift from a person resident outside India in accordance with the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and the rules and regulations made thereunder.

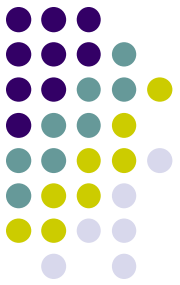
LRS- ODI- Prohibited



-Prohibited - Real estate activities

Real estate activity means Buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.

LRS-Bank account abroad



Para 6 of LRS master Directions:

The permissible capital account transactions by an individual under LRS are:

- (i) opening of foreign currency account abroad with a bank;

LRS-Bank account abroad



- 10. Individuals can **also** open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the Scheme without prior approval of the Reserve Bank. The foreign currency accounts may be used for putting through all transactions connected with or arising from remittances eligible under this Scheme.

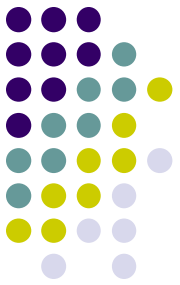
LRS- Reinvestment



PARA 16 of LRS master circular

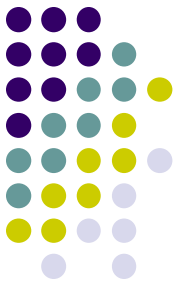
- The investor who has remitted funds under LRS can retain and reinvest the income earned from his investments. *The received/ realised/ unspent/unused foreign exchange, unless reinvested, shall be repatriated and surrendered to an authorised person within a period of 180 days from the date of such receipt/ realisation/ purchase/ acquisition or date of return to India, as the case may be.*

LRS- Reinvestment



- **Q 23. Whether prior approval is required to open, maintain and hold foreign currency account with a bank outside India for making remittances under the LRS?**
- **Ans: No.**

LRS-Bank account abroad



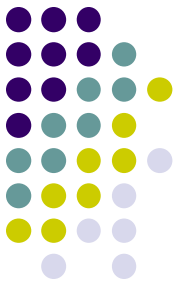
- Question:
- Whether a person can open and maintain bank account abroad under LRS and keep the balance beyond 180 days.
- Whether FDR in foreign bank is permitted investment under LRS- Whether covered under bank account
- Implications of para 6,10 & 16 & FAQ 23

LRS- Bank account by students



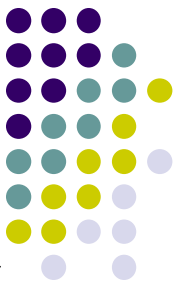
A person resident in India who has gone abroad for studies may open a foreign currency account with a bank outside India during his stay abroad. All credits to the account from India should be made in accordance with FEMA and the rules and regulations made thereunder. On the student's return to India after completion of studies, the account will be deemed to have been opened under the Liberalised Remittance Scheme.

LRS- Bank account by students



- The Reserve Bank of India has been receiving representations from Indian students studying abroad requesting that they may be treated as non-residents under FEMA. The purport of their argument is that though they are students, they are, in reality, not dependent for a dominant part of their expenses on remittances from their households in India. Often they are permitted to work and have to undertake certain related financial transactions. They urge, therefore, that the definition needs to be revised. Cont.....

LRS- Bank account by students



- Taking into account the definition of resident under FEMA and the intention of the student to stay abroad for uncertain period though not for permanent settlement, it has been decided to treat them henceforth as non-residents from the FEMA angle. As non-residents, students will, in any case, be eligible for receiving remittances from India, as follows : (i) up to USD 100,000 from close relatives from India on self-declaration towards maintenance, which could include remittances towards their studies also, (ii) up to USD 1 million out of sale proceeds/balances in their account maintained with an AD in India, (iii) all other facilities available for NRIs under FEMA, (iv) educational and other loans which were availed (as residents in India) by students would be allowed to continue.

It is also clarified that these instructions do not dilute in any way the utilisation of the existing foreign exchange remittance facilities to students in regard to their academic pursuits.

Ajit Prasad Manager Press Release : 2003-2004/710

Other Bank accounts- temporary



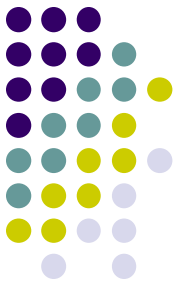
A person resident in India who is on a visit to a foreign country may open a foreign currency account with a bank outside India **during his stay abroad**. The balance in the account should be repatriated to India on return of the account holder to India.

Other Bank accounts



A person going abroad to participate in an **exhibition/ trade fair** may open a foreign currency account with a bank outside India for crediting the sale proceeds of goods. The balance should be repatriated to India within one month from the date of closure of the exhibition/ trade fair.

Liberalized Remittance Scheme



*Remittance can be consolidated among family members for all current account transactions

*Consolidation for capital account transaction possible only if asset acquired in joint name.

Liberalized Remittance Scheme



- Banks should not extend any kind of credit facilities to resident individuals to facilitate capital account remittances under the Scheme.

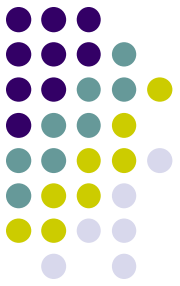
IMMOVABLE PROP. ABROAD BY RES.



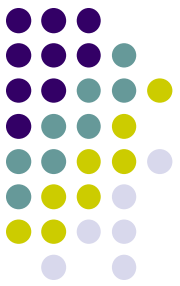
Section 6(4):

- 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 asset was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India

IMMOVABLE PROP. ABROAD BY RES.

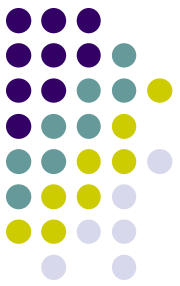


person resident in India may acquire immovable property outside India by way of **inheritance or gift or purchase** from a person resident in India who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition;



IMMOVABLE PROP. ABROAD BY RES.

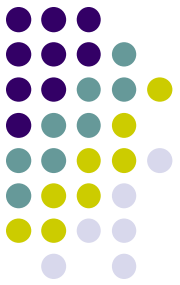
- Residents can hold property acquired as non-resident
- Can acquire property out of RFC account
- Out of LRS 2.5 Lac USD scheme
- *out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act;*



IMMOVABLE PROP. Cont..

- Resident can acquire immovable property by way of inheritance from resident/ non resident
- Can Acquire jointly with a relative who is a person resident outside India
- Such property can be transferred by way of gift to relative resident.

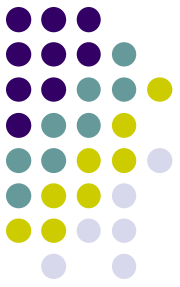
Liberalized Remittance Scheme



Remittance procedure:

- > Identify designated AD
- > Application cum Declaration in prescribed format cum Form A2 cum LRS
- > PAN
- > KYC norms to be complied
- > AD to ensure compliance

Remittances by NR on employment in India

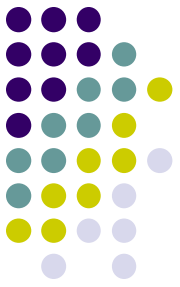


- *If resident but not permanently resident*

the entire salary net of taxes can be remitted

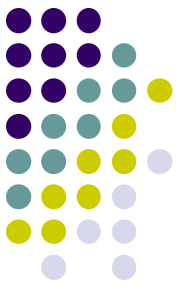
For the purpose of this item, a person resident in India on account of his employment on deputation of a specified duration (irrespective of length thereof) or for a specific job or assignment; the duration of which does not exceed three years, is a resident but not permanently resident

Resident Foreign Currency (Domestic) a/c



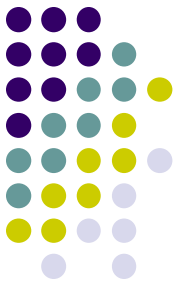
- Eligibility : Resident **individuals**
- Permitted credits :
 - i. Currency received as gift, remuneration, honorarium, Settlement of lawful obligation from any NR on visit outside by the resident or from a NR on his visit to India
 - ii. Unspent foreign exchange out of travel abroad

Resident Foreign Currency (Domestic) a/c

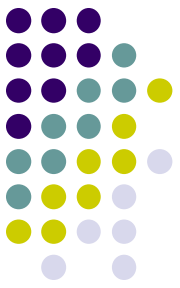


- Permitted debits :
Can be utilised for permissible current account / capital account transactions
- Type of account :
RFC (domestic) account only non-interest bearing current account
- Cheque facility available
- Convertible into NRE account on change of residential status

Resident Foreign Currency (Domestic) a/c



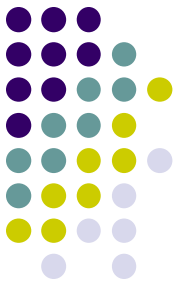
- The balance must be converted into Rupee account at the end of subsequent month.



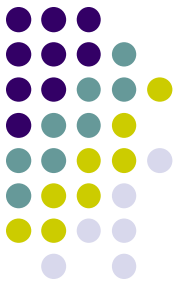
Resident Foreign Currency a/c

- **Person** resident in India can open RFC account
- Eligible credits :
 - i. Pension/superannuation from foreign employer
 - ii. Conversion of foreign asset on becoming resident
 - iii. Gift / Inheritance from non resident

Resident Foreign Currency a/c



- Utilization of RFC account :
Freely available for any purposes and is free from all restrictions of FEMA.
- Type of account : Current a/c / Saving a/c / Term Deposit a/c in case of individual.
Current a/c / Term deposit by others

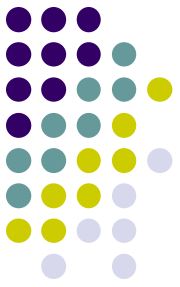


Joint Bank Accounts

- RFC accounts : jointly with close relatives on former or survivor basis.
- NRE / FCNR : jointly with resident close relatives on former or survivor basis.

Liberalized Remittances Scheme

Loan to NRI relative

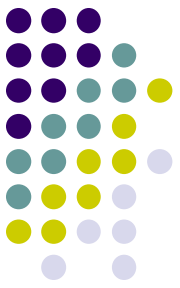


- Interest free with minimum maturity of 1 year
- Within the overall limit under LRS
- Borrowers personal / business requirements in India
- Not to be utilized for prohibited purposes
- Loan to be credited to NRO account
- Cannot be remitted outside India
- Repayment out of NRO / NRE / FCNR

Valuation

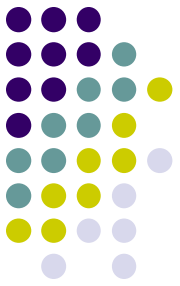


- For the purposes of investment under this Regulation by way of remittance from India **in an existing company outside India**, the valuation of shares of the company outside India shall be made -(i) where the investment is more than USD 5 (five) million, by a **Category I Merchant Banker Registered with (SEBI)**, or an Investment Banker/Merchant Banker outside India registered with the appropriate regulatory authority in the hostcountry; and(ii) in all other cases, by a **Chartered Accountant or a Certified Public Accountant**.



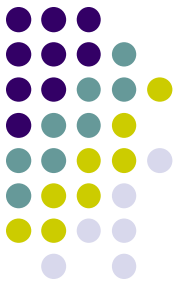
Alterations post investment

- Any alteration in shareholding pattern of the JV or WOS may be reported to the designated AD in the Annual Performance Report.
- In case of restructuring resulting in diminution the reporting is in section F of form FC



Disinvestment

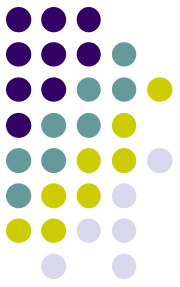
- Disinvest (partially or fully) by way of transfer/sale or by way of liquidation/merger of the JV or WOS.



disinvestment

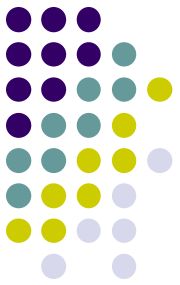
- Disinvestment allowed **after one year from the date of making first remittance** for setting up or acquiring the JV or WOS abroad.

Disinvestment proceeds and w/o

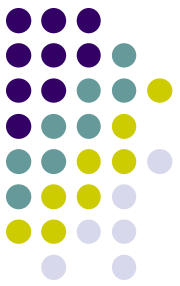


- The disinvestment proceeds shall be repatriated to India immediately and in any case **not later than 90 days** from the date of disinvestment and the same may be reported to the designated AD.

Obligations



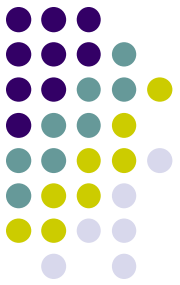
- **FC** needs to be submitted for such investment/ Disinvestment
- UIN to be obtained from RBI before sending remittance/ acquisition of shares
- All transactions of a particular UIN to be routed through same AD
- **APR** is required to be filed by 31/12. Now to be attested by CA.



Obligations

- Where more than one investor in same entity, only one UIN to be obtained but multiple FC.
- Share certificates to be submitted within 6 months
- Any change in the shareholding pattern should be intimated within 30 days.
- Disinvestment to be reported within 30 days of receipts of remittance

Obligations



- In case more than one person resident in India is investing in the same foreign entity, Form FC shall be submitted individually by all such investing persons to the designated branch of the AD bank. The AD bank should report the forms online indicating details of each party. The Reserve Bank would allot only one UIN to a foreign entity.

Obligations



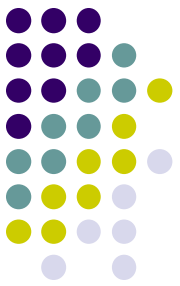
- Acquisition of foreign securities by way of inheritance or gift in accordance with paragraph 2 of Schedule III of OI Rules shall not be reckoned towards the LRS limit and hence, shall not require reporting under LRS but shall be reported in form FC.

LRS-TCS



- Latest development is introduction of sub-section 206C(1G) where the AD will also collect tax at source while sending remittance under LRS
- Circular no. 10 of 2023 dated 30/06/2023 of CBDT

LRS-TCS



Nature of payment (1)	Earlier rate before Finance Act, 2023 (2)	New rate w.e.f 1st October, 2023 (3)
LRS for education, financed by loan from financial institution	Nil upto Rs 7 lakh 0.5% above Rs 7 lakh	Nil upto Rs 7 lakh 0.5% above Rs 7 lakh
LRS for Medical treatment/ education (other than financed by loan)	Nil upto Rs 7 lakh 5% above Rs 7 lakh	Nil upto Rs 7 lakh 5% above Rs 7 lakh
LRS for other purposes	Nil upto Rs 7 lakh 5% above Rs 7 lakh	Nil upto Rs 7 lakh 20% above Rs 7 lakh
Purchase of Overseas tour program package	5% (without threshold)	5% till Rs 7 lakh, 20% thereafter