

CLUSTER 11

The Foreign Exchange Management Act, 1999

1. **Printex Computer is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its headquarters in Pune. It has a branch in Dubai which is controlled by the headquarters in Pune. What would be the residential status under FEMA, 1999 of printer units in Pune and that of Dubai branch?**

Ans. Section 2(u) defines a 'person' as

- (a) A company
- (b) Any agency, office or branch owned by a 'person'.

Section 2(v) defines a 'person resident in India' as

- (a) Any person or body corporate registered or incorporated in India.
- (b) An office, branch or agency in India owned or controlled by a person resident outside India.
- (c) An office, branch or agency outside India owned or controlled by a person resident in India.

In the given case, Printex Computers (Singapore) its headquarters in Pune as well as Dubai Branch is a 'person', Therefore, residential status under FEMA shall be determined for each of them separately.

Printex Computers (Singapore) does not fall under the definition of a 'person resident in India'. Therefore, Printex Computers (Singapore) is a person resident outside India.

The Pune Headquarters of Printex Computers is a 'person resident in India' since it falls under the clause 'an office, branch or agency in India owned or controlled by a person resident outside India'.

The Dubai branch of Printex Computers (Singapore), though not owned, is controlled by the Pune headquarters. The Dubai branch is a 'person resident in India' since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'.

2. **Examine, with reference to the provisions of the Foreign Exchange Management Act, 1999, the residential status of the branches mentioned below:**

(i) MKP Limited, an Indian company having its Registered Office at Mumbai, India established a branch at New York U.S.A. on 1st April, 2004.

(ii) WIP Ltd., a company incorporated and registered in London established a branch at Chandigarh in India on 1st April, 2004.

(iii) WIP Ltd.'s Singapore branch which is controlled by its Chandigarh branch. [CA Final May 2005]

Ans. Section 2(u) defines a 'person'. As per this definition, the following shall be covered in the definition of a 'person':

- (a) A company
- (b) Any agency, office or branch owned by a 'person'.

Section 2(v) defines a 'person resident in India'. As per this definition, the following shall be covered in the definition of a person resident in India':

- (a) Any person or body corporate registered or incorporated in India.
- (b) An office, branch or agency in India owned or controlled by a person resident outside India.
- (c) An office, branch or agency outside India owned or controlled by a person resident in India.

The answer to the given problem is as under:

(i) MKP Limited as well as the New York branch of MKP Limited is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

MKP Limited is incorporated in India. Therefore, it is a 'person resident in India'.

MKP Limited (a 'person resident in India') has established a branch outside India. Therefore, the New York branch of MKP Limited falls under the clause 'an office, branch or agency outside India owned or controlled by a person residential India' and so the New York branch is a 'person resident in India'.

(ii) WIP Ltd. as well as Chandigarh branch of WIP Ltd. is a 'person'. WIP Ltd. (a foreign company) does not fall under any of the clauses of the definition of a 'person resident in India'. Therefore, WIP Ltd. is a person resident outside India. The Chandigarh branch of WIP Ltd. is a 'person resident in India' since it falls under the clause an office, branch or agency in India owned or controlled by a person resident outside India'.

(iii) The Singapore branch of WIP Ltd., though not owned, is controlled by the Chandigarh branch. The Singapore branch is a person resident in India' since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'.

3. Pamtop is a London based company having several business units all over the world. It has a manufacturing unit called Laptop with headquarters in Bengaluru. It has a branch in Seoul. South Korea which is controlled by the headquarters in Bengaluru. What would be the residential status under FEMA 1999 of Laptop in Bengaluru and that of Seoul branch? [CA Final Nov 2009]

Ans: Section 2(u) defines a 'person' as

(a) A company

(b) Any agency, office or branch owned by a 'person'.

Section 2(v) defines a 'person resident in India' as

(a) Any person or body corporate registered or incorporated in India.

(b) An office, branch or agency in India owned or controlled by a person resident outside India.

(c) An office, branch or agency outside India owned or controlled by a person resident in India.

In the given case. Pamtop (London), its headquarters in Bengaluru as well as Seoul Branch is a 'person', Therefore, residential status under FEMA shall be determined for each of them separately.

Pamtop (London) does not fall under any of the clauses of the definition of a 'person resident in India', Therefore Pamtop(London) is a person resident outside India.

The Bengaluru Headquarters of Pamtop (London) is a 'person resident in India' since it falls under the clause an office, branch or agency in India owned or controlled by a person resident outside India.

The Seoul branch of Pamtop (London), though not owned, is controlled by the Bengaluru headquarters. The Seoul branch is a person resident in India' since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'.

4. Examine whether the following branches can be considered as a person resident in India under the Foreign Exchange Management Act;

(i) ABC Limited a company incorporated in India established a branch at London on 1st January, 2003.

(ii) M/s XYZ, a foreign company, established a branch at New Delhi on 1st January, 2003. The branch at New Delhi controls a branch at Colombo. [CA Final May 2003]

Ans. Section 2(u) defines a 'person' as

(a) A company

(b) Any agency, office or branch owned by a 'person'.

Section 2(v) defines a 'person resident in India' as

(a) Any person or body corporate registered or incorporated in India.

(b) An office, branch or agency in India owned or controlled by a person resident outside

India.

(c) An office, branch or agency outside India owned or controlled by a person resident in India.

The answer to the given problem is as under:

(i) ABC Limited as well as the London branch of ABC Limited is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

ABC Limited is incorporated in India. Therefore, it is a 'person resident in India'.

ABC Limited (a 'person resident in India') has established a branch outside India. Therefore, the London branch of ABC Limited falls under the clause 'an office, branch or agency outside India owned or controlled by a person residential India' and so the London branch is a 'person resident in India'.

(ii) M/s XYZ, New Delhi branch as well as Colombo branch of M/s XYZ is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

M/S XYZ (a foreign company) does not fall under any of the clauses of the definition of a 'person resident in India. Therefore, M/s XYZ is a person resident outside India.

The New Delhi branch of M/s XYZ is a 'person resident in India' since it falls under the clause 'an office, branch or agency in India owned or controlled by a person resident outside India'.

The Colombo branch of M/s XYZ, though not owned, is controlled by the New Delhi branch.

The Colombo branch is a person resident in India" since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'.

5. Examine with reference to the provisions of the Foreign Exchange Management Act, 1999, the residential status of the branches mentioned below:

(i) NNM Ltd. an Indian Company having its registered office at Mumbai, India established a branch at New York U.S.A. on 1st April 2005.

(ii) DDI Ltd. a company incorporated and registered in London established a branch at Kanpur in India on 1st April 2005.

(iii) DDI Ltd. has a branch office at Singapore which is controlled by its Kanpur branch [CA Final May, 2002]

Ans. Section 2(u) defines a 'person' as

(a) A company

(b) Any agency, office or branch owned by a 'person'.

Section 2(v) defines a 'person resident in India' as

(a) Any person or body corporate registered or incorporated in India.

(b) An office, branch or agency in India owned or controlled by a person resident outside India.

(c) An office, branch or agency outside India owned or controlled by a person resident in India.

(i) NNM Ltd. as well as the New York branch of NNM Ltd. is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

NNM Ltd. is incorporated in India. Therefore, it is a 'person resident in India'.

NNM Ltd. (a person resident in India') has established a branch outside India. Therefore, the New York branch of NNM Ltd. falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India 'and so the New York branch is a "person resident in India'.

(ii) DDI Ltd. as well as Kanpur branch of DDI Ltd. is a 'person'. Therefore, residential status under FEMA shall be determined for each of them separately.

DDI Ltd. (a foreign company) does not fall under any of the clauses of the definition of a 'person resident in India'.

Therefore, DDI Ltd. is a person resident outside India.

The Kanpur branch of DDI Ltd, is a 'person resident in India' since it falls under the clause 'an office, branch or agency in India owned or controlled by a person resident outside India'.
(iii) The Singapore branch of DDI Ltd., though not owned, is controlled by the Kanpur branch. The Singapore branch is a person resident in India' since it falls under the clause 'an office, branch or agency outside India owned or controlled by a person resident in India'.

6. Mr. X resided in India during the financial year 2000-2001 for less than 183 days. He came to India on 1st April, 2001 for employment.

What would be his residential status during the financial year 2001-2002 under FEMA, 1999? [CA Final Nov 2002]

Ans. The residential status of an individual for a particular financial year is determined with reference to his residence in India in the immediately preceding financial year. In the problem given, Mr. X resided in India for less than 183 days in the financial year 2000-01. Therefore, for the financial year 2001-02 he is a 'Person resident outside India'

7. Mr. X resided in India during the financial year 1999-2000. He left India on 1st August, 2000 for United States of America for pursuing higher studies for three years. What would be his residential status during the financial year 2000-2001 under FEMA, 1999? [CA Final Nov 2002]

Ans. Mr. X resided in India for the whole year in the preceding financial year, i.e. 1999-2000. Therefore, for the financial year 2000-01 he is a 'Person resident in India'. His leaving India for pursuing higher studies for 3 years would not exclude him from the definition of 'Person resident in India' because he is not going outside India for any of the following purposes:

- (i) for or on faking up employment outside India, or
- (i) for carrying on outside India business or vocation outside India, or
- (ii) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

8. Mr. Mickey is a citizen of America. He came to India for the first time on October 5, 2000 for employment and stayed in India till 31.3.2002. What would be his residential status during the financial years 2000-01, 2001-02 and 2002-03? What would be the conditions in which he may be treated as a person resident outside India in the financial year 2002-03?

Ans. The given problem can be answered as under :

(a) Financial year 2000-01. Mr. Mickey came to India for the first time on October 5, 2000. It means he did not reside in India for anytime in the financial year 1999-2000. Therefore, for the financial year 2000-01 he is a 'Person resident outside India'.

(b) Financial year 2001-02. He resided in India for less than 183 days in the financial year 2000-01. Therefore, for the financial year 2001-02 he is a 'Person resident outside India'.

(c) Financial year 2002-03. Since he resided in India for more than 182 days in the financial year 2001-02, he shall be a 'Person resident in India' for the financial year 2002-03.

He shall be regarded as a 'Person resident outside India' for the financial year 2002-03 if he goes out of India-

-for taking up employment outside India; or

-for carrying on outside India a business or vocation outside India; or

-for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

9. Mr. Ram had resided in India during the financial year 1999-2000 for less than 183 days. He again came to India on 1st May, 2000 for higher studies and business and stayed up to 15th July, 2001. State whether-

(a) Citizenship is relevant for determining the residential status under the Foreign Exchange Management Act, 1999?

(b) Mr. Ram can be considered Person resident in India' during the financial year 2000-2001. [CA Final Nov 2002]

Ans.

(a) A person residing for more than 182 days in India in preceding financial year is a 'person resident in India' as per FEMA. Therefore, citizenship is not relevant for determining the residential status of a person under FEMA.

(b) The residential status of an individual for a particular financial year is determined with reference to his residence in India in the immediately preceding financial year. In the problem given, Mr. Ram resided in India for less than 183 days in the financial year 1999-2000. Therefore, for the financial year 2000-2001 he is a 'Person resident outside India' notwithstanding the purpose or duration of his stay in India during the financial year 2000-2001. Unless an individual resides in India for more than 182 days in the preceding financial year, he cannot be termed as a person resident in India.

10. Mr. Sekhar resided for a period of 150 days in India during the financial year 2003-2004 and thereafter went abroad. He came back to India on 1st April, 2004 as an employee of a business organization. What would be his residential status during the financial year 2004-2005? [CA Final Nov 2004]

OR

Mr. Sekhar resided for a period of 150 days in India during the financial year 2006-2007 and thereafter went abroad. He came back to India on 1st April, 2007 as an employee of a business organization. What would be his residential status during the financial year 2007-2008? [CA Final May 2007]

OR

Mr. Sekhar resided in India for a period of 150 days during the financial year 2007-2008 and thereafter went abroad. He came back to India on 1st April 2008 as an employee of a business organization. What would be his residential status under Foreign Exchange Management Act, 1999 during the financial year 2008-2009? [CA Final June 2009]

Ans. The residential status of an individual for a particular financial year is determined with reference to his residence in India in the immediately preceding financial year. In the problem given, Mr. Sekhar resided in India for less than 183 days in the financial year 2003-2004. Therefore, for the financial year 2004-05 he is a 'Person resident outside India' irrespective of the purpose or duration of his stay. Unless an individual resides in India for more than 182 days in the preceding financial year, he can in no case be termed as a person resident in India.

11. Mr. Ruchi resided for a period of 170 days in India during the financial year 2008-09 and thereafter went abroad. He came back to India on 1st April, 2009 as an employee of a business organisation. What would be his residential status during financial year 2009-10 under Foreign Exchange Management Act, 1999? [CA Final Nov 2008]

Ans. The residential status of an individual for a particular financial year is determined with reference to his residence in India in the immediately preceding financial year. In the problem given, Mr. Ruchi resided in India for less than 183 days in the financial year 2008-2009. Therefore, for the financial year 2009-10 he is a Person resident outside India' irrespective of the purpose or duration of his stay in India. If an individual does not reside in India for more than 182 days in the preceding financial year, he cannot be termed as a person resident in India.

12. During the financial year 2000-01, Mr. Srinivas visited India for the first time for a holiday. He stays in India for more than 182 days and goes back on 1st January 2001. He again

comes to India on August 1, 2001 for the purpose of business. He intends to wind up his business and leave India on 31st December, 2002, and plans to take up employment outside India. What would be his residential status during the financial years 2000-01, 2001-02 and 2002-03?

Ans. The given problem can be answered as follows:

(a) Financial year 2000-01. Mr. Srinivas came to India for the first time in the financial year 2000-01. It means he did not reside in India for anytime in the financial year 1999-2000. Therefore, for the financial year 2000-01 he is a Person resident outside India'.

(b) Financial year 2001-02. He resided in India for more than 182 days in the financial year 2000-01. Also, during the financial year 2001-02 he has been in India for the purpose of business. Therefore, for the financial year 2001-02 he is a Person resident in India".

(c) Financial year 2002-03. He resided in India for more than 182 days in the financial year 2001-02. However, he left India for the purpose of taking up employment outside India. Therefore, he shall be a 'Person resident outside India' for the financial year 2002-03.

13. During the financial year 2010-11, Mr. Bhattacharyya resided in India for a period of 180 days and thereafter went abroad. On 1st April, 2011 Mr. Bhattacharyya came back to India as an employee of a business organization. Decide the residential status of Mr. Bhattacharyya during the financial year 2010-11 under the provisions of the Foreign Exchange Management Act, 1999 [CA Final May 2011]

Ans. The residential status of an individual for a particular financial year is determined with reference to his residence in India in the immediately preceding financial year.

For the financial year 2011-12, since Mr. Bhattacharyya did not reside for more than 182 days in India in the preceding financial year, viz. 2010-2011, he is a person resident outside India. It is immaterial that Mr. Bhattacharyya stayed in India as an employee of a business organization during the financial year 2011-12.

The residential status of Mr. Bhattacharyya for the financial year 2010-11 cannot be determined since the period for which he resided in India during the preceding financial year (viz. 2009-10) is not given.

14. Mr. Kishore resided in India during the Financial Year 2009- 2010 for less than 182 days. He came to India on 1st April, 2010 for business. He closed down his business on 30th April, 2011 and left India on 30th June, 2011 for the purpose of employment outside India. Decide the residential status of Mr. Kishore during the Financial Years 2010-2011 and 2011-2012 under the provisions of the Foreign Exchange Management Act, 1999 [CA Final May 2013]

Ans. The residential status of an individual for a particular financial year is determined with reference to his residence in India in the immediately preceding financial year.

Residential status of Mr. Kishore for financial year 2010-2011

For the financial year 2010-11, Mr. Kishore is a 'Person resident outside India' since he did not reside in India for more than 182 days in the preceding financial year, viz. 2009-2010.

Residential status of Mr. Kishore for financial year 2011-2012

Mr. Kishore resided in India for more than 182 days in the preceding financial year, viz. 2010-2011. Also, he came to India for the purpose of business. Therefore, he became a person resident in India. However, he left India for employment outside India on 30th June, 2011, and so he ceased to be a person resident in India.

Thus, Mr. Kishore was a person resident in India only up to 30th June, 2011 and not for the entire financial year 2011-2012.

15. Mr. Karan is an Indian Citizen. He has been residing in India since his birth. He left India for employment in Australia on 25th February, 2001. The contact of employment is for 2

years. He comes back on 24th February, 2003. What is his residential status for the financial years 2000-01, 2001-02, 2002-03 and 2003-04?

Ans. The given problem can be answered as under:

- (a) Financial year 2000-01. Mr. Karan resided in India for the whole year in the preceding financial year, i.e. 1999-2000. However, he leaves India for employment outside India in the current financial year, i.e. 2000-01. It is immaterial whether the period of employment is certain or not. Therefore, for the financial year 2000-01 he is a 'Person resident outside India'.
- (b) Financial year 2001-02. Mr. Karan resided for more than 182 days in the preceding financial year, i.e. 2000-01. However, he has left India for employment outside India. Therefore, he is a Person resident outside India'.
- (c) Financial year 2002-03. Mr. Karan did not reside at all in the preceding financial year, i.e. 2001-02. Therefore, he shall be a Person resident outside India' for the financial year 2002-03.
- (d) Financial year 2003-04. Mr. Karan resided for less than 183 days in the preceding financial year, i.e. 2002-03. Therefore, he shall be a 'Person resident outside India' for the financial year 2003-04.

16. Mr. Chauhan is an Indian Citizen. He has been residing in India since his birth. He left India on 25th February, 2001 for pursuing business management in America for 2 years. He comes back on 24th February, 2003. What is his residential status for the financial years 2000-01, 2001-02, 2002-03 and 2003-04?

Ans. The given problem can be answered as under:

- (a) Financial year 2000-01. Mr. Chauhan resided in India for the whole year in the preceding financial year, i.e. 1999-2000. His leaving India for pursuing business management for 2 years would not exclude him from the definition of Person resident in India' because he is not going outside India for any of the following purposes:
- (i) for or on taking up employment outside India, or
- (ii) for carrying on outside India a business or vocation outside India, or
- (iii) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.
- Therefore, Mr. Chauhan is a person resident in India for the financial year 2000-01.
- (b) Financial year 2001-02. He resident in India for more than 182 days in the preceding financial year i.e., 2001-02. Therefore, he is a 'Person resident in India' for the financial year 2001-02. It is immaterial that he is outside India for the whole financial year 2001-02.
- (c) Financial year 2002-03. Mr. Chauhan did not reside in India at all in the preceding financial year, i.e., 2001-02. Therefore, he shall be a 'Person resident outside India' for the financial year 2002-03.
- (d) Financial year 2003-04. Mr. Chauhan resided for less than 183 days in the preceding financial year, i.e., 2002-03. Therefore, he shall be a 'Person resident outside India' for the financial year 2003-04.

17. Forex Dealers Ltd. is an Authorized Person within the meaning of Foreign Exchange Management Act, 1999 Reserve Bank of India issued certain directions to the said Authorized Person to file certain returns, which it failed to file. You are required to state the penal provisions to which they said Authorized Person has exposed itself. [CA Final May 2007, Nov. 2004]

OR

The Reserve Bank of India certain directions to Dream Construction Limited, an authorized person under the Foreign Exchange Management Act, 1999 to file certain returns. The Company failed to file the said returns. Decide, as to what penal provisions are applicable against the said authorized person under the said Act. [CA Final May 2010]

Ans. Penalty for contravention -

When can penalty be levied? The penalty may be levied in the following cases:

- (i) Where an authorized person contravenes any direction given by the Reserve Bank under this Act.
- (ii) Where an authorized person fails to file any return as directed by the Reserve Bank.

Amount of penalty.

- (i) The penalty shall not exceed Rs. 10,000.
- (ii) Where any contravention is a continuing one, further penalty not exceeding Rs. 2,000 per day may be levied.

18. The Reserve Bank of India receives a complaint that an authorized person has submitted incorrect statements and information to the Reserve Bank of India in respect of receipt and utilization of foreign exchange. Explain the powers of the Reserve Bank of India with regard to inspection of records of the above authorized person in respect of the above complaint. Referring to the provisions of Foreign Exchange Management Act, 1999, state the duties of the above authorized person. [CA Final May 2010]

Ans. Power of Reserve Bank to inspect authorized person (Section 12)

(a) Inspection by Reserve Bank: The Reserve Bank may, at any time, cause an inspection to be made, by any officer of the Reserve Bank specially authorized in writing by the Reserve Bank in this behalf, of the business of any authorized person as may appear to it to be necessary or expedient for the purpose of –

- (i) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;
- (ii) obtaining any information or particulars which such authorized person has failed to furnish on being called upon to do so;
- (iii) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made hereunder.

(b) Duty to produce books and furnish information: It shall be the duty of every authorized person to produce before the officer authorized by Reserve Bank to make an inspection of the authorized person, such books, accounts and other documents in his custody or power and to furnish any statement or information as the said officer may require within such time and in such manner as the said officer may direct.

19. Explain the meaning of the term 'Current Account Transaction' and the right of a citizen to obtain Foreign Exchange under the Foreign Exchange Management Act, 1999. [CA Final May 2001]

Ans. 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-

- (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.

No restriction on current account transactions unless prescribed (Section 5)

Foreign exchange is freely available for a current account transaction if the following two conditions are satisfied:

- (a) The transaction is not prohibited by the Rules.
- (b) The transaction is within the ceiling, if any, prescribed by the Rules, or the permission of the Reserve Bank of India or the Central Government, as the case may be, is obtained.

20. Mr. G, an Indian National desires to obtain foreign exchange on current account transactions for the following purposes:

(i) Payment of commission on exports made towards equity investment in wholly owned subsidiary abroad of an Indian company.

(ii) Remittance of hiring charges of transponder.

Advise G whether he can obtain the foreign exchange and, if so, under what conditions?

[CA Final Nov 2001]

Ans: If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

(i) 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

(ii) As per Rule 4 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange for remittance of hiring charges of transponder requires the prior approval of the Central Government. However, no approval of the Central Government is required if the payment is made out of the funds held in Resident Foreign Currency Account.

21. Mr. Sane, an Indian National desires to obtain foreign exchange for the following purposes:

(i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.

(ii) US Dollar 1,00,000 for sending a cultural troupe on a tour of U.S.A.

(iii) US Dollar 50,000 for meeting the expenses of his business tour to Europe.

Advise him whether he can get foreign exchange and if so, under what conditions? [CA Final May 2008, May 2004]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

(i) As per Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000, remittances out of lottery winnings. Therefore, Mr. Sane cannot obtain foreign exchange of US Dollar 50,000 out of winnings of a lottery ticket is prohibited.

(ii) As per Rule 4 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange for cultural tour requires the prior approval of the Central Government. Therefore, Mr. Sane can obtain US Dollar 1,00,000 for sending a cultural troupe on a tour of U.S.A. with the prior approval of Central Government. However, no approval of the Central Government is required if the payment is made out of the funds held in Resident Foreign Currency Account.

(iii) As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to US Dollar 2,50,000 for travel for business (referred to as 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. Sane can obtain US Dollar 50,000 for business tour to Europe without any approval of the Reserve Bank of India.

22. Mr. Ramesh of Nagpur wants to travel to Nepal and for this purpose proposes to draw foreign exchange. Specify-

(i) Can Mr. Ramesh draw any foreign exchange for his journey?

(ii) What are the purposes for which foreign exchange drawal is not allowed for current account transactions? [CA Final Nov 2002]

Ans.

(i) Rule 3 of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits drawal of foreign exchange (by any person) for the purpose of travel to Nepal and/or Bhutan. Therefore, Mr. Ramesh cannot draw any foreign exchange for journey to Nepal.

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

1. Remittance out of lottery winnings.
2. Remittance of income from racing/riding, etc., or any other hobby.
3. Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes. etc.
4. Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
6. 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.
7. Payment related to 'Col Back Services' of telephones.
8. Remittance of interest income on funds held in Non-resident Special Rupee Scheme Account.
9. Payment for travel to Nepal and/or Bhutan.
10. Any transaction with a person resident in Nepal or Bhutan.

23. Mr. Atul, an Indian National desires to obtain US Dollar 10,000 for payment for goods purchased from a party situated in Nepal. Advise him, he can get the Foreign Exchange and under what conditions. [CA Final June 2009, May 2007, Nov 2004]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits drawal of foreign exchange in respect of any transaction with a person resident in Nepal or Bhutan. Therefore, Mr. Atul cannot obtain foreign exchange of US Dollar 10,000 for payment of goods purchased from a party situated in Nepal.

24. Mr. F, an Indian National desires to obtain foreign exchange for the following purposes:

(i) Payment of US \$ 10,000 as commission on exports under Rupee State Credit Route.

(ii) US \$ 30,000 for a business trip to U.K.

(iii) Remittance of US \$ 2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia.

Advise him, if he can get the Foreign Exchange and under what conditions. [CA Final May 2005]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

(i) 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.

(in) As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to US Dollar 2,50,000 for travel for business (referred to as '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.

(iii) As per Rule 4 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange exceeding US\$ 1,00,000 for the purpose of remittance of prize money/sponsorship of sports activity abroad by a person other than International / National / State level sports bodies requires the prior approval of the Central Government. In the given case, the drawal of US \$ 2,00,000 for payment as prize money to the winning team in a Hockey Tournament to be held in Australia is organized by Mr. F, who is an Indian National (i.e. not any International, National or State level Sports Body). Therefore, Mr. F can obtain US Dollar 1,00,000 without any permission, but for drawal of additional US Dollar 1,00,000., prior approval of the Central Government is required. However, prior approval of the Central Government shall not be required if drawal of additional US Dollar 1,00,000 is made out of funds held in Resident Foreign Currency (RFC) Account.

25. Mr. Loma, an Indian National desires to obtain foreign exchange for the following purposes:

(I) Payment of commission on exports under Rupee State Credit Route.

(ii) Gift remittance exceeding US Dollars 10,000.

Advise him whether he can get foreign exchange and if so, under what condition? [CA Final Nov 2006]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

(i) 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 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.

(I) As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to US Dollar 2,50,000 for gift or donation (referred to as '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. Loma can obtain more than US Dollar 10,000 for gift without any approval of the Reserve Bank of India provided the total amount drawn by him during the entire financial year does not exceed US Dollar 2,50,000.

26. State which kind of approval is required for the following transactions under the Foreign Exchange Management Act, 1999:

(i) X, a film star, wants to perform along with associates in New York on the occasion of Diwali for Indians residing of New York, Foreign exchange drawal to the extent of US dollars 20,000 is required for this purpose.

(ii) Y wants to get his heart surgery done at UK. Upto what limit foreign exchange can be drawn by him and what are the approvals required?

(iii) I, wants to pursue a course in fashion design in Paris. The foreign exchange drawal is US dollars 20,000 towards tuition fees and US dollars 30,000 for incidental and stay expenses for studying abroad. [CA Final May 2006]

OR

State the kind of approval required for the following transactions under the Foreign Exchange Management Act, 1999:

(i) L, a famous playback singer of India wants to perform a musical night in Paris for Indians residing there. Foreign exchange to the extent of US D 20,000 is required for this purpose.

(ii) N wants to pursue a course in business management in New York. He wants to draw US D 50,000 towards expenses for studying abroad. [CA Final June 2009]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

(i) As per Rule 4 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange for cultural tour requires prior approval of the Central Government, irrespective of the amount of foreign exchange required. Therefore, drawal of US\$ 20,000 by X can be made only with the prior approval of CG.

(ii) As per Rule 5 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to US Dollar 2,50,000 for meeting expenses of medical treatment (referred to as the Liberalized Remittance Scheme). However, an individual may draw more than US Dollar 2,50,000 under the Liberalized Remittance Scheme if it is so required by the medical institute offering the medical treatment. Therefore, Mr. Y can obtain US Dollar 2,50,000 for his heart surgery without any approval of the Reserve Bank of India. Also, if the expenses of his heart surgery exceeds US Dollar 2,50,000, such drawal may also be made without any approval of the Reserve Bank of India provided

such amount is required by the medical institute offering the medical treatment (viz. heart surgery) to Mr.Y.

(iii) As per Rule 5 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to US Dollar 2,50,000 for studies abroad (referred to as 'the Liberalized Remittance Scheme'). However, an individual may draw more than US Dollar 2,50,000 under the Liberalized Remittance Scheme if it is so required by the university or educational institution abroad. Therefore, Mr. L can obtain US Dollar 20,000 towards tuition fees and US dollars 30,000 for incidental and stay expenses without any approval of the Reserve Bank of India.

27. State the kind of approval required for the following transactions under the Foreign Exchange Management Act, 1999:

(i) X wants to draw USD 20,000 to make donation to a charitable trust situated in South Korea.

(ii) M requires USD 5,000 to make payment related to 'call back services' of telephone. [CA Final June 2009]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

(i) As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules 2000 individuals can draw foreign exchange up to US Dollar 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.

(ii) Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules 2000 prohibits drawal of foreign exchange for payments related to call back services of telephones. Therefore, payment of US \$ 5,000 for callback services of telephone is prohibited.

28. Drawal of foreign exchange for call back services of telephone, studies abroad and cultural troupe Whether permissible?

Mr. Basu desires to draw foreign exchange for the following purposes:

(i) Payment related to Call back services of telephones

(ii) USD 1,20,000 for studies abroad on the basis of estimates given by the foreign university

(iii) USD 25,000 for sending a cultural troupe on a tour of Europe. [CA (Final) Nov 2008]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

(i) As per Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange for payments related to call back services of telephones is prohibited. Therefore, payment related to call back services' of

telephone is prohibited.

(ii) As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to US Dollar 2,50,000 for studies abroad (referred to as the Liberalized Remittance Scheme'). However, an individual may draw more than US Dollar 2,50,000 under the Liberalized Remittance Scheme if it is so required by the university or educational institution abroad. Therefore, Mr. Basu Can obtain Us Dollar 1,20,000 for studies abroad without any approval of the Reserve Bank of India.

(iii) As per Rule 4 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange for cultural tours requires the prior approval of the Central Government. Therefore, Mr. Basu can obtain USD 25,000 for sending a cultural troupe on a tour of Europe with the prior approval of Central Government. However, no approval of the Central Government is required if the payment is made out of the funds held in Resident Foreign Currency Account.

29. Examine the provisions of Foreign Exchange Management Act, 1999 and advise whether the approval of Central Govt. is needed where X wants to remit certain sum of money out of lottery winnings.

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits remittances out of lottery winnings. Therefore, Mr. X cannot obtain any foreign exchange out of winnings of a lottery ticket.

30. Examine with reference to the Provisions of the Foreign Exchange management Act. 1999 and the rules made there under whether foreign exchange can be drawn for the following purposes:

(i) Mr. Gopal, a cine artist in India proposes to organize a cultural programme at Dubai and requires to c aw foreign exchange US \$ 1,00,000for this purpose.

(ii) Mr. Shah proposes to visit United States on a business tour and for this purpose he wants to draw foreign exchange US \$ 40,000 for meeting expenses. [CA Final Nov 2013]

Ans: If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

(i) As per Rule 4 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, drawal of foreign exchange for cultural fours requires the prior approval of the Central Government.

Therefore, in the given case, prior approval of the Central Government is required for drawal of foreign exchange of US \$1.00.000 for organizing the cultural programme. However, approval of the Central Government is not required if the payment is made out of funds held in Resident Foreign Currency Account.

(ii) As per Rule 5 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to US Dollar 2,50,000 to travel for business (referred to as 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. Shah can obtain US Dollar 40,000 for business tour to United States without any approval of the Reserve Bank of India.

31. (i) Mr. Phas won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in USA. Advise whether such remittance is possible under the Foreign Exchange Management Act, 1999.

(ii) Mr. Z is unwell and would like to have a kidney transplant done in USA. He would like to know the amount that can be drawn as foreign exchange for the medical treatment abroad. [CA Final Nov 2014]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

(i) As per Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000, remittances out of lottery winnings is prohibited. Therefore, Mr. P cannot obtain foreign exchange of US Dollar 20,000 out of winnings of a lottery ticket.

(ii) As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to US Dollar 2,50,000 for meeting the expenses of medical treatment abroad and various other purposes prescribed under Schedule III (referred to as the Liberalized Remittance Scheme). However, an individual may draw more than US Dollar 2,50,000 under the Liberalized Remittance Scheme if it is so required by the medical institute offering the medical treatment. Therefore, Mr. Z can obtain US Dollar 2,50,000 for his kidney transplantation without any approval of the Reserve Bank of India. Also, if the expenses of his kidney transplantation exceeds US Dollar 2,50,000, such drawal may also be made without any approval of the Reserve Bank of India provided such amount is required by the medical institute offering the medical treatment (viz. kidney transplantation) to Mr. Z.

32. Mr. T. Raghava has secured admission in a reputed and recognized university in Germany, for the study of higher and technical education, outside India. After arrival in Germany, he has gone ill and wants medical treatment facility in a reputed German hospital. He desires to apply to the Government of India for availing the additional remittance beyond the limit approved for foreign currency exchange facility. He has already enjoyed the permitted facility of foreign exchange for studies abroad, for the said financial year. Decide the following to the facts given in the question as per the provisions of the Foreign Exchange Management Act, 1999:

(i) As an individual, to what extent Mr. T. Raghava may avail foreign exchange facilities for higher and technical study in Germany.

(ii) Can Mr. T. Raghava avail the facility of additional remittance in foreign exchange, beyond the limit, for the medical treatment. [CA Final Nov 2017]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such

reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

As per Rule 5 read with Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000, individuals can draw foreign exchange up to US Dollar 2,50,000 for studies abroad and for meeting the expenses of medical treatment abroad and various other purposes prescribed under Schedule III referred to as the Liberalized Remittance Scheme' However, under the Liberalized Remittance Scheme, an individual may draw more than US Dollar 2,50,000 for the medical treatment abroad if it is so required by the medical institute offering the medical treatment, or for studies abroad if it is so required by the university.

In the light of provisions of these rules, the answer to the given problem is as follows:

(i) Mr. T. Raghava may avail foreign exchange facilities for higher and technical study in Germany up to US Dollar 2,50,000 without obtaining any approval. Drawal of foreign exchange exceeding US Dollar 2,50,000 is also possible if such higher amount is required by the university. However, drawal of any amount exceeding the amount required by the university is possible only with the prior approval of the RBI.

(ii) The aggregate amount of drawal of foreign exchange for medical treatment in Germany and studies in Germany has to be within the limit of US Dollar 2,50,000. However, if the aggregate of such drawal exceeds US Dollar 2,50,000, such drawal shall be permitted if it is so required by the medical institute in Germany which is offering the medical treatment. However, drawal of any amount exceeding the amount required by the medical institute offering the medical treatment is possible only with the prior approval of the RBI.

33. 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.

(i) Is such "chair" creation permissible?

(ii) What is the maximum amount that can be donated for such chair?

(iii) Any formalities to be complied with? [CA Final Nov 2016]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, any person other than a resident individual shall require prior approval of the Reserve Bank of India if such person intends to make a donation exceeding 1% of its foreign exchange earnings during the previous 3 financial years or USD 50,00,000, whichever is less, for creation of chairs in reputed educational institutes.

The given problem is answered as follows:

(i) Yes, the creation of chairs is permissible as per Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

(ii) The maximum amount that can be donated for creation of chairs is lower of-

(a) 1% of foreign exchange earnings of Lifesys Limited during the previous 3 financial years; or

(b) USD 50,00,000.

However, donation exceeding the above amount may be made with the prior approval of

the Reserve Bank of India.

(iii) If the amount of donation is up to 1% of foreign exchange earnings of Life sys Limited during the previous 3 financial years or USD 50,00,000, whichever is lower, no formalities are to be complied with.

However, if the amount of donation exceeds the abovementioned amount, then, the prior approval of the Reserve Bank of India shall be required.

34. Mr. Rohan, an Indian Resident individual desires to obtain Foreign Exchange for the following purposes:

(A) US \$ 1,20,000 for studies abroad on the basis of estimates given by the foreign university.

(B) Gift Remittance amounting to US \$ 10,000.

Advise him whether he can get Foreign Exchange and if so, under what conditions(s)?

[CA Final May 2015]

Ans. If a sale or drawal satisfies the conditions of a current account transaction, then any person may sell or draw foreign exchange to or from an authorized person. However, the Central Government may, in public interest and in consultation with the RBI, impose such reasonable restrictions for current account transactions as may be prescribed (Section 5). The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000. The rules stipulate some restrictions on drawal of foreign exchange for certain purposes.

In the light of the above, answer to the given problem is as under:

As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000, resident individuals can draw foreign exchange up to US Dollar 2,50,000 for studies abroad, for gift or donation and for various other purposes prescribed under Schedule III (referred to as 'the Liberalized Remittance Scheme'). However, under the Liberalized Remittance Scheme, an individual may draw more than US Dollar 2,50,000 for studies abroad if it is so required by the university.

In the light of provisions of these rules, the answer to the given problem is as follows:

(i) Mr. Rohan can draw foreign exchange of US Dollar 1,20,000 for studies abroad without obtaining any approval since such drawal does not exceed the limit of US Dollar 2,50,000 per financial year or any higher amount as is required by the university.

(ii) Mr. Rohan can draw foreign exchange of US Dollar 10,000 for gift remittance without obtaining any approval since such drawal along with the drawal made by him for studies abroad, is within the limit of US Dollar 2,50,000 per financial year as per the Liberalized Remittance Scheme.

35. Examine whether the following transactions are permissible or not under the above Act as Capital Account 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. [CA Final Nov 2007]

Ans.

(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 it 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).

36. State whether there are any restrictions in respect of the following transactions:

(i) Drawal of foreign exchange for payments due on account of amortization of loans in ordinary course of business.

(i) Purchase by a person resident outside India of shares of a company in India engaged in plantation activities. [CA Final Nov 2005]

OR

State whether there are any restrictions in respect of the following transactions:

(i) Drawal of foreign exchange for payments due on account of amortization of loans.

(ii) Purchase of shares of a company engaged in plantation activities by a person resident outside India. [CA Final Nov 2002]

OR

Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether there are any restrictions in respect of the following:

(i) Drawal of Foreign Exchange for payments due on account of amortization of loans in the ordinary course of business.

(ii) A person resident outside India proposes to invest in the shares of an Indian company engaged in plantation activities. [CA Final Nov 2010]

Ans.

(i) 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.

(ii) 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.

37. Examine with reference to the provisions of the Foreign Exchange Manage Act. 1999 whether there are any restrictions in respect of the following:

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.? [CA Final Nov 2010]

Ans. 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.

38. 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? State whether Mrs. Chandra can sell the property and repatriate outside India the sale proceeds. [CA Final Nov 2012]

Ans. 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.

Regulation 8(a) of the Foreign Exchange Management [Acquisition and Transfer of Immovable property in India] Regulations 2018 states that a person referred to in sub-section (5) of Section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section.

Hence, Mrs. Chandra may sell the immovable property in India, but she can repatriate outside India the sale proceeds of such immovable property only with the general or specific permission of the Reserve Bank of India.

39. Mrs. Kamala, a resident in India is likely to inherit an immovable property in U.S.A. from her father, who is a resident outside India. Advise Mrs. Kamala about the restrictions, if any, in this regard under the Foreign Exchange Management Act, 1999 explaining the relevant provisions of the Act. Will your answer be different, if she is likely to inherit foreign securities? [CA Final Nov 2006]

Ans. 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 [Section 2(e) read with Section 6.]

As per Section 6, 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, in the given case, there is no restriction on Mrs. Kamala when she inherits an immovable property in USA or foreign securities from her father who is a resident outside India.

40. Ms. Ashima daughter of Mr. Mittal (an exporter), is residing in Australia since long. She wants to buy a flat in Australia. Since she is unmarried, she wants to make her father Mr. Mittal a joint holder in that flat, for which entire proceeds are to be paid by her.

(i) What are the provisions of FEMA governing such type of transaction?

(ii) Can Mr. Mittal join her daughter in acquiring such a flat in Australia?

(iii) Mr. Mittal, wants to receive advance payments against his exports from a buyer

outside India. What are the relevant provisions? [CA Final May 2017]

Ans.

(i) As per Regulation 5 of the Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015, a person resident in India may acquire immovable property outside India jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

For this purpose, 'relative' means husband, wife, brother or sister or any lineal ascendant or descendant of an individual.

(ii) Mr. Mittal is a person resident in India. Daughter of Mr. Mittal, viz. Ms. Ashima, is a person resident outside India. Ms. Ashima is a 'relative' of Mr. Mittal. The entire proceeds for the flat shall be paid by Ms. Ashima, and so there shall be no outflow of funds from India. Since, all the conditions contained in Regulation 5 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 are satisfied, Mr. Mittal can become the joint holder of the flat to be bought by Ms. Ashima.

(iii) As per Regulation 15 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, where an exporter receives advance payment (with or without interest), from a buyer/third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that-

(a) the shipment of goods is made within 1 year from the date of receipt of advance payment.

(b) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points; and

(c) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received:

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within 1 year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of 1 year, without the prior approval of the Reserve Bank. Mr. Mittal can receive advance payments against his exports from a buyer outside India in accordance with Regulation 15 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.

41. In terms of the provisions of the Foreign Exchange Management Act, 1999 Mr. SAM is a person of India origin resident outside India. He wants to acquire some immovable properties in India not being agricultural property, plantation or a farm house. Referring to the provisions of the Foreign Exchange Management Act, 1999, state the permitted sources, means and restrictions imposed in this regard. Also state the provisions where the acquisition will be in the form of gift or inheritance by Mr. SAM. [CA Final May 2018]

Ans. Acquisition of immovable properties in India by a person of Indian origin resident outside India: A person of Indian origin resident outside India may acquire immovable property in India other than an agricultural property, plantation, or a farm house. Sources: In case of acquisition of immovable property, payment of purchase price, if any, shall be made out of (i) funds received in India through normal banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank.

Restriction: It is also provided that no payment of purchase price for acquisition of immovable property shall be made either by traveller's cheque or by currency notes of any foreign country or any mode other than those specifically permitted by this clause

Acquisition in the form of gift: A person of Indian origin resident outside India may acquire any immovable property in India other than agricultural land/farm house/plantation property by way of gift from a person resident in India or from a person resident outside India who is a

citizen of India or from a person of Indian origin resident outside India.

Acquisition in the form of inheritance : A person of Indian origin resident outside India may acquire any immovable property, in India by way of inheritance from a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or from a person resident in India.

NOTE: This topic has been excluded from the Paper 4 syllabus from Nov 2019 onwards. Hence, just go through the answer once for your knowledge

42. Mr. V. a person of Indian origin and resident of USA desires to acquire two immovable properties in India comprising

(i) a residential flat in Mumbai and

(ii) a farm house on the outskirts of Mumbai. [CA Final May 2014]

Ans. The given problem relates to Regulation 3 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.

Provisions of law

1. As per the said Regulation 3, an NRI (i.e. a person resident outside India who is a citizen of India) or an Overseas Citizen of India (OCI) (i.e. a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955) may acquire immovable property in India other than agricultural land/farm house/plantation property. The consideration for such transfer shall be paid out of-

(i) funds received in India through banking channels by way of inward remittance from any place outside India; or

(ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed there under.

2. Regulation 3 further provides that the payment for such acquisition shall not be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted above.

Analysis and Conclusion

3. Mr. V is a resident of USA. So, he is a person resident outside India. He is a person of Indian origin. Assuming that Mr. V is either a citizen of India or is an Overseas Citizen of India, he is governed by Regulation 3 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.

(i) Mr. V can acquire the residential flat in Mumbai, provided the payment for acquisition or such flat shall be made in accordance with Regulation 3.

(ii) Mr. V cannot acquire any farm house on the outskirts of Mumbai since acquisition of farm house is prohibited by Regulation 3.

NOTE: This topic has been excluded from the Paper 4 syllabus from Nov 2019 onwards. Hence, just go through the answer once for your knowledge

43. One of the directors of Abhiman Ltd. is a person of Indian origin with US Citizenship. He wants to acquire commercial premises in India and then lease such premises to the company (Abhiman Ltd.). Is this permissible under FEMA, 1999? Will your answer be different if that director is a US citizen of non-Indian origin? [ICAI, Mock Test Paper, August 2018]

Ans. The given problem relates to Regulation 3 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.

Provisions of law

As per the said Regulation 3, an NRI (i.e. a person resident outside India who is a citizen of India) or an Overseas Citizen of India (OCI) (i.e. a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship

Act, 1955) may acquire immovable property in India other than agricultural land/farm house/plantation property. The consideration for such transfer shall be paid out of-

(i) funds received in India through banking channels by way of inward remittance from any place outside India; or

(ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed there under.

2. Regulation 3 further provides that the payment for such acquisition shall not be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted above.

Analysis and Conclusion

3. One of the directors of Abhiman Ltd. intends to acquire commercial premises and then lease such premises to the company, viz. Abhiman Ltd. Since he is US citizen, he is not NRI. But he is a person of Indian origin. Assuming that he is an

Overseas Citizen of India, he is governed by Regulation 3 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.

(i) The concerned director of Abhiman Ltd, can acquire the commercial premises if he is an Overseas Citizen of India. The payment for acquisition of such commercial premises shall be made in accordance with Regulation 3.

(ii) The concerned director of Abhiman Ltd, cannot acquire the commercial premises if he is not of Indian Origin.

NOTE: This topic has been excluded from the Paper 4 syllabus from Nov 2019 onwards. Hence, just go through the answer once for your knowledge

44. Mr. Bandha, a software Engineer of Indian Origin took employment in A. He is a resident of USA for a long time. He desires

(i) to acquire a farm house in Munar (Kerala).

(ii) to make investment in KU (Nidhi) Ltd., registered as Nidhi Company.

(iii) to make investment in Rose Real Estate Ltd., on Indian Company formed for the development of township.

Mr. Unsatisfactory, brother of Mr. Bandha residing at Chennai is aggrieved by an order made by Appellate Tribunal established under Foreign Exchange Management Act, 1999, desires to file further appeals.

With references to the provisions of Foreign Exchange Management Act, 1999, analyse whether there are any restrictions in respect of the transactions desired by Mr. Bandha. Also determine the appeal procedure to Mr. Unsatisfactory on the order of Appellate Tribunal under the said Act. [CA Final May 2018]

Ans. The given problem relates to Regulation 4 of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

As per Regulation 4, no person resident outside India shall make investment in India in any entity which is engaged, or proposes to engage-

(a) in the business of chit fund; or

(b) as Nidhi Company; or

(c) in agricultural or plantation activities; or

(d) in real estate business, or construction of farm houses, or

(e) in trading in Transferable Development Rights (DRSs).

For the purpose of this regulation, 'real estate business' shall not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.

As per Section 35, an appeal against any decision or order of the Appellate Tribunal may be filed with the High Court. However, such appeal can be filed only on a question of law. The

appeal shall be filed within 60 days of the communication of the decision or order of the Appellate Tribunal. However, the High Court may entertain a belated appeal upon being satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. But the further time which the High Court may allow is restricted to 60 days.

In the given case, Mr. Bandha has been a resident of USA since a long time. So, Mr. Bandha is a person resident outside India.

Therefore,

(i) Mr. Bandha cannot acquire a farm house in Munar (Kerala) since this transaction is prohibited

(ii) Mr. Bandha cannot make investment in KLJ (Nidhi) Ltd. (a Nidhi Company) since this transaction is prohibited

(iii) As per Regulation 4 of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, development of townships is excluded from the purview of 'real estate business, and so if a company is engaged in the development of townships, the prohibition contained in Regulation 4 is not attracted. In the given case, Rose Real Estate Ltd. is engaged in development of townships, and so Mr. Bandha can make investment in Rose Real Estate Ltd, since this transaction is not prohibited as per Regulation 4.

Procedure for appeal against the order of the Appellate Tribunal

Mr. Bandha is entitled to prefer an appeal to the High Court against the order passed by the Appellate Tribunal, since the question as to whether Mr. Bandha is entitled or not to make the investments desired by him, is a question of law. The time limit for filing the appeal shall be 60 days from the date of communication of order of the Appellate Tribunal, which may be extended by the High Court by maximum 60 days, in case sufficient cause is shown to the High Court.

45. Referring to the provisions of the Foreign Exchange Management Act, 1999, in respect of a person not being an individual resident in India, state the period within which the individual should sell the realized foreign exchange to an authorized person under clause (a) of sub-section (1) of regulation 4 in respect of remuneration for services rendered in India. Would your answer change, if the realized foreign exchange is in respect of monetary gifts? [CA Final Nov 2018]

Ans. The given problem relates to Regulation 5 of the Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015" as discussed below:

Provisions

1. As per Regulation 5, when any foreign exchange becomes due to a person (not being an individual resident in India), he shall sell the realised foreign exchange to an authorised person in India in exchange for rupees, within the period specified below:

(a) Where the foreign exchange becomes due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift, he shall sell the realized foreign exchange to an authorized person in India within 7 days from the date of its receipt.

(b) Where the foreign exchange becomes due in any other case, he shall sell the realized foreign exchange to an authorized person in India within 90 days from the date of its receipt.

Analysis and Conclusion

2. A person, not being an individual resident in India, has rendered certain services in India. In consideration of rendering of these services, some foreign exchange has become due to him.

3. The person who has realized the foreign exchange is required to sell the same to an authorized person in accordance with Regulation 5, i.e. within 7 days of its receipt.

4. Even if the foreign exchange had become due to such person by way of a gift, the period

for selling the same to the authorized person would have remained same as per Regulation 5, i.e. within 7 days of its receipt.

NOTE: This topic has been excluded from the Paper 4 syllabus from Nov 2019 onwards. Hence, just go through the answer once for your knowledge

46. A French Manufacturing Company desirous of setting up its branch office at Pune, seeks your advice on the objects for which the company may be allowed to set up the desired branch office. Advise the company about the procedure as required under the Foreign Exchange Management Act, 1999 to be followed in this regard. [CA Final May 2006]

Ans. The given problem relates to Regulation 4 and Regulation 5 of the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016, as discussed below:

Objects for which setting up of branch office in India is allowed

A person resident outside India can establish a branch office or a liaison office in India, if it satisfies the conditions contained in Regulation 4(a).

As per Regulation 4(b) read with Annex B to Schedule I and Schedule II, following activities may be undertaken or carried on through such branch office or liaison office:

- i. Export/import of goods.
- ii. Rendering professional or consultancy services.
- iii. Carrying out research work in which the parent company is engaged.
- iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- v. Representing the parent company in India and acting as buying/selling agent in India.
- vi. Rendering services in Information Technology and development of software in India.
- vii. Rendering technical support to the products supplied by parent/group companies.
- viii. Representing a foreign airline/shipping company.
- ix. Representing the parent company / group companies in India.
- x. Promoting export / import from / to India.
- xi. Promoting technical/ financial collaborations between parent / group companies and companies in India.
- xii. Acting as a communication channel between the parent company and Indian companies.

Procedure for setting of a branch office in India

1. A person resident outside India desiring to establish a branch office or a liaison office or a project office or any other place of business in India shall submit an application in Form FNC to an Authorized Dealer Category-I bank who may, subject to the provisions of Regulation 5, grant approval as per the directions and/or guidelines issued by the Reserve Bank in this regard.
2. In case no office is opened by the person resident outside India within 6 months from the date of approval letter, the approval for establishing the office in India shall be cancelled.
3. In cases where the person resident outside India is not able to open the office within the stipulated time frame due to reasons beyond its control, the Authorized Dealer Category-I bank may consider granting extension of time for setting up the office by a further period of 6 months. Any further extension of time shall require the prior approval of the Reserve Bank in this regard.
4. A person resident outside India desiring to establish additional branch office or liaison office may submit to the Authorized Dealer Category-I bank a fresh FNC Form along with the justification for the need for additional office/s.
5. Any application from a person resident outside for opening of a branch office or a liaison office or a project office or any other place of business in India shall require prior approval

of Reserve Bank in the following cases:

- (i) Where the applicant is a citizen of or is registered/incorporated in Pakistan.
- (ii) Where the applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a liaison, branch or project office in Jammu and Kashmir, North East region and Andaman and Nicobar Islands.
- (iii) Where the principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting.
- (iv) Where the applicant is a Non-Government Organization, Non-profit Organization, Body/Agency/Department of a foreign government.

47. Mr. Ramesh is an exporter of goods and services. Explain briefly his duties under the Foreign Exchange Management Act with regard to the following:

(i) Furnishing of information relating to such exports.

(ii) Realization and repatriation of foreign exchange on such exports. [CA Final May 2003]

Ans: Reserve Bank of India's right over the exporter and export proceeds (Section 7)

1. Furnishing of declaration by an exporter of goods. Every exporter of goods shall furnish to the Reserve Bank or other specified authority a declaration in such form and in such manner as may be specified. The declaration shall contain true and correct material particulars. The declaration shall indicate the full export value of the goods exported. However, if the full export value of the goods is not ascertainable at the time of export, the exporter shall specify the amount which he expects to receive by way of sale of such goods in the overseas market. While determining the expected export value, the exporter shall pay due regard to the prevailing market conditions.

2. Furnishing of information by exporter of goods. Every exporter of goods shall furnish to the Reserve Bank such information as may be required by the Reserve Bank for the purpose of ensuring the realization of the export proceeds by such exporter.

3. Declaration by and exporter of services. Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

4. Issue of directions by RBI. The Reserve Bank may, for the purpose of ensuring that the full export value or the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.

5. Realization and repatriation of foreign exchange, i.e, export proceeds (Section 8.) Where any amount or foreign exchange is due or has accrued to any person resident in India. such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

48. Bharat Computer Hardware Ltd. received an advance payment for export of high-tech hardware to a business concern In Singapore by entering into an export agreement to supply the hardware within six months from the date of receipt of advance payment. The shipment of hardware was made after 9 months and the documents covering the shipment were routed through an authorized dealer through whom the advance payment was received.

(i) Examine whether Bharat Computer Hardware Ltd. has discharged its obligation in accordance with the provisions of the Foreign Exchange Management Act, 1999?

(ii) Is it possible to receive advance payment where the export agreement provides for shipment of goods within 15 months from the date of receipt of advance payment?

(iii) Also identify the maximum rate of interest payable on the advance payment under the said Act. [CA Final Nov 2018]

Ans. The given problem relates to Regulation 15 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.

Provisions

Regulation 15 makes the following provisions with respect to advance payments:

(1) Where an exporter receives advance payment (with or without interest), from a buyer / third party named in the export declaration made by the exporter, outside India, the exporter shall be under an Obligation to ensure that-

(i) the shipment of goods is made within 1 year from the date of receipt of advance payment:

(ii) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter Bank Offered Rate (UBOR) + 100 basis points: and

(iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received:

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within 1 year from the date of receipt of advance payment. no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve Bank.

(2) Notwithstanding anything contained in clause (i) of sub-regulation (1), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of 1 year from the date of receipt of advance payment.

Analysis and conclusion

- I. Bharat Computer Hardware Ltd. made the shipment to a party in Singapore after 9 months of receipt of advance payment. Thus, the condition that the shipment has to be made within 1 year of receipt of advance payment, has been satisfied. Further, the condition that the shipment is to be routed through an authorized dealer through whom the advance payment is received, has also been satisfied.
- II. Thus, Bharat Computer Hardware Ltd. has complied with the provisions contained in Regulation 15 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.
- III. As per Regulation 15(2), it is possible that the shipment of goods is made after a period of 1 year from the date of receipt of advance payment, if the export agreement itself duly provides so.
- IV. Thus, if the export agreement expressly provides that the Shipment of goods shall be made within 15 months from the date of receipt of advance payment, it is possible for the exporter to receive the advance payment and make the Shipment within 15 months.
- V. The rate of interest, if any, payable on the advance payment shall not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) + 100 basis points.

49. Indian Software Ltd. seeks to export software to its client In Indonesia, in this regard -
(i) explain the procedure to be adopted for export of software under the Foreign Exchange Management Act. 1999 and also state the period within which export value is to be realised.
(ii) explain the position in case of delay In receipt of payment from Its client. [CA Final May 2016]

Ans. The given problem relates to Regulation 3, 9 and 14 of the Foreign Exchange Management (Export of Goods and Services) Regulations', 2015, as discussed below:

Procedure to be followed for export of software (Regulation 3)

1. The exporter shall furnish to the specified authority, a declaration in one of the forms set

out in the Schedule and supported by such evidence as may be specified, containing true and correct material particulars including the amount representing –

- i. the full export value of the software; or
 - ii. if the full export value is not ascertainable at the time of export. the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the software in overseas market, and affirms in the said declaration that the full export value of the software (whether ascertainable at the time of export or not) has been or will be paid in the specified manner and within the specified period.
2. The declaration shall be executed in sets of such number as specified.
 3. Realization of export proceeds in respect of export of software from third party should be duly declared by the exporter in the appropriate declaration form.

Period within which export value of software is to be realised (Regulation 9)

1. The amount representing the full export value of software exported shall be realised and repatriated to India within 9 months from the date of export.
2. However, the Reserve Bank may, for a sufficient and reasonable cause shown, extend the period of 9 months.

Position in case of delay in Receipt of Payment (Regulation 14)

1. If the specified period has expired and the payment there for has not been made as aforesaid, the Reserve Bank may give to any person who has sold the software, such directions as appear to it to be expedient, for the purpose of securing the payment thereof.
2. However, omission of the Reserve Bank to give directions shall not have the effect of absolving the person committing the contravention from the consequences thereof.

50. Referring to the provisions of the Foreign Exchange Management Act, 1999, examine whether V. an exporter is bound to make declaration on gift exported from India to United Kingdom a jewellery valued at Rs. 20,000 to his friend in Australia. [ICAI, Study Material]

Ans. The given problem relates to Regulation 4 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.

Provisions

1. As per Regulation 3, every exporter exporting any goods or software to any place outside India is required to furnish to the specified authority, a declaration in one of the forms set out in the Schedule to these Regulations.
2. Regulation 4 grants some exemptions from furnishing declaration. As per Regulation 4, in such cases as are contained in Regulation 4, export of goods or software may be made without furnishing the declaration. One of such cases is "gift of goods accompanied by a declaration by the exporter that they are not more than Rs. 5 lakh in value"

Analysis and conclusion

Mr. V intends to gift jewellery worth Rs. 20,000 to one of his friends in Australia.

The value of the gift is within the permissible limit of Rs. 5 lakh as specified in Regulation 4.

Mr. V is not required to make the declaration in one of the forms set out in the Schedule to the Regulations. He is only required to make a declaration that the jewellery is being exported by him by way of a gift and that the value of the jewellery is not more than Rs. 5 lakh.

51. Sunita Garments limited is engaged in the business of exporting leather garments. The company is neither located in a Special Economic Zone, nor has availed any special status like Status Holder Exporter, Export Oriented Unit or a unit under Bio-Technology Park. The company seeks your advice regarding the time limit within which the company is required to realise and import into India the foreign exchange arising out of export of goods by them and to be paid to the authorised dealer. Referring to the provisions of the Foreign Exchange Management Act, 1999 advise the company. [CA Final May 2019]

Ans. The given problem relates to Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.

As per Regulation 9, the amount representing the full export value of goods / software/ services exported shall be realised and repatriated to India within 9 months from the date of export. However, the Reserve Bank, or subject to the directions issued by the Reserve Bank in this behalf, the authorized dealer may, for a sufficient and reasonable cause shown, extend the period of 9 months.

Thus, Sunita Garments Limited is required to realize and repatriate to India the foreign exchange arising out of export of leather garments, within 9 months from the date of export.

Repatriation to India [Section 2(y)]

'Repatriate to India' means bringing into India the realized foreign exchange and- (i) the selling of such foreign exchange to an authorized person in India in exchange for rupees, or (ii) the holding of realized amount in an account with an authorized person in India to the extent notified by the Reserve Bank, and in eludes use of the realized amount for discharge of a debt or liability denominated in foreign exchange.

Realization and repatriation of foreign exchange (Section 8)

Where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

Exemption from realization and repatriation (Section 9)

The provisions of sections 4 and 8 shall not apply to the following, i.e. in the following cases the foreign exchange need not be repatriated to India:

- Possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify.
- Foreign currency account held or operated by such person or class of persons up to such limits as may be specified by the Reserve Bank of India.
- Foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank.
- Foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from.
- Foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limits as the Reserve Bank may specify.
- Such other receipts in foreign exchange as the Reserve Bank may specify.

52. Explain the meaning of the term 'Adjudicating Authority' under the Foreign Exchange Management Act, 1999. [CA Final May 2002]

Ans:

Meaning of 'adjudication'

'Adjudication' means the process by which a contravention of any provision of the Act, rule, regulation, notification, direction or order issued under the Act is dealt with by the appropriate Adjudicating Authority. For the purpose of adjudication, the Central Government has been empowered vide section 16) to appoint the Adjudicating Authorities who shall hold the inquiry in the manner prescribed under the Act read with Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000.

Meaning of 'Adjudicating Authority [Section 2(a)]

Adjudicating Authority' means an officer authorized under section 16(1).

Appointment of Adjudicating Authority (Section 16)

1. For the purpose of adjudication and imposing penalties, the Central Government may

appoint certain officers as the Adjudicating Authorities for holding inquiries in respect of any contravention under the Act. Such appointments shall be made by the Central Government by issuing a notification in the Official Gazette [Section 16(1)].

2. The Central Government shall specify the respective jurisdictions of various Adjudicating Authorities.

53. TKM Exporters of New Delhi are engaged in export business. It made certain exports, but failed to realise and repatriate to India the foreign exchange due on its exports. The Adjudicating Authority imposed a penalty under the provisions of Foreign Exchange Management Act, 1999 (FEMA). Being aggrieved by this penalty, the said exporter seeks your advice as to the authority to which appeal can be made and the time limit for making such appeal. You are required to advise on the matter. [CA Final May 2008 Nov 2005]

OR

Adjudicating Authority imposes a penalty under the provisions of Foreign Exchange Management Act, 1999 on ABC Limited for failure to realise and repatriate to India foreign exchange due on its exports. ABC Limited, being aggrieved by this penalty, seeks your advice as to the authority to which appeal can be made under the provisions of FEMA and the time limit for making such appeals. Advise [CA Final Nov 2002]

OR

India Exports Limited engaged in the export of software products to U.S. One party in U.S. to whom the company exported certain products failed to pay the amount due for these exports resulting into non repatriation of amount to India. The Adjudicating Authority on coming to know about this, levied a penalty on India Exports Limited under the provisions of the Foreign Exchange Management Act, 1999. The company seeks your advice as to which authority, to whom it can make an appeal against the decision of Adjudicating Authority. State also, the time limit within which the appeal can be lodged. [CA Final Nov 2015]

Ans. The given problem relates to section 17 and section 19 of the Foreign Exchange Management Act, 1999, as discussed below:

Authority to which appeal may be preferred against the order of Adjudicating Authority

An appeal against the order of the Adjudicating Authority may be filed-

(a) with the Special Director (Appeals), if the Adjudicating Authority is-

(i) an Assistant Director of Enforcement; or

(ii) a Deputy Director of Enforcement;

(b) with the Appellate Tribunal, if the Adjudicating Authority is other than an Assistant Director of Enforcement or a Deputy Director of Enforcement.

Time limit for filing the appeal

An appeal may be filed with the Special Director (Appeals)/Appellate Tribunal within 45 days from the date of order of the Adjudicating Authority (excluding the time required in obtaining a copy of the order). However, if sufficient cause is shown, the Specified Director (Appeals)/Appellate Tribunal may condone the delay.

54. A person aggrieved by an order made by the Special Director (Appeals) desires to file an appeal against the said order to the Appellate Tribunal but the period of limitation of 45 days as prescribed in Section 19(2) of the Foreign Exchange Management Act, 1999 has expired, Advise. [CA Final Nov 2011]

Ans. The given problem relates to section 19 of the Foreign Exchange Management Act, 1999, as discussed below:

An appeal against the order of the Special Director (Appeals) may be filed with the Appellate

Tribunal within 45 days from the date of order of the Special Director (Appeals) (excluding the time required in obtaining a copy of the order). However, if sufficient cause is shown, the Appellate Tribunal may condone the delay.

Thus, even if the stipulated time of 45 days for filing the appeal has expired, the Appellate Tribunal has the discretion to condone such delay, if the Appellate Tribunal is satisfied that there was sufficient cause for not filing the appeal within the stipulated period of 45 days.

1. Right to legal assistance

A person preferring an appeal to the Special Director (Appeals) under this Act may either appear in person or take the assistance of a legal practitioner or a chartered accountant of his choice to present his case before the Special Director (Appeals).

2. Power of the Central Government to appoint presenting officers

(a) The Central Government may authorise one or more legal practitioners or chartered accountants or any or its officers to act as presenting officers.

(b) Every person so authorised may present the case with respect to any appeal before the Special Director (Appeals)