

15

CURRENT ACCOUNT TRANSACTIONS

15.1 Statutory provisions

Under FEMA, there are restrictions only on capital account transactions. Current account transactions are free unless there is specific restriction.

Any person can sell or draw foreign exchange to or from authorised person if such sale or drawal is a current account transaction. Reasonable restriction on current account transactions can be imposed by Central Government in public interest, in consultation with RBI. [section 5 of FEMA]

Section 2(j) of FEMA states that 'Current Account Transaction' means a transaction other than a capital account transaction. It includes following -

- ◆ Payment due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business
- ◆ Payments due as interest on loans and as net income from investments (dividends after deduction of tax)
- ◆ Remittances for living expenses of parents, spouse and children residing abroad
- ◆ Expenses in connection with foreign travel, education and medical care of parents, spouse and children [However, there are certain restrictions]

The definition is 'inclusive' i.e. besides aforesaid expenses, any expenditure which is not a 'capital account transaction' will be current account transaction e.g. own expenses on foreign travel, education and medical care, expenses of branch/office abroad are covered as 'current account transaction' even if not specified above.

15.1-1 Distinction between current expenditure and capital expenditure under Income Tax

Distinction between current expenditure and capital expenditure has been recognised under Income Tax also. In *Assam Bengal Cement Co. v. CIT* (1955) 27 ITR 34 (SC), it was held that if expenditure was made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it was properly attributable to capital and was of the nature of capital expenditure. If, on the other hand, it was made for running of business or working it with a view to produce profits, it was revenue expenditure. In *Empire Jute Co. v. CIT* (1980) 124 ITR 1 = 3 Taxman 69 (SC), it was observed that there may be cases where expenditure, even if incurred for

obtaining advantage of enduring benefit, may none the less, be on revenue account and test of enduring benefit may break down. What is material is the nature of advantage in commercial sense. Test of enduring benefit is not certain and conclusive test and cannot be applied blindly and mechanically. - - Broadly, the same principle should apply in FEMA also.

15.1-2 No restrictions on current account transaction, unless specified

Basically, all current account transactions are free, unless specifically restricted by Central Government. Thus, there are no restrictions on following current account transactions —

- ◆ Payment for imports of goods which are permitted to be imported
- ◆ Remittance of interest on investment made from abroad. Remittance of principal amount i.e. capital is permitted subject to restrictions imposed in the scheme. - . - Tax will be deducted at source as per Income Tax provisions.
- ◆ Remittance of interest on funds borrowed from abroad as per approved schemes. Even penal interest can be remitted. - . - Tax will be deducted at source as per Income Tax provisions.
- ◆ Remittance of dividend is permitted if the foreign investment was as per approved scheme. - . - Remittance of dividend requires permission only when investment was allowed subject to dividend balancing condition.
- ◆ Booking of passage for foreign travel with airline/shipping companies or booking of cargo in ships/aircrafts. Indian office/agent can accept payment in Indian rupees and make remittance abroad to Principal.
- ◆ Salary/remuneration to foreign nationals/foreign directors [However, this would be is subject to restrictions under any other law e.g. Company Law.
- ◆ Remittance from EEFC/RFC account for permitted current account transactions
- ◆ Export Commission
- ◆ There is no restriction on remittance for advertisement in print media or advertisement on internet or TV.

15.1-3 Payment to SEZ by DTA unit in foreign exchange for supply of goods and services

A SEZ may supply goods or provide services to unit in DTA (Domestic Tariff Area). In such case, the DTA unit can pay for the goods or services in foreign exchange, for which foreign exchange can be released by authorised dealers. However, there should be enabling provision in the Letter of Approval issued to SEZ unit for supplying these goods or services to DTA - RBI AP (DIR) Circular No. 105 dated 16-6-2003 as amended by RBI AP (DIR) Circular No. 46 dated 23-10-2012.

This amount can be credited in EEFC account of EOU/STP/EHTP/BTP unit and Foreign Currency Account of SEZ unit.

15.2 Restrictions on current account transactions

Miscellaneous remittance facilities for residents are allowed in terms of Section 5 of the FEMA and FEM (Current Account Transactions) Rules, 2000.

RBI instructions are contained in RBI (FED) Master Direction No. 8/2015-16 dated 1-1-2016.

Prohibited current account transactions - Current account transactions in Drawal of foreign exchange for certain categories of transactions listed in Schedule I of FEM (Current Account Transactions) Rules, 2000 is expressly prohibited.

Current account transaction with permission of specified Government authority - Exchange facilities for transactions included in Schedule II of FEM (Current Account Transactions) Rules, 2000 may be permitted by the Authorised Dealer banks provided the applicant has secured the approval from the Ministry/Department of the Government of India as specified therein.

Limits on certain current account transactions - In respect of transactions included in Schedule III to FEM (Current Account Transactions) Rules, 2000, prior approval of the Reserve Bank would be required for remittance exceeding the specified limits. The release of foreign exchange up to the threshold ceilings specified in Schedule III is delegated to the Authorised Dealer banks.

All applications for release of foreign exchange exceeding the limits as prescribed in Schedule III to the Rules should be referred to the Regional Office concerned of the Foreign Exchange Department of the Reserve Bank, under whose jurisdiction the applicant is functioning/residing.

Meaning of 'drawal' - "Drawal" of foreign exchange also includes use of International Credit Cards (ICC), International Debit Cards (IDC), ATM cards, etc.

"Currency", *inter alia*, includes ICC, IDC and ATM Cards. Accordingly, all Rules, Regulations made and Direction issued under the Act apply to the use of ICC, IDC and ATM Cards.

Release of foreign exchange is not admissible for travel to and transaction with residents of Nepal and Bhutan.

15.2-1 Prohibitions in foreign exchange remittances

Some remittances are prohibited, as per Schedule I of FEM (Current Account Transactions) Rules, 2000.

- (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 Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
- (7) Payment related to “Call Back Services” of telephones.
- (8) Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme.

15.2-2 Remittances subject to prior approval

As per Schedule II FEM (Current Account Transactions) Rules, 2000, following transactions require prior approval of the Central Government.

<i>Purpose of Remittance</i>	<i>Ministry/Department of Govt. of India whose approval is required</i>
1. Cultural Tours	Ministry of Human Resources Development, (Department of Education and Culture)
2. Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its Public Sector Undertakings	Ministry of Finance, (Department of Economic Affairs)
3. Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport, (Chartering Wing)
4. Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis (i.e. other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport, (Chartering Wing)
5. Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from the Director General of Shipping
6. Remittance of hiring charges of transponders by : (a) TV Channels (b) Internet Service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology
7. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
8. omitted	
9. Remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State Level sports bodies, if the amount involved exceeds USD 100,000.	Ministry of Human Resources Development (Department of Youth Affairs and Sports)
10. Omitted	
11. Remittance for membership of P&I Club	Ministry of Finance (Insurance Division)

15.2-3 Bogus prizes/fictitious schemes/money circulation schemes/cheap money offers

Other restrictions are as follows.

Lottery schemes outside India - Remittances in any form towards participation in lottery schemes are prohibited under FEMA. These restrictions are also applicable to remittances for participation in lottery like schemes existing, e.g. money circulation scheme or remittances for the purpose of securing prize money/awards, etc.

Fraudulent offers - There is a spate of fictitious offers of cheap funds in recent times from fraudsters through letters, e-mails, mobile phones, SMS, etc. Communications on fake letterheads of the Reserve Bank and purportedly signed by its top executives/senior officials are also being sent to targeted people. Many residents have been victims of such offers and lost huge money in the process.

Fraudsters are seeking money from gullible people, under different heads, such as processing fees/transaction fees/tax clearance charges/conversion charges, clearing fees, etc. Banks must, therefore, exercise due caution and to be extra vigilant while opening or allowing transactions in such accounts - para 1.5 of RBI (FED) Master Direction No. 8/2015-16 dated 1-1-2016.

Some (usually bogus) organisations advise individuals by e-mails or letters that they have won prizes in lotteries etc. and they should arrange to remit some amount in US \$ as processing fees or transaction fee, tax clearance charges etc. Sometime cheap money is offered and processing charges for application fee are demanded. Gullible people fall to such mails.

RBI has cautioned to public vide its press release No. 2009-2010/168 dated 30-6-2009 and earlier press release No. 770 dated 7-12-2007.

It has been clarified that remittance for lottery like schemes functioning under different names like money circulation scheme or remittance for purpose of securing prize money/awards is prohibited - RBI AP (DIR) Circular No. 49 dated 4-6-2002 and No. 2 dated 27-7-2001.

RBI, vide its circular No. 54 dated 26-5-2010 has advised Banks to be cautious in opening accounts which appear suspicious and be vigilant in allowing such transactions.

15.3 Release of Foreign Exchange by Authorised Dealer Category II

The Reserve Bank has granted licenses to certain entities by authorising them as Authorised Dealer - Category II to undertake a range of non-trade current account transactions. They can release/remit foreign exchange for the following non-trade current account transactions:

- (a) Private visits
- (b) Remittance by tour operators/travel agents to overseas agents/principals/hotels
- (c) Business travel

- (d) Fee for participation in global conferences and specialized training
- (e) Remittance for participation in international events/competitions (towards training, sponsorship and prize money)
- (f) Film shooting
- (g) Medical treatment abroad
- (h) Disbursement of crew wages
- (i) Overseas education
- (j) Remittance under educational tie up arrangements with universities abroad
- (k) Remittance towards fees for examinations held in India and abroad and additional score sheets for GRE, TOEFL, etc.
- (l) Employment and processing, assessment fees for overseas job applications
- (m) Emigration and emigration consultancy fees
- (n) Skills/credential assessment fees for intending migrants
- (o) Visa fees
- (p) Processing fees for registration of documents as required by the Portuguese/ other Governments
- (q) Registration/subscription/membership fees to International Organisations.

15.4 Remittance facilities for resident individuals

Remittances for current account transactions (viz. private visit; gift/donation; going abroad on employment; emigration; maintenance of close relatives abroad; business trip; medical treatment abroad; studies abroad) available to resident individuals are subsumed (i.e. included) under the Liberalised Remittance Scheme (LRS) of USD 2,50,000 per Financial Year (FY).

[Instructions on LRS are available on Master Direction on Liberalised Remittance Scheme dated January 1, 2016].

Release of foreign exchange exceeding USD 2,50,000, requires prior permission from the Reserve Bank of India.

15.4-1 Remittances permissible to resident individuals

Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of RBI.

- (i) Private visits to any country (except Nepal and Bhutan).
- (ii) Gift or donation.
- (iii) Going abroad for employment.
- (iv) Emigration.
- (v) Maintenance of close relatives abroad.