

Foreign Exchange Management Act, 1999

Definitions

Person [Section 2(u)]:

Person includes:

- a) An **individual**
- b) A **HUF**
- c) A **Company**
- d) A **Firm**
- e) An **AOP/BOI**, whether incorporated or not
- f) Every **AJP**
- g) Any **agency, office or branch** owned or controlled by such person.

Authorised Person [Section 2(c)]:

Means an **authorized dealer, money changer, off-shore banking unit** or any other person for the time being authorized to **deal in foreign exchange**.

Repatriate to India [Section 2(y)]:

It means **bringing into India realized foreign exchange** and

- a) **Selling** of such Foreign Exchange to an **Authorised person** in India in exchange for Rupees, or
- b) The **holding of the realized amount** in an account with the authorized person in India to the extent notified by the Reserve Bank.

It includes use of realized amount for discharge of a debt or liability.

Person resident outside India [Section 2(w)]:

Means a **person who is not resident in India**

Person resident in India [Section 2(v)] (PRII):

Period of stay in India during preceding FY

→ **182 days or more**

But does not include

A person who has gone out of India or who stays outside India, **IN EITHER CASE:**

- **for employment** outside India
- for **business or vocation** outside India
- for other purpose, where the **period of stay is uncertain**

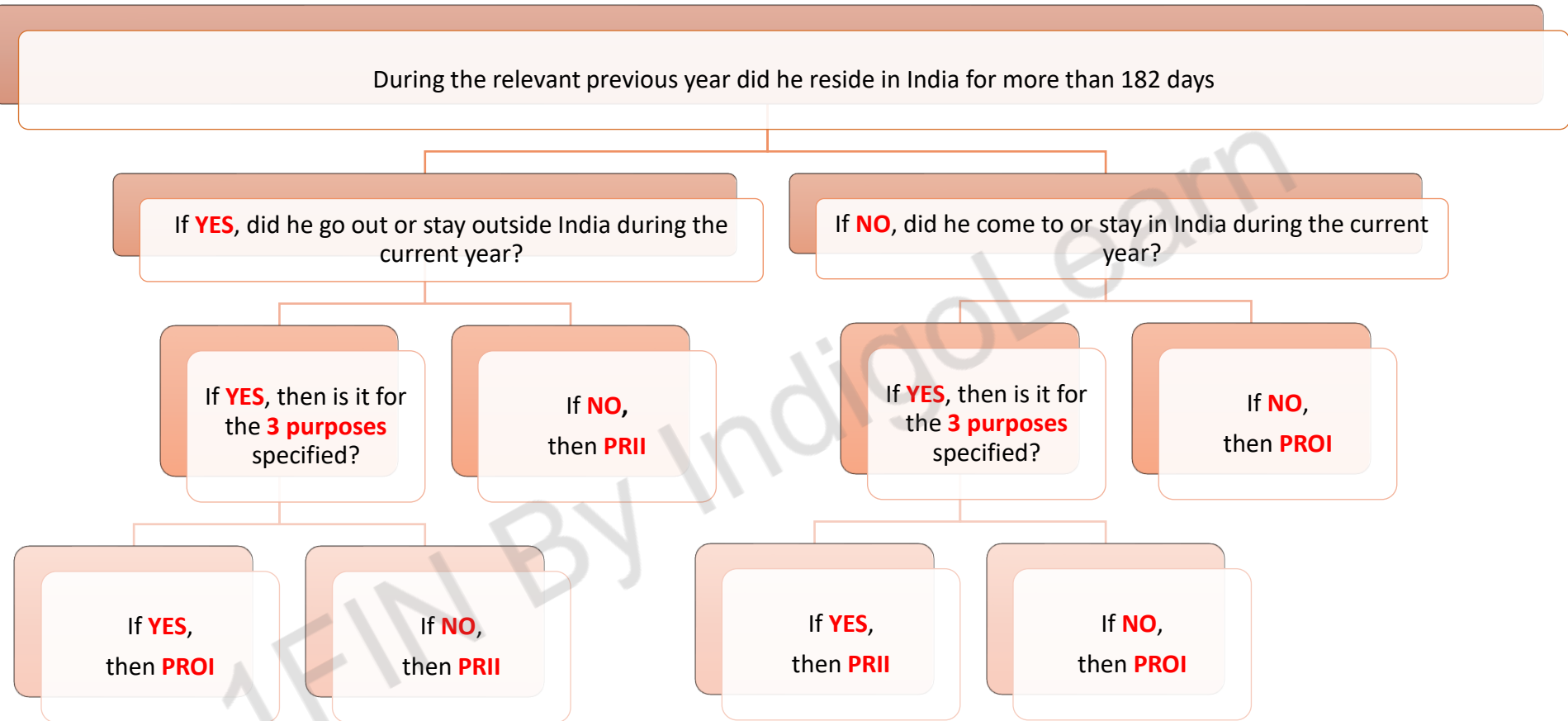
A person who has come or stays in India, otherwise than:

- for **employment**
- for **business or vocation** in India
- for other purpose, where the **period of stay is uncertain**

Includes

- any person or Body Corporate **registered or incorporated in India**
- an office, branch or **agency in India** owned or controlled by a **PROI**
- an office, branch or agency **outside India** owned or controlled by a **PRII**.

Determining Residential Status



Section 3 – Dealing in Foreign Exchange

Without **general or special permission of RBI**, No person shall

Deal in or transfer **any foreign exchange** or foreign security to any person not being an **authorised person**

Make **any payment** to or for any **PROI**

Receive through **an authorised person**, any **payment by order or on behalf of any PROI**

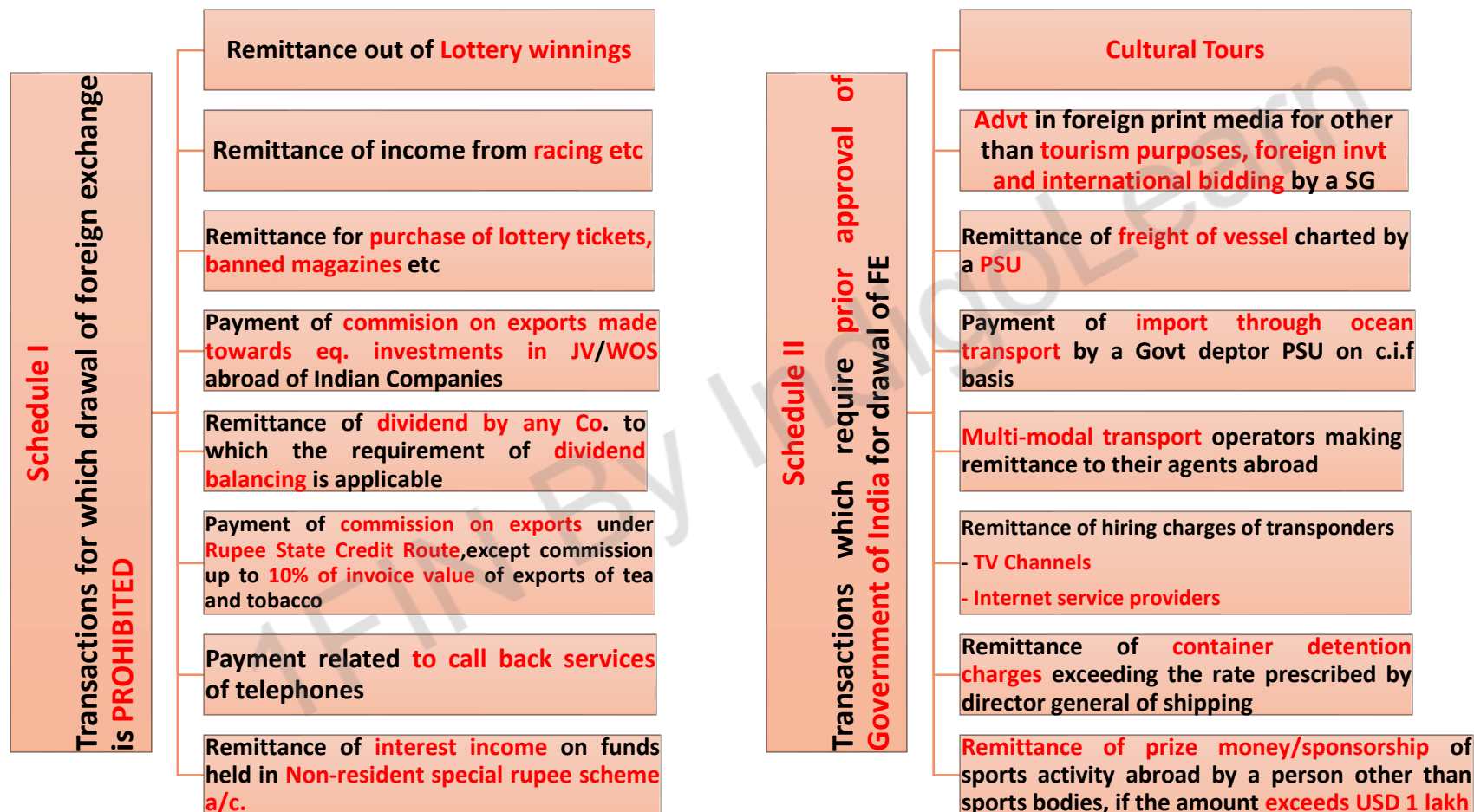
Enter into **Financial Transaction** in India as consideration for or in association with **acquisition or creation or transfer** of a **right to acquire any asset outside India**

Section 4 – Holding of Foreign Exchange

Except as provided in this Act, **NO PRII** shall **acquire, hold, own, possess or transfer any foreign exchange**, foreign security or any immovable property situated **outside India**.

Current Account Transactions

The Act permits any person to **sell or draw foreign exchange** to or from an **Authorised person** to undertake any current account transaction. The CG has power to impose **reasonable restrictions**, in consultation **with RBI** and in public interest on current account transactions. The CG has issued **rules** in this regard.



Schedule III

Facilities for individuals

Individuals can avail of foreign exchange facility for the following purposes within limit of **USD 2,50,000 only**

Private visit to any country

Gift or Donation

Going abroad for employment

Emigration

Maintenance of close relatives abroad

Travel for business or attending conference or for meeting medical expenses, or check-up abroad or accompanying as attendant

Expenses in connection with medical treatment abroad

Studies Abroad

Any other Current Account Transaction

Procedure for drawal or remittance of any FE under Schedule III

- Procedure for drawal or remittance of any FE under this Schedule **shall be the same as applicable for remitting any amount under said LRS**
- Authorised dealer banks may now allow remittances by **individual upto USD 2,50,000 per FY** for any **permitted current or capital account transaction or combo** of both
- If individual **has already remitted** amount under LRS, then applicable limit for such an individual would be **reduced from present limit of USD 2,50,000.**

Facilities for person other than individuals

The following remittances by persons other than individuals shall require **prior approval of RBI**

Donation by corporate for
i) creation of chair in reputed **educational institutes**

ii) contribution to **funds** promoted by **educational institutes**

iii) Contribution to a **technical institution** or body or association in the field of activity of donor co.

- **1% of their foreign exchange earnings during the previous 3 FY's or**

- **USD 5,00,000**
Whichever is **less**

Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India

- **USD 25,000**
- **5% of inward remittance**
Whichever is **more**

Consultancy services in respect of infra project

USD 10,00,000 per project

Other consultancy services procured outside India

USD 1,00,000 per project

Reimbursement of pre-incorporation expenses

- **remittance exceeding 5% of invt brought into India**
- **USD 1,00,000**
Whichever is **higher**

Capital Account Transactions

It 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 would be capital account transaction.

Section 6(1)	Any person may sell or draw FE to or from an authorised person for capital account transaction.
Section 6(2)	RBI may, in consultation with CG specify <ul style="list-style-type: none"> a) Class or classes of Capital Account Transactions, which are permissible b) Limit upto which FE shall be admissible for such transactions. c) Any conditions which may be placed on such transactions
Section 6(2A)	CG may in consultation with RBI prescribe- <ul style="list-style-type: none"> a) Any class or classes of capital account transactions, not involving debt instruments, which are permissible b) Limit upto which FE shall be admissible for such transaction
Section 6(4)	A PRII may hold, transfer, invest in foreign currency, foreign security or immovable property situated outside India if such currency, security, property was acquired, held or owned by such person when he was a resident outside India or inherited from PROI. It covers the following transactions: <ul style="list-style-type: none"> a) Foreign currency accounts opened and maintained by PROI b) Income earned through employment or business or vocation outside India taken up or commenced with such PROI c) FE including any income arising therefrom & conversion or replacement or accrual to same d) A PRII may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments.
Section 6(5)	A PROI may hold, own, transfer or invest in Indian Currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such a person when he was resident in India or inherited from a person who was resident in India .
Section 6(6)	RBI may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a PROI, for carrying on any activity relating to such branch, office or other place of business.

Permissible transactions made by PRII
a) Investment by a PROI in foreign securities
b) Foreign currency loans raised in India & abroad by a PRII
c) Transfer of immovable property outside India by a PRII
d) Guarantees issued by a PRII in favour of a PROI
e) Export, import & holding of currency /currency notes
f) Loans & overdrafts by a PRII from a PROI
g) Maintenance of foreign currency accounts in India & outside India by a PRII
h) Taking out of insurance policy by a PRII from an insurance company outside India
i) Loans & overdrafts by a PRII to a PROI
j) Remittance outside India of capital assets of a PRII
k) Sale & purchase of foreign exchange derivatives in India & abroad & commodity derivatives abroad by a PRII

Permissible transactions made by PROI
a) Investment in India by PROI , that is to say <ul style="list-style-type: none"> i) Issue of security by a body corporate or an entity in India & investment therein by a PRII ii) Investment by way of contribution by a PROI to capital of a firm or a proprietorship or an AOP in India
b) Acquisition & transfer of immovable property in India by a PROI
c) Guarantee by a PROI in favour of, or on behalf of, a PRII
d) Import & export of currency/currency notes into/from India by a PROI
e) Deposits between a PRII & a PROI
f) Foreign currency accounts in India of a PROI
g) Remittance outside India of capital assets in India of a PROI

Prohibited Transactions
a) No person shall undertake or sell or draw FE to or from an authorised person for any CAT provided that – He may draw from an authorised person FE not exceeding USD 250,000 per FY or such amount as decided by RBI
b) PROI is prohibited from making investments in India in any form, in any company, or firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage : <ul style="list-style-type: none"> i) In business of chit fund; ii) As Nidhi company iii) In agricultural or plantation activities iv) in real estate v) In trading Transferable Development Rights (TDRs)