Framework for Possession of Foreign Currency in India

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The framework for management and administration of foreign exchange in India is present under the Foreign Exchange Management Act 1999 (FEMA). Before this, foreign exchange was regulated under the Foreign Exchange Regulation Act, 1973 (FERA). The objective of FERA was the preservation and appropriation of assets related to foreign exchange in India**. Under FERA, criminal punishments were imposed on offenders. This act was repealed, and the FEMA was brought out. With the introduction of FEMA in 1999, the transactions have been considered and divided into capital account and current account transactions.** Under the FEMA, there is completed freedom for an individual to buy and sell foreign exchange related to current account transactions.

Individuals and companies require foreign exchange for various purposes. **An individual travelling abroad for tourism and educational purposes would require foreign exchange to conduct transactions in the respective country.** When an individual goes and settles abroad for work, foreign exchange would be required to conduct transactions. **Apart from this Indian Companies, that send employees abroad would provide foreign exchange to conduct transactions in a foreign country.**

To receive a specific amount of foreign exchange, an individual would need to make an application to a foreign exchange broker or an institution dealing in foreign exchange. There are specific rules related to the possession of foreign currency in India. **These rules have to be adhered to by individuals and companies while dealing in foreign exchange transactions in India. The Foreign Exchange Management Act (FEMA) regulates possession of Foreign Currency in India.** Apart from this, the RBI makes various laws related to the buying and selling of foreign currency in India. These rules have to be adhered to by institutions that deal with foreign exchange regularly.

Foreign exchange is not only required by individuals and companies. Businesses that have a liaison office and branch office outside India would be dealing with foreign exchange regularly. This would also apply to import and export transactions. Therefore it is essential to have a proper framework dealing with the possession of foreign currency in India.

Meaning of Foreign Exchange

Foreign exchange means and includes any form of freely convertible currency that is issued by Central Banks outside India. Money that is earned outside India is also foreign exchange. The following can be classified as foreign exchange in India:

- **Deposits and credits balances which are payable in foreign currency.**
- **Demand Drafts, Travellers Cheque, Letter of Credit or Bills of Trade, which is drawn in the form of Indian Rupees but payable in foreign currency.**
- **Demand Drafts, traveller's cheques and letters of credit or bills of trade which is drawn by the bank. However, the payment has to be made in Indian Rupees**.
- **Apart from this, there is a foreign currency in the form of coins. However, coins are considered as small value; hence there is no form of framework related to the regulation of coins in India.**

Buying and selling of foreign exchange in India is regulated by the Foreign Exchange Management Act 1999. Apart from this, the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000 deals with possession and retention of foreign exchange in India. Dealing with foreign exchange is explicitly not prohibited in India, but there are certain limitations in the amount of limit that an individual can have in India. The meaning of possession and retention of money has been explained in the above regulations. **Possession and retention of money means to hold the money in some physical form. This would not include sums of money, which are held in electronic form.**

Specific regulations and law related to FEMA explain the limits of foreign currency, which can be possessed in India. Possession of foreign currency has some rules related to the institutions dealing in foreign exchange. **On an application made to the RBI, a financial institution or a bank (the 'Authorised Dealer' or 'Authorised Person') would deal in the buying and selling of foreign currency. Apart from this, the Authorised dealer is only permitted to deal in foreign exchange and possess foreign exchange. The possession of foreign currency by an Authorised dealer has no limit.** An authorized dealer can maintain foreign exchange of different countries.

An authorized dealer can be a money changer, money manager, or an offshore banking company. These institutions have the authority to freely purchase foreign currency in the form of traveller's cheques, demand draft and other modes of foreign currency from non-resident Indians as well as resident Indians. Authorized banks are also permitted to purchase foreign currency from companies as well.

Possession of Foreign Currency by a Resident Indian

There is no limit of foreign currency and coins which can be retained and possessed by an authorized person. An individual can possess foreign currency in coins without any particular limits. Possession of foreign currency is also allowed by a resident of India. The following would apply to a resident of India:

- **A resident of India can possess foreign currency in the form of coins. There is no particular limit imposed by the RBI or the Authorised Person.**
- **Foreign currency, which is not in the form of coins, can be possessed by a resident of India. However, there are specific limits that can be possessed and retained by a resident Indian.** Foreign currency possessed in this form has some particular limit that can be held by the resident Indian. **Apart from this, a resident of India who is not a permanent resident can possess foreign currency for using the currency in a foreign country.**

Read, Also: Money Transfer from Overseas / NRIs to India.

Amount of Foreign Currency maintainable- Possession of Foreign Currency in India

Under the Foreign Exchange Management Act, only authorized persons can deal in foreign currencies. Inward and outward remittances can be made through authorized dealers. Any payment or credit can be made through the authorized dealer to a person who is resident outside India. There are specific exemptions related to this. The Government of India and the RBI has classified the limits for possession of foreign currency by an individual. The following are the limits allowed by resident Indians:

- **Possession of Foreign currency is limited up to US$ 2000. This is not only applicable to American Dollars. This would also apply to foreign currencies of different countries. If an individual has British Currency (GBP) of more than the above amount in India, then the same has to be declared to the customs authority.** There are further conditions to the acquisition of foreign currency limited to US$ 2000:

    - **This amount must be acquired when the person was outside India. The services rendered by the individual or the business done by the individual must be carried outside India for obtaining the above amount.** If any service is rendered in India and the amount is paid in foreign currency then such payment would not be valid for treatment as the exempted amount of foreign currency allowed to be possessed in India.

    - **Possession of foreign currency above will be allowed if the foreign currency is provided by another person as an honorarium or gift**. If an individual receives a gift of US$ 2000, then such amount would be allowed to be possessed and retained by the individual.
    - **Possession of foreign currency will also be allowed if the individual receives it as an honorarium or a gift from a particular organization.**
- When an individual comes from a foreign country, then foreign currency can be carried by him. **There is no particular limit on the amount of foreign currency that is carried. However, the foreign currency notes or traveller's cheques should not exceed US$ 10,000 or its equal value. If the amount exceeds US$ 5000, then the same must be declared to the Customs Authorities at the port of disembarkation**. It should be declared at the customs authority at the airport in the **Currency Declaration Form (CDF) in India.**
- **An individual resident in India but not a permanent resident in India is allowed to bring foreign currency into India.** There is no specific limit on the amount which can be brought by the individual. The individual can bring Currency Notes, Coins, and traveller's cheque in India. **However, the foreign currency brought into India must be acquired or earned outside India. Therefore foreign currency, which is acquired by an individual when he was a resident outside India, would come under the exception of possession of foreign currency in India.**
- Individuals who return from trips such as business trips, educational trips, and travel are required to surrender foreign currency, which is not spent. **The foreign currency which is not spent must be returned to the Authorised dealer/ Authorised Person within 90 days, and the traveller's cheque must be returned within 180 days. This would not apply to foreign exchange, which is limited to US$ 2000 or its equivalent.** Foreign exchange, which falls below the limit, must be stored in the resident foreign currency account (national accounts). **The foreign exchange retained by the individual can be used in the future. Therefore if an individual has foreign currency more than this amount, then the same have to be returned to the authorized bank.**
- **Travellers can buy foreign currency up to a limit of US$ 2000. Any form of balance that is present in the travellers' cheque or the amount is allowed to be accommodated to the bankers' draft**. However, there are certain exceptions related to the possession of foreign currency:
    - **Individuals who are travelling to Libya and Iraq can purchase foreign currency in the form of currency and coins. The amount which is allowed for an individual is up to US$ 5000.** A foreign currency from another country is allowed to the same limit.
    - **When an individual goes on a business trip, Authorised Dealers are allowed to release foreign exchange up to US$ 25,000**. **This would apply to all countries except Nepal and Bhutan**. This amount would include the travel expenses and the period of stay. **However, prior permission is required from the RBI for releasing such amount. International visits, such as attending a conference, seminar, study tour, or some form of specialized training, is considered as business trips. When an individual visits abroad for medical purposes, then this would also fall under the same category.**
    - An **individual going outside India for employment can take foreign exchange up to US$ 5000.**
    - **For educational purposes, an individual is allowed to carry foreign exchange up to US$ 30,000 or the amount which is stated by the institution**, whichever is higher. There is no need to take permission from the RBI for foreign exchange required for educational purposes.
    - **For individuals going on cultural trips and dance trips, the amount of foreign exchange which is allowed is dependent on the prior permission from the RBI.**

- **Individuals who are visiting the Islamic Republic of Iran or the Federation of Russia and other Republics of Commonwealth of Independent States can draw the entire foreign exchange more than the above amount.**
- Non-Resident Indians are permitted to carry a certain amount of foreign currency aboard.

Therefore there are certain limits on restrictions on the possession of foreign currency in India. Specific limits would also apply to possession of foreign currency for travelling, business purposes, and educational visits outside India. **As long as the individual retains a limited amount of foreign currency that falls under the exceptions, then such amount would be permissible by the Authorised banks and the RBI.**

Capital account transactions and current account transactions are also present under the Foreign Exchange Management Act. **These transactions will allow individuals to buy and sell foreign exchange to and from unauthorized persons**. Capital Account transactions are the transactions which alters the assets and liabilities outside India. This would apply to a person who is resident in India.

Penalty for Possession of Foreign Currency in India

Under the Foreign Exchange Management Act, specific penalties are imposed for non-compliance with the above provisions. These penalties would be applicable when an individual breaches foreign exchange regulations. According to the regulations, if an individual contradicts any form of rule, then he would be liable to pay a penalty, **which is equivalent to thrice the amount of sum involved or up to two lakhs where the amount is not quantifiable. On further infringement the individual would have to pay a fine of Rs.5000 every day.** Apart from this, the authority would order the confiscation of all forms of foreign currency, which includes- travellers' cheques, foreign currency, and foreign coins.

Comparing Penalties under FEMA and COFEPOSA- possession of Foreign Currency in India

The penalty imposed under FEMA is merely civil and not criminal. Stringent penalties were under the FERA for breach of foreign exchange regulations. In the case of **Union of India and Another v. Venkateshan S. and Another, the court stated that violation of FEMA law is not treated as a criminal penalty.** Under the **Conservation of Foreign Exchange and Prevention of Smuggling Activities, 1974 (COFEPOSA) violation of foreign exchange activities would attract criminal punishments.**

These punishments under COFEPOSA would also include preventive detention. Both acts deal with different fields. **FEMA deals with the promotion and maintenance of foreign exchange in India, whereas the COFEPOSA act deals with the violation of foreign exchange regulation and the prevention of smuggling activities. On construing the above laws, if an individual commits a civil offense under FEMA, then if interpreted under the COFEPOSA Act, the punishment would be criminal in nature.** Therefore if a person is punished for possession of foreign currency in India under COFEPOSA, then a criminal penalty would be levied on the individual. Possession of Foreign currency in India must be strictly regulated, which would deter offenders from carrying out further offenses.

Conclusion- Possession of Foreign Currency in India

Under the Foreign Exchange Management Act, an individual is allowed possession of foreign currency in India. The RBI regulates authorized Dealers and Authorised Persons in buying and selling foreign currency in India. Therefore Authorised Dealers are allowed to have foreign currency of no particular limit on the possession of foreign currency. Possession of foreign currency is also allowed by resident Indians. However, there are certain exceptions for the possession of foreign currency by the individual. Foreign currency in the form of coins can be retained by an individual as the value of foreign currency in coins is minimal. **Foreign currency, which is earned outside India and brought to India, is allowed. Only US$ 2000 is allowed. Resident Indians who are not permanently staying in India are allowed to carry foreign exchange into India**. The RBI has made certain limits of foreign exchange that can be carried by an individual outside India.

Thank You

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