



Issues in FEMA

Harshal Bhuta

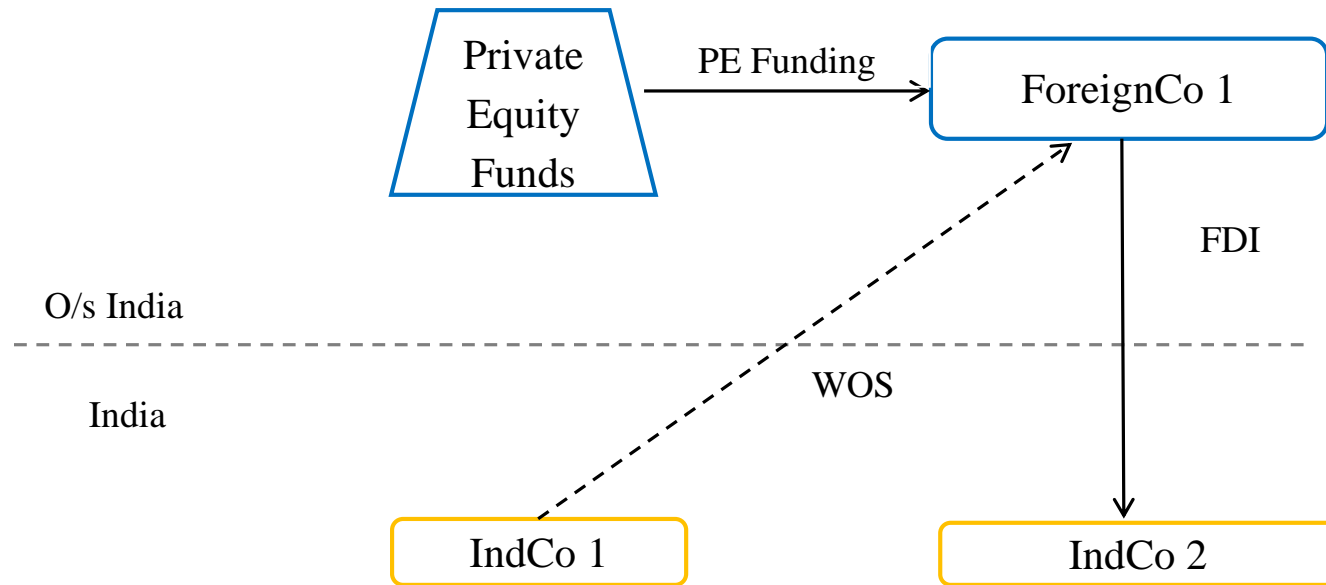
M.Com., F.C.A., A.D.I.T., LL.M. (Hons.)
in International Tax Law [WU]

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Case Study 1: FDI through ODI

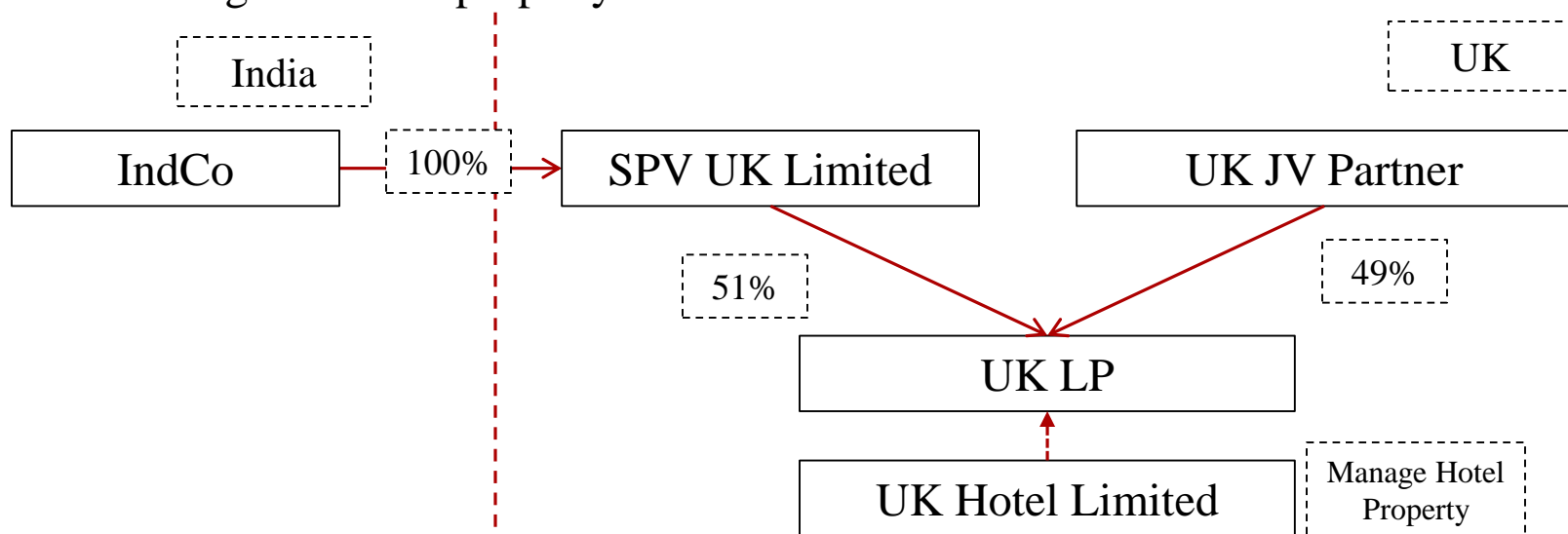
Facts: Promoters of IndCo 2 intend to sell a majority stake in the company to pare down high debt levels of IndCo 2. IndCo 1 has tied up with foreign PE funds to purchase majority stake in IndCo2. However, foreign PE funds have advised IndCo 1 to incorporate a new company ForeignCo 1 in tax friendly jurisdiction which will act as a pooling vehicle for acquisition of IndCo 2.



Question: Can IndCo 1 acquire IndCo 2 through ForeignCo 1 by partnering with foreign PE funds?

Case Study 2: ODI Investment

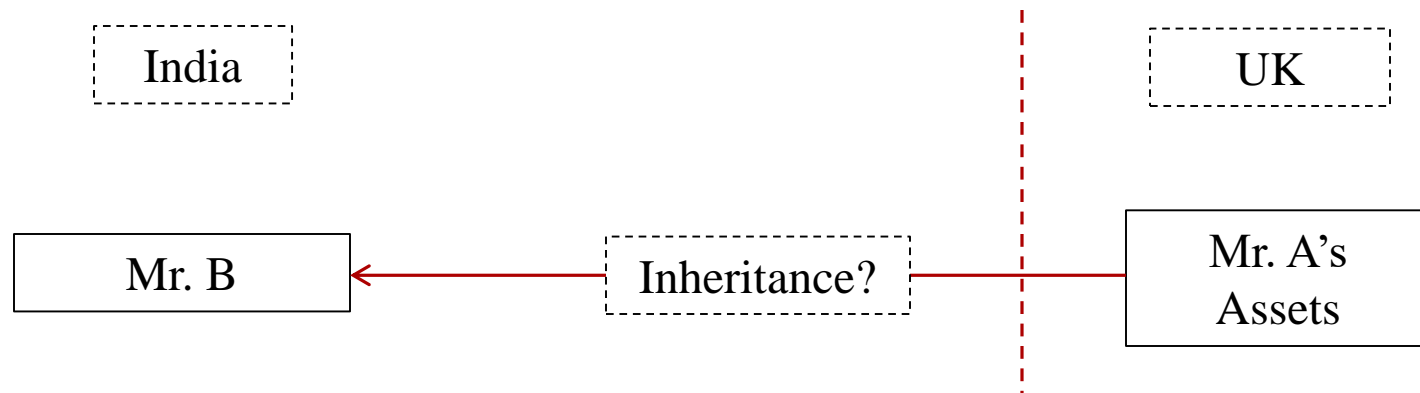
Facts: IndCo (a company incorporated in India) owns hotel properties in India which are run by third party management operators. It wants to replicate this business model outside India too. It has recently come across a business opportunity outside India. Thereunder, IndCo would invest in SPV UK limited which would in turn jointly invest along with a UK JV partner in a UK LP. UK LP would own the hotel property but it would lease out the hotel property to UK Hotels Limited which will also manage the hotel property.



Question: Is this structure viable under FEMA?

Case Study 3: Inheritance of Foreign assets by PRI

Facts: Mr. A, a Person Resident Outside India (PROI) since 40 years, had stock broking business in UK. Due to his ill health, Mr. A died 2 months back. At the time of his death, Mr. A owned following assets in UK: 1 apartment, 2 luxury cars, 2 bank accounts, three diamond rings and 5,000 shares of IBM. Mr. A had acquired these assets while being PROI. His son Mr. B is presently a resident in India and is working as tax head of an large MNC Bank in India. Mr. B is named as the sole inheritor of assets of Mr. A.



Question: Would Mr. B able to inherit assets of Mr. A while being PRI?

Case Study 4: Advance remittance for import

Facts: LMN Limited, a company incorporated in India, is engaged in the business of manufacturing electrical equipments in India. LMN Limited had taken advance payment of USD 15,000/- from one of its overseas customers in US in July 2016 towards supply of electrical equipments. However, due to contractual disputes relating to cost overruns, even till November 2019 it has not yet supplied the equipment to its overseas customer against the advance received by it previously *nor* has it paid any interest on the advance to the overseas customer.



Question: What would be the consequences under the FEMA?

Case Study 5: ODI through cash currency

Facts: YZ Pvt. Ltd. an Indian company undertakes Software Development as its business. Mr. A and Mr. B are promoter-directors of the company. While on a business trip to Singapore in the year 2017, Mr. B incorporated a local company as overseas WOS of YZ Pvt. Ltd. with SGD 100 as share capital. The company commenced its operations immediately and has already earned handsome profits for Dec y/e 2017 and 2018.

The matter came to the notice of ED and it is investigating the matter to verify the bona fides of source of funds invested as share capital as well as its business operations. Upon being questioned by ED, Mr. B has replied that he had borrowed SGD 100 from Singaporean consultant for investment on behalf of YZ Pvt. Ltd. as share capital.



Question: What are the FEMA consequences under this case?

Case Study 6: LRS limit

Facts: Mr. ET had booked an immovable property in New Jersey in the year 2018 for USD 8,00,000/- on a instalment basis. Mr. ET had already paid the first instalment that accrued in the year 2018-19 out of his LRS entitlement for FY 2018-19.

Now for the year 2019, Mr. ET has received the second instalment call letter for USD 2,10,000/-. For FY 2019-20, Mr. ET has already utilised USD 27,000/- for his Son's education and maintenance abroad, USD 10,000/- for purchase of shares of Tesla Inc and USD 10,000/- for the family vacations out his LRS entitlement for FY 2019-20, thus utilising USD 47,000/- out of his total LRS entitlement for FY 2019-20.

PRI is allowed to remit USD 2,50,000/- per year under LRS. Therefore, Mr. ET is falling short of USD 13,000/- (USD 2,50,000/- less USD 47,000/-) to pay for the instalment of the property purchased.

Question: To meet the shortfall of USD 13,000/- there are 3 options that Mr. ET is exploring. Kindly advice him on the following options:

- Mr. ET's mother sending remittance from India under LRS on his behalf to the New Jersey developer;
- Mr. ET's cousin in US making payment on his behalf as a gift;
- Mr ET's cousin in US is making payment on his behalf as a loan.

Case Study 7: Consequences of becoming PRI

Facts: Mr. John is a British national and a Overseas Citizen of India. He is working as CEO of an event management company that he founded in India in the year 2018. He draws salary from the Indian company and remits the same to the UK for family maintenance.

He had purchased an immovable property in UK on mortgage while he was person resident outside india (PROI). His next instalment of mortgage payment is now due.

Mr. John works in the Indian company for about 20 days in a month and for balance days, he goes to UK to provide consultancy services to the NGO based in UK. He has stayed in India for more than 182 days during FY 2018-19. Income earned by Mr. John for providing consultancy services to the UK NGO gets directly credited in his UK bank account. He holds NRO and NRE a/c in India.



Question: Are his affairs in order for the purpose of FEMA?

Case Study 8: Refund of excess share capital remittance

Facts: TP Limited, a company incorporated in India is engaged in the business of manufacturing smartphones in India. TP Ltd is WOS of TP Inc. USA. TP Limited decided to issue 1,22,500 shares @ Rs. 100/- per share to TP Inc for capex. TP Ltd was supposed to receive Rs. 12,25,00,000/- (USD 1,75,000/-* Rs. 70/- Per USD), however, it received short amount due to deduction of bank charges @ 0.05%. Accordingly, it received Rs. 12,24,38,750/- instead (Bank charges of Rs. 61,250/-). Thereafter, it decided to issue only 1,20,000/- shares.

Questions:

- 1) What is the course of action to be adopted by TP Limited?
 - Refund differential amount attributable to short allotment in USD (Assume Rs. 71 per USD) viz. $2500 \text{ shares} * \text{Rs. } 100 = \text{Rs. } 2,50,000 / 71 = 3521.12 \text{ USD?}$
 - Refund differential amount attributable to short allotment in INR viz. $2500 \text{ shares} * \text{Rs. } 100 = \text{Rs. } 2,50,000.$
 - Refund differential amount attributable to short allotment in USD, net of shortfall due to deduction of bank charges viz. $(\text{Rs. } 2,50,000 - \text{Rs. } 61,250) / 71 = 2658.45 \text{ USD?}$
 - Refund differential amount attributable to short allotment in INR, net of shortfall due to deduction of bank charges viz. $\text{Rs. } 2,50,000 - \text{Rs. } 61,250 = \text{Rs. } 188,750/-$

Case Study 9: Contract Manufacturing under FDI Policy

Facts: XYZ Limited a company incorporated in India is engaged in the manufacturing of cooking oil in India. However, the XYZ Limited does not itself manufacture the cooking oil but outsources it to ABC Private Limited who is a contract manufacturer.

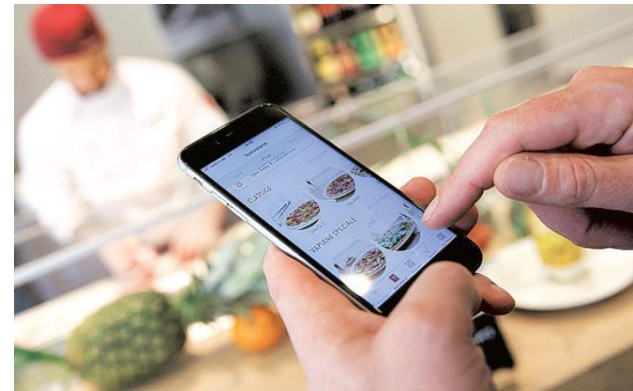
The DPIIT on 18/09/2019 issued a Press Note 4 of 2019 amending the consolidated FDI circular of 2017 (FDI Policy). The Press Note intends to clarify that manufacturing activities may be conducted by self-manufacturing by the investee entity or contract manufacturing in India through a legally tenable contract whether or principal to principal or principal to agent basis.

Questions:

- 1) What are the pre-requisites to become a ‘contract manufacturer’ and what is the meaning of the term ‘contract manufacturing’?
- 2) What does Press Note 4 intend to clarify - whether FDI is now allowed in XYZ Limited or is now allowed in ABC Private Limited?

Case Study 10: FDI in e-commerce

Facts: ZM Pvt. Ltd. is an Indian restaurant aggregator and food delivery company which has received 30% of its share capital as FDI since its inception. It has approached WJ Resto Pvt. Ltd. to offer an opportunity to them to become a partner restaurant. ZM Pvt. Ltd. would charge 25% commission on total F&B revenue made by the partner restaurant through their platform – either by way of booking reservations or delivery through the platform. During Diwali festival, ZM Pvt. Ltd. extended an offer to the partner restaurant to lower the commission to 5% instead of 25% if they in turn agree to offer higher discount of 20% discount to subscribers of platform owned by ZM Pvt. Ltd.



Question: Is the offer of ZM Pvt. Ltd. in compliance with the FDI policy?

Case Study 11: Scope of LRS

Facts: Mr. A has utilised the entire LRS limit of USD 2,50,000/- for FY 2019-20. He now wants to travel abroad

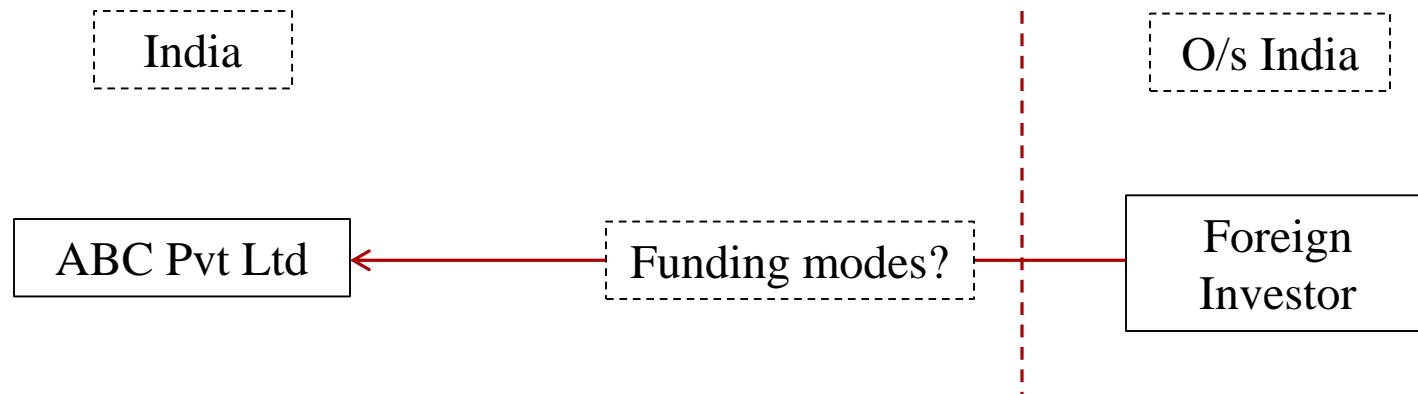


Questions:

- 1) Whether LRS Limit would apply for booking from India of air tickets for foreign travel and overseas accommodation?
- 2) Whether LRS limit would apply to duty free shopping at airports in India?
- 3) Whether LRS Limit would apply if any purchase is made abroad by using Indian credit card?

Case Study 13: Alternate modes of funding real estate company

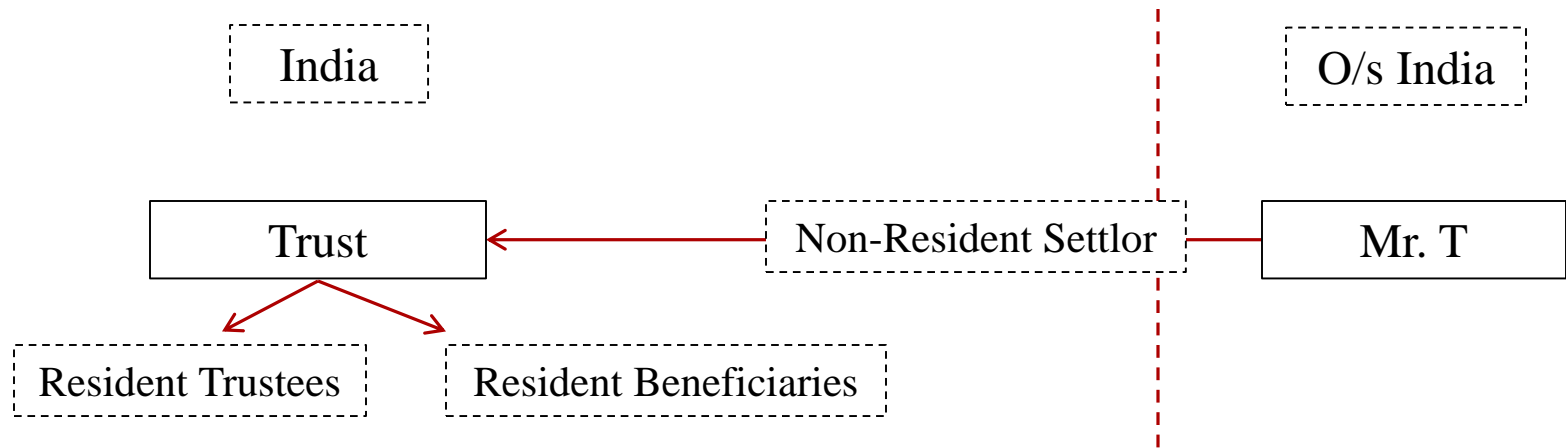
Facts: ABC Pvt. Ltd., a company incorporated in India, is in the business of development of residential apartments in India. Due to the crisis in real estate sector in India, ABC Pvt. Ltd. is in dire need of bridge finance in order to finish their ongoing projects. It has identified a foreign investor who is willing to provide funds.



Questions: What are the different funding modes that can be explored by ABC Pvt. Ltd.?

Case Study 14: Indian Trust by NRI with resident beneficiaries

Facts: Mr. T, a Person Resident Outside India is presently working outside India at CXO level. He has made investment into the equity shares of listed foreign companies as well as Indian companies. He also holds 2 bank accounts in his own name. As a measure of succession planning, Mr. T now wants to create a trust in India. Trustees and beneficiaries of the trust would be a person resident in India.



Question: Whether Mr. T can create a trust in India and settle all these assets?

Thank you

