

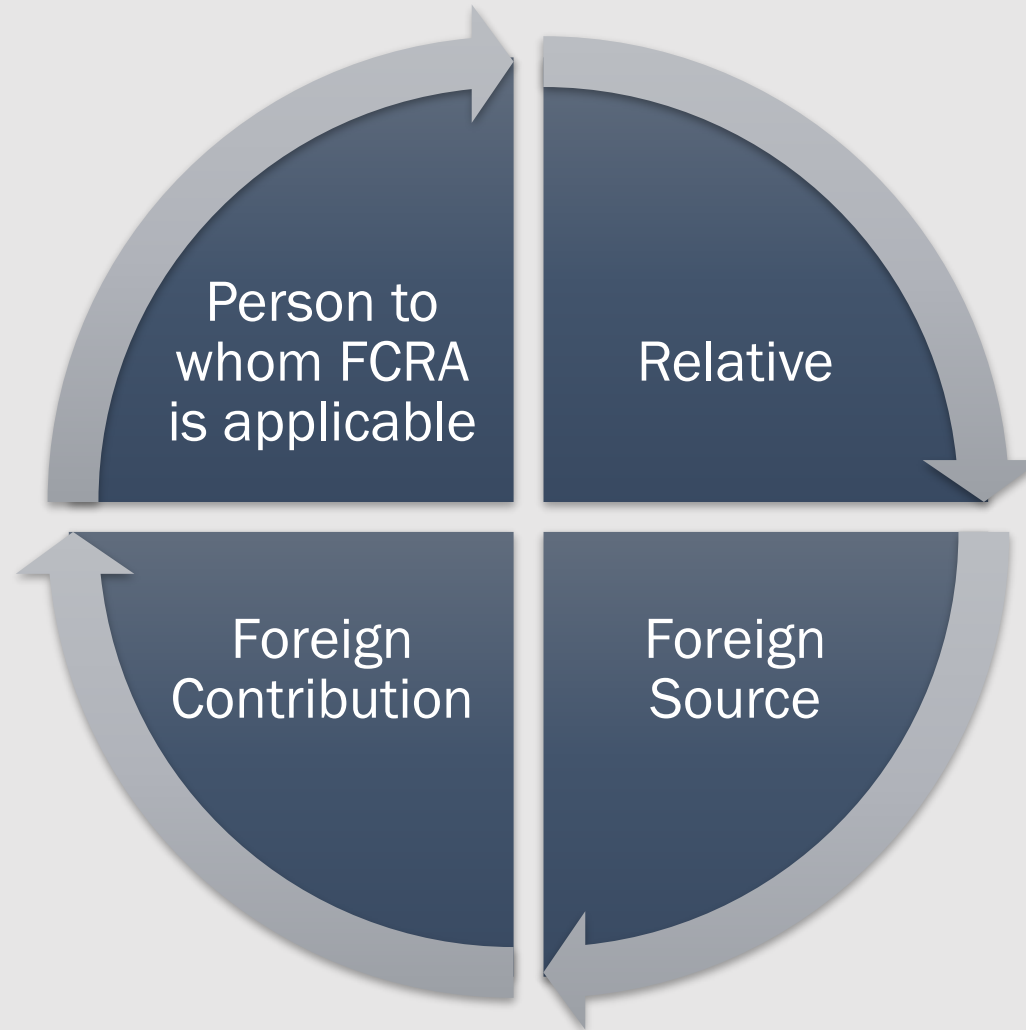
**GIFT FROM RELATIVES (CITIZEN  
OF COUNTRY OTHER THAN INDIA)  
TO AN INDIAN CITIZEN  
SEP 2021**

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# Applicable Statutes and Regulations

- Foreign Contribution (Regulation) Act, 2010 (herein after referred to as “the FCRA 2010”) as amended from time to time
- Foreign Contribution (Regulation) Rules, 2011 as amended from time to time
- Foreign Exchange Management Act, 1999 as amended from time to time
- Income Tax Act, 1961 as amended from time to time

# Important Definitions – FCRA 2010



# Definition of person under FCRA 2010

- Section 2(1)(m) - “person” includes
  - (i) *an individual;*
  - (ii) a Hindu undivided family;
  - (iii) an association;
  - (iv) a company registered under section 25 of the Companies Act, 1956 (now Section 8 of Companies Act, 2013).

# Definition of relative under FCRA 2010

- Section 2(1)(r) - “relative” has the same meaning assigned to it in clause (41) of Section 2 of the Companies Act, 1956
- Section 2(41) of the Companies Act, 1956 - "relative" means, with reference to any person, any one who is related to such person in any of the ways specified in section 6, and no others.
- Section 6 of the Companies Act, 1956
- A person shall be deemed to be a relative of another, if, and only if,
  - (a) they are members of a Hindu undivided family ; or
  - (b) they are husband and wife ; or
  - (c) the one is related to the other in the manner indicated in Schedule IA (list of relatives)

# Definition of relative under FCRA 2010

Schedule IA (list of relatives): -	
Father	Son's daughter
Mother (including step-mother)	Son's daughter's husband
Son (including step-son)	Daughter's husband
Son's wife	Daughter's son
Daughter (including step-daughter)	Daughter's son's wife
Father's father	Daughter's daughter
Father's mother	Daughter's daughter's husband
<i>Mother's mother</i>	Brother (including step-brothers)
Mother's father	Brother's wife
Son's son	Sister (including step-sister)
Son's son's wife	Sister's husband

# Definition of “foreign source” under FCRA 2010

- Section 2(1)(j) - Foreign source includes –
  - i. the Government of any foreign country or territory and any agency of such Government;
  - ii. any international agency, not being the United Nations or any of its specialized agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
  - iii. a foreign company;
  - iv. a corporation, not being a foreign company, incorporated in a foreign country or territory;
  - v. a multi-national corporation referred to in sub-clause (iv) of clause (g) of section 2 of FCRA, 2010;
  - vi. a company within the meaning of the Companies Act, 1956, and more than one half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:-
    - a. the Government of a foreign country or territory;

# Definition of foreign source under FCRA 2010

- b. the citizens of a foreign country or territory;
- c. corporations incorporated in a foreign country or territory;
- d. trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;
- e. foreign company;

*“Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999, (42 of 1999.) or the rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source;”*

- vii. a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;



# Definition of foreign source under FCRA 2010

- viii. a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;
- ix. a society, club or other association or individuals formed or registered outside India;
- x. a citizen of a foreign country

A few bodies/ organisations of the United Nations, World Bank and some other International agencies/multilateral are exempted from this definition and are not treated as foreign source. Hence, the funds received from them are not considered as foreign contribution. List of such bodies / organisations, which are not treated as 'foreign source', are available on the website [fcraonline.nic.in](http://fcraonline.nic.in)

- ✓ NRIs are not considered as Foreign Source.
- ✓ All Foreign Citizens and Foreign Entities are treated as Foreign Source.

# Definition of “foreign contribution” under FCRA 2010

- Section 2(1)(h) - Foreign Contribution means the donation, delivery or transfer made by any foreign source –
  - i. of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift is not more than such sum as may be specified (Rs. 1,00,000) from time to time by the Central Government by the rules made by it in this behalf.
  - ii. *of any currency, whether Indian or foreign;*
  - iii. of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of Section 2 of the Foreign Exchange Management Act, 1999.

# Definition of foreign contribution under FCRA 2010

- **Explanation 1** – A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution with the meaning of this clause.
- **Explanation 2** – The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of Section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.
- **Explanation 3** – Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent or a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause.

# Restrictions under FCRA, 2010

## ■ Section 3 of FCRA 2010 - Prohibition to accept foreign contribution

No foreign contribution shall be accepted by any

- (a) candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- (d) member of any Legislature;
- (e) political party or office-bearer thereof;
- (f) organisation of a political nature as may be specified under sub-section (1) of section 5 by the Central Government;
- (g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000) or any other mode of mass communication;
- (h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

# Restrictions under FCRA, 2010

Explanation 1.—For the purpose of clause (c), "public servant" means a public servant as defined in section 21 of the Indian Penal Code.

Explanation 2.—In clause (c) and section 6, the expression "corporation" means a corporation owned or controlled by the Government and includes a Government company as defined in clause (45) of section 2 of the Companies Act, 2013

(2) (a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—

(i) any political party or any person referred to in sub-section (1), or both; or

(ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency—

(a) to any person other than a person for which it was received, or

(b) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received.

# Reporting requirements under FCRA

- Foreign Contribution from Relatives (Rule 6):

Any person receiving foreign contribution in **excess of one lakh rupees or equivalent** thereto in a financial year from any of his relatives shall inform the Central Government by uploading details electronically online in **Form FC-1** within thirty days from the date of receipt of such contribution.

- Exemption from applicability of FCRA Rule 6A:

Any article gifted to a person for his personal use whose market value in India on the date of such gift does not exceed one lakh rupees shall not be a foreign contribution within the meaning of sub-clause (i) of clause (h) of sub-section (1) of section (2).

# CASE STUDY : -

- A citizen of United Kingdom (Grandson) wishes to give a sum of money (exceeding Rs 1 lac) as gift to an Indian citizen (Grandmother).

*Questions : -*

Whether recipient will be considered as “person” for the purpose of FCRA 2010?

Whether recipient will be considered as relative under FCRA 2010?

Whether gift will be considered from a foreign source?

Whether gift will be considered as foreign contribution in the hands of recipient?

Whether any maximum amount specified under FCRA 2010 for Gift?

# CASE STUDY : -

- The gift is proposed to be given to an Indian Citizen who is an Individual.
- The recipient of the gift is 'Grandmother' and 'mothers' mother' is included in the definition of relative under the Companies Act, 1956.
- As per clause (x) of Section 2(1)(j), foreign source includes a citizen of a foreign country
- As per Section 2(1)(h) and Rule 6, gift of money in excess of Rs. 1 lac is considered as foreign contribution
- There is no maximum amount specified under the FCRA 2010 for remittance of money as gift to an Indian citizen.

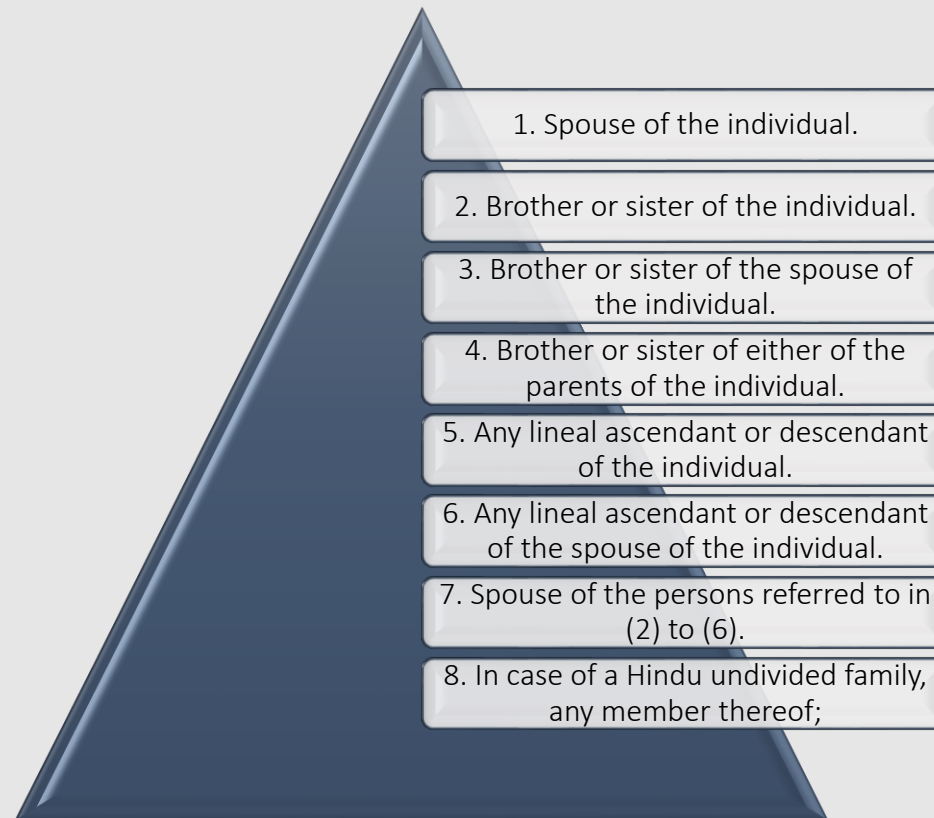


# Requirement under FEMA 1999:

- Receiving bank is under an obligation to -
  - a) Obtain a purpose code from the recipient
  - b) Obtaining a declaration that the receipt is a bonafide receipt under FEMA.
  - c) Issue a Foreign Currency Inward Certificate (FIRC) to the recipient

# Treatment under Income Tax Act 1961:

- Definition of the term 'Relative' under Section 56(2):



Amount received will not be considered as income in the hands of the recipient. Definition of relative under Sec 56 of the Act covers lineal ascendant of individual. This would cover grandmother.

# Documentation for gift:

- Gift deed should be prepared in UK- Deed should be duly apostilled in UK as well as notarized in India upon receipt of the document.
- FIRC from bank must indicate the purpose as Gift (important from Income tax perspective).

# THANK YOU

Any queries on this PPT can be addressed to  
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