THE CHAMBER OF TAX CONSULTANTS

3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020
●Tel.: 2200 1787 / 2209 0423 ●Fax: 2200 2455 ●E-mail: office@ctconline.org
●Website: www.ctconline.org

INTENSIVE STUDY COURSE ON FEMA

BRAIN TRUST SESSION / PANEL DISCUSSION

SATURDAY, 22ND DECEMBER 2018

Moderator: CA Dilip J. Thakkar

Penalists: CA Rashmin Sanghvi and Mr. Himanshu Mohanty (Ex General Manager RBI)

RESIDENTIAL STATUS

1. Mr. Desai leaves India on 1st December 2018 for taking up employment outside India for the first time. What will be his residential status? Can he acquire agricultural land in India before 30th April, 2019?

---

2. Mr. Sunil Bhatia, staying in Dubai for past several years came to India on 1st May 2018 for medical treatment. He has not visited India during F.Y. 2017-2018. He is planning to return to Dubai after medical treatment. Doctors have advised him to stay in India up to 31st October 2019. What will be his residential status under FEMA for the financial years 2018- 2019 & 2019-2020?

---

3. Mr. Barak Clinton, a foreign citizen of non-Indian origin comes to India for the first time and takes up employment in India on 1st September 2018. What will be

his residential status for the financial year 2018-2019? Can he acquire Immovable property in India during Financial year 2019-2020?

---

4. Mr. VM Fisher, a UK-based OCI has business operation overseas and no employment in India. His family also resides abroad. He was extradited to India and was required to stay in India till the court proceedings were over and dues were settled. The same took 4 years from 2013-14 to 2017-18. In all the four years he was in India throughout the year. He left India on 10th December, 2018, the very day on which he obtained the Court permission. Would he be treated as a resident for 2013-14 till 2017-18?

ECB

5. ABC Ltd., an Indian Company is a WOS of XYZ Ltd., a Japanese Company. ABC Ltd has also taken ECB from its holding company up to USD 4 million. Now it want to take further ECB of USD 2 million from its associate concern viz. POR Pte. Ltd. a Singapore Company. ABC Ltd. and PQR Pte. Ltd. are held by the same parent i.e. XYZ. Ltd.. After taking further ECB of USD 2 million, ECB liability: Equity Ratio of ABC Ltd. will be 8:1.

Question:

Whether ABC Ltd. can take ECB from PQR Pte. Ltd. under automatic route?

---

6. In case of Track I and III Companies, if ECB is taken from Direct/Indirect Holder and the loan is for a minimum average maturity period of 5 years, ECB can be utilised for Working Capital purpose and General Corporate purpose.

Question:

What is the meaning of General Corporate purpose and Working Capital purpose?

---

7. What's the threshold period for outstanding expenses to be classified as deemed ECB?

DEPOSITS

8. Mr. Patel takes up employment in USA. He currently operates the following Bank Accounts / Deposits jointly held with his spouse who is resident of India under FEMA.

Nature of Deposit	Type of Holding	Amount
Fixed Deposit	First Name	Rs. 10,00,000

Current Account	First Name	Rs. 20,00,000
Resident Foreign Currency Account – RFC(D)	First Name	US $ 50,000
Savings Account	Second Name	Rs. 35,00,000

Question:

Mr. Patel needs expert advice of the Brains Trustees for action required by him upon change in his residential status

---

FDI – FOREIGN DIRECT INVESTMENT

9. M/s. Rudrax LLP, an existing LLP with two resident partners who were sharing profit / losses equally invited Mr. Clinton to join LLP as 1/3rd partner. The fair value of the LLP was determined to be Rs. 7 Cr as per the internationally accepted pricing methodology resulting into premium of Rs. 6 Cr.

Questions:

The LLP wants expert advice on following FEMA issues

(i) Whether 33.33% share offered to a non-resident partner will amount to transfer of shares by resident partners to a non-resident?

(ii) Mr. Clinton remitted Rs. 2.50 Cr. which included premium of Rs. 2 Cr. Where will the premium of Rs. 2 Cr. received from Mr. Clinton be credited?

(iii) Which form should the LLP file – Form LLP I or Form LLP- II or both?

---

10. ICo. is a wholly owned subsidiary of FCo. FCo. enters into an arrangement with a Foreign bank (or foreign branch of an Indian bank) to issue SBLC in favour of the Indian bank of ICo, which in turn discounts the same to extend a loan to ICo.

Questions:

(i) Is the above arrangement permissible under the FEMA regulations?

(ii) What would be the implications when FCo makes a payment against the SBLC to its bank?

(iii) Will there be any change in the answer if FCo holds 10% or 15% of the shares in ICo rather than 100%?

(iv) Would the implications be different if FCo is a group company of ICo and not a direct shareholder?

ODI- OVERSEAS DIRECT INVESTMENT

11. A is an Indian company, engaged in the business of making investment in shares of group companies and earning income therefrom as well as providing management / advisory services.

B UK, a wholly owned subsidiary of A, is a holding cum operating entity of the A group engaged in the hospitality sector and is in the process of setting-up its greenfield operations in Australia through its Melbourne branch. B UK also has operating assets in Amsterdam and Germany which it had acquired from third parties. Additionally, B UK also provides consulting services to the group companies interalia asset management services, back office accounting support etc.

B UK along with a JV partner is contemplating to acquire the entire business operations of C Hotels by acquiring 100% stake in D Investments S.a.r.l (Luxembourg). Further, there is no intention of the Purchasers to lease any hotel asset of the group to third parties and / or sell out any asset individually without the business operations.

The IP of C Hotels group is held by D Investments. Post acquisition D will charge a royalty for use of IP.

D has obtained a debt from third party banks, which has been pushed down into the group companies. It charges interest from the group entities, which is used to pay interest due to the banks (cash pooling). Currently, D is not charging any fee for cash pooling services, but shall charge for the same post acquisition.

C Hotels BV (Netherlands) does not have any operations / income. C Hotels BV along with C GP1 Limited (UK) holds 100% shareholding of C Hotels Property LP (UK) which in turn owns the UK real estate. UK operations are housed under C Hotels Limited (UK), which pays the lease rentals.

C Hotels SAS (France) holds the real estate hotel in France and has leased out the same to Hotel Cayre SAS which operates the hotel and pays lease rentals to C Hotels SAS.

Questions:

(i) Whether the proposed acquisition in the existing structure on as is basis is permissible under automatic route from ODI perspective?

(ii) The structure has group companies which are Property Cos earning lease rentals, Op Cos managing business operations and SPVs. Whether this overall structure is fine from ODI perspective or that each entity in the structure would need to comply with the extant ODI guidelines?

(iii) As per Master Directions on ODI, it is possible to make the investments through **"A"** SPV (i.e. a non-operating holding company) where the Target

is an operating Company. In view thereof, can there be more than one SPV in the group structure (horizontally) from ODI standpoint?

(iv) Whether D Investments could be said to be engaged in financing activity from ODI standpoint?

(v) While submitting the ODI filing for the proposed acquisition of C through B UK, which sector should be selected from the drop down menu in the Form ODI? Also is a single ODI form required to be filed, reporting all the entities acquired under the structure, with details of each entities to be provided separately?

---

12. Mr. Keyur Patel formed a 100% owned FZC in UAE in March 2014 and as per Articles & Memorandum of the FZC he has subscribed to shares worth UAE DHS 1,00,000. Since there was no need of money, he has so far not contributed any capital to the FZC. The FZC has earned following income during last 4 years -

2014	DHS	52.500
2015	DHS	1,62.500
2016	DHS	12,15.500
2017	DHS	22,15,500

Question:

Mr. Keyur Patel is of the view that since he has not contributed any capital, he was not required to obtain UIN from the RBI and also file APR for the past four years. Since one of his friends has warned him about the possible consequences under FEMA, he is seeking expert opinion of the Brain Trustees to confirm his understanding.

---

13. In case of ODI by LLP, will balance of partner's current capital be treated as a part of paid-up capital?

---

14. In case of shares issued against director's remuneration, RBI has granted general permission. Will it be required to be reported under ODI or APR, or can it be treated as portfolio investment?

---

15. In case of swap of shares, whether FIPB permission is required? As per the master directions on ODI, FIPB permission is required only if the FDI leg of the swap requires the same.

---

16. If shares in a foreign company are gifted by Person Resident outside India to Person Resident in India, is it covered under general permission under Part II of FEMA 120 or would it require approval under Part I?

LRS-ODI

17. As per the FAQs on LRS, there is no distinction between individual and proprietorship. So, in case of ODI by a proprietorship concern, will the LRS limit of USD 2,50,000 apply?

---

18. Whether overseas bank account opened under LRS can be used for making remittances for ODI?

---

19. S Ltd. is a foreign company having 6 equal shareholders – A & B, who are NRIs and C, D, E, F, who are resident Indians. All shareholders are also directors of the company, but the control and management is with A & B. S Ltd holds two immovable properties in the UK, using funds borrowed from the shareholders

and earns rent from both these properties. S Ltd. has incurred loss in the last two years, resulting in a negative networth. All the original remittances were made by C, D, E & F under the LRS scheme into their foreign bank accounts and from there into S Ltd.

The Board of the company had announced a rights issue to the existing shareholders. The Indian shareholders declined the offer in view of the FEMA regulations. However, the NRI shareholders subscribed to an equity shares worth GBP 1,00,000. To partly reduce the negative networth, E & F have agreed to convert their loan to equity to the extent of GBP 1,00,000.

Due to their old age, A, B, C & D now wish to transfer their shareholdings to E & F at fair value certified by auditors of the company. The fair value of the shares is computed by substituting market value of the immovable properties instead of the book value and the same shall result in capital gains to the transferors. Further, E & F shall infuse additional funds into S Ltd., which shall be used to repay the loans of C & D.

Questions:

(i) Can C & D transfer their shareholding to E & F at the fair value computed by the statutory auditors of S Ltd.?

(ii) Would C & D be required to remit the full sales proceeds from transfer of shares to India?

(iii) Whether E & F can remit further funds under the LRS scheme to their personal foreign bank accounts and give loan to S Ltd. for repayment of loan of other shareholders?

(iv) Are C & D required to remit back to India the loan repaid by S Ltd. into their personal foreign bank accounts?

(v) Can E & F purchase shares from A, B, C & D out of funds lying in their foreign bank account, which were remitted under the LRS scheme from India?

GUARANTEE

20. A resident individual has obtained loan from an Indian bank for purchase of immovable property in India. The said loan is guaranteed by the NRI son of the borrower. Is this permissible?

OTHERS

21. An Indian holding company appoints Indian consultant to incorporate subsidiary outside India. For its services, Indian holding company makes advance payment to Indian consultant, which would then be reimbursed by the subsidiary after its incorporation. Is the payment of advance for services, a violation of Sec. 3 (b)?

---

22. Is gift of forex in cash by NRI relative to resident individual on the occasion of his marriage considered to be a violation of Sec. 3?

---

23. Under bill-to-ship-to model, only movement of goods is domestic. What about payment mechanism? For eg, ICo1 sells to FCo1 but FCo1 instructs ICo1 to deliver goods to ICo2. FCo1 will make payment to ICo1 and FCo1 will receive payment from ICo2. Whether such cross border payment and receipt is allowed in this case?

CASE NO. 24

I. BACKGROUND :

1.1 'A', an Indian company and part of the 'A'Group, is engaged in the business of making investment in shares of group companies and earning income therefrom as well as providing management / advisory services.

1.2 B (UK) Limited, a wholly owned subsidiary of A, is a holding cum operating entity of the 'A' group engaged in the hospitality sector and is in the process of setting-up its greenfield operations in Australia through its Melbourne branch. B UK also has operating assets in Amsterdam and Germany which it had acquired from third parties. Additionally, B UK also provides consulting services to the group companies *interalia* asset management services, back office accounting support etc.

1.3 Management discussions indicated that B UK along with a JV partner is contemplating to acquire the entire business operations of C Hotels from the current owners by acquiring 100% stake in D 3 Investments S.a.r.l (Luxembourg). Further, there is no intention of the Purchasers to lease any hotel asset of the group to third parties and / or sell out any asset individually without the business operations.

II. POINTS FOR CONSIDERATION :

1. The intellectual property of the group was previously held by C Hotel GmbH (Switzerland) and is currently held by D 3 Investments S.a.r.l. (Luxembourg). Thus, currently C Hotel Gmbh does not have any operations / income. Additionally, it is proposed that post acquisition, D 3 Investments would charge a royalty fee from the group companies for the usage of intellectual property.

---

2. D 3 Investments S.a.r.l. (Luxembourg) has obtained a debt from third party banks which has further been pushed down in group companies. Additionally, D 3 Investments charges interest from various group entities and the same is utilized to discharge the interest which is due to banks (known as cash pooling services). Currently, D 3 Investments is not charging any fee from the group entities for rendering such cash pooling services, however, post acquisition a fee is proposed to charged from the group entities in compliance with transfer pricing regulations.

---

3. C Hotels BV (Netherlands) does not have any operations / income. Additionally, C Hotels BV (Netherlands) along with C GP1 Limited (UK) holds 100% shareholding of C Hotels Property LP (UK) which in turn owns the UK real estate. UK operations are housed under C Hotels Limited (UK) and lease rental is paid by C Hotels Limited (UK). Thus

---

---

4. C Hotels BV (Netherlands) does not have any standalone operations / income. Additionally, C Hotels BV (Netherlands) along with C GP1 Limited (UK) holds 100% shareholding of C Hotels Property LP (UK Partnership Firm) which in turns owns the UK real estate hotel. C Hotels Property LP has leased out the hotel asset to C Hotels Limited (UK) which is managing the hotel operations and pays lease rentals to C Hotels Property LP UK.

---

5. C Hotels SAS (France) holds the France real estate hotel and has leased out the same to Hotel Cayre SAS which operates the France hotel and pays lease rentals to C Hotels SAS (France).

---

6. C Germany GmbH does not have any standalone operations / income. Additionally, C HotelgesellschaftmbH along with C Germany GmbH holds 100% shareholding of C Hotels Property GmbH & co. KG (German partnership Firm) which in turn holds the Germany real estate hotel property and has leased out the same to C HotelgesellschaftmbH which operates the Germany hotel and pays the lease rentals to C Hotels Property GmbH & co. KG

III. <u>QUERIES</u> :

A. Given that the intent of B UK is to acquire the business operations of C Hotels, whether the proposed acquisition in the existing structure on as is basis is permissible under automatic route from ODI perspective?

B. We understand that the Sellers have structured certain group entities as Prop Cos earning lease rentals and Op Cos which are managing the business operations (e.g. in UK, Germany as has been mentioned above) while certain entities are in the nature of SPVs (e.g. C Hotel GmbH (Switzerland), C Germany GmbH, C Hotels BV, C GP1 Limited). Whether this overall structure is fine from ODI perspective or that each entity in the structure would need to comply with the extant ODI guidelines?

C. The Investments by B Private Limited shall be governed by the Master Direction – Direct Investment by residents in Joint Venture (JV)/ Wholly Owned Subsidiary (WOS) abroad" ("**master direction ODI**"). As per master direction ODI, it is possible to make the investments through **"A"** SPV (i.e. a non-operating holding company) where the Target is an operating Company. In view thereof, can there be more than one SPV in the group structure from ODI standpoint (horizontally)?

D. In light of the fact that D 3 Investments is earning interest income on loans given to group entities and would also be earning fee from group entities, whether D 3 Investments could be said to be engaged in financing activity from ODI standpoint?

E. While submitting the ODI filing for the proposed acquisition of C through B UK, which sector should be selected from the drop down menu in the Form ODI? Also would we need to file a single ODI form reporting all the entities acquired under the structure (details of each entities to be provided separately).

CASE NO. 25

I. FACTS :

IMF Trust is a discretionary trust settled by M.

Beneficiaries of the trust are Mrs. M, Ms. I (Daughter of M) and daughters of Ms. I.

Mrs. M is resident Indian and other beneficiaries are UK Resident.

M has settled cash and some shares of listed co. Out of cash settled in Trust and dividend received from listed co, investment is made in Mutual Funds etc.

Trust has income from Capital Gain on its Investment, Dividend from Listco and Mutual Funds and Interest income

II. QUERIES :

1) If Trust makes distribution out of its income in favour of beneficiaries who are UK Resident then

a) Can they deposit distribution in their NRO account?

---

b) Can they remit money outside India? If yes, how much?

---

2) Can Trust directly make distribution in favour of beneficiaries, who are UK Resident?

CASE NO. 26

I. BACKGROUND:

1. Company, ABC Pvt. Ltd (India) is a 100% subsidiary of ABC GmbH & Co. KG, Germany.

---

2. Principal business activities of the Indian company comprise of marketing services in respect of Textile Machineries, providing erection & commissioning, field services etc. to 3rd party Indian customers as well as to other customers of our parent company, trading of spares and assembly of control panels. The company has a team of about 35 engineers who provide above mentioned services.

II. <u>FACTS</u>:

1. The parent company (Germany) has a customer by the name PQR in Turkey.

---

2. 2 of our engineers were deputed to carry out technical services to PQR for & on behalf of our parent company. The said 2 engineers were required to sign a fixed term employment contract with PQR.

---

3. In addition to the employment contract, our said two engineers were asked to open bank account in Turkey. This was with the view that out of the monthly deposits made by PQR in the engineer's account (salary), certain amount would be withdrawn by PQR towards discharge of legal social security / other statutory obligations.

III. <u>QUERIES</u> :

1. Is the above arrangement valid / legal, considering that the engineers were made to open bank account only with the primary objective of discharge of social security obligation by PQR?

CASE NO. 27

I FACTS :

T Co. is a company incorporated in India and is also registered with SEBI as a portfolio manager and merchant banker. M Co is overseas incorporated body corporate and T Co has acquired 100% ordinary shares (60,001 shares) of M Co. for consideration amounting to USD 1,89,025 (USD 3.15 each) paid in March, 2017 and approval of RBI for the same has been obtained. M Co. is regulated investment manager. Further, basis valuation from Merchant Banker & CA, Class A Shares have been valued at Fair Value of USD 2.27 each.

Post-acquisition by T Co., M Co. re-characterised these shares as "management shares" and created four separate categories of "Class Shares" (Class A, Class B, Class C and Class D) and has issued the following :

i. Class A (60,001 bonus shares), Class B, C & D (1000 bonus shares) to T Co.

ii. Class A shares issued to Mr NT, a resident in lieu of director's remuneration (20,000 shares) constituting 25% of total outstanding Class A Shares (80,001 shares).

However, the "management shares" continues to be 100% held by T Co.

For this purpose, M Co has designated a class of shares namely "Management Shares" and "Class Shares" respectively which shall have the following rights:

a) Management Shares :

- Issued at par value of US$1 each
- One vote per management share
- Entitled to distributions as may be determined by the Board out of all the assets of the company.

b) Class Shares:

- Issued at par value of US$1 each in relation to specific class
- Confer the holder, the right to receive distributions of income and capital as may be determined by the Board
- Not entitled to receive notice of any shareholder meetings except –
  - New shares are issued of that particular Class; or
  - Variation in the right of Class Shareholder
- No right to vote.

Further,MCo2. has "ACCRUED CARRY" and can be triggered and activated for transfer to the Investors as per the Investor Management agreement.

II. QUERIES :

1. It is proposed by M Co. to transfer a lump-sum reserve from Class A to management shares post unanimous approval from Class A shareholders as well as M Co.'s board of directors. Kindly guide if there is any restriction. If No, please guide on the justification for the nature of transaction.

   ---

2. It is proposed to transfer the entire accrued "CARRY" till date with M.Co. to the holding company, i.e. T. Co. Kindly guide whether such transaction is permissible as per applicable FEMA guidelines and RBI Directions.

CASE NO. 28

I. FACTS :

Section A – Extending Overseas Debt

1. ABC is proposing to extend loans to or infuse further equity in ABC's wholly owned subsidiary, DEF Inc. (a company incorporated in California USA) ("**DEF**"). It is then proposed for DEF to use funds from such loans/equity infusion to extend loans to an entity outside India ("**Foreign Entity**"). ABC or DEF will not have any shareholding in the Foreign Entity. The Foreign Entity shall use the funds received from DEF to invest in other foreign entities that have investments (directly or indirectly) in entities in India.

---

2. As per our understanding, as per the ODI regulations, an Indian Party/entity may extend loan only to an overseas JV / WOS in which it has equity participation. Further, ABC would need to be in compliance with additional obligations under the ODI Obligations if DEF is considered as an entity engaged in the financial sector.

Section B – Proposed Investment in a Foreign Entity by swap of shares

1. PQR (wholly owned subsidiary of ABC, incorporated in India) is considering investment in an entity set up outside India ("**Overseas Entity A**"). The Overseas Entity has a subsidiary in India ("**India Subsidiary**").

---

2. The Overseas Entity A is proposing to set up an operational entity outside India ("**Overseas Entity B**") and issue shares in such entity to XYZ. Subsequently, it is proposed that the Overseas Entity A will purchase the shares held by XYZ in

Overseas Entity B and in return/consideration for the same issue shares in the Overseas Entity A to XYZ ("**Foreign Swap**"). To clarify, this is a secondary purchase of shares and not merger/amalgamation of foreign entity.

---

3. Alternately, it is proposed for XYZ to invest in the Indian Subsidiary. Subsequently, the Overseas Entity A will purchase the shares held by XYZ in Indian Subsidiary and in return/consideration for the same issue shares in the Overseas Entity A to XYZ ("**Indian Swap**"). The Indian Subsidiary is engaged in a sector under the automatic route of the FDI Regulations.

---

3. As per our understanding, as per the ODI regulations, XYZ will be able to sell its shares in the Overseas Entity B to Overseas Entity A, only if Overseas Entity B has been in operation for at least one full year and the annual performance report together with the audited accounts for that year has been submitted to the RBI. Further, on a joint reading of the FDI Regulations and ODI Regulations we understand that investment through swap is understood to mean the acquisition by an Indian company of shares in an overseas entity (either through subscription or acquisition from an existing shareholder of the overseas entity) against shares in the Indian company issued to the overseas entity.

II. QUERIES :

(i) (a) Is the transaction as contemplated under Section A permissible under the ODI Regulations? Would the grant of loan by DEF to the Foreign Entity (which is not a JV of DEF) or multiple grants of loans by DEF to various foreign entities, allowed under FEMA ? (b) Would granting of loan or inter corporate deposit, render DEF an entity engaged in the financial sector for the purposes of the ODI Regulations? (c) Would the transaction contemplated under Section A (1) be considered as round tripping by ABC?

(ii) (a) Is Foreign Swap permissible under the ODI Regulations? (b) Is an Indian entity entitled to receive shares (instead of cash) as consideration for sale of its shares in an overseas joint venture, in a transaction that does not involve amalgamation/merger of such overseas joint venture? (c) Would the answer to (ii) (b) be different had the swap taken place through amalgamation / merger (d) Would the Foreign Swap, in the current situation wherein Overseas Entity has an Indian subsidiary, be considered as round tripping by XYZ? (e) Would the answer to (ii) (d) be different had the swap taken place through amalgamation/merger

---

(ii) (a) Is Indian Swap, (involving secondary sale of shares) permissible under the FDI Regulations and ODI Regulations? (b) Would the India Swap, in the current situation wherein the Overseas Entity A is having Indian subsidiary be considered as round tripping by XYZ? (c) Would the answer to (iii) (b) be different had the swap taken place through amalgamation / merger (d) Can Indian Swap be done with prior permission of government and/or RBI if the Overseas Entity does not have investment in any entity in India (directly or indirectly). (e) Would the answer to (ii) (d) be different had the swap taken place through amalgamation/merger

---

CASE No. 29

I. FACTS :

ABC is a non profitorganisation registered under Section 25 of the Companies Act, 1956. Our objects are to provide education and health programmes to children living on construction sites.

II. QUERY :

We are likely to receive a donation/grant from an Indian Company which is a 100 per cent subsidiary of a foreign company. Whether such grant or donation should be treated as a foreign source or an Indian source?

CASE No. 30

I. BACKGROUND :

Mr. KK and his wife MK are Hindu, Indian citizens and residents. They have two children RK and VK. RK, his son, is a resident Indian citizen. He has H1B visa and has applied for a green card. VK, his daughter, is a Canadian citizen, while her husband is an Indian citizen. She and her husband have H1B visa and live in USA. KK has been transferring money under Liberalized Remittance

Scheme limits to VK on a monthly basis. Currently there is only one grand-daughter who is an Indian citizen and resident.

II. CLIENT OBJECTIVES :

1) Mr. KK wishes to settle a trust for funding education for all his grandchildren, whether existing now or not. He is planning to set up the trust in Singapore where he and his wife are the primary beneficiaries and barring exceptional circumstances, the income of the Trust shall be accumulated. Each grandchild that is born shall be, on applying to the Trustees, eligible to receive from the corpus of the Trust the cost of their education for which the Settlor will set a maximum limit. On each child reaching 25 years, the difference between this maximum limit and the actual amount withdrawn shall be paid out to such child. The balance corpus, if any, shall be paid to the other family trusts which KK will settle in the future.

---

2) Given the presence of US persons in the family, from a US tax perspective, we have discussed the objectives of this trust with a US counsel. He has advised that the preference would be for a Singapore revocable Grantor Trust.

---

3) It is planned that the Trust be preferably be set up as a discretionary trust, whether revocable or irrevocable. The Settlor will leave a letter of wishes with the Trustees to appoint a specified maximum corpus in favor of each of the Grandchildren. The Protector of the Trust would be RK, KK's son, with negative powers of vetoing trustees' decision in specified circumstances.

III. <u>QUERIES</u> :

1. Can an Indian person settle a trust outside India for the benefit of himself, wife and grandchildren?

   ---

2. If the trust is settled as a revocable trust or irrevocable trust, what would be the implications under FEMA, 1999, and tax treatment under Income Tax Act, 1961 under both the situation? Further Trust is fully taxable in India?

   ---

3. Would the trust enjoy the benefits of Indo Singapore Tax Treaty in either case and be able to take advantage of tax set-off, should tax apply to it in Singapore?

---

4. If the Trust is irrevocable, would the grandchildren, being US persons resident in India, be liable for any tax on the Trust income in India once a maximum amount is determined by the Trustees in their favour?

CASE No. 31

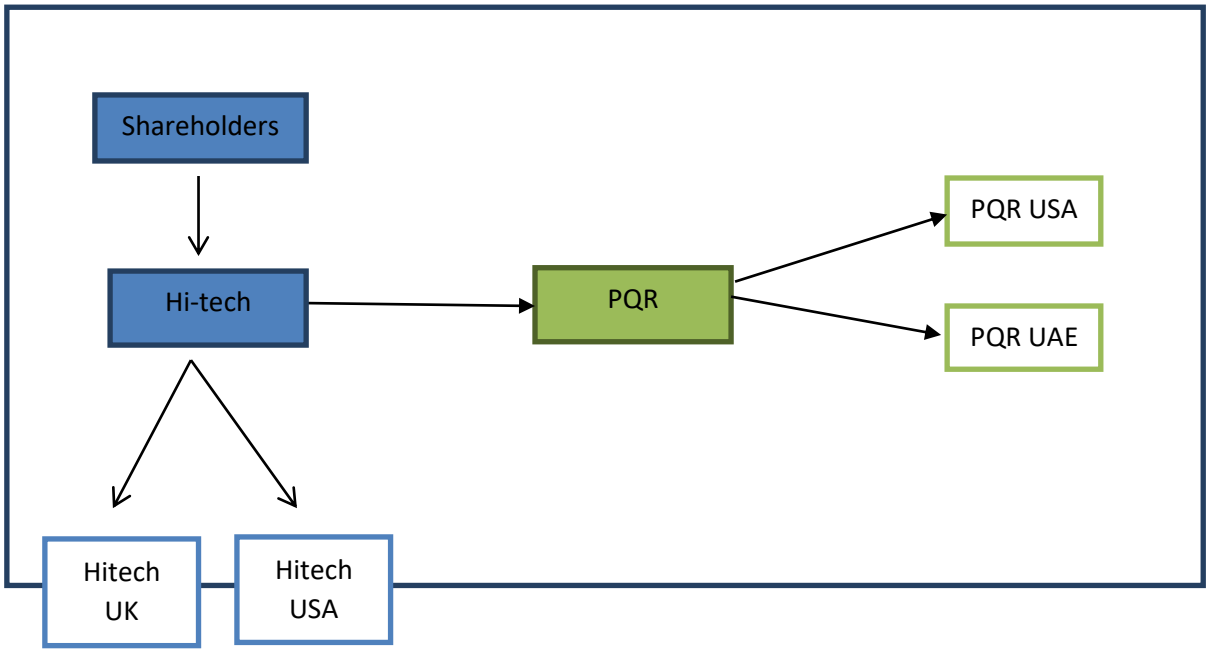
I) Background:

- The Hi-Tech Group is engaged in the business of providing IT enabled market research and analytics solutions to global clients.

- The Hi-tech group comprises of the following entities:

  - Hi-tech Pvt. Ltd, PQR Pvt. Ltd;
  - Branches – in USA, UK and UAE.

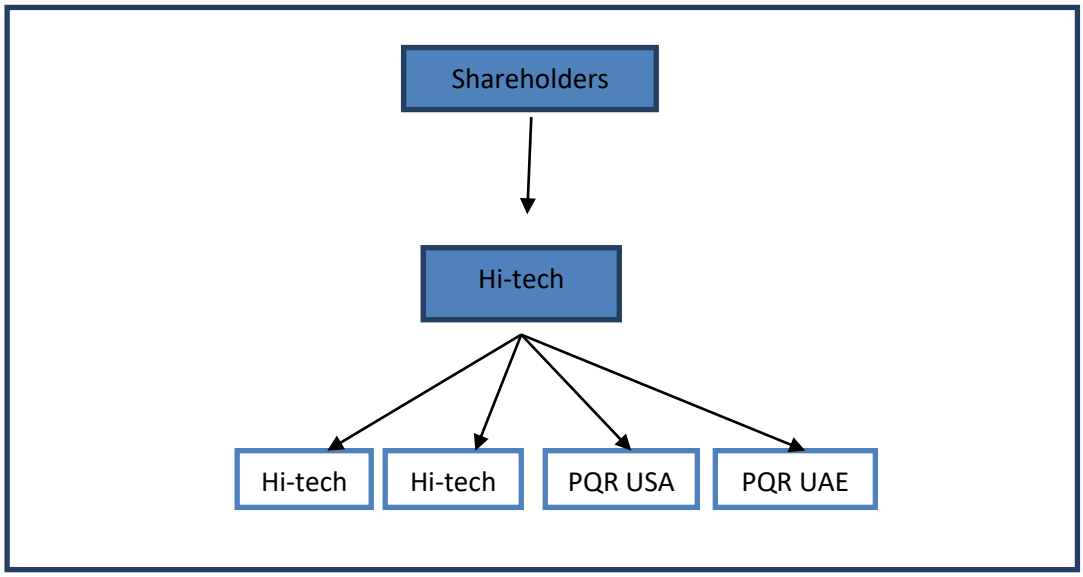
- The current structure of the group is as follows:



Transaction:

- Hi-tech and PQR have filed a Scheme of Arrangement with the NCLT whereby it is proposed that PQRwill be merged into Hi-tech with effect from 01 April 2017.

- Thus, the resulting structure post approval of the Scheme of Arrangement by the NCLT will be as follows:



II) <u>QUERIES</u> :

- Whether the existing branches would be deemed to be transferred to Hi-tech pursuant to the Scheme of Arrangement or would the branches have to be closed and set up again under Hi-tech?

- If the branches would be deemed to be transferred pursuant to the Scheme of Arrangement, Hi-tech would have 2 branches in USA with effect from 01 April,

2017 (please note that this is a retroactive date merger). Whether it is permissible under automatic route or would it require approval from RBI?

- Please let us know the procedure to be followed and filings to be done with RBI by Hi-tech and PQR.

