Liberalised Remittance Scheme (LRS) – Recent changes and the impact

21 June 2023

Finance Act, 2023

- Tax Collection at Source (TCS) on remittances under the LRS was first introduced vide Finance Act, 2020, to widen the tax net. Subsequently, Finance Act, 2023, revised the rates of TCS with effect from 1 July 2023.
- Thereafter, in these provisions, Finance Act, 2023, deleted the reference to the term 'out of India' in relation to the LRS, and hence, all remittances under the LRS are now subjected to TCS, whether incurred in India or outside India.

  TCS rates pre and post amendments are tabulated as under:

<table>
<tr><th>Sr No.</th><th>Particulars</th><th>TCS rate
till 30 June 2023</th><th>TCS rate
with effect from 1 July 2023</th></tr>
<tr><td>1</td><td>Education, where the source of funds is through a loan obtained from a specified financial institution</td><td>0.5% if the aggregate remittance exceeds INR 7,00,000</td><td>0.5% if the aggregate remittance exceeds INR 7,00,000</td></tr>
<tr><td>2</td><td>Education (not covered in point No.1 above) or medical treatment</td><td>5% if the aggregate remittance exceeds INR 7,00,000</td><td>5% if the aggregate remittance exceeds INR 7,00,000</td></tr>
<tr><td>3</td><td>Overseas tour package</td><td>5% without any threshold limit</td><td rowspan="2">20% without any threshold limit (except for credit and debit card payments where the threshold of INR 7,00,000 applies)</td></tr>
<tr><td>4</td><td>Other remittances</td><td>5% if the aggregate remittance exceeds INR 7,00,000</td></tr>
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Amendments under FEMA (Current Account Transaction) Rules, 2000

- On 16 May 2023, the Ministry of Finance issued a notification to delete the exemption available under the LRS for use of international credit card during overseas visits.
- Thereafter, some clarifications and FAQs were also issued, which cumulatively have the following impact –

  a. All payments, whether through international credit / debit cards, forex cards or any other mode, are covered under the LRS.

  b. Payments through international credit / debit cards up to INR 7,00,000 per financial year (FY) are not considered under the LRS. Accordingly, TCS provisions will not apply to such transactions.

c. Expenses relating to business visits of employees are not covered under the LRS. Such expenses will continue to be governed by the FEMA (Current Account Transaction) Rules, 2000.

d. The government has stated that it will provide detailed guidelines on incidental expenses for education and medical treatment, which will be governed by the beneficial TCS provisions. These guidelines are yet to be issued.

Impact of changes

1. Business v/s personal spends

- Expenses relating to business visits of employees outside India are not covered under the LRS. Such expenses will continue to be governed by the FEMA (Current Account Transaction) Rules, 2000, without any limit.

  However, banks would not be able to identify whether the expense is a business or personal expense. Hence, TCS may be charged on business expenses as well. This is a practical challenge and it merits attention of the tax authorities.

- Generally, corporate credit cards are issued in the employee's name, though they may be guaranteed by the employer. The employee incurs business expense through corporate credit cards and is subsequently reimbursed by the employer.

  In the current set up, banks will not be in a position to identify business expenses. Consequently, the entire foreign spends on the card may be considered as remittance under LRS by the employee. As a result, the employee's LRS limit will be adjusted and TCS will be levied on such remittances.

  To mitigate this hardship, it may be necessary to have corporate credit cards in the name of the corporate entity and paid directly by the employer or a similar new instrument to separate business expenses of the employee.

- At this stage, to avoid the impact on employees' LRS limits and levy of TCS, employers may need to purchase foreign exchange in India and provide it to employees for business travel.

2. Foreign credit cards

- Payments made by a resident individual using a foreign credit card for overseas spends will not attract TCS. However, the monthly settlement of the outstanding amount, if made from an individual's Indian bank account, will be covered under the LRS, and subject to TCS.

  On the other hand, if the credit card bill is directly paid by the employer, it would be covered under current account transactions without any limit.

3. Forex cards

- Many travellers prefer using forex cards vis-à-vis debit / credit cards while visiting overseas to save transaction fees and high forex markup, which is otherwise charged on such transactions.

Unlike international credit / debit cards, the exemption limit of INR 7,00,000 for TCS provisions is not applicable for the purchase of foreign currency and amounts credited to the forex cards. As a result, there is an upfront outflow of 20% on account of TCS at the time of credit of foreign exchange to the forex cards.

However, forex cards may be efficiently used for business expenses by employers directly funding the forex cards under current account transactions regulations.

4. Add-on cards

- In case of add-on cards, the overseas transactions done by the secondary cardholder will be considered as utilisation of the LRS limit of the add-on card holder (i.e., secondary card holder) and not of the primary card holder.

5. Overall LRS limit

- Every overseas payment exceeding INR 7,00,000 per FY incurred by a resident individual through an international credit card will now come within the ambit of the LRS. In lieu of this, the overall available LRS limit of USD 250,000 will be enhanced by INR 700,000 paid through international credit / debit cards.

Our comments

There is an increased compliance burden on banks to collect TCS and remit the same to the tax department. It is necessary to build a robust system for tracking remittances covered within the ambit of the LRS in order to comply with TCS requirements.

The aforesaid changes would lead to the blockage of funds of residents on account of TCS and increase the overall cost of spends under the LRS. However, TCS can be set off against the advance tax payable every quarter. Accordingly, the impact is limited to the opportunity cost of funds, till credit for TCS is claimed.

In August 2022, the government had amended the LRS regulations to the effect that in case an individual fails to utilise / spend / use the funds remitted under the LRS within 180 days of such remittance, the same shall be repatriated to India. The amendments reflect the government's intent of keeping a strict vigil on overseas remittance and its utilisation.