

EY Tax Alert

Finance Ministry announces various relief measures on TCS on LRS remittances and overseas tour program package

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Executive summary

This Tax Alert explains the relief measures announced by Finance Ministry on tax collection at source (TCS) on remittances under Liberalised Remittance Scheme and purchase of overseas tour program package (OTPP).

Prior to the amendment by Finance Act (FA) 2023, TCS was applied @ 5% on LRS remittances outside India in excess of INR700,000 (0.5% in case of remittance for education purposes financed by loans from qualifying financial institutions). It was also applied on sale of OTPP but without the threshold limit of INR700,000.

The FA 2023 enhanced the TCS rate on LRS to 20% (except in case of remittances for education and medical purposes) without the threshold limit of INR700,000. It also enhanced TCS rate on sale of OTPP to 20%. The amendments were to come into effect from 1 July 2023. On 16 May 2023, the transactions on international credit card (ICC), while being on overseas visit, were also brought within the purview of LRS and TCS.

This caused widespread concern and ambiguity amongst various stakeholders who made representations and suggestions to the Central Government (CG).

In deference to the representations by various stakeholders, the Finance Ministry issued a Press Release on 28 June 2023 announcing the decision to make following changes in TCS on LRS and OTPP:

- a) Restoration of threshold of INR700,000 to attract (i) TCS on LRS and (ii) TCS at higher rate of 20% on sale of OTPP
- b) Restoration of exclusion of ICC transactions from LRS
- c) Deferral of effective date of higher TCS rate from 1 July 2023 to 1 October 2023

On 30 June 2023, the Central Board of Direct Taxes (CBDT)¹ issued Circular No. 10 to provide clarifications on various procedural issues on TCS on LRS and OTPP in exercise of its power to issue guidelines to remove difficulties arising in giving effect to TCS provisions. The Circular clarifies (i) the applicability of threshold of INR700,000, (ii) process for monitoring the threshold by obtaining undertaking from remitter, (iii) applicability of TCS on purchase of OTPP from foreign tour operator, (iv) inclusion of incidental expenses related to education and medical for TCS at lower rate and (v) non-applicability of TCS on OTPP to stand alone travel and hotel bookings.

LRS

The Liberalised Remittance Scheme (LRS) is an exchange control facility to allow resident individuals (including minors) to draw foreign exchange to remit funds outside India up to USD250,000 per financial year (FY) for any permissible capital/current account transactions. It also includes remittances within India (e.g., gifts/loans to non-resident Indians or investment through GIFT² City units).

Prior to 16 May 2023, it excluded use of ICC towards meeting expenses while on a visit outside India. However, it included similar expenses incurred on international debit card (IDC).

TCS on LRS and OTPP imposed w.e.f. 1 October 2020

Effective 1 October 2020, the FA 2020 imposed obligation on authorized dealers (AD) to collect tax at source (TCS) from remitters @ 5% on LRS remittances outside India in excess of INR700,000 (0.5% in case of remittance for education purposes financed by loans from qualifying financial institutions). It also imposed similar obligation on OTPP sellers to collect TCS @ 5% from buyers but without the threshold limit of INR700,000. The object of such levy was to widen and deepen the tax net.

For this purpose, the term OTPP is defined to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

The relevant TCS provision gives power to CBDT to issue guidelines, with the approval of the CG, to remove difficulties arising in giving effect to the said provision. Every such guideline issued by CBDT shall be laid before both Houses of Parliament and shall be binding on the tax authority and on the person liable to collect TCS.

Vide Notification No. 3878 (E) dated 17 August 2022, the CG notified that TCS provisions shall not apply to a person (being a buyer) who is a non-resident (NR) for income tax purposes and who does not have a permanent establishment

(PE) in India. Thus, OTPP sellers are not required to collect TCS from NR buyers who do not have a PE in India.

The TCS is an advance payment of tax which can be set off against final tax liability and/or claimed refund while filing return of income (ROI).

Enhancement and widening of TCS on LRS and OTPP by FA 2023

The FA 2023 made following changes effective from 1 July 2023:

- (a) increase in TCS rate from 5% to 20% for remittances other than for education/medical purposes
- (b) removal of threshold of INR700,000 for remittances other than for education/medical purposes
- (c) extension of TCS to LRS remittances within India.

While moving the amendments to Finance Bill 2023, the Finance Minister clarified that the Reserve Bank of India (RBI) was requested to look into the non-inclusion of payments for foreign tours through a credit card under LRS to bring credit card payments for foreign tours within the ambit of LRS and TCS thereon.

Inclusion of ICC expenses within LRS

On 16 May 2023, the RBI issued the Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023 (FEMA (CAT) Rules) to include use of ICC towards meeting expenses while on a visit outside India within LRS. The Finance Ministry also issued clarifications on 18 May 2023 on this issue. However, as a measure of relief for small transactions and to avoid any procedural ambiguity, the Finance Ministry issued a further Press Release on 19 May 2023 announcing exclusion of ICC/IDC transactions up to INR700,000 from LRS.

The key points/clarifications issued by the Finance Ministry were as follows:

- ▶ ICC transactions, while on visit outside India, are brought under LRS to bring parity with IDC transactions which were already covered under LRS
- ▶ The lower TCS rate of 5% will apply for travel and incidental expenses related to education and medical treatment for which a detailed clarification will be issued separately

¹ The apex direct tax administrative body in India

² Gujarat International Financial Tec-City - an International Finance Service Centre

- ▶ Expenditure incurred on business visits by employees outside India are not covered by LRS and, hence, may be permitted by the AD without any limit, subject to verifying the bonafides.
- ▶ Even earlier, all current account transactions undertaken on ICC in India were covered by LRS and there is no change in this position. However, due to the FA 2023 amendments, such transactions will also be subject to TCS from 1 July 2023.
- ▶ Any payments by an individual using their ICC/IDC up to INR700,000 per FY will be excluded from LRS limits through necessary changes to FEMA (CAT) Rules and hence, will not attract any TCS. Existing beneficial TCS treatment for education and health payments will also be continued.

Object of enhancement/ expansion of TCS on LRS

- ▶ As per the clarifications provided by Finance Ministry, during FY 2021-22, Indian residents remitted USD19.61 billion under LRS route rising from USD12.68 billion in FY 2020-21. In FY 2022-23, it rose to more than USD24 billion of which overseas travel accounted for more than half.
- ▶ The Finance Ministry also clarified that the main reason for enhancement of TCS rate from 5% to 20% on LRS is that instances have come to notice where LRS payments are disproportionately high when compared to the disclosed incomes.

Representations by stakeholders

- ▶ Different stakeholders involved in LRS and OTPP made several representations to the Finance Ministry to roll back or dilute the scope of TCS on LRS and OTPP and/or provide clarifications on implementation issues.
- ▶ The ADs sought more time to change their information technology (IT) systems to implement the changes.
- ▶ The Indian sellers of OTPP represented that a steep 20% TCS on OTPP without any threshold limit will be detrimental to their business since the resident buyers will either directly book overseas travel tickets, hotels, etc. on standalone basis or book OTPP with foreign tour operators.

Press Release dated 28 June 2023 announcing relief measures

In deference to the representations by various stakeholders, the Finance Ministry issued Press Release on 28 June 2023 announcing the decision to make following changes in TCS on LRS and OTPP:

1. Restoration of threshold of INR700,000

There will be no change in TCS rate for all purposes under LRS and for OTPP, regardless of mode of payment, for amounts up to INR700,000 per individual per annum.

Thus, for first LRS up to INR700,000, there shall be no TCS. Beyond this threshold, TCS shall apply as follows:

- 0.5% if remittance for education is financed by education loan
- 5% in case of remittance for education (other than (a) above)/medical treatment
- 20% for others

However, for purchase of OTPP, TCS shall continue to apply @ 5% for the first INR700,000 per annum and 20% rate will apply for expenditure above this limit.

2. Restoration of exclusion of ICC transactions from LRS

To give adequate time to banks and credit card networks to put in place requisite IT based solutions, the CG has decided to postpone the inclusion of ICC transactions while being overseas, within LRS. This means that such transactions will not be counted as LRS and, hence, not attract TCS. Accordingly, the Press Release dated 19 May 2023 announcing exclusion from LRS of such transactions on ICC/IDC up to amount of INR700,000 also stands superseded. In other words, the position prevailing prior to 16 May 2023 is restored.

3. Deferral of effective date of higher TCS from 1 July 2023 to 1 October 2023

The increased TCS rate of 20% which was to come into effect from 1 July 2023 shall now come into effect from 1 October 2023 with modifications as indicated above. Till 30 September 2023, earlier TCS rates which prevailed prior to FA 2023 amendment shall continue to apply.

The Press Release also provides the following table summarizing the old and new TCS rates as follows:

(1) Nature of payment	(2) Earlier rate before FA 2023 amendment – Applicable till 30 September 2023	(3) New rate w.e.f. 1 October 2023
LRS for education financed by loan	<ul style="list-style-type: none"> ▶ NIL up to INR700,000 ▶ 0.5% above INR700,000 	<ul style="list-style-type: none"> ▶ NIL up to INR700,000 ▶ 0.5% above INR700,000
LRS for medical treatment/ education (other than financed by loan)	<ul style="list-style-type: none"> ▶ NIL up to INR700,000 ▶ 5% above INR700,000 	<ul style="list-style-type: none"> ▶ NIL up to INR700,000 ▶ 5% above INR700,000
LRS for other purposes	<ul style="list-style-type: none"> ▶ NIL up to INR700,000 ▶ 5% above INR700,000 	<ul style="list-style-type: none"> ▶ NIL up to INR700,000 ▶ 20% above INR700,000
Purchase of OTP	<ul style="list-style-type: none"> ▶ 5% (without threshold) 	<ul style="list-style-type: none"> ▶ 5% till INR700,000 ▶ 20% thereafter

The Press Release also stated that necessary legislative changes/notifications and clarifications shall be proposed/issued in due course.

CBDT Circular No. 10 dated 30 June 2023 providing guidelines for removal of difficulties

To remove difficulties in giving effect to provisions of TCS on LRS and OTP, as announced in Press Release dated 28 June 2023, the CBDT has issued following guidelines with the approval of the CG:

1. No TCS shall be applicable on expenditure incurred through ICC while being overseas till further order. (FAQ 1)
2. The threshold of INR700,000 is a combined threshold for applicability of TCS on LRS irrespective of the purpose of remittance. Such was the position prior to FA 2023 amendment which will prevail till 30 September 2023. (FAQ 2)

Illustratively, a remittance of INR700,000 under LRS is made in a FY for education purpose and other remittance in the same FY of INR700,000 is made for medical treatment and INR700,000 for other purposes. In such case, first remittance of INR700,000 shall not be liable for TCS. However, subsequent remittance of INR1,400,000 under LRS shall be liable for TCS in accordance with applicable

TCS rates as per the table provided in Press Release (refer preceding para).

3. The threshold of INR700,000 is for whole of FY 2023-24. If this threshold has already been exhausted, all subsequent remittances under LRS, whether in the first half or second half of FY 2023-24, would be liable for TCS at applicable rate. (FAQ 3)
4. The threshold of INR700,000 is qua remitter and not qua AD. Since the facility to provide real time update of LRS remittance is still under development by RBI, it is clarified that the details of earlier LRS remittances by the remitter during the FY may be taken by the AD through an undertaking at the time of remittance. If the AD correctly collects TCS based on information given in this undertaking, the AD will not be treated as "assessee-in-default". However, for any false information in the undertaking, appropriate action may be taken against the remitter under the ITL. It is further clarified that the same methodology of taking undertaking from the buyer of OTP may be followed by the seller of such OTP. (FAQ 4)
5. The thresholds of INR700,000 apply independently for LRS and OTP. For LRS, the threshold of INR700,000 applies to make TCS applicable. For OTP, the threshold of INR700,000 applies to

determine the applicable TCS rate as 5% or 20%. (FAQ 5)

6. In case of purchase of OTPP from a foreign tour operator for which money is remitted under LRS, the TCS provision for purchase of OTPP shall apply and not TCS provision for LRS remittance. Since the threshold of INR700,000 for NIL TCS does not apply for OTPP, TCS is applicable and TCS is required to be collected by the seller. Illustratively, if remittance under LRS for purchase of OTPP from a foreign tour operator is INR300,000 and there is no other remittance under LRS or for OTPP during the FY, the TCS shall be required to be collected at 5% and should be made by the seller. (FAQ 6)
7. As per RBI clarification, remittance for the purposes of medical treatment shall include:
 - (i) Remittance for purchase of tickets of the person to be treated medically overseas (and his/her attendant) for commuting between India and the overseas destination;
 - (ii) His/her medical expense; and
 - (iii) Other day to day expenses required for such purpose

As per RBI clarification³, Code S0304 (under the Purpose Group Name "Travel") in RBI Master Direction for LRS, pertains to travel for medical treatment and covers the transactions which are related to health services acquired by residents travelling abroad for medical reasons, which includes medical services, other healthcare, food, accommodation and local transport transactions.

In addition, Code S1108 (under the Purpose Group Name "Personal, Cultural & Recreational services") covers transactions for health services rendered remotely or on-site (that is no travel by service recipient is involved). This covers services from hospitals, doctors, nurses, paramedical and similar services etc.

TCS provision for medical treatment would apply when remittance is under Code S0304 or S1108.

Similarly, remittance for purpose of education shall include:

- (iv) Remittance for purchase of tickets of the person undertaking study overseas for commuting between India and the overseas destination;
- (v) The tuition and other fees to be paid to educational institute; and
- (vi) Other day to day expenses required for undertaking such study

As per RBI clarification⁴, Code S0305 (under the Purpose Group Name "Travel") in RBI Master Direction for LRS, pertains to travel for education (including fees, hostel expenses etc.) and covers education related services such as tuition, food, accommodation, local transport and health services acquired by resident students while residing overseas.

In addition, Code S1107 (under the Purpose Group Name "Personal, Cultural & Recreational services") covers transactions for education (e.g., fees for correspondence courses abroad) where the person receiving education does not travel overseas.

TCS provision for education would apply when remittance is under Code S0305 or S1107. (FAQ 7)

8. Considering the definition of OTPP, it is clarified that purchase of only international travel ticket or purchase of only hotel accommodation, by itself is not covered within the definition of OTPP. To qualify as OTPP, the package should include at least two of the following:
 - (i) International travel ticket,
 - (ii) Hotel accommodation (with or without food)/boarding/lodging,
 - (iii) Any other expenditure of similar nature or in relation thereto

(FAQ 8)

³ BPM6, A.P.(DIR Series) Circular No. 50 dated 11 February 2016

⁴ BPM6, A.P.(DIR Series) Circular No. 50 dated 11 February 2016

Comments

The Press Release dated 28 June 2023 and Circular No. 10 provides relief and clarity on various aspects of TCS on LRS and OTTP to all stakeholders.

While the object of TCS on LRS and OTTP to widen and deepen the tax net is well appreciated, the steep increase in TCS rate from 5% to 20% for LRS (other than education/medical purposes) and OTTP without any threshold by FA 2023 and inclusion of ICC transactions in LRS on 16 May 2023 had caused widespread concern and ambiguity.

The announcements to restore threshold of INR700,000, exclusion of ICC transactions from LRS, deferral of effective date of higher TCS rate from 1 July 2023 to 1 October 2023 and guidelines issued for clarifying various procedural issues will provide relief to individual taxpayers and also provide procedural clarity to ADs and OTTP sellers.

However, a number of issues still persist on the scope and ambit of changes in TCS provisions. These are illustrated below:

- a. Presently there is no mechanism in the ITL for the employer to consider TCS suffered by the employee for adjusting the salary withholding tax. This creates cash flow blockage for the employee till the processing of his/her return of income. In contrast, non-salaried taxpayers can reduce their advance tax payments to the extent of TCS suffered by them. It was hoped that the CG may provide appropriate clarification on the issue, but Press Release dated 28 June 2023 and Circular No. 10 are silent on this aspect.
- b. While the position prior to 16 May 2023 of exclusion from LRS of ICC transactions during overseas visit is restored, it has resulted in differentiation between overseas ICC transactions (which are excluded from LRS) and overseas IDC transactions (which are not excluded from LRS). Although, the restoration of threshold of INR700,000 partially mitigates this distinction, ideally, both the transactions ought to have been kept at par as announced by Press Release dated 19 May 2023 (which now stands superseded).

- c. While it is clarified that overseas ICC transactions shall be excluded from LRS, it gives rise to ambiguity on foreign currency expenditure incurred on ICC in India (e.g., downloading of software from foreign vendor's website, shopping on international e-commerce websites, booking of foreign travel tickets, hotels, etc.). The tracking and modality of TCS on such transactions requires better clarity.
- d. Clarity on inclusion in LRS and applicability of TCS is also awaited on transactions incurred in INR through ICC/IDC to foreign vendors (e.g., payments in INR to foreign vendors or Indian vendors for foreign travel expenses)
- e. FAQ 6 of Circular No. 10 clarifies that the foreign tour operator selling OTTP to a resident individual is required to collect TCS @ 5% up to INR700,000 and 20% thereafter. This appears to put Indian and foreign tour operators at par on TCS obligation on OTTP. However, the enforcement of TCS obligation on foreign tour operators who do not have taxable presence in India is uncertain. If the foreign tour operator does not collect TCS, the TCS obligation may fall on AD who facilitates the LRS remittance to such foreign tour operator. This gives rise to further issue whether AD should apply TCS on LRS or TCS on OTTP.

Stakeholders may need to continue to engage with CG to seek clarity on the above and any other issues faced on implementation of TCS on LRS and OTTP.

