



Newsflash:
Repatriation of Unutilised Amount out of LRS
remittance - *New Requirement Perspective*

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Repatriation of Unutilised Amount out of LRS remittance
- New Requirement Perspective

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1.0 BACKGROUND:

- 1.1** Reserve Bank of India ('RBI') vide Master Direction on Liberalised Remittance Scheme (LRS) dated 1 January 2016 (FED Master Direction No. 7/2015-16), as updated from time to time, has permitted all resident individuals, including minors, to freely remit up to USD 250,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both under the Liberalised Remittance Scheme ('LRS' or 'the Scheme').
- 1.2** The limit of USD 250,000 per Financial Year (FY) under the Scheme also includes/subsumes remittances for current account transactions (viz. private visit; gift/donation; going abroad on employment; emigration; maintenance of relatives abroad; business trip; medical treatment abroad; studies abroad) available to resident individuals.

2.0 REPATRIATION REQUIREMENT FOR REMITTANCES UNDER LRS

- 2.1** RBI, on 24 August 2022, had updated Master Direction **No. 7/2015-16** on LRS, wherein Para 16 of the said directions was modified to align the same with Regulation 7 of Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015 [Notification No. FEMA 9(R)/2015-RB dated 29 December 2015].

- 2.2** Prior to modification, Para 16 of the Master Direction read as under:

"At present, the resident individual is not required to repatriate the funds or income generated out of investments made under the Scheme. However, a resident individual who has made overseas direct investment in the equity shares; compulsorily convertible preference shares of a JV/WOS outside India, within the LRS limit, shall have to comply with the terms and conditions prescribed by the overseas investment guidelines under Notification No. FEMA 263/RB-2013 dated March 5, 2013."

- 2.3** The revised **Para 16 of Master Direction No. 7/2015-16** (as updated on and with effect from 24 August 2022) on Liberalised Remittance Scheme (LRS) is reproduced as under:

"Investor, who has remitted funds under LRS can retain, reinvest the income earned on the investments. The received/realised/unspent/unused foreign exchange, unless reinvested, shall be

repatriated and surrendered to an authorised person within a period of 180 days from the date of such receipt/ realisation/ purchase/ acquisition or date of return to India, as the case may be, in accordance with Regulation 7 of Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015 [Notification No. FEMA 9(R)/2015-RB]. However, a resident individual who has made overseas direct investment in accordance with FEMA provisions, shall have to comply with the provisions contained in Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022.”

- 2.4 Further, **Regulation 7** of the Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015 is reproduced as under:

Period for surrender of received/ realised/ unspent/ unused foreign exchange by Resident individuals:-

7. A person being an individual resident in India shall surrender the received/realised/unspent/unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be.

- 2.5 Thus, prior to the modification, there was no requirement for a resident individual to repatriate the funds remitted under LRS or income earned on investments made under the Scheme.

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| 2.6 | However, with effect from 24 August 2022, the foreign exchange realised/ unspent/ unused and not reinvested, is to be repatriated and surrendered to an authorised person within a period of 180 days from the date of such receipt/ realisation/ purchase/ acquisition or date of return to India. |
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- 2.7 The resident individual is mandatorily required to either invest the funds in securities outside India or expend the same for any purpose specifically permitted under the Master Direction No. 7/2015-16 within the period of 180 days. **Considering the requirement for repatriation of funds within 180 days as introduced in the Master Direction No. 7/2015-16, with respect to the unutilised funds remitted under LRS prior to 24 August 2022, the first period of such 180 days since the commencement of such provision has expired in February 2023.**

Further, it seems that individual investors who have remitted funds under LRS prior to 24 August 2022 were also required to repatriate the unspent/ unused foreign exchange back to India unless the same is reinvested. However, there is no specific clarification issued in this respect.

3.0 TCS IMPLICATIONS ON LRS REMITTANCE:

- 3.1** As per the existing provisions of Section 206C(1G) of the Income Tax Act, 1961, (hereinafter referred to as 'the IT Act'), Authorized Dealers are liable to collect Tax Collected at Source (TCS) on transactions under Liberalised Remittance Scheme (LRS). As such, the AD Bank would be required to collect TCS at the rate of 5% on the aggregate remittance amount exceeding Rs. 7 lakhs during a Financial Year. However, in case of remittance under LRS for education loan mentioned under section 80E of the IT Act, the TCS rate is 0.5%.
- 3.2** Further, the Finance Bill 2023 has proposed to amend the said sub-section (1G) to increase the rate of TCS for foreign outward remittance under LRS (other than for Education and medical purpose) from 5% to 20%. The said amendment will come into effect from 1 July 2023 once the Finance Bill is ratified into Finance Act.

4.0 PRACTICAL DIFFICULTIES FACED BY RESIDENT INDIVIDUALS:

- 4.1** Resident individuals while making remittance under LRS would be required to appropriately choose the relevant purpose code for such remittance. It seems that the purpose of the new regulation is to cover cases where remittances have been made towards opening of foreign currency abroad or for the purpose of making investment and the amount of which is unutilized upto a period 180 days. Also, it would cover any accruals on such investments, which has not been reinvested within a period of 180 days.

4.2 **There is an ambiguity faced by resident individuals with respect to applicability of said time limit for various remittances sent under LRS. Accordingly, it is recommendable that the resident individual must approach their Authorised Dealer Banks and confirm if the remittances sent under LRS, which are not invested, are required to be repatriated back to India within 180 days.**

5.0 SCOPE AND LIMITATION:

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This Newsflash summarizes on the to applicability of the 180 days time limit for various remittances sent under LRS in accordance with updated Master Direction No. 7/2015-16 on LRS on 24 August 2022. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said judgement and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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