



Newsflash

TCS on payments made by a person through International Credit card on a visit outside India under the Liberalised Remittance Scheme

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1.0 Background

- 1.1 Foreign Exchange Management Act, 1999 ('FEMA') regulates capital account and current account transactions. As per Rule 5 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 ('FEMA Rules'), every drawal of foreign exchange for transactions included in Schedule III is governed as provided therein in the schedule.
- 1.2 Schedule III allows both individuals and other than individuals to remit a certain amount of money in a particular financial year outside India for making investment, donations/ gifts and incurring expenditure on tourism, travel, education along with other permissible transactions.
- 1.3 On February 4, 2004, vide ***A.P. (DIR Series) Circular No. 64 read with Government of India ('Gol') Notification G.S.R. No.207(E) dated March 23, 2004***, Gol introduced Liberalised Remittance Scheme ('LRS') as a liberalization measure to facilitate resident individuals to remit funds abroad upto USD 25,000 for permitted current or capital account transactions or combination of both per calendar year. The threshold has been increased from time to time and as on date, a resident individual can make remittance upto **USD 250,000** in a financial year without any approval of the Reserve Bank of India ('RBI').
- 1.4 Drawal of foreign exchange is permitted through modes including International Debit Card, ATM Card, International Credit Card etc.
- 1.5 In addition to the above, Rule 7 of the FEMA Rules states that nothing contained in Rule 5 shall apply to the use of International Credit Card ('ICC') for making payment by a person towards meeting expenses while such person is on a visit outside India. Thus, it is pertinent to note that payments made by an individual through ICC to meet expenses on a visit outside India, were not covered under LRS and accordingly, transaction of any amount, irrespective of quantum, through the ICC could be entered into without any approval.

2.0 Recent Change in the FEMA Rules

- 2.1 **The Ministry of Finance vide Notification G.S.R. 369(E) dated 16 May 2023 has amended the FEMA Rules by way of omitting Rule 7. The said omission implies that payments made by a resident individual through ICC while on a visit outside India would now fall under the ambit of LRS.**

2.2 International debit or credit cards both could be used for undertaking current account transactions. Initially, only international debit cards were covered under the LRS, and expenditure incurred through ICC were not covered for under the LRS limit, which led to some individuals making remittances through credit cards more than USD 250,000.

3.0 Impact of the Change in the FEMA Rules on TCS u/s 206C(1G)

3.1 **Omission of Rule 7 of the FEMA Rules has corresponding impact on the applicability Tax Collection at Sources (TCS) as per section 206C(1G) of the IT Act.**

3.2 It is pertinent to note that earlier, ICC was not covered under LRS. Accordingly, an AD Bank was not required to collect TCS on the payments made by a resident individual through ICC while on a visit outside India. Since Rule 7 of the FEMA Rules has now been omitted, AD Banks are required to collect TCS on the amount remitted/ drawal of amount through ICC by an individual under LRS on a visit outside India.

3.3 The Ministry of Finance vide **Press release dated 19 May 2023** has further clarified that **no provisions of TCS under the IT Act shall apply where transactions made through international debit or credit cards are upto INR 700,000 in a financial year.**

3.4 As per section 206C(1G) of the IT Act, every person-

- (i) being an authorised dealer ('AD Bank'), who receives an amount, for remittance from a buyer, being a person remitting such amount under LRS shall collect tax in the form of TCS from the buyer;
- (ii) being a seller of an overseas tour program package, who receives any amount from a buyer who purchases such package shall collect tax at source from the buyer.

TCS is applicable on all foreign remittances that falls under the LRS.

3.5 Prior to Finance Act 2023, an AD Bank was required to collect TCS at the rate of 5% on amounts remitted under LRS for more than INR 700,000. Vide Finance Act 2023, an amendment has been brought under the IT Act and now, **w.e.f. July 01, 2023**, an AD Bank is required to collect **TCS at the rate of 20%** on amounts remitted under LRS irrespective of the amount of remittance. Also, where the buyer purchases an overseas tour package, rate at which tax is required to be collected by the seller, has been increased from 5% to 20% without any threshold limit.

3.6 Further, where amount remitted in excess of INR 700,000 pertains to loan obtained from any financial institution, defined under section 80E of the IT Act, TCS shall be collected at the rate of 0.5% (not 20%) of the amount in excess of INR 700,000.

3.7 However, where remittance is for the purpose of education (other than through loan) or for medical treatment, no TCS shall be collected if the remittance is upto INR 700,000. Any

remittance more than INR 700,000 is subject to TCS at the rate of 5%. The above provisions with respect to education and medical treatment, were already in existence prior to amendment made vide the Finance Act 2023 and have not been modified further.

3.8 The applicable TCS provisions prior to and post 1st July 2023 can be summarised as follows:

Sr. No.	Nature of Transaction (Type of Remittance outside India under LRS)	Existing Threshold for Collection (before 1 st July 2023)	Rate at which Tax is to be collected	Threshold for Collection w.e.f. 1 st July 2023	Rate at which Tax is to be collected
1	For the purpose of education loan obtained from financial institution mentioned under section 80E	Above Rs. 7,00,000 p.a.	0.5%	Above Rs. 7,00,000 p.a.	0.5%
2	For the purpose of education other than mentioned above and for medical treatment	Above Rs. 7,00,000 p.a.	5%	Above Rs. 7,00,000 p.a.	5%
3	Sale of overseas tour package	No threshold	5%	No threshold	20%
4	Any other case other than mentioned above	Above Rs. 7,00,000 p.a.	5%	No threshold	20%

4.0 Other Aspects of TCS

4.1 TCS under section 206C(1G) of the IT Act is **not applicable**:

- If remitter is liable to deduct tax at source ('TDS') and has deducted such amount;
- Where the remitter is Central Government, State Government, an Embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign state, a local authority or any other person as may be specified by the Central Government in this behalf.

4.2 Further, an AD Bank shall not collect TCS on an amount in respect of which TCS has already been collected by the seller.

- 4.3 As per section 206CC of the IT Act, where the remitter does not furnish Permanent Account Number ('PAN') to the person responsible for collecting TCS, TCS shall be collected at the rate of 5% or twice the rate specified under the relevant provisions of the Act, subject to maximum rate of 20%.
- 4.4 As per section 206CCA of the Act, TCS is to be collected at the rate of 5% or twice the rate specified under the relevant provisions of the IT Act where the payment is received from a person who has not furnished the return of income for the assessment year relevant to the immediately preceding the previous year, subject to maximum rate of 20%.
- 4.5 TCS collected by an AD Bank or the seller may be claimed by the individual as tax credit at the time of filing of return of income for that previous year.

5.0 Our Comments

- 5.1 In past couple of years, Indian Government has made various changes in TDS/ TCS provisions to trace the financial transactions. The omission of Rule 7 of the FEMA Rules has been done with an objective to bring uniformity and equity in treatment of modes of drawal of foreign exchange.
- 5.2 Non- applicability of TCS on transactions upto INR 700,000 by an individual has provided some relief in case of small transactions and is a welcome move.
- 5.3 Since credit of the TCS can be claimed at the time of filing of tax return, same needs to be considered while computing advance tax liability.
- 5.4 There are still ambiguities around timing, collection mechanism in case of credit card payments etc., and it would be interesting to see how the regulators bring in a mechanism to address these issues.
- 5.5 GoI has also issued detailed Frequently Asked Questions (Refer appendix of the newsflash) to clarify the LRS and recent amendment impacts.

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