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Rationalisation under LRS for Current and Capital Account Transactions

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A Point of View

Background & Objective

In India, any money sent overseas is subject to controls, as the government is wary of excessive outflows of foreign exchange draining its reserves and destabilising the rupee. But there has been an effort to gradually liberalise these controls.

In 2004, a window was opened for individuals to remit money abroad, without seeking specific approvals, called the Liberalised Remittance Scheme (LRS).The LRS represents India's steps towards dismantling controls on foreign exchange movements in and out of the country.

Having opened up the LRS to Indian residents in 2004, the RBI has tweaked the rules with an eye on the exchange rate situation. For example, the Reserve Bank reduced the eligibility limit for foreign exchange remittances under the Liberalised Remittance Scheme (LRS) to USD 75,000 in 2013 as a macro-prudential measure. With stability in the foreign exchange market, this limit was enhanced to USD 125,000 in June 2014 without end-use restrictions, except for prohibited foreign exchange transactions such as margin trading, purchase of lotteries and the like.

On February 3, 2015 through the Sixth Bi-Monthly Monetary Policy Statement, Dr. Raghuram G. Rajan, Governor of RBI enhanced the limit under the LRS to USD 250,000 per person per year. The decision to enhance the limit had been made on a review of the external sector outlook and as a further exercise in macro-prudential management.

Further, in order to ensure ease of transactions, resident individuals are allowed remittances for any permitted current or capital account transaction or a combination of both up to a limit of USD 250,000.

Extract of the regulation

It has been decided by RBI to make changes for further liberalization and rationalization on the existing guidelines on the Liberalised Remittance Scheme (LRS) for resident individuals and the existing guidelines issued under the Foreign Exchange Management (Current Account Transactions) Rules, 2000. AD banks may now allow remittances by a resident individual up to USD 250,000 per financial year for any permitted current or capital account transaction or a combination of both. If an individual has already remitted any amount under the LRS, then the applicable limit for such an individual would be reduced from the present limit of USD 250,000 for the financial year by the amount already remitted.

Impact Assessment

The release of the guideline has the following impact:-

- Banks should allow remittances by a resident individual up to USD 250,000 per financial year for any permitted current or capital account transaction or a combination of both.
- For any individual who has already made remittances in the year under the LRS, then the applicable limit for such an individual would be reduced from the present limit of USD 250,000 for the financial year by the amount already remitted i.e. USD 250,000 – Amount already remitted in the year = Current limit for the year.
- Permissible capital account transactions
  Capital account transactions by an individual under LRS are permitted for five types of transactions, namely:
  a) Opening of foreign currency account abroad with a bank;
  b) Purchase of property abroad;
  c) Making investments abroad;
  d) Setting up Wholly owned subsidiaries and Joint Ventures abroad;
  e) Extending loans including loans in Indian Rupees to Non-Resident Indians who are relatives as defined in Companies Act, 2013.
- Permissible current account transactions
  Permissible current account transactions by an individual within the limit of USD 250,000 without prior RBI approval are:
  a) Private visits to any country (except Nepal and Bhutan)
  b) Gift or donation.
  c) Going abroad for employment
  d) Emigration
  e) Maintenance of close relatives abroad
  f) Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
  g) Expenses in connection with medical treatment abroad
  h) Studies abroad
  i) Any other current account transaction

Facility for remittances for the purpose of emigration, expenses in connection with medical treatment abroad and studies abroad by individuals can be availed in excess of the prescribed limit under the LRS if it required by a country of emigration, medical institute offering treatment or a university. Indicative list of documents that can be obtained from the customer for any expenses incurred in excess of USD 250,000 without prior approval of RBI is as below:

Purpose of Remittance	Document
Emigration	Any document substantiating the requirement of amount in excess of USD 250,000
Medical treatment	Bills or quotation or email from the overseas hospital for treatment in excess of USD 250,000
Studies abroad	Invoice / prospectus / admission form college necessitating the need for fee payment in excess of USD 250,000

Gift in INR by resident individuals to NRI relatives as defined in the Companies Act, 2013 shall also be included under the LRS limit.

A person who is a resident but not a permanent resident of India can make remittances subject to the following conditions:

1. The person should be a citizen of a foreign State other than Pakistan;
2. The person should be a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions). For this purpose, the duration of employment of the person should not exceed 3 years for him to be a resident but not permanently resident.

- Remittances cannot be made for the purpose of any prohibited or illegal activities such as margin trading, lottery, etc.
- Banks should obtain a declaration (format prescribed in the Annex to the circular) for resident individual seeking to make the remittances.
- Banks should ensure that the declaration provided by the customer should contain details of foreign exchange purchased by the customer from a full-fledged money changer (FFMC) for private/ business visits and the same should be within the LRS limit of USD 250,000.
- All KYC/ AML guidelines should be adhered to while facilitating remittance transactions.
- Banks should ensure that no fund based or non-fund based facilities are provided to resident individuals under the five permitted capital account transactions as mentioned above.
- Customers are allowed to make remittance for allowable capital account transactions only if they have maintained account with the Bank for a minimum period of one year. For a new customer, the Bank would need to carry out due diligence on the operations of the client and maintenance of the account.

- Indicative list of documents to carry out the customer due diligence is as below:
  a) Account statement for the period account maintained with the bank.
  b) Account statement of any other account maintained with any other bank.
  c) Copy of the ITR/ Assessment order
  d) Any other document as deemed necessary by the bank
- Remittance should not be permitted to non-cooperative countries and territories as prescribed by the Financial Action Task Force (FATF) and communicated by RBI.
- Banks should furnish a monthly statement basis details of the number of applicants and total amount remitted under LRS to the Chief General Manager - External Payment Division of the Foreign Exchange Department of RBI.
- Facilities for persons other than individuals: Persons other than individuals can make remittances for the following permissible purposes:
  a) Donations for educational institutions. Donations as detailed in the circular exceeding 1% of the foreign exchange earnings during the previous three financial years or USD 5million , whichever is less, requires a prior approval from RBI.
  b) Commissions to agents abroad for sale of residential flats/commercial plots in India. Commission exceeding USD 25,000 or 5% of the inward remittance, whichever is more, requires prior approval from RBI.
  c) Remittances for consultancy services. Remittances exceeding USD 10 million per project, for any consultancy services in respect of infrastructure projects and USD 1 million per project, for other consultancy services procured from outside India requires RBI approval.
  d) Remittances for reimbursement of pre-incorporation expenses. Remittances exceeding 5% of investment brought into India or USD 1 million whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses requires prior RBI approval.

While making the above remittances, Banks should obtain a declaration from the customer stating that the limits and conditions in relation to the remittances have been adhered to.

Ambiguity

- As per the RBI guidelines on Liberalised Remittance Scheme of USD 25,000 for Resident Individuals dated February 4, 2004, the LRS facility will not be made available for remittances made directly or indirectly to Bhutan, Nepal, Mauritius or Pakistan. The latest guideline dated June 1, 2015 states that remittances should not be made to non-cooperative countries and territories by the Financial Action Task Force (FATF). However, the FATF list does not contain to Bhutan, Nepal, Mauritius or Pakistan as one of the non-cooperative countries and territories.
- In the section on permissible current account transactions, any other current account transaction is included in the list despite a detailed list being provided. This does not provide a clarity on what any other current account transaction would include and is left to the discretion of the Bank to define it in line with the FEMA guidelines.

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