



## Tax alert: Clarifications on TCS on LRS and purchase of overseas tour program

4 July 2023

The Central Board of Direct Taxes (CBDT), vide Circular No. 10/2023 dated 30th June 2023, has extended the date of applicability of increased rate of Tax Collection at Source (TCS) under section 206C(1G) of the Income-tax Act, 1961 (ITA), from 1 July 2023 to 1 October 2023. Further, the CBDT has also issued certain clarifications in relation to the applicability of TCS on transactions covered under the Liberalised Remittance Scheme (LRS) and purchase of overseas tour program.

### In a nutshell



Threshold of INR 700,000 per financial year for applicability of TCS restored for all categories of LRS payments.



Currently, the clarifications are based on the fact that the classification for use of international credit card while being overseas as LRS, is postponed.



The circular will provide clarity for applicability of TCS provisions under section 206C(1G) of the ITA, after the amendments proposed vide the FA 2023 (which would now apply with effect from 1 October 2023).



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## Background:

- Finance Act, 2023 (FA 2023) had amended section 206C(1G) of the Income-tax Act, 1961 (ITA)<sup>1</sup>, *inter-alia*, to:
  - i) increase the rate of Tax Collection at Source (TCS) from 5% to 20% for remittance under Liberalised Remittance Scheme (LRS) as well as for purchase of overseas tour program package; and
  - ii) remove the threshold of INR 700,000 for triggering TCS on LRS.

However, the above two changes did not apply where the remittance is for education and medical purpose.

- Subsequently, the central government had separately notified<sup>2</sup> to remove the differential treatment for credit cards vis-a-vis other modes of withdrawal of foreign exchange under LRS, which has now been postponed for the time being.
- Further, the central government received comments about the practical difficulties that may arise from the removal of the threshold for LRS payments other than for education and medical treatment and to modify stakeholder's current Information Technology (IT) systems to address issues arising from the implementation of the provision of TCS on credit card transactions.
- In order to address these issues, the Ministry of Finance (MoF) issued a Press Release dated 28 June 2023 wherein the following decisions were communicated:
  - a. The threshold of INR 700,000 shall apply for a Financial Year (FY) on all LRS payments. Hence, for first INR 700,000 there shall be no TCS. Beyond this INR 700,000, the rates would be as follows:
    - 0.5% (if remittance for education is financed by loan taken from a financial institution);
    - 5% (in case of remittance for education/medical treatment);
    - 20% for others
  - b. For purchase of overseas tour program package, the TCS shall continue to apply at the rate of 5% for the first INR 700,000 per individual per annum; the 20% rate will only apply for expenditure above this limit.

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<sup>1</sup> As per section 206C(1G) of the ITA "Every person,—

(a) being an authorised dealer, who receives an amount, for remittance from a buyer, being a person remitting such amount under the Liberalised Remittance Scheme of the Reserve Bank of India;

(b) being a seller of an overseas tour program package, who receives any amount from a buyer, being the person who purchases such package, shall, at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier, collect from the buyer, a sum equal to twenty per cent of such amount as income-tax:

**Provided** that the authorised dealer shall not collect the sum, if the amount or aggregate of the amounts being remitted by a buyer is less than seven lakh rupees in a financial year and is for the purposes of education or medical treatment:

**Provided further** that the sum to be collected by an authorised dealer from the buyer shall be equal to five per cent of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, where the amount being remitted is for the purposes of education or medical treatment:

**Provided also** that the authorised dealer shall collect a sum equal to one half per cent of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, if the amount being remitted out is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education...

...Explanation.—For the purposes of this sub-section,—

(i) "authorised dealer" means a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of the Foreign Exchange Management Act, 1999 (42 of 1999) to deal in foreign exchange or foreign security;

(ii) "overseas tour programme package" means 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."

<sup>2</sup> Vide the Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023 through notification dated 16 May 2023

- c. The increase in TCS rates, which were to come into effect from 1 July 2023, shall now come into effect from 1 October 2023.
- Section 206C(1-I) of the ITA provides that if any difficulty arises in giving effect to the provisions of section 206C(1G) of the ITA, the CBDT may, with the approval of the central government, issue guidelines for the purpose of removing the difficulty. Accordingly, the CBDT has now issued Circular No. 10/2023 dated 30 June 2023 (Circular):

#### Highlights of the Circular:

- The earlier and new TCS rates are summarized as below:

Nature of payment (1)	TCS rate before Finance Act, 2023 (2) <sup>3</sup>	New rate w.e.f 1 October 2023 (3)
LRS for education, financed by loan from financial institution	Nil up to INR 700,000 0.5% above INR 700,000	Nil up to INR 700,000 0.5% above INR 700,000
LRS for Medical treatment/ education (other than financed by loan)	Nil up to INR 700,000 5% above INR 700,000	Nil up to INR 700,000 5% above INR 700,000
LRS for other purposes	Nil up to INR 700,000 5% above INR 700,000	<b>Nil up to INR 700,000</b> <b>20% above INR 700,000</b>
Purchase of Overseas tour program package	5% (without threshold)	<b>5% till INR 700,000</b> <b>20% thereafter</b>

- The Circular has also issued the following key clarifications, in Question and Answer (Q&A) form, with respect to applicability of section 206C(1G) of the ITA.

1) Whether payment through overseas credit card would be counted in LRS?

Answer:

As announced in the press release dated 28 June 2023, the classification of use of international credit card while being overseas, as LRS, is postponed. Therefore, no TCS shall be applicable on expenditure through international credit card while being overseas till further order.

2) Whether the threshold of INR 700,000, for TCS to become applicable on LRS, applies separately for various purposes like education, health treatment and others? For example, if remittance of INR 700,000 under LRS is made in a financial year for education purpose and other remittances in the same financial year of INR 700,000 is made for medical treatment and INR 700,000 for other purposes, whether the exemption limit of INR 700,000 shall be given to each of the three separately?

Answer:

The threshold of INR 700,000 is combined threshold for applicability of the TCS on LRS irrespective of the purpose of the remittance under first proviso to section 206C(1G) of the ITA.

The first proviso states that the TCS is not required if the amount or aggregate of the amounts being remitted by a buyer is less than INR 700,000 in a FY. The amendment by the FA 2023 has only restricted it to education and

<sup>3</sup> TCS rate mentioned in column 2 shall continue to apply till 30 September 2023

medical treatment purpose. Now, after the press release, the previous position has been restored and the threshold continues to apply for INR 700,000 in a FY, irrespective of the purpose.

Thus, in the given example, up to INR 700,000 remittance under LRS during a FY shall not be liable for TCS. However, subsequent INR 1.4 million remittance under LRS shall be liable for TCS in accordance with the TCS rates applicable for such remittance.

In the example, if the remittances under LRS are made in the current FY at different point of time, TCS rates for the remaining INR 1.4 million remittances under LRS would depend on the time of remittance as TCS rates changes from 1 October 2023. TCS rates would be applicable as under:-

#### For first INR 700,000

- No TCS – For First INR 700,000 remittance under LRS during the FY 2023-24 for education purpose (or for that matter any purpose).

#### Beyond INR 700,000 till 30 September 2023

- TCS @5% - Remittances beyond INR 700,000 under LRS during the financial year 2023-24, if on or before 30 September 2023 (irrespective of the purpose unless it is for education purpose financed by loan from a financial institution when the rate is 0.5%).

#### Beyond INR 700,000 from 1 October 2023

- TCS at 0.5% - Remittances beyond INR 700,000 under LRS during the FY 2023-24, if on or after 1 October 2023 (if it is for education purpose financed by loan from a financial institution),
  - TCS@ 5% (if it is for education or medical treatment) and
  - TCS@20% (if it is for other purposes).
- 3) Since there are different TCS rates on LRS for the first six months and next six months of the FY 2023-24, whether the threshold of INR 700,000, for the TCS to become applicable on LRS, applies separately for each six months?

Answer:

No. The threshold of INR 700,000, for the TCS to become applicable on LRS, applies for the full financial year. If this threshold has already been exhausted; all subsequent remittances under LRS, whether in the first half or in the second half, would be liable for TCS at applicable rate.

- 4) Whether the threshold of INR 700,000, for TCS to become applicable on LRS, applies separately for each remittance through different authorised dealers? If not, how will authorised dealer know about the earlier remittances by that remitter through some other authorised dealer?

Answer:

The threshold of INR 700,000 for LRS is **qua remitter and not qua authorised dealer**, under first proviso to section 206C(1G) of the ITA. The proviso states that the TCS is not required if the amount or aggregate of amounts being remitted by a buyer is less than INR 700,000 in a financial year.

The threshold continues to apply qua remitter. Since the facility to provide real time update of remittance under LRS by remitter is still under development by the Reserve Bank of India (RBI), the details of earlier remittances under LRS by the remitter during the FY may be taken by the authorised dealer through an undertaking at the time of remittance.

If the authorised dealer correctly collects the TCS based on information given in this undertaking, he 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 ITA.

Further same methodology of taking undertaking from the buyer of overseas tour program package may be followed by the seller of such package.

- 5) There is threshold of INR 700,000 for remittance under LRS for TCS to become applicable while there is another threshold of INR 700,000 for purchase of overseas tour program package where reduced rate of 5% TCS applies. Whether these two thresholds apply independently?

Answer:

Yes, these two thresholds apply independently. For LRS, the threshold of INR 700,000 applies to make TCS applicable.

For purchase of overseas tour program package, the threshold of INR 700,000 applies to determine the applicable TCS rate as 5% or 20%.

- 6) A resident individual spends INR 300,000 for purchase of overseas tour program package from a foreign tour operator and remits money which is classified under LRS. There is no other remittance under LRS or purchase of overseas tour program during the FY. Whether TCS is applicable?

Answer:

In case of purchase of overseas tour program package, which is classified under LRS, TCS provision for purchase of overseas tour program package shall apply and not TCS provisions for remittance under LRS.

Since for purchase of overseas tour program package, the threshold of INR 700,000 for applicability of TCS does not apply, TCS is applicable, and tax is required to be collected by the seller.

In this case the tax shall be required to be collected at 5% since the total amount spent on purchase of overseas tour program package during the FY is less than INR 700,000. The TCS should be made by the seller.

- 7) There are different rates for remittance under LRS for medical treatment/education purposes and for other purposes. What is the scope of remittance under LRS for medical treatment/education purposes?

Answer:

Medical

As per the clarification by the RBI, 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 attendant) for commuting between India and the overseas destination;
- ii) his medical expense; and
- iii) other day to day expenses required for such purpose.

TCS provision for purpose of medical treatment would apply when remittance is under code S0304 or under code S1108.

It may be noted that code S0304<sup>4</sup>, pertains to travel for medical treatment. As per BPM6, A.P. (DIR Series) Circular no 50, dated 11 Feb 2016 this code 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.

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<sup>4</sup> under the Purpose Group Name "Travel", in RBI master direction for LRS

In addition, code S1108<sup>5</sup> covers transactions for health services rendered remotely or onsite (that is no travel by service recipient is involved). This cover services from hospitals, doctors, nurses, paramedical and similar services, etc.

#### Education

Remittance for purpose of education shall include,-

- i) remittance for purchase of tickets of the person undertaking study overseas for commuting between India and the overseas destination;
- ii) the tuition and other fees to be paid to educational institute; and
- iii) other day to day expenses required for undertaking such study.

TCS provision for purpose of education would apply when remittance is under code S0305 or under S1107.

Code S0305<sup>6</sup>, pertains to travel for education (including fees, hostel expenses, etc). As per BPM6, A.P. (DIR Series) Circular no 50, dated 11 Feb 2016 this code 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<sup>7</sup> covers transactions for education (eg. fees for correspondence courses abroad) where the person receiving education does not travel overseas.

- 8) Whether purchase of international travel ticket or hotel accommodation on standalone basis is purchase of overseas tour program package?

Answer:

The term 'overseas tour program package' is defined as 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.

Purchase of only international travel ticket or purchase of only hotel accommodation, by itself, is not covered within the definition of 'overseas tour program package'. To qualify as 'overseas tour program package', the package should include **at least two** of the followings:-

- i) international travel ticket,
- ii) hotel accommodation (with or without food)/boarding/lodging,
- iii) any other expenditure of similar nature or in relation thereto.

#### Comments:

The circular will provide clarity for applicability of TCS provisions under section 206C(1G) of the ITA, after the amendments proposed vide the FA 2023 (which would now apply with effect from 1 October 2023).

Threshold of INR 700,000 per financial year for applicability of TCS restored for all categories of LRS payments.

It may be pertinent to note that the currently the clarifications are based on the fact that the use of international credit card while being overseas as LRS, is postponed. One may need to consider the same and its impact under the TCS provisions, once applicable.

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<sup>5</sup> under the Purpose Group Name "Personal, Cultural & Recreational services"

<sup>6</sup> under the Purpose Group Name "Travel", in RBI master direction for LRS

<sup>7</sup> under the Purpose Group Name "Personal, Cultural & Recreational services"



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