Representations on Tax Collection at Source (TCS) on Liberalised Remittance Scheme (LRS)

The Liberalised Remittance Scheme (LRS) is a measure to allow resident individuals (including minors) to remit funds outside India up to USD 250,000 per FY for any permissible capital/current account transactions. It may also include remittances within India for example gifts/loans to NRIs or investment through GIFT City units.

Effective October 1, 2020 authorised dealers (ADs) were imposed with an obligation to collect tax at source (TCS) of 5% on LRS remittances outside India in excess of INR 700,000 (0.5% in case of remittance out of education loans). Similar TCS obligation @ 5% was imposed on overseas tour program package sellers but without the threshold limit of INR 700,000.

Further, the Finance Act 2023 made the following changes which will be effective July 1, 2023 :-

(a) increase in TCS rate from 5% to 20% for remittances other than for education/medical purposes

(b) removal of threshold of INR 700,000 for remittances other than for education/medical purposes

(c) extended TCS to LRS remittances within India.

While moving the amendments to Finance Bill 2023, the Finance Minister clarified that the 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

Accordingly, on May 16, 2023, the RBI issued the Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023. As per this amendment, the usage of international credit cards (ICC) towards meeting expenses on a visit outside India is brought under LRS (earlier only debit cards were included). The Finance Ministry also issued clarifications on May 18, 2023 on this issue. Furthermore, Finance Ministry issued a Press Release on May 19, 2023 for excluding ICC/international debit card transactions up to INR 700,000 from LRS

Key points/clarifications by the Finance Ministry:

- ICC transactions while on visit outside India are brought under LRS to bring parity with debit card 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
- 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 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 Budget 2023 amendment, such transactions will also be subject to TCS from July 1, 2023
- Any payments by an individual using their international debit or credit cards up to INR 700,000 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 continue (Press Note dated May 19, 2023)

Representations for withdrawing the enhancement of TCS rate from 5% to 20% on LRS remittances

- As per clarifications provided by Finance Ministry, during FY 2021-22, a total of USD 19.61 billion was remitted under LRS route rising from USD 12.68 billion in FY 2020-21. In FY 2022-23, it rose to more than USD 24 billion of which overseas travel accounted for more than half. This is not surprising considering that many Indians who could not travel outside India for last two years due to Covid 19 pandemic chose to spend their vacation outside India.

- It is 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.

- It may be noted that the foreign assets (like investments, property, etc.) purchased through LRS are required to be reported by resident taxpayer in Schedule FA of ITR and any default on reporting foreign income/assets is amenable to adverse consequences under Black Money Act. Hence, it is submitted that the solution for observed cases of LRS remittances by persons not having sufficient means does not lie in increasing TCS rate.

- The increase in TCS rate casts more burden on the honest taxpayers who make LRS remittances from their tax-paid incomes of current and earlier years. Rather the information generated from 5% TCS reporting ought to be investigated further and undisclosed incomes should be taxed in the hands of the defaulters at 60% u/s. 115BBE. The steep increase in TCS rate will result in honest taxpayers facing burden of higher TCS whereas dishonest persons will resort to other illegal means to remit monies outside India.

- **The relief from TCS for international credit/debit card transactions upto Rs. 7 lakhs by excluding them from LRS, though a welcome measure, will be insufficient to address cash flow blockage for middle class taxpayers**

- The Government collects information of LRS transactions made available through quarterly reporting in Form 15CC by Authorised Dealers as also through current regime of 5% TCS. It is submitted that four fold increase in TCS rate from 5% to 20% is not the appropriate measure to be adopted to tackle the parallel economy. Rather the information collected through Form 15CC and TCS should be used by the Government to seek out the tax defaulters and take appropriate action against them under law.

- **Hence, the primary recommendation of the Chamber is to roll back the amendment to increase the TCS rate from 5% to 20% on LRS as also on overseas tour program package**.

- Alternatively, since the amendment is in response to observed LRS instances by persons of insufficient means, a mechanism should be introduced whereby honest taxpayers who have regularly filed returns for last 3 years and the quantum of LRS remittance is less than average returned income (including exempt income) of last 3 years will not face higher TCS of 20%. The CBDT can enable identification of such taxpayers for Authorised Dealers through 'specified person' functionality presently made available by CBDT for the purposes of identification of non-filers for higher TDS/TCS u/s. 206AB and s.206CCA.

Relieve cash flow blockage for salaried taxpayers by enabling adjustment of TDS against salary TDS

- Presently there is no mechanism in the law for the employer to consider TCS suffered by the employee for adjusting the Salary TDS. This creates cash flow blockage for the employee till processing of his return u/s. 143(1). In contrast, non-salaried taxpayers can reduce their advance tax payments to the extent of TCS suffered by them.

- **To avoid discrimination between salaried and non-salaried taxpayers in terms of TCS cash flow blockage, it may be clarified through a Circular to permit the employer to consider the TCS suffered by employee while doing Salary TDS u/s. 192 based on appropriate evidence furnished by the employee. This can be codified in the next Budget by consequential amendment to s.192**.

Further issues requiring further clarity from RBI/Finance Ministry:

- While it is clarified that business visits of employees will be excluded from LRS, which we believe should cover expenditure incurred by employees either by corporate credit card or individual credit card but the operational mechanics to distinguish between business/official and personal expenditure need more clarity.

- While it is clarified that all current account transactions undertaken on ICC in India are covered by LRS, more clarity is required on inclusion in LRS of certain personal expenditure incurred through ICCs in India and the operational mechanics of TCS for such transactions viz :

    a) **Incurred in foreign currency** (eg. downloading of software from foreign vendor, shopping on international e-commerce websites, etc). While it is clear that such spending in foreign currency will fall under LRS, there should be proper operational mechanism to track the threshold limit of INR 7 lakhs across multiple credit cards of different banks.

    b) **Incurred in INR** (eg. payments in INR to foreign vendors or Indian vendors for foreign travel expenses). Since current account and LRS includes only those transactions which involve drawing of foreign exchange through any mode, it should be clarified that any spending in INR through credit/debit cards will not constitute LRS. The foreign exchange in such cases is drawn by business entities like travel agents, airlines, credit card companies, etc for whom the foreign exchange remittances does not fall under LRS.

- The Finance Ministry, RBI and the bankers should arrive at common understanding in terms of declarations to be taken from employer and/or employees. The onus for any default on wrong reporting should lie on the individual employee and not on the employer and/or the authorised dealer.

- Further, while the intent of the Revenue is to track and trap unmatched expenditure spend , the implementation may need a quick relook given that the TCS effectively will be a tax on the expenditure for corporates which is unwarranted in the current scenario where we are looking at India being one of the front runners in the global economy .