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Spending in foreign currency through International Credit Cards (ICC) in excess of INR 7 lakhs to be covered within the ambit of Liberalized Remittance Scheme (LRS) limits and to also attract 20% Tax collection at source (TCS) (other than medical and education purposes)

Background

Under Foreign Exchange Management Act, 1999 (FEMA), an individual can make remittances outside India under the LRS for specified purposes within the limit of USD 2,50,000. Any additional remittance in excess of the limit requires prior approval of the Reserve Bank of India (RBI).

The government statistics showed that the remittances made under LRS rose from USD 12.68 billion in the financial year 2020-21 to USD 24 billion in the financial year 2022-23 and it was felt that substantial amount of remittances were through ICCs which were not captured within LRS limits.

Thus, to discourage people from remitting excessive money outside India, section 206(1G) of the Income Tax Act, 1961 (the Act) 1961 was amended by the Finance Act, 2023 whereby the TCS rate was increased from 5% to 20% on the amount remitted under LRS and threshold limit of 7 lakhs was also removed.

Necessary amendments were also made under Foreign Exchange Management (Current Account Transactions) Rules, 2000 (FEM(CAT) Rules, 2000) to cover expenses through ICCs under the limit of LRS.

Changes under FEMA and its implications

1) Omission of Rule 7:

   Rule 7 of (FEM(CAT) Rules, 2000) excluded the use of ICCs for payments towards meeting expenses during a visit outside India from the LRS limit of USD 2,50,000. Due to this exclusion, expenses through ICCs were not captured while computing the limit for LRS, resulting in LRS limit getting breached.

   The government, vide notification dated 16 May 2023, has omitted Rule 7 of the FEM(CAT) Rules, 2000. Thus, effectively, any spending in foreign currency using ICCs will now be covered under LRS and limit of USD 2,50,000 will apply to transactions carried out using ICCs as well.

   The government however has clarified that payments made using international debit cards (IDCs) or ICCs up to INR 7 lakhs will be excluded from the LRS limits. Thus, effectively an individual will have a limit of INR 7 lakhs for spending using IDCs or ICCs over and above the limit of LRS of USD 2,50,000.

2) Use of ICCs for business purpose

   The FAQs issued in this regards, has clarified that use of ICCs by an employee on a business visit shall be treated as residual current account transactions and will be outside the preview of LRS if expenses are borne by an employer.

Implications under the Income Tax Act,1961

Higher levy of TCS on the ICC transactions:

Forex spending using ICCs in excess of INR 7 lakhs during trip outside India will now be covered under LRS and will be subject to TCS at rate of 20%. However, payment using ICCs towards foreign tour packages would attract TCS at 20% without any threshold limit.

The TCS rates on use of ICCs for various remittances will be as follows:

Purpose of Transaction	TCS rate till 30 June 2023		TCS rate with effect from 1July 2023	
	Threshold	Rate	Threshold	Rate
Education **	7 Lakhs	5%	7 Lakhs	5%
Medical	7 Lakhs	5%	7 Lakhs	5%
Any other purpose (including gift or donation, Emigration, Maintenance of close relative abroad, etc.)	7 Lakhs	5%	NIL	20%

*** For education loan the applicable TCS rate is 0.5%.*

CNK Comments:

a) All current account transactions undertaken from India, using ICCs were always covered under LRS limits and were liable to TCS. The only benefit that rule 7 of FEM(CAT) Rules, 2000 provided was exclusion of ICCs from LRS provision for expenditure made while on a visit outside India. Now this exclusion has been removed and all limits has been subsumed within the LRS limits;

b) The credit card companies and bank will be required to establish a system to ensure that international spending through ICCs and IDCs are tracked and wherever the aggregate remittance during the year exceeds INR 7 lakhs, appropriate TCS is collected;

c) The present amendment raising TCS rate to 20% is regressive and anti-reformist. There already existed a system to track credit cards spending beyond the threshold limit by the tax department;

d) Retired senior citizens and middle to lower income group people will be impacted the most. Senior citizens and others with income below taxable limit may have to go through the hassle of filing income-tax return to claim refund and funds will be blocked, till their returns are processed by the tax department.;

e) The Government has clarified that TCS is not applicable to use of ICC on a business trip. However, where the employees are using their personal ICCs, there are practical challenges in determining whether the trip is a business trip or personal trip at the time of executing the transaction;

f) Companies will be required to frame/ update their foreign travel policy with respect to payments made by the employees using their personal credit card. They will also need to ensure proper control on reimbursement of expenses incurred by employees using personal credit card on foreign tours for business purposes;

g) Vide Circular No. 76/50/2018-GST – Central Tax, dated 31-12-2018, it has been clarified that *"For the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax."* Therefore, GST will not be applicable on the TCS amount.

h) The present levy of TCS will give the government a substantial float of interest free tax collection on which interest liability will arise only from the end of the financial year;

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