



Workshop on Basics of FEMA

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Liberalised Foreign Remittances Scheme “LRS” Law & Procedures

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Agenda

- **Section 1 : Brief Overview of Liberalised Remittance Scheme (LRS)**
- **Section 2 : Permissible Current Account Transactions**
- **Section 3 : Permissible Capital Account Transactions**
- **Section 4 : Procedure for Remittance under LRS**
- **Section 5: Case Studies**
- **Section 6: Tax Collection at Source (TCS) on Foreign Remittances under
LRS**

SECTION-1
INTRODUCTION

Liberalized Remittance Scheme ('LRS')- Background

- LRS introduced in February, 2004 as a measure of partial capital account convertibility for Resident Individuals(RI) to undertake any Current Account Transaction; or for any Capital Account Transaction; or a combination of both, subject to certain restrictions.
- Prior to introduction of LRS, drawl of foreign exchange by RI was governed by :-
 - For Current Account Transactions, by Current Account Transaction (CAT) Rules, 2000 divided under three schedules as follows:-
 - **Schedule I** - Completely prohibited transactions
 - **Schedule II** – Remittances allowed only with the prior approval of the concerned Ministry of the Central Government
 - **Schedule III** - Permissible transactions. It also prescribed limits for certain transactions beyond which procedures / approvals are prescribed.
 - There were **no restriction or limit** on other Current Account Transaction which were not covered by any of the above mentioned three schedules
- For Capital Account Transactions, remittances are governed by various notifications issued for permissible capital account transactions. .

Liberalized Remittance Scheme ('LRS')- Background

- Drawal of Foreign exchange under LRS was originally to be allowed in addition to various limits prescribed under Schedule III for certain Current Account Transactions by RIs.
- Similarly, it was perceived that remittances for specified Capital Account Transactions was allowed freely irrespective of absence of specific provisions under various Capital Account Notifications.
- Funds up to the prescribed limit were allowed for investment abroad / purchase of asset outside India without the prior approval of RBI. This was done as a measure of partial capital account convertibility.
- However, drastic changes in the position brought in from May 2007. It was clarified that LRS was allowed only for 'permissible' current or capital account transaction or a combination of both.

Liberalized Remittance Scheme ('LRS')

- LRS introduced on February 4, 2004, with a initial limit of USD 25,000 per financial year
- LRS brought in as a measure of partial capital account convertibility by allowing remittances for current or capital account transactions or combination of both within the LRS limit
- Facility available to all Resident Individuals including minors
- Limit has increased over the years (except reduction between August 2013 till May, 2015 due to depleting forex reserves)

							Amount in US \$
Date	Feb 4, 2004	Dec 20, 2006	May 8, 2007	Sept 26,2007	Aug14,2013	June 3,2014	May 26,2015
LRS Limit	25,000	50,000	1,00,000	2,00,000	75,000	125,000	2,50,000

- All facilities for release of foreign exchange for RI under Para 1 of Schedule III, as amended from time to time, for current account transactions subsumed within the overall limit for drawal of foreign exchange of USD 250,000. No separate limits for gifts, donations, etc.

Liberalized Remittance Scheme ('LRS')

Permitted Transactions for RI under LRS

Current Account Transactions	Capital Account Transactions
<ul style="list-style-type: none"> i. Private visits to any country (except Nepal and Bhutan). ii. Gift or donation. iii. Going abroad for employment. iv. Emigration.* v. Maintenance of close relatives abroad. vi. Travel for business, or attending a conference or specialized 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. vii. Expenses in connection with medical treatment abroad. * viii. Studies abroad.* ix. Any other current account transaction 	<ul style="list-style-type: none"> i. Opening of foreign currency account abroad with a bank. ii. Acquisition of immovable property abroad- Rule 21 of Overseas Investment Rules, 2022. iii. Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI) abroad in accordance with Rule 13- Schedule –III of Overseas Investment Rules, 2022. iv. Extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.

* Resident Individuals can avail exchange facility in excess of the overall LRS limit of US \$ 2,50,000 if it is so required by the country of emigration, medical institute offering the treatment or the university respectively.

Liberalized Remittance Scheme ('LRS')- Background

▪ **Prohibited Remittances:**

- Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.
- Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty.
- Remittances for purchase of Foreign Currency Convertible Bonds (FCCB) issued by Indian companies in the overseas secondary market.
- Remittance for trading in foreign exchange abroad.
- Capital account remittances, directly or indirectly, to countries identified by the Financial Action Task Force (FATF) as “non- cooperative countries and territories”, from time to time.
- Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

SECTION-2

**PERMISSIBLE CURRENT ACCOUNT
TRANSACTIONS**

Permissible Current Account Transactions

- **Private visits abroad**
- For private visits abroad, other than to Nepal and Bhutan, any resident individual can obtain foreign exchange up to an aggregate amount of USD 2,50,000 from an Authorised Dealer or FFMC, in any one financial year, irrespective of the number of visits undertaken during the year.
- Further, all tour related expenses including cost of rail/road/water transportation; cost of Euro Rail; passes/tickets, etc. outside India; and overseas hotel/lodging expenses shall be subsumed under the LRS limit. The tour operator can collect this amount either in Indian rupees or in foreign currency from the resident traveler.

- **Gift/donation**
- Gift is allowed to NRI/ OCI close relative as defined under Section 2(77) of the Companies Act, 2013.
- RI can remit within LRS limit of USD 2,50,000 in one FY as gift to a person residing outside India or as donation to an organization outside India.
- Gift in rupee shall be by way of crossed cheque /electronic transfer and should be credited to the NRO account of the NRI / PIO relative

- **Going abroad on employment**
- A person going abroad for employment can draw foreign exchange up to USD 2,50,000 per FY from any Authorised Dealer in India.

Permissible Current Account Transactions

▪ **Emigration**

- A person wanting to emigrate can draw foreign exchange from AD Bank up to the amount prescribed by the country of emigration or USD 250,000.
- Remittance of any amount of foreign exchange in excess of this limit can be allowed only towards meeting incidental expenses in the country of immigration and **not for earning points or credits to become eligible for immigration by way of overseas investments in government bonds; land; commercial enterprise; etc.**

▪ **Maintenance of close relatives abroad**

- A resident individual can remit up-to USD 2,50,000 per FY towards maintenance of close relatives [‘relative’ as defined in Section 2(77) of the Companies Act, 20137 abroad.]

▪ **Business Trip**

- Visits by individuals in connection with attending of an international conference, seminar, specialised training, apprentice training, etc., are treated as business visits. The amount can be spent within the overall limit of USD 2,50,000 irrespective of number of visits abroad.
- However, when an employee is deputed by **an entity** for any of the above purposes and the expenses are borne by the entity, such expenses shall be treated as residual current account transactions outside LRS and may be permitted by the AD **without any limit**, subject to verifying the bonafides of the transaction.

Permissible Current Account Transactions

- **Medical treatment abroad**
- Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 or its equivalent per FY without insisting on any estimate from a hospital/doctor. For amount exceeding the above limit, Authorised Dealers may release foreign exchange under general permission based on the estimate from the doctor in India or hospital/ doctor abroad. A person who has fallen sick after proceeding abroad may also be released foreign exchange by an Authorised Dealer (without seeking prior approval of the Reserve Bank of India) for medical treatment outside India.
- In addition to the above, an amount up to USD 250,000 per financial year is allowed to a person for **accompanying as attendant to the patient** going abroad for medical treatment/check-up.
- **Students studying abroad**
- AD may release foreign exchange up to USD 2,50,000 or its equivalent to resident individuals for **studies abroad** without insisting on any estimate from the foreign University.
- However, AD may allow remittances exceeding USD 2,50,000 based on the estimate received from the education institution abroad.

Permissible Current Account Transactions

▪ Other Points

- Remittances under the Scheme can be used for purchasing **objects of art** subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of the Government of India.
- The Scheme can be used for outward remittance **in the form of a DD** either in the resident individual's own name or in the name of beneficiary with whom he intends putting through the permissible transactions at the time of private visit abroad, against self-declaration of the remitter in the format prescribed.
- Banks **should not extend any kind of credit facilities to resident individuals to facilitate capital account remittances** under the Scheme. However, AD banks may extend fund and **non-fund based facilities** to resident individuals **to facilitate current account remittances** under the Scheme.

SECTION-3

**PERMISSIBLE CAPITAL ACCOUNT
TRANSACTIONS**

Permissible Capital Account Transactions

- **Opening of foreign currency account abroad with a bank.**
- Individuals can also open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the Scheme without prior approval of the Reserve Bank. The foreign currency accounts may be used for putting through all transactions connected with or arising from remittances eligible under this Scheme.
- The unspent/unused foreign exchange, unless invested/ reinvested, shall be repatriated and surrendered to an AD in India within a period of 180 days.
- **Acquisition of immovable property abroad- Rule 21 of Overseas Investment Rules, 2022.**
- In terms of Rule 21(2), a person resident in India is allowed to acquire immovable property outside India by way of purchase out of the remittances sent under the LRS.
- Such remittances under the LRS can be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme;

Family Members - Clubbing

Family Members can club and remit under LRS.

However, clubbing is permitted by other family members for **capital account** transactions such as opening a bank account/investment/purchase of property only if ...

they are the co-owners/co-partners of the overseas bank account/
investment/property- **Para A(4) of Master Direction on LRS dated August 24, 2022).**

Para 18 of Master Direction on LRS allows a resident Individual to make rupee gift. In other words, A resident **cannot gift** to another resident, **in foreign currency**, for the credit of the latter's foreign currency account held abroad under LRS.

Permissible Capital Account Transactions

- **Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI) abroad in accordance with Rule 13- Schedule - III of Overseas Investment Rules, 2022.**
- A resident individual can make ODI by way of investment in equity capital or OPI in the manner provided in Schedule –III subject to the overall ceiling under the LRS Scheme
- The Overseas Investment can be by way of–
 - ODI in an operating foreign entity not engaged in financial services activity and which does not have subsidiary or step down subsidiary where the resident individual has control in the foreign entity. Therefore, Resident individuals cannot invest in foreign companies having downstream subsidiaries where they exercise control
 - As per Rule 2(c) - “control” means the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders’ agreements or voting agreements that entitle them to ten per cent. or more of voting rights or in any other manner in the entity;
 - OPI, including by way of reinvestment of earnings;

Permissible Capital Account Transactions

- **Extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.**
- Resident individual can to lend to a NRI/ PIO relative ['relative' as defined in Section 2(77) of the Companies Act, 2013] by way of crossed cheque/ electronic transfer subject to the following conditions:
 - the loan is free of interest and the minimum maturity of the loan is one year;
 - the loan amount should be within the overall limit under the LRS of USD 2,50,000 per FY
 - the loan shall be utilized for meeting the borrower's personal requirements/ own business purposes in India.
 - the loan shall not be utilized, either singly or in association with other person for any of the activities in which investment by persons resident outside India is prohibited, namely: a. The business of chit fund, or b. Nidhi Company, or c. Agricultural or plantation activities or in real estate business, or construction of farm houses, or d. Trading in Transferable Development Rights (TDRs).
 - For this purpose real estate business shall not include development of townships, construction of residential/ commercial premises, roads or bridges.
 - the loan amount should be credited to the NRO a/c of the NRI / PIO. Credit of such loan amount may be treated as an eligible credit to NRO account;
 - the loan amount shall not be remitted outside India; and
 - repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to NRO/ NRE/ FCNR of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.

Other Points

- **Soliciting deposits**
- All banks, both Indian and foreign, including those not having an operational presence in India, should seek prior approval from RBI for the schemes being marketed by them in India to residents either for soliciting foreign currency deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company .

- **Retain /Re-invest**
- Investor , who has remitted funds under LRS can retain , reinvest the income earned on the investments.

- **Document/ Procedure for Remittance under LRS**
- RI to designate a branch of an AD Bank through which all the remittances under LRS will be made.
- Furnish Form A2 along with LRS declaration.
- AD to observe KYC Guidelines, Obtain Copy of PAN
- The applicants should have maintained the bank account with AD for a minimum period of one year prior to the remittances for capital account transactions. If the applicant is a new customer, AD to carry out due diligence on the opening, operation and maintenance of the account.
- The AD to ensure that the payment is out of funds belonging to the person making remittances.
- AD shall certify that the remittance is not being made directly or indirectly by /or to ineligible entities.

Remittances to International Financial Service Centre (IFSC)

- **AP Dir. Cir No. 11 dated February, 16,2021**
- The remittance shall be made only for making investments in IFSCs in securities, other than those issued by entities/companies resident (outside IFSC) in India.
- RI allowed to open a non interest bearing Foreign Currency Account (FCA) in IFSCs, for making the above permissible investments under LRS.
- Funds lying idle in the account for a period up to 15 days from the date of its receipt shall be repatriated to domestic INR account of the investor in India.
- RI is not allowed to settle any domestic transactions with other residents through FCAs held in IFSC.

SECTION-4

PROCEDURE FOR REMITTANCE

Procedure for Remittance

- **Document/ Procedure for Remittance under LRS**
- RI to designate a branch of an AD Bank through which all the remittances under LRS will be made.
- The applicants should have maintained the bank account with AD for a minimum period of one year prior to the remittances for capital account transactions. If the applicant is a new customer, AD to carry out due diligence on the opening, operation and maintenance of the account.
- The applicant to declare that the total amount of foreign exchange purchased from or remitted through, all sources in India during the financial year including this application is within the overall limit of the Liberalised Remittance Scheme prescribed by the Reserve Bank of India and certify that the source of funds for making the said remittance belongs to him and the foreign exchange will not be used for prohibited purposes
- The applicant to declare that total amount of foreign exchange purchased from or remitted through, all sources in India during this calendar year including this application is within the annual LRS limit.
- AD to observe KYC Guidelines, Obtain Copy of PAN
- Furnish Form A2 containing beneficiary's name, address, purpose code & LRS declaration..
- AD shall certify that the remittance is directly or indirectly not made by /or to ineligible entities and that the remittance is in conformity with the instructions issued by RBI from time to time under the Scheme.

SECTION-5
CASE STUDIES

Case Study -1

- Mr. PK, a RI subscribed 100 shares of USD 10 each of P K Inc USA on March 14, 2007 for 10.00% through subscription to MOA and remitted USD 1,000 using the LRS Scheme prevalent then.
- Examine validity of the transaction.
- Investment by RI through subscription to MOA is considered as strategic investment.
- Strategic investment in shares of an overseas entity by RI was not a permitted capital account transaction either under ODI or LRS before August 5, 2013.
- It was only in August, 2013, the specific provisions permitting strategic investments by RI were incorporated in Notification No. 120.

Case Study-2

- Mrs. Pratima Shah wants to buy a home in UK for USD 7,50,000/-.
- For this purpose, she has opened a bank account in UK in her name in UK and wants to fund the investment as follows-
 - Remit USD 2,50,000 during the year under LRS out of own funds
 - Her husband Mr. Ketan Shah will also remit USD 2,50,000 to her account in UK.
 - Her mother Mrs Rama Parmar will remit by way of Gift USD 2,50,000 to the said UK account.
- Please advice Mrs. Pratima Shah from FEMA perspective.

- Mr Ketan Shah can remit to the said account only if he is a joint account holder. Further, he should also be a joint owner of the property in proportion to his investment.
- Mrs. Rama, her mother, cannot to gift her daughter in foreign currency.

Case Study-3

- Mr Shah opened a foreign bank account in UK and remitted USD 250000 during the FY 2021-22. On 24 April 2022, He lent USD 10000 to his NRI friend who is a resident of UK.
- Examine the transaction from FEMA perspective.

- Mr Shah can spend money from the overseas account only for permissible current and capital account transaction under the Scheme.
- Lending in foreign currency under the Scheme is permissible only to NRIs who are 'close relative' as defined in Section 2(77) of the Companies Act, 2013.

Issues under LRS

■ Overseas Direct Investment by Individuals

- Can I use LRS facility to set up a company abroad?
- Whether overseas entity having investment by RI under LRS can set up a subsidiary company either in India/ abroad?
- Can I extend loan to a Company in which I have made investment under LRS?
- Can I set up a Company abroad under LRS for investment in Crypto Currency or for making personal investments in shares, stocks, bank fixed deposits, etc.?

■ Immovable Properties

- Can I set up a Company abroad under LRS for acquisition of Immovable Property abroad?
- Can I lease the immovable property abroad and earn rental income?
- Can I invest in immovable property abroad under LRS jointly with my close relatives?
- Can I gift the immovable property acquired through LRS to a non-resident close relative?
- Can I take housing Loan for acquisition of immovable property abroad?

■ Miscellaneous

- Do I need to submit any Form for investments made under LRS?
- Can I use the money remitted under LRS for other permissible capital / current account transactions, other than the original purpose for which the amount was remitted?
- Can I extend loan under LRS?
- Do I need to repatriate money invested in a bank account abroad and interest earned thereon to India?

SECTION-6

TCS ON FOREIGN REMITTANCES

Tax Collection at Source (TCS) on Foreign Remittances- S. 206C(1G)

- **TCS provision on Foreign remittances under LRS introduced effective from 1st October, 2020.**
 - TCS at the rate of 5% for remittances exceeding INR 7 Lakh if PAN is provided..
 - TCS at the rate of 10% for remittances exceeding INR 7 Lakh if PAN is not provided..
 - For foreign tour packages, TCS of 5% is applicable on the entire amount, with no limit.
 - TCS not applicable on mere air ticket booking as it does not amount to a 'package tour'.
 - Remittances for education purposes out of Education Loans from financial institutions defined under S. 80E (i.e. Bank or any Financial Institution notified by the Central Government) will attract discounted TCS rate of 0.5%. However, if no PAN is provided the TCS rate will be 5%.
 - Transfer to NRO account as gift/loan – No TCS.
- **AD to collect TCS from Buyer (Remitter/ buyer of overseas tour package)**
- **Time of TCS Collection –**
 - at the time of receipt of remittance amount by AD by any mode from the buyer, or
 - at the time of debiting the amount payable by the buyer, whichever is earlier

Tax Collection at Source (TCS) on Foreign Remittances- S. 206C(1G)

- **Exclusions for the applicability of Section 206C (1G) –**
 - Central Government, State Government, an embassy, a High Commission, legation, commission, consulate, and the trade representation of a foreign State.
 - A local authority as defined in Section 10(20) of the Act.
 - Any person specified by the Central Government through a notification in the Official Gazette.
 - TCS is not applicable if the overseas remittance under LRS is subject to TDS deduction and the customer makes TDS.

- **Public sector undertakings, government companies are not excluded.**

- **TCS can be claimed as credit against tax payable in the ITR - TCS amount to appear in Form 26AS.**

- **TCS is not applicable on foreign remittances which are not covered under the LRS.**

Tax Collection at Source (TCS) on Foreign Remittances- S. 206C(1G)

S. No.	Purpose of Remittance	Threshold	Rate of TCS	Rate of TCS if PAN is not provided
1	Purchase of overseas tour programme	No minimum amount is prescribed under Income tax Act, 1961 for such transaction	5 %	10%
2	Remittance for educational purposes out of loan obtained from any financial institution defined in S. 80E	TCS on amount exceeding INR 7 Lakhs in a financial year	0.5%	5%
3	Remittance for education purposes out of own funds	TCS on amount exceeding INR 7 Lakhs in a financial year	5%	10%
4	For any other purpose under LRS	TCS on amount exceeding INR 7 Lakhs in a financial year	5%	10%

Illustration

Transaction Date	Amount of Remittance	Cumulative Remittance in a Financial Year	TCS Applicability
01.04.2021	6,50,000	6,50,000	NIL
13.06.2021	3,50,000	10,00,000	On Rs. 3,00,000 (Rs. 10,00,000- Rs. 7,00,000)
20.07.2021	2,00,000	12,00,000	TCS on INR 2,00,000- Exemption of Rs. 7 lacs is already exhausted

Thank
you



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