



Overseas Tour Package

By CA Saket Bagdia, Nagpur



What is TCS?

TCS is a type of tax that is collected by the seller or service provider from the buyer at the time of sale of goods or provision of services as mentioned in the Income Tax Act. TCS to be collected on sale of goods / provision of services or receipt of money whichever is earlier.

It is made applicable to Overseas Tour packages since 2020 along with the Overseas remittances with the introduction of new sub section.

Important Definitions

- ▶ (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 to deal in foreign exchange or foreign security;*
- ▶ (ii) *“overseas tour program 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.*

Clarification on definition of Overseas Tour Package vide Circular 10 dated 30.06.23

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.

If any of the above is sold standalone will not be covered within the definitions of Overseas tour package for collection of TCS

Applicability u/s 206C(1G)

- ▶ An “authorised dealer”, who receives an amount, of Rs.7,00,000/- or more in a financial year for remittance out of India from a buyer, remitting such amount out of India under the Liberalised Remittance Scheme of the Reserve Bank of India;
- ▶ A seller of an “overseas tour program package”, who receives any amount from a buyer, 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, whichever is earlier, collect a sum equal to 5% / 20% of such amount as received from the buyer.

Exemptions under the Provisions- Not Applicable to

When the buyer is,

1. Liable to deduct tax at source under any other provision of this Act and has deducted such amount;

TDS is deducted by the buyer e.g. Corporates.

2. The Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

It has been clarified in Circular 10 dated 30th June'23

- i) **Threshold of Rs. 7 lakh per financial year per individual** in clause (i) of sub-section (1G) of section 206C shall be restored for TCS on all categories of LRS payments, through all modes of payment, regardless of the purpose: **Thus, for first Rs 7 lakh remittance under LRS there shall be no TCS.** Beyond this Rs 7 lakh threshold, TCS shall be at the rate of -
- a) 0.5% (if remittance for education is financed by loan taken from a financial institution);
 - b) 5% (in case of remittance for education/medical treatment);
 - c) 20% for others.

For purchase of overseas tour program package under clause (ii) of sub-section (1G) of section 206C, the TCS shall continue to apply at the rate of 5% for the first Rs 7 lakh per individual per annum; the 20% rate will only apply for expenditure above this limit.

It has been clarified in Circular 10 dated 30th June'23

ii) Increased TCS rates to apply from 1st October, 2023:

The increase in TCS rates; which were to come into effect from 1st July, 2023 shall now **come into effect from 1st October, 2023** with the modification as in (i) above.

Till 30th September, 2023, earlier rates (prior to amendment by the Finance Act, 2023) shall continue to apply.

Earlier and new TCS rates are summarised as under

<i>Nature of Payment</i>	<i>Earlier Rates Before Finance Act, 2023</i>	<i>New rate w.e.f. 1st Oct'23</i>
LRS for education through a Bank Loan	Nil up to Rs. 7 lakh 0.50% above Rs. 7 lakh	Nil up to Rs. 7 lakh 0.50% above Rs. 7 lakh
LRS for Education / Medical treatment other than through Bank loan	Nil up to Rs. 7 lakh 5% above Rs. 7 lakh	Nil up to Rs. 7 lakh 5% above Rs. 7 lakh
Overseas Tour Package	5% (Without Threshold)	5% till Rs. 7 lakh 20% thereafter
LRS for any other purpose	Nil up to Rs. 7 lakh 5% above Rs. 7 lakh	Nil up to Rs. 7 lakh 20% above Rs. 7 lakh

Expenses covered under Medical Treatment

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.

Expenses covered under Education

Remittance for the 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.

Levelled Playing Field

With levy of TCS @ 20% on Foreign Remittances, Banks, AD's, credit card company will levy TCS on all the foreign payments above Rs. 7 lacs. Thus, any booking done from foreign vendors above the threshold limit, accepting money in Foreign currency will be subject to TCS being charged by Banks, AD's and credit cards companies while making the payment to the offshore service provider who were erstwhile not covered under

TCS subject to provisions u/s 195.

As a travel agent you need not

Verify the usage of LRS.



TCS on Non Residents

- ▶ TCS collection is not necessary in case of non Resident individuals as well as non resident corporates.
- ▶ Take care to record and keep the evidence that the purchaser is a non resident
- ▶ A foreign citizen does not become Non resident Automatically. It depends on the no of days stay in India
- ▶ Ideally, you should take a declaration and the TRC (Tax Residency Certificate) of the buyer.

TCS on Credit card on Forex payment

The FEMA rules allowed the Credit card swipes in foreign Exchange without TCS and LRS.

The clause read as below:-

“Nothing contained in rule 5 shall apply to the use of International Credit Card for making payment by a person towards meeting expenses while such person is on a visit outside India”

Though the exemption was conditional, the banks never collected TCS on Credit card swipes in foreign exchange.

As per the new notification on 16th May, 2023 the above exemption is removed which makes all the credit card expenses in Foreign exchange covered under TCS.

On 19th May RBI gave a fresh Notification allowing foreign currency payment upto Rs.7 lac without any TCS

TCS on payment through Overseas Credit Card

As announced in the press release dated 28th 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.

TCS on Receipts Vs Payments

- ▶ The responsibility of collection of TCS and payment is with the Seller of OTP.
- ▶ However under the same section TCS is collected by the Bank on all foreign remittances.
- ▶ The responsibility of TCS on Remittance is with banker not TA.
- ▶ However, TA has to take into consideration the impact of TCS on remittance, since it will effect the cash flow.

Care to be taken while making the payment so that you are not paying the TCS

- ▶ Remittances covered U/s 195 of the Income Tax Act. Other payments to Non residents other than companies
- ▶ Declaration in Form A2 for the RBI
- ▶ Form 15CA and 15CB certified by CA

When not covered

- ▶ Declaration that TCS is collected so that bank does not recover again.

If not covered in above 2 your payment will be subject to TCS

Remittances and TCS by the Bank/ Payment gateway

Card	TCS applicability
Personal credit card	20% after Rs.7 lacs PA
Corporate Credit card	
Remittance made with Form 15CA/ CB/ Declaration	NA
Direct payment made	20% after Rs.7 lacs PA
Payment to foreign websites/ Airlines	
Remittance made with Form 15CA/ CB/ Declaration	NA
Direct payment made	20% TCS after Rs. 7 lacs

Compliance Calendar

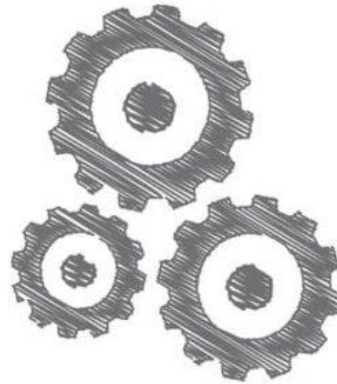
TCS Payment

Period	Date
April to March	7th of Next Month

TCS Return Filing

Period	Date
April to June	15th July
July to Sep	15th Oct
Oct to Dec	15th Jan
Jan to Mar	15th May

ISSUES



Whether threshold for applicability of TCS is available separately 7 lacs for each category viz. Education / Medical/ OTS / Other remittances?

No, collective limit of first Rs. 7 lacs calculated on an annual basis for the entire year 2023-24 need to be considered and accordingly TCS rates would be applicable depending on time of payment.

TCS on payments

Since it is card no provision to give the PAN of the applicant. How the TCS will be collected from TA

Some examples.

- ▶ When a TA swipes his card for Visa Fees.
- ▶ When TA books an Air Ticket in a foreign airline directly by swiping card.

Ans

When the remittance is made directly through bank for all payments TA gives the PAN of the traveller and a declaration that TCS is already collected and paid.

- ▶ Otherwise Remittance above Rs. 7 lacs will be covered under TCS

Should TCS be added to the cost? or inclusive? How to quote customers?

The TCS should be collected separately. If you do not collect separately, it will be your cost. Hence it is a business call. Ideally one should quote as the OTP Price + GST + TCS.

Is TCS applicable on remittance amount or on entire Invoice amount (minus GST)

It should be noted that the TCS is only on the OTP receipts. Whatever remittance you make on the OTP does not make any difference to the TCS.

How is the calculation of TCS/LRS done?

Per person / Per family / Per Invoice
Per booking / per hotel / per service booked
Per entity making the payment

The TCS is made per PAN, as provided by the customer. If there are number of travellers you can give the option to the customer, based on customer's declaration and PAN you collect the TCS and pay on that PAN. It is important since the Credit will be available to the payer, based on the PAN declared by him/her.

If tour cost includes domestic and international portion, is the TCS applicable on total or only on international portion? Does TCS apply on total tour cost (cost to passenger, including our margin) or only on the forex component?

TCS is applicable on Outbound tour package only. When the package is sold including domestic portion the TCS will be applicable on full package amount. Whether the seller of OTP spends in Forex or otherwise does not matter for TCS as applicable to Travel Agent.

Whether the threshold of Rs 7 lakh, 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?

It is clarified that the threshold of Rs 7 lakh for LRS is qua remitter and not qua authorised dealer. This is clear from the first proviso to sub-section (1G) of section 206C of the Act. The proviso states that the TCS is not required if the amount or aggregate of amounts being remitted by a buyer is less than seven lakh rupees 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 RBI, it is clarified that the details of earlier remittances under LRS by the remitter during the financial year may be taken by the authorised dealer through an undertaking at the time of remittance. If the authorised dealer correctly collects the tax at source 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 Act.

It is further clarified that same methodology of taking undertaking from the buyer of overseas tour program package may be followed by the seller of such package.

If passenger pays by credit card directly to the hotel at the time of checkout, will Credit Card Company have to collect TCS? If agent buys services for his customers on an international website and pay by credit card, what is TCS position?

TCS is applicable when you bill for OTP and collect the same. If someone directly pays to the hotel by credit card there is no liability of TCS on the Travel agent who has arranged the bookings. However the Bank will collect TCS on the same under LRS. The TCS will be applicable whether the agent pays for the same by credit card or through bank.

Who will monitor LRS - Bank or agent?

Monitoring the LRS is banks duty and liability. The LRS declaration required by the Bank contains the details of utilisation of LRS for the year. Agent is supposed to collect and pay TCS on OTP only. Since the bankers will ask for the confirmation of TCS on all LRS declared payments, it will be necessary to collect TCS on all payments which are covered under LRS, though the TCS rules says that it will be applicable on OTP only.

If only hotel or only transfers is booked? Is it a package? Does TCS still apply? Does package include airline ticketing / visa?

As per the provisions If you give any single service, it cannot be termed as OTP. Only if there are more than one service it can be considered as package. However, the bank will cross check TCS in case of all LRS payments. Thus it will be necessary to collect TCS even if only Hotel is booked. Further Hotel and Transfer may be considered to be OTP since there are more than one service.

What if an agent levy Service charge through a separate invoice? Will TCS be applicable on that service charge invoice too?

If service charges is on the OTP then TCS is applicable whether billed separately or not.

In case of travel agent making payment to his supplier in India who shall follow the compliance of TCS - the travel agent or Indian Supplier?

The TCS is to be collected on sales and not making the payment.

What could be the situation in which one agent bills to another agent?

There can be cases where one supplier of OTP in India sells to another sub-agent. There is no clarification to this situation as on date with regard to the cascading effect. As per law if you are selling the OTP you need to collect the TCS. The intent is to tax the traveller not the sub agent. However until any official clarification, there can be a case of double TCS on the OTP.

What documents are required from the customer

For TCS purposes only document needed is the PAN of the buyer of the OTP. It is suggested to keep the copy of PAN for record purposes.

When does agent file TCS and how.

TCS return procedures are similar to TDS.

Agents raise invoice in advance and make payments/remittances subsequently after a month or two? How to make such compliances.

The obligation of TCS is on the collection against OTP, Advance or otherwise, once you receive the money you pay TCS. For e.g. The package cost is Rs. 10,000/- for travel in January. Advance received is Rs. 3,000/- in October. Then TCS to be collected in October on 3000/- and on balance when received from customer. However if any client refuses to pay the TCS you cannot take the plea that it is not collected hence not paid. In such cases you have work out the TCS proportionately by grossing up. The same will result in the TCS amount being blocked up to actual billing.

What happens in case of cancellation or part refund or death case refund

There is no provision of refund of the TCS. The clients have to get it from Govt just like TDS. In case of cancellation you should not refund the TCS.

What is the compliance if agent receives payment from overseas for travel of Indian client? Bookings done by Indian Agent for foreigner, residing in another country and travelling to a third country?

There is no exemption for receipts from Outside India.

However there is no TCS for Non residents.

Payments are received from clients subsequent to raising of invoice. TCS to be paid by agent on receipt basis or as per date of invoice?

TCS is on receipt basis. Total receipts during the month to be paid within 7 days from the end of the month. In case you have already billed before 1st Oct and received in October, then you have the duty to collect TCS. You may issue a debit note to that effect.

There can be cases when Bank will require TCS collected details from agents, but payment shall be received after remittance being made. How do we work on that?

If you remit before receiving the money from the customer, this problem will arise. There is no ready solution to this as on now. May be you give a reconciliation to the banker, on how much is collected and how much is yet to be collected. You need to seek guidance from the Authorized Dealer to give some guidance based on their reporting requirements.

Invoice Amount is Rs. 1,000 + 5% GST = Rs. 1,050 + 210 (20%-TCS on Rs 1,050) = Rs 1260/- Here the pax make a payment of Rs. 1,000/- considering discount or lumpsum payment. Can the invoice be revised or credit note be passed and on basis of reverse calculation TCS be levied?

Such an adjustment is possible, and you can pay TCS based on the reverse calculation, since you are required to pay TCS on collection / billing whichever is earlier.

What about the applicability of TCS on bookings done for:

- a) Student travel
- b) One-way passengers
- c) Medical Treatment
- d) Educational Tours

There are no Exemptions for (b) & (d). For (a) & (c) clarification has been given in circular.

- ▶ The exemptions are available for the following only:
- ▶ *the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation to clause (20) of [section 10](#) or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein*

In a scenario where Agent only books an OTP for the client and only guarantees the same.

- a. No invoice or payment is collected in India. All payments are made directly by the passenger on arrival. The overseas hotel/supplier later forwards the commission to the Agent in India?
- b. Only a booking fee/charges/consultancy Invoice is raised on the customer? Is TCS applicable?

TCS will be applicable if same is billed as OTP. Receipt of commission from overseas agent is not sale of OTP. Therefore there is no applicability of TCS. In such cases the foreign currency is drawn under LRS and bank will collect TCS on the same

TCS on Non resident visiting India and booking his tour package

Non resident Individual not having PAN, visiting India, TCS @double the rate, IT return filing and claiming refund issues, etc...

Press Release by CBDT dated 31.3.22 has specified that provisions of this section will not apply to a buyer being an individual who is a non resident in terms of clause (1) and Clause (1A) of Section 6 of the Income Tax Act and who is visiting India. Hence, a domestic tour operator is not required to collect tax on sales of overseas tour package to non resident individuals visiting India.

What is the rate for TCS on purchase of foreign exchange through FMCC – is there an abated / rebated rate?

Remittances covered under Section 195 (TDS) are outside the TCS. All others are covered.

Pax Indian Passport holder and trip sponsored by overseas company, what happens to TCS & is pan card mandatory.

If the invoice is given to company, it will be covered by TDS. As explained if TDS is applicable TCS is not, otherwise yes.

Non Compliance

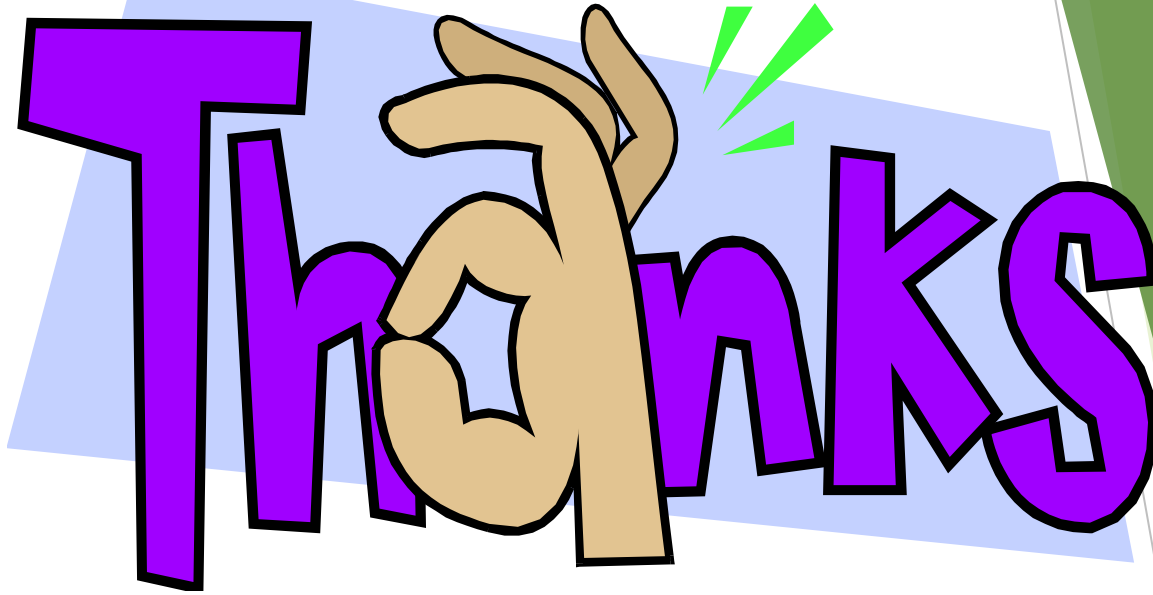
What is the penalty for non compliance of collection of TCS by Travel Agent? How does the government ensure that the law is being followed?

- ▶ First you are liable to pay the Interest for delay in deduction and payment
- ▶ Then you have to pay the late fees for delay in filing
- ▶ Then AO can levy further penalty
- ▶ The Income Tax Department can proceed with Prosecution resulting in jail term.
- ▶ Primary responsibility is on the Assessee, Then the Auditor has to report any discrepancy.
- ▶ The Income Tax Dept can make a survey if they feel it right.

DISCLAIMER

- ▶ The discussions and interpretations set forth in this material are based on the laws prevailing as on the date of presentation. If there is a change, including a change having a retrospective effect, in the statutory laws, the discussions and comments expressed in this material would necessarily have to be re-evaluated in light of the changes. We do not have responsibility of updating this note.
- ▶ This material is giving only general guidelines covering general situations our answer may differ on specific situation. Before taking any decision the users are required to obtain the opinion of the firm or their respective Consultant. Neither the firm nor any partner/employee is responsible for any action taken on the basis of this material.
- ▶ This material is not binding and acceptance of it including any subsequent and resultant planning or action will be at their own sole discretion and risk, without recourse.
- ▶ This material and comments mentioned there in are based on our understanding and interpretation of the legislations, and are not binding on any regulators, court and there can be no assurance that the regulators or court will not take a position, contrary to our opinion and comments.
- ▶ This material cannot be shared and copyright of GMJ.

CA SAKET BAGDIA



Presented by

Compiled by **CA Saket
Bagdia, Nagpur**

Bagdia & Company

Chartered Accountants

Mobile - 9823272345