



Tax collection at source in India: The conundrum continues!

The Dbriefs Corporate Income Tax series

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Agenda

Regulatory framework governing overseas remittances from India



Overview of Liberalized Remittance Scheme ('LRS')



Framework of Tax Collection at Source (TCS) provisions

- Overview
- Journey so far
- Summary of rates and threshold
- Key clarifications



Key considerations of TCS provisions



Key takeaways



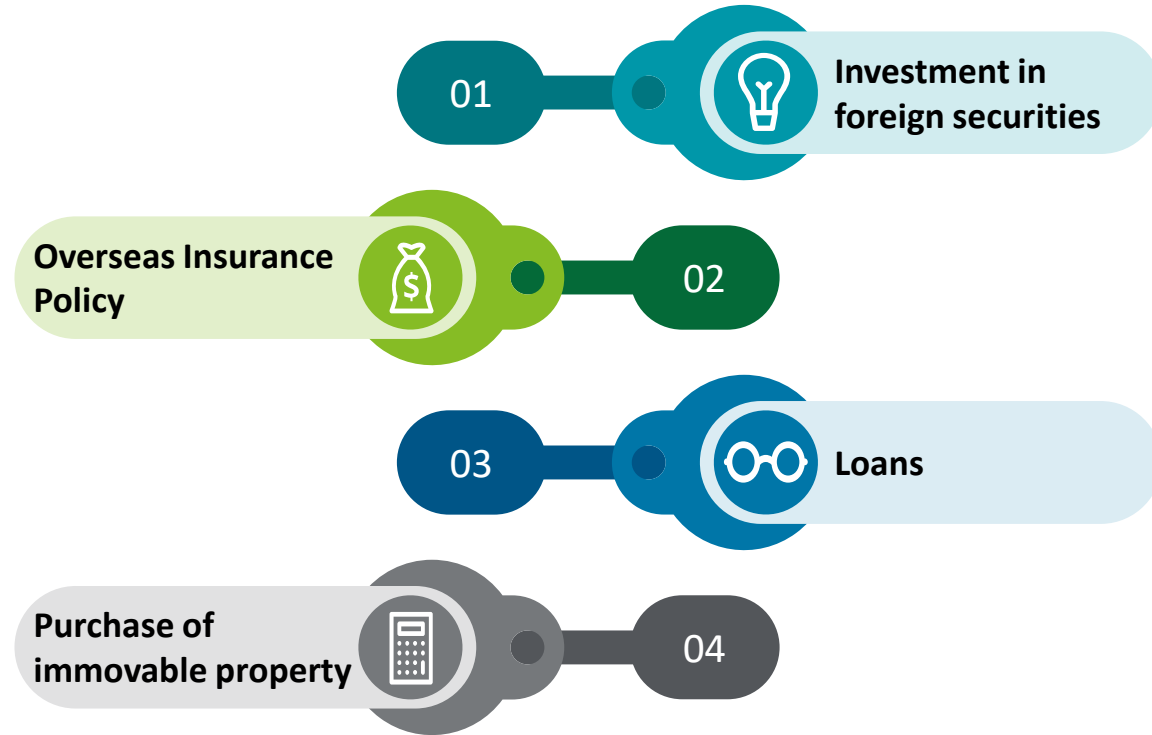
Questions & answers



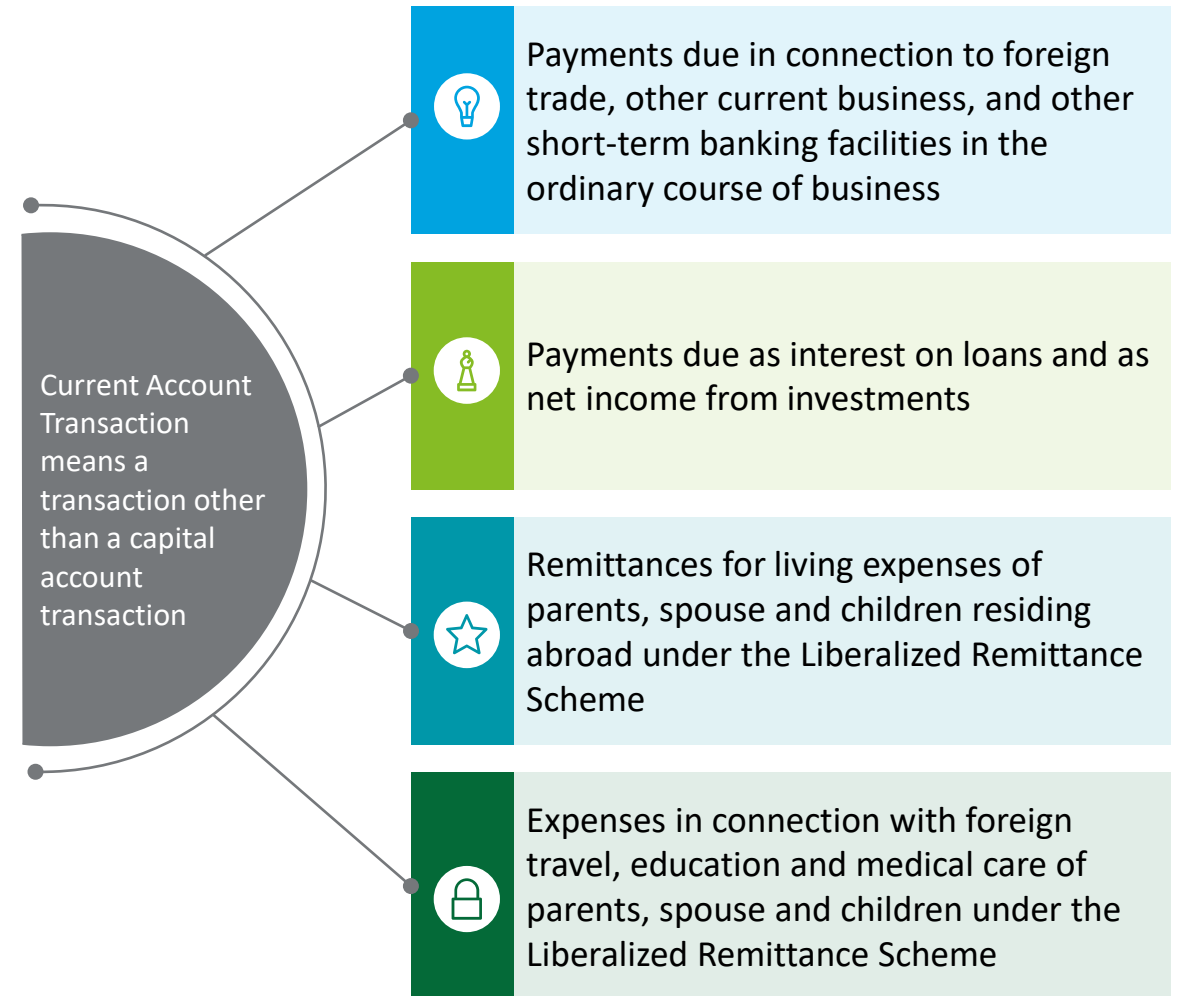
Regulatory framework governing overseas remittances from India

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Capital Account Transactions



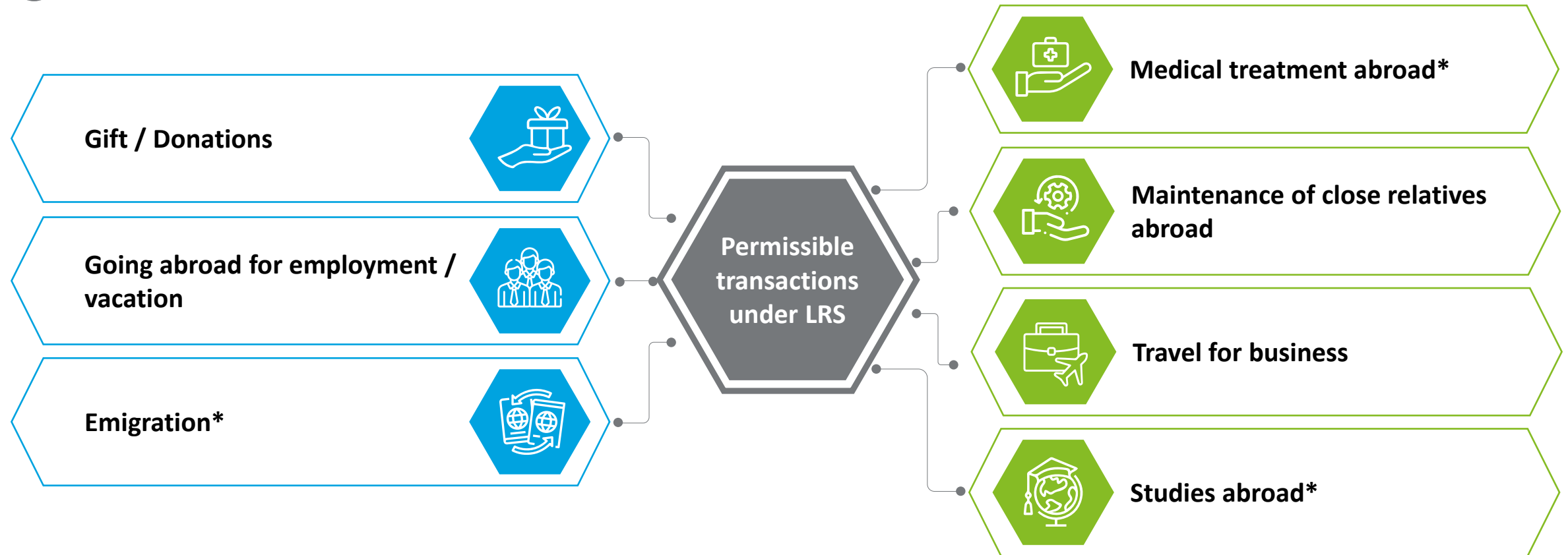
Current Account Transactions



Overview of Liberalized Remittance Scheme

Transactions permissible under LRS

Under the LRS, all resident individuals, are allowed to remit up to USD 250,000 per financial year for the following purposes. Remittance in excess shall require prior approval of the Reserve Bank of India (RBI)



*Excess remittance allowed if required subject to documentary evidence

Overview of Liberalized Remittance Scheme

Transactions prohibited under LRS

The remittance facility under the LRS is not available for the following prohibited items:

Remittance for purchase of lottery tickets/sweep stakes, prescribed magazines, etc

01

Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty

02

Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market

03

Remittance for trading in foreign exchange abroad or margins or margin calls to overseas exchanges / overseas counterparty

04

Capital account remittances to countries identified by FATF as “non-cooperative countries and territories”

05

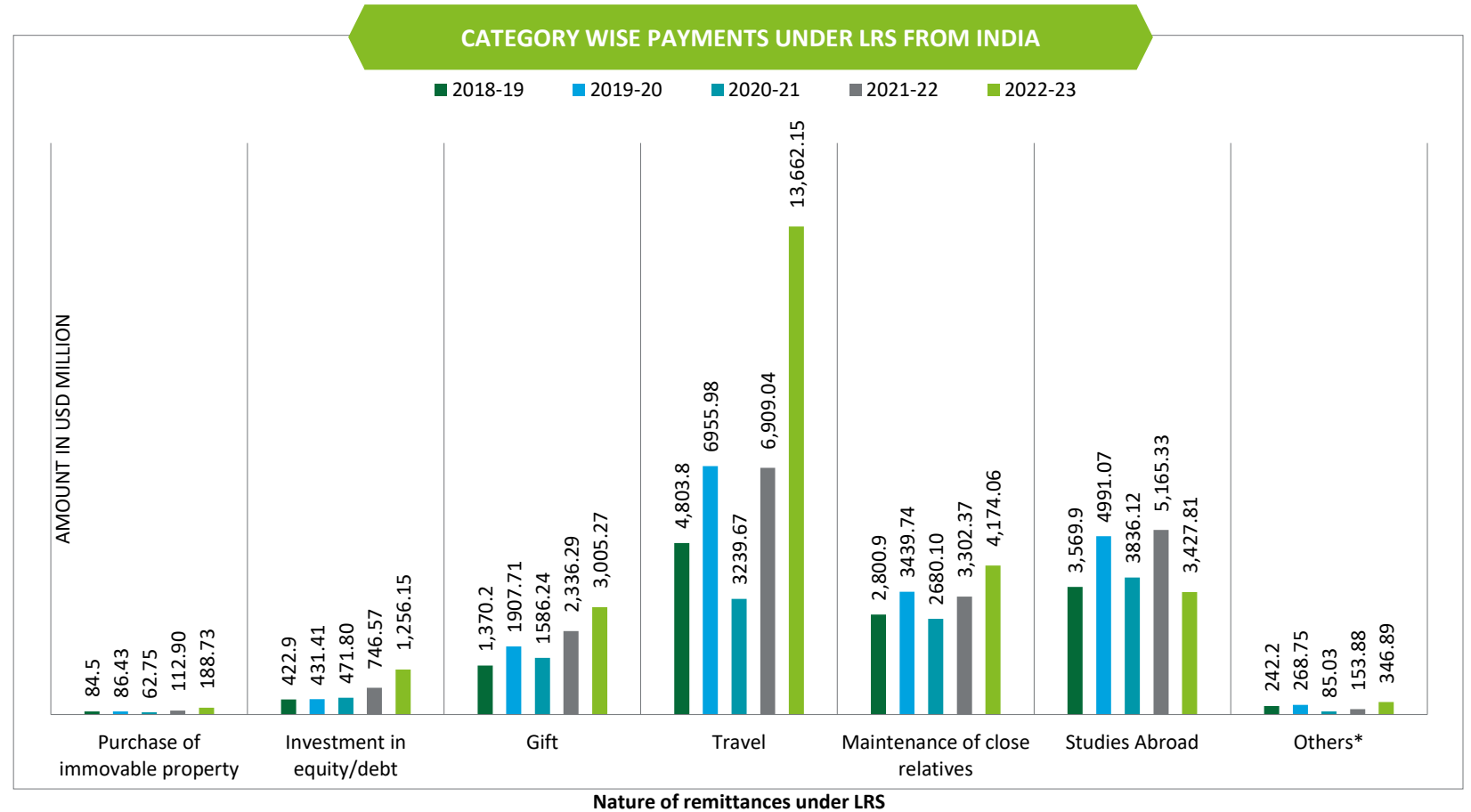
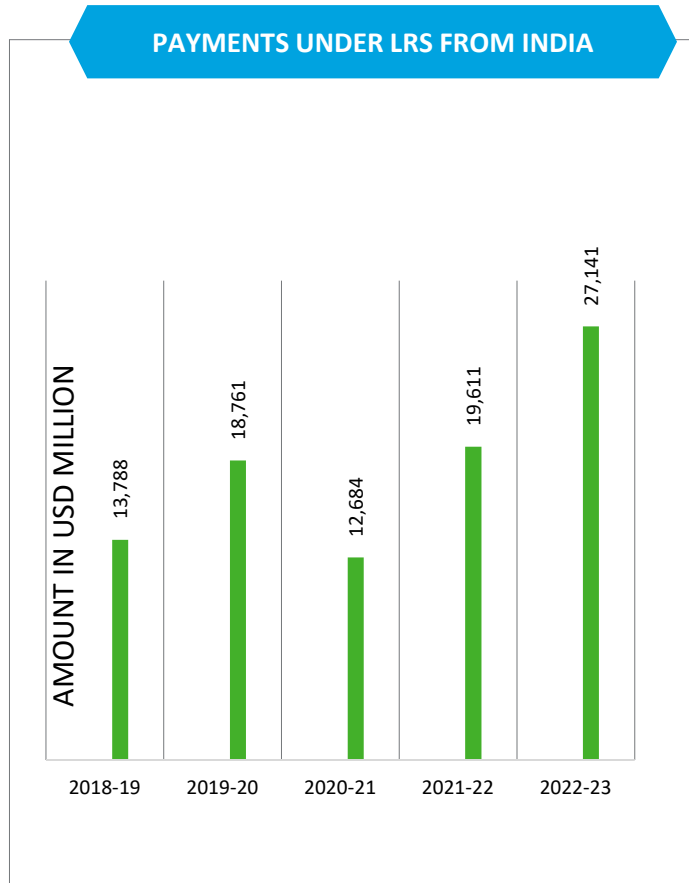
Remittances to those individuals and entities identified as posing significant risk of committing acts of terrorism

06

Gifting by a resident to another resident, in foreign currency, for the credit of the latter’s foreign currency account held abroad under LRS

07

Overview of Liberalized Remittance Scheme Statistics



*Others include items such as subscription to journals, maintenance of investment abroad, student loan repayments and credit card payments

Source: Reserve Bank of India

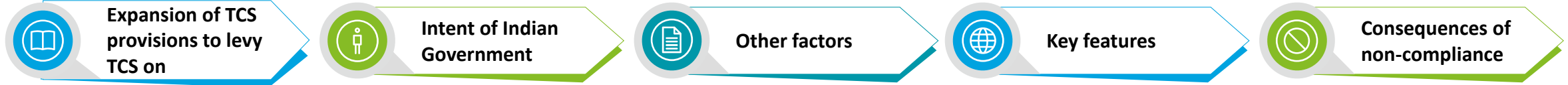
Framework of TCS provisions

Overview

- LRS payments - Authorised dealer ('AD') responsible to collect and discharge TCS
- Payment for overseas tour program package - Seller responsible to collect and discharge TCS

- Increasing trend seen in LRS payments, particularly travel;
- Prevent depletion of foreign reserves;
- Promote tourism and spending within India

- Interest at the rate of 1 percent per month for delay in collection or deposit of TCS
- Penalty for failure to collect TCS, furnish TCS return, issue TCS certificates
- Fees for delay in furnishing TCS return
- Prosecution on failure to deposit taxes collected



- To deepen and widen the tax net
- Instances observed of LRS payments being disproportionately high compared to disclosed incomes

- Not a charging provision / additional tax
- Creditable against income-tax liability
- Interest on refund of TCS at 6 percent per annum
- Not possible to apply for lower / NIL TCS rate
- Higher TCS rate if collectee's PAN not provided or Indian income-tax return not filed by collectee for FY preceding the year in which TCS is collected

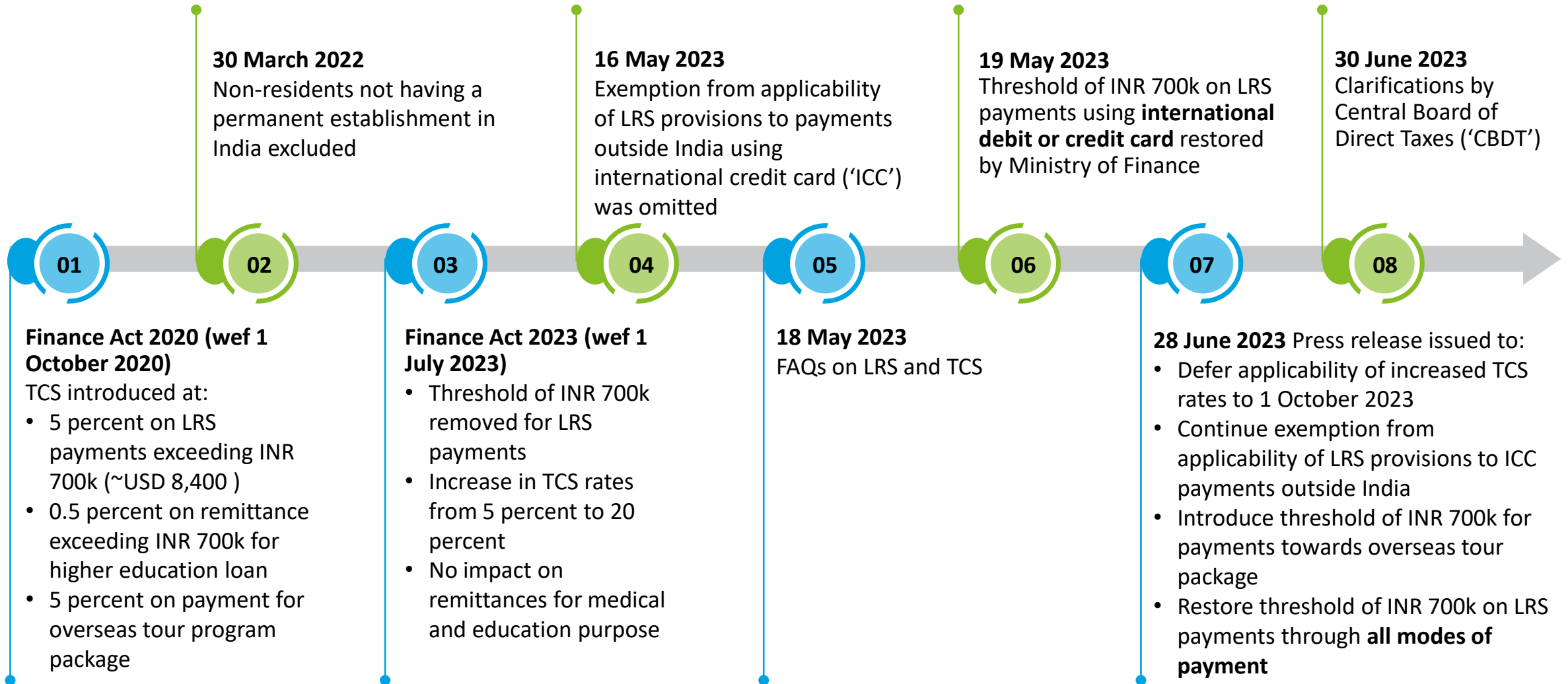
Polling question 1

To what extent the TCS impact you and whether you are complying with the said provisions?

- Significant impact and complying
- Significant impact but not complying
- Insignificant impact and complying
- Insignificant impact and not complying
- No impact

Framework of TCS provisions

Journey so far...



Framework of TCS provisions

Summary of rates and threshold

Nature of payment	TCS rates and threshold applicable up to 30 September 2023	TCS rates and threshold applicable from 1 October 2023 onwards	Obligation to collect and discharge TCS
Remittances under LRS for education purposes where it is financed by loan from financial institution	<ul style="list-style-type: none">• Nil up to INR 700k• 0.5% above INR 700k	<ul style="list-style-type: none">• Nil up to INR 700k• 0.5% above INR 700k	Authorised Dealer
Remittances under LRS for medical treatment / education purposes (other than financed by loan)	<ul style="list-style-type: none">• Nil up to INR 700k• 5% above INR 700k	<ul style="list-style-type: none">• Nil up to INR 700k• 5% above INR 700k	Authorised Dealer
Remittances under LRS for other purposes	<ul style="list-style-type: none">• Nil up to INR 700k• 5% above INR 700k	<ul style="list-style-type: none">• Nil up to INR 700k• 20% above INR 700k	Authorised Dealer
Remittances for purchase of overseas tour program package	<ul style="list-style-type: none">• 5% (without threshold)	<ul style="list-style-type: none">• 5% upto INR 700k• 20% thereafter	Seller of overseas tour package

Framework of TCS provisions

Key clarifications

01

Threshold of INR 700k is qua remitter. RBI's facility to provide real time update is under development

02

Thresholds – (i) For LRS: No TCS below INR 700k; 5 percent / 20 percent TCS above INR 700k; (ii) For purchase of overseas tour program package : TCS of 5 percent below INR 700k and 20 percent above INR 700k

03

Clarified meaning of 'overseas tour package' - should include atleast two of these (i) international travel ticket; (ii) hotel accommodation / boarding / lodging; (iii) any other expense of similar nature

04

Remittance for medical treatment includes – (i) purchase of tickets of the person to be treated medically and his attendant; (ii) medical expense; (iii) other day to day expenses required for such purpose

05

Remittance for education purpose includes – (i) purchase of tickets of the person undertaking study overseas; (ii) tuition and other fees to be paid to educational institute; (iii) other day to day expenses required for such purpose

Polling question 2

Are your systems and processes in place to comply with the LRS and TCS provisions?

- Yes
- Somewhat / not completely
- No
- Not applicable

Key considerations of TCS provisions

Key considerations of TCS provisions

Stakeholders / sectors impacted

Key sectors impacted



Hospitality and travel



Education



Financial Services

Key stakeholders impacted

Indian businesses

Individuals resident in India

Key considerations of TCS provisions

Hospitality and travel



Key considerations of TCS provisions

Education and Financial Services



Scholarship payments

Background

- Institutes award scholarship to Indian students for pursuing educational courses in foreign universities
- Students remit the fees which is covered under LRS and subject to TCS at the rate of 5 percent if the amount exceeds INR 700k

Key considerations

- Options to mitigate the burden of TCS on students
- Appropriate declaration to be obtained from students
- AD to ensure correct PAN reporting of students



Financial Services

Key considerations

- Tracking of LRS payments – historical payments not tracked
- Assisting in obtaining RBI approvals
- Payments through multiple ADs – common facility not available
- Reliance on declarations
- Increased compliances
- Appropriate PAN reporting

Key considerations of TCS provisions

Indian businesses and Indian resident individuals



Payment for Management Incentive Plan

Shares or interest acquired by resident individuals under Management Incentive Plan of overseas entity considered under LRS limits

Key considerations

- TCS collection mechanism
- Upgradation of payroll systems
- Declaration from employees
- Additional compliances
- Option to mitigate the TCS liability / reduce the burden on employees



Payment for business visits

Expenses for deputation of employees overseas for business visit, seminars, conference shall not be treated as LRS, subject to verifying the bonafides of the transaction

Key considerations

- Use of corporate cards vis-à-vis personal cards
- Appropriate documentation to substantiate business visits
- Change in corporate policies

Polling question 3

What option has been chosen by you or your employees as regards collection of TCS on the employee's contribution to employee benefit schemes?

- Employees have opted for no payroll deduction
- Employees have opted for payroll deduction
- Employer will bear the TCS incidence
- Interim gap funding to employees
- No option chosen yet

Key takeaways

01

Evaluate the applicability of LRS and TCS provisions to business and for personal remittances

02

Seek RBI approvals where required for historical remittances

03

Upgrade the systems and processes to comply with LRS and TCS provisions – tracking, seeking declarations etc

04

Undertake required compliances in a timely manner to avoid adverse consequences

05

Appropriate documentation and purpose codes for effectuating remittances from India

06

Regular tracking of TCS credit and monitoring the threshold for personal remittances

Question and answers

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