Global Reward Update

India

Increase of TCS applicable to foreign remittances

July 2023

Headline

From 1 October 2023, the withholding rate for the Indian Tax Collected at Source (TCS), applicable to foreign remittances, will increase from 5% to 20% (delayed from 1 July 2023). Originally it was proposed the INR 700,000 (c. USD 8,500) exempt threshold would be removed, however this is no longer the case and this will now remain in place.

TCS applies to remittances to purchase foreign shares, including transfers of funds under employee share purchase plans. Following these changes all individuals in share purchase plans will be subject to this 20% withholding on their contributions remitted from India above the exempt threshold.

Background

Since 1 October 2020, the Liberalised Remittance Scheme ("LRS") requires TCS of 5% to be applied on all outward remittances from India over the annual INR 700,000 exempt threshold. All outward remittances from India are made through a licensed foreign exchange dealer / bank (an 'authorised dealer'). At the point of any outward remittance exceeding the exempt threshold, the authorised dealer applies the withholding of the TCS and pays this to the tax authority.

The TCS is not an additional tax and so it can be claimed as a credit by affected individuals against their advance tax (PAYG) instalments on personal income and/or at the time of filing their personal annual tax return. However, in practice, we have seen some individuals experience challenges and delays when reclaiming taxes from the authorities. This can be a concern for individuals who do not normally have excess tax to settle via their tax return (due to a having limited non-employment income) and therefore would require a refund of taxes.

What has changed

On 1 February 2023, an increase of the TCS to 20% and removal of the exempt threshold was announced. Whilst the original intention was for the changes to come into effect from 1 July 2023, the Indian tax authorities deferred the rate change until 1 October 2023 and confirmed that the INR 700,000 exempt threshold would not be removed.

Where total remittances (i.e. both share plan related and other remittances) exceed the INR 700,000 exempt threshold during the Indian tax year (year ending 31 March), this will have a double impact on contributions above the exempt threshold for employee share plan participants in India. Firstly, the TCS will result in individuals only being able to use 80% of their contributions above the threshold to purchase shares (rather than 95% currently). Whilst they may be able to collect a refund at the end of the tax year, they will have lost the opportunity to use this amount in the purchase plan. Secondly, depending how the purchase plan is structured the reduced number of shares purchased by individuals will result in either (i) a reduced number of matching shares being awarded or (ii) the benefit of any discount being reduced by 20% (rather than 5% currently).

Deloitte's view

It is welcome news that the Indian tax authorities are intending to keep the INR 700,000 (c. USD 8,500) exempt threshold. However, there remains a significant increase in the TCS rate on remittances above this threshold that may impact employee share purchase plan participation rates in India, due to the reduced benefits received by individuals and the potential administrative burden to reclaim the TCS.

Ahead of the 1 October 2023 planned effective date, we will continue to monitor the position and provide further updates where applicable. In the meantime, employers should consider preparing communications for impacted participants explaining the impact of these changes where relevant. Additionally, some employers may consider alternative plan designs to continue to incentivise their Indian employees.

Who to contact

If you would like to discuss this further, or have any questions, please speak to your usual Deloitte contact or any of the contacts listed below:

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