

WIRC - ICAI

Recent Amendments to Liberalised Remittance Scheme & Recent TCS amendments applicable on LRS remittances

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WOW Series

PRE – LRS POSITION

- Current Account Transactions (CAT) Rules

Schedule I – Listed Prohibited Transactions

Schedule II – Listed Transactions that required prior CG approval

Schedule III – Listed Transactions permitted by RBI upto prescribed limits. Central Government has issued FEM (Overseas Investment) Rules, 2022 vide G.S.R. 646(E)

- Other Current Account Transactions permitted unless restricted
- All Capital Account Transactions restricted unless permitted under Section 6 of FEM Act, 1999 (earlier issued by RBI, since 2015 issued by CG)

LIBERALISED REMITTANCE SCHEME

- Introduced on 4th February 2004 vide A. P. Circular No. 64
- The LRS limit has been revised in stages consistent with prevailing macro and micro economic conditions. During the period from 4th February 2004 till date, the LRS limit has been revised as under:

	(Amount in USD ³)						
Date	Feb 4, 2004	Dec 20, 2006	May 8, 2007	Sep 26, 2007	Aug 14, 2013	Jun 3, 2014	May 26, 2015
LRS limit (USD)	25,000	50,000	1,00,000	2,00,000	75,000	1,25,000	2,50,000

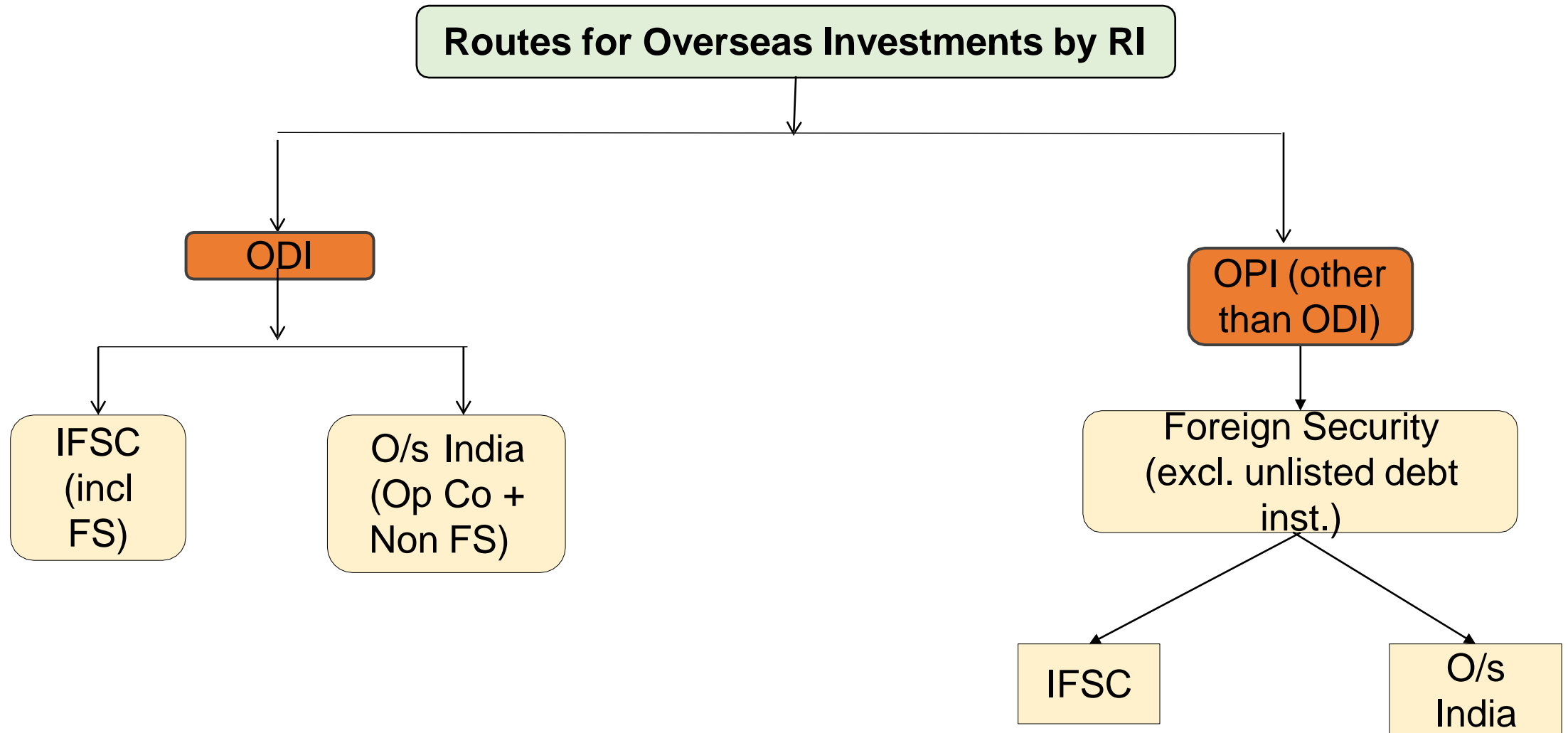
- Ads may freely allow remittances by RI up to USD 2,50,000 per Financial Year (April-March) for any permitted current or capital account transaction or a combination of both.
- **The Scheme is not available to corporates, partnership firms, HUF, Trusts, etc.**
- **The Scheme is available to all resident individuals including minors. In case of remitter being a minor, the Form A2 must be countersigned by the minor's natural guardian.**
- Banks should not extend any kind of credit facilities to RIs to facilitate capital account remittances under LRS.

LIBERALISED REMITTANCE SCHEME – Permitted Transactions

Permitted Capital Account Transactions:

- opening of foreign currency account abroad with a bank;
- acquisition of immovable property abroad, Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI), in accordance with the provisions contained in Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022;
- extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013 (*conditions provided in MD on LRS*)

ROUTES FOR OVERSEAS INVESTMENTS



FEM OI RULES – SCHEDULE III - OVERSEAS INVESTMENT BY RI

Any RI may make ODI by way of investment in equity capital or OPI in the manner provided in this Schedule + subject to the overall ceiling under LRS in the following manner:

- ODI in an **operating foreign entity** *not engaged in financial services activity* and which **does not have a subsidiary or step down subsidiary** where RI has **control in foreign entity**. *'Subsidiary' or 'step down subsidiary' of a foreign entity means an entity in which the foreign entity has control;*
- **OPI including reinvestment;**
- **ODI or OPI by way of:**

Capitalization
of any
amount due
within time
period

Bonus
shares
or rights
issue

Swap on
account of
merger /
demerger/
amalgama
tion/
liquidation

Gift
See
next
slides

Inheritance

Sweat
Equity
Shares

Minimum
Qualification
Shares

ESOP/
Scheme

FEM OI RULES – SCHEDULE III- OVERSEAS INVESTMENT BY RI

Certain relaxations/conditions:

- ODI allowed if FE carries FS activity / has SDS in case *inheritance/sweat equity/qualification shares/ESOP*.
- Holding < 10% without control **whether listed or unlisted** in case of *sweat equity/qualification shares/ESOP* shall be considered as OPI.
- **where swap of securities results in acquisition of equity capital viz. is not in conformity with the OI Rules/Regulations, e.g., ODI in FE engaged in financial services activity, foreign entity having a subsidiary/SDS, etc., such equity capital must be disinvested within a period of six months from the date of such acquisition**

FEM OI RULES – SCHEDULE III- OVERSEAS INVESTMENT BY RI

- Acquisition by way of Gift or Inheritance:

Mode	From	To	Limits
Inheritance	PROI	PRI	Without any limits
Inheritance	PRI	PRI	Without any limits
Gift	PRI Relative	PRI	Without any limits
Gift	PROI	PRI	Limits subject to FCRA provision

- Acquisition under ESOP Plan/Scheme

Who can Receive	Limits
RI who is an employee/ director of the office in India or BO of an overseas company or Subco in India of an overseas entity or an Indian entity in which overseas entity has direct/ indirect equity	Without any limits

FEMA OI RULES – Immovable Property o/s India

- Permitted Mode of Acquisition of Immovable Property

Mode	Transferor	Transferee
Inheritance	PRI	PRI
Gift	PRI	PRI
Purchase	PRI	PRI
Inheritance	PROI	PRI
Purchase	PROI	PRI

- Indian entity having an **overseas office** permitted to acquire immovable property outside India for the **business and residential purposes of its staff**.
- PRI who has acquired any immovable property outside India may **transfer** such property by way of **gift to PRI** who is eligible to acquire such property or by way of sale; **create a charge** on such property.

LIBERALISED REMITTANCE SCHEME – Permitted Transactions

Permitted Current Account Transactions:

- Private visits to any country (except Nepal and Bhutan): Irrespective of the number of visits during the year; 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 traveller.**
- Gift or donation: The gift may also be a rupee gift to a NRI / PIO who is a relative of the resident individual by way of crossed cheque / electronic transfer to NRO a/c of NRI / PRI
- Going abroad for employment
- Emigration: Remittance of any amount of Forex outside India in excess of this limit may 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

LIBERALISED REMITTANCE SCHEME – Permitted Transactions

Permitted Current Account Transactions:

- Maintenance of close relatives abroad
- Travel for business, or attending a conference or specialised training or for meeting expenses : **If an employee is being deputed by an entity for any of the above and the expenses are borne by the latter, 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.**
- For meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up & Expenses in connection with medical treatment abroad : AD may release forex **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, AD may release forex 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 forex by an AD (without seeking prior approval of the Reserve Bank of India) for medical treatment outside India.**

LIBERALISED REMITTANCE SCHEME – Permitted Transactions

Permitted Current Account Transactions:

- Studies abroad : AD may release forex **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 banks may allow remittances (without seeking prior approval of the RBI) **exceeding** USD 2,50,000 **based on the estimate** received from the institution abroad.
- **Any other current account transaction which is not covered under the definition of current account in FEMA 1999. → what does this cover ???**

LIBERALISED REMITTANCE SCHEME – Prohibited Transactions

- 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 FCCBs 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 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.
- **Gifting by a resident to another resident, in foreign currency, for the credit of the latter’s foreign currency account held abroad under LRS. → R to R Gift of Forex in foreign a/c not permitted**

LIBERALISED REMITTANCE SCHEME – Consolidation

- Remittances under LRS can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.
- Clubbing is not permitted by other family members for capital account transactions such as opening a bank account/investment, **if they are not the co-owners/co-partners of the overseas bank account/investment.**
- Remittances for purchase of property shall be in accordance with the provisions under provisions contained in Foreign Exchange Management (Overseas Investment) Rules, 2022.

LIBERALISED REMITTANCE SCHEME – Consolidation for immovable property

Prior to amendment in August 2022:

- The second sentence included the words “purchase of property’. Read as “conditions. However, clubbing is not permitted by other family members for capital account transactions such as opening a bank account/investment / purchase of property, if they are not the co owners /co partners of the overseas bank account/ investment / property.”

Rule 21(2)(ii) of OI Rules

- “(ii) a person resident in India may acquire immovable property outside India from a person resident outside India –
 - (c) by way of purchase out of the remittances sent under the Liberalised Remittance Scheme instituted by the Reserve Bank:
Provided that such remittances under the Liberalised Remittance Scheme **may be consolidated in respect of relatives if such relatives , being persons resident in India, comply with the terms and conditions of the Scheme;**”

This has led to a school of thought that co-ownership condition is removed.

LIBERALISED REMITTANCE SCHEME – Out of Borrowed funds

- Banks should not extend any kind of credit facilities to RIs to facilitate capital account remittances under LRS
→ Para 11 of Part A of MD on LRS & Para 10 of Part B of MD on LRS
- AD Banks may extend fund and non-fund based facilities to RIs to facilitate **current account remittances** under LRS → FAQ 16 on LRS updated on 6th April 2023
- Underlying principle under LRS is that remittance should be from own funds → Para 8 of Part B of MD on LRS and Declaration in Form A2
- **Are loans from other parties for current account transactions permissible?** E.g. Relatives or Third parties for education or medical treatment which are most common

LIBERALISED REMITTANCE SCHEME – Idle Funds

MD on LRS updated on 24th August 2022 (Paragraph 16)

- Investor, who has remitted funds under LRS can retain, reinvest the income earned on the investments.
- The **received / realized / unspent / unused foreign exchange**, **unless reinvested**, **shall be repatriated and surrendered** to an authorised person **within a period of 180 days** from the date of **such receipt / realization / purchase / acquisition or date of return to India**, as the case may be, in accordance with Regulation 7 of Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015 [Notification No. FEMA 9(R)/2015-RB].
- However, a resident individual who has made overseas direct investment in accordance with FEMA provisions, shall have to comply with the provisions contained in Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022 → **90 days provided under Reg 8(4)**

LIBERALISED REMITTANCE SCHEME – Idle Funds

Prior to amendment MD on LRS read as under (Paragraph 16):

- Investor, who has remitted funds under LRS can retain, reinvest the income earned on the investments.
- At present, the resident individual is not required to repatriate the funds or income generated out of investments made under the Scheme

Issues / Posers:

- 1) Applicable to? Funds remitted under LRS; Incomes earned on investments; Sale proceeds of investments.
- 2) Apply to investors only? Since words “unspent/ unused forex” generally does not refer to funds remitted from India for investment but rather for current account transactions
- 3) Retrospective applicability? Is grandfathering available? Funds lying idle 180 days from 24th Aug i.e. till 19th February 2023 ? or already lying idle as on 24 Aug 2022? 180 days limit to bring funds to India
- 4) What is the meaning of ‘reinvested’? Can the purpose be changed? What about sec 10(6) of FEMA? Bank FDs? MFs? Gold or Paintings ?
- 5) How to regularize ?



TAX COLLECTED AT SOURCE on LRS – Section 206C(1G)

Finance Act, 2020 w.e.f. 1st October 2020

- Introduced 5% TCS on remittances out of India under LRS with a threshold of Rs. 7,00,000/-
- Concessional rate of 0.5% TCS on where remittance is for education and amount remitted is out loans taken from financial institutions (concessional rate not available if remittance for education out of own funds)
- No threshold provided for 5% TCS on remittance for Overseas Tour Program Package

Finance Act, 2023 w.e.f. 1st July 2023 (passed by Lok Sabha on 24.03.2023)

- Rate of TCS increased from 5% to 20%
- Threshold of Rs. 7,00,000/- only available for remittance for education or medical purpose
- The words 'out of India' was also removed. Therefore, it applied to TCS on remittances under LRS.
- No change regarding concessional rate for education

TAX COLLECTED AT SOURCE on LRS – Section 206C(1G)

Amendment to FEM (CAT) Rules, 2000 – 16th May 2023

- Rule 7 provided exemption of International Credit Cards for inclusion under LRS for payments by a resident for meeting expenses when on a visit outside India
- Long awaited notification deleted Rule 7. Includes current a/c transactions **while on visit out India** under LRS limit.
- NOTE: All current account transactions undertaken on ICC **in India** were subject to Rule 5 of FEM (CAT) Rules and therefore always covered under LRS limits. For eg. Booking Thailand hotel on Makemytrip.
- Effect of Amendment – This resulted in TCS applicability to such ICC transactions undertaken o/s India @ 20%. Also, ICC and IDC brought on par.
- FAQs posted by MoF on their twitter feed providing clarifications on TCS and LRS amendments on 18th May 2023
- Not to cover employee deputed by an entity and borne by the entity. Since not covered under LRS.

TAX COLLECTED AT SOURCE on LRS – Section 206C(1G)

Clarification by Ministry of Finance – 19th May 2023

- After hue and cry by public, with the reasoning of procedural ambiguity, MoF issued a clarification vide Press Release stating that “Payments by resident individuals using ICC & IDC upto Rs. 7,00,000/- shall be excluded from LRS limits and therefore TCS will not be attracted”
- The language is ambiguous whether the LRS limit is amended or a threshold for TCS is provided?
- It should be noted that the 7 Lakh threshold is only applicable to ICC and IDC transactions and other LRS transactions would not enjoy any threshold (beneficial treatment for education and medical not affected)
- It is not clear if only payments outside India or also from India will be affected by the threshold.
- Clarity will be available after requisite amendment to FEM (CAT) Rules.

TAX COLLECTED AT SOURCE on LRS – Section 206C(1G)

Clarification by Ministry of Finance – 28th June 2023

- Government gave more time for implementation of revised TCS rates and for inclusion of credit card payments in LRS
- Provided two clarifications:
 - Postponed increased rates to apply from 1st October 2023
 - No change in rate of TCS for all purposes under LRS and for overseas travel tour packages, regardless of mode of payment, for amounts up to Rs. 7 lakh per individual per annum
- The press release clarified that the Govt decided to postpone the implementation of its 16th May 2023 e-gazette notification. Therefore, transactions through ICC while being overseas would not be counted as LRS and hence would not be subject to TCS

TAX COLLECTED AT SOURCE on LRS – Section 206C(1G)

CBDT Circular No. 10 of 2023 – 30th June 2023

- CBDT issued circular duplicating the language used in the press release dated 28th June
- The circular also provides guidance in the form of 8 FAQs. Key takeaways from the FAQs are:
 - i) The amendment to Current Account Transaction for ICC transactions as LRS was postponed
 - ii) The threshold limit of Rs. 7 Lakhs per financial year is a combined threshold irrespective for the purpose for the entire year eventhough different rates are prescribed before and after 1st October 2023
 - iii) Threshold is qua remitter and not authorized dealer – real time update on LRS transactions under implementation
 - iv) Separate threshold limits are available for LRS remittances & overseas tour program package
 - v) Clarifications on purpose & codes included in Medical and Education
 - vi) Purchase of only international travel ticket or only hotel accommodation not covered under overseas tour program package.
 - vii) Items qualifying as overseas tour program package explained.

TAX COLLECTED AT SOURCE on LRS – Section 206C(1G)

Amendment to FEM (CAT) Rules, 2000 – 30th June 2023

- Deletion of Rule 7 vide 16th May amendment postponed.
- Accordingly, Rule 7 exemption of International Credit Cards for inclusion under LRS for payments by a resident for meeting expenses when on a visit outside India restored
- Retrospective (re) insertion of Rule 7 from 16th May 2023 itself.

TAX COLLECTED AT SOURCE on LRS – Section 206C(1G)

Birds Eye View of TCS Provisions Today

Sr. no	Purpose of remittance	Nature	Present rate (up to 30 th September 2023)		Proposed Rate (From 1 st October 2023)	
			Threshold	Rate	Threshold	Rate
1.	Any Education	Loan obtained from any Financial Institution defined in sec 80E	7 Lakhs	0.5%	7 Lakhs	0.5%
		Not obtained from Financial Institution	7 Lakhs	5%	7 Lakhs	5%
2.	Medical Treatment		7 Lakhs	5%	7 Lakhs	5%
3.	Tour Package	Purchase of a Tour Package	Nil	5%	Nil	5% up to 7 Lakh
						Above 7 Lakhs 20%
4.	Any other remittance	For e.g. Bonds, shares, real estate, gifts etc	7 Lakhs	5%	7 Lakhs	20%

Contact

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THANK YOU