



# Issues vis-a-vis remittances under Section 195

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1 Overview

2 Analysis of Section 195

3 Approach for Tax Withholding & Section 206AA

4 Consequences of Non-Compliance

5 Procedure for Remittance

6 Case Study





# Overview



## Objective of Section 195 of the Act: Circular Number 152 dated 27-11-1974

- Tax is collected at the earliest point of time
- No difficulty in collection of tax at the time of assessment
- To avoid loss of revenue as the non residents may not have any assets in India from which subsequent recovery can be made
- Example of nature of payment covered in the circular – royalty / fees for technical services





## Overview of Section 195:

Section	Provisions
195(1)	Scope and conditions for applicability
195(2)	Application by the “payer” to the AO
195(3)	Application by the “payee” to the AO
195(4)	Validity of certificate issued by the AO
195(5)	Powers of the CBDT to issue Notifications
195(6)	Furnish the information relating to the payment of any sum
195A	Grossing up of tax





- Withholding tax on payments to non-residents in certain circumstances
- Govt. uses withholding tax to collect a portion of tax in advance and it is “Provisional Collection” and not a “Final Tax”
- Withholding is tentative and subject to assessments of Income Tax Department
- Non-resident who has suffered withholding tax is not exempt from filing a return of income in India except in circumstances referred to in Section 115A(5) & 115G
- 195 – Covers interest and any sum chargeable to tax other than -
  - 194LB - Income by way of interest from infrastructure debt fund
  - 194LC - Income by way of interest from Indian company
  - 194LD - Income by way of interest on certain bonds and Government securities
  - 192 - Income Chargeable under the head salaries



# Unique features of Section 195 as compared to other TDS provisions



- Unlike other provisions in Chapter XVII (TDS provisions), which puts an obligation on the payer to withhold taxes at the time of payment of **“any sum”**, Section 195 uses a special phrase **“chargeable to tax under the Act”**
- Unlike threshold criteria specified in section 194C / 194J / 194 I / etc., no basic limit in section 195 - even Re 1 payment is covered
- Unlike provisions of section 194C which exempts personal payments by Individual / HUF from ambit of tax withholding obligations; no exclusion for such payments in section 195 (e.g. payment to foreign architect for residential house construction is covered etc.)
- All payers covered irrespective of legal character: Individual / HUF etc.
- Multi-dimensional as involves understanding of DTAA/Treaty



## Analysis of Section 195(1)





# Section 195(1) - Overview



<b>Who is responsible to deduct TDS</b>	<b>Any person- as defined u/s 2(31) - Includes virtually everyone</b>
Payment made to non resident	Includes all non-residents having presence in India or not
Payment made to resident	Includes payment made to foreign company being resident in India
Determine-Status of NR	<ul style="list-style-type: none"><li>– Under Section 6</li><li>– In case of dual residence - Apply tie breaker under DTAA</li></ul>
Payment covered	Any cum chargeable under the Act except <ul style="list-style-type: none"><li>o Salaries</li><li>o Specific sections for interest</li><li>o Exempt dividend u/s 115O (Other dividends are covered)</li></ul>
At what time TDS has to be deducted	At the time of payment or credit whichever is earlier
Rate of TDS	Relevant rate in force

# Section 195(1) - Overview



- Any Person responsible for paying to a non-resident or a foreign company, any sum chargeable to tax under the Act is required to deduct tax at source at the rates in force
- Definition of person under Section 2(31) includes non residents. Further, Explanation 2 to Section 195(1) having retrospective application from 1.04.1962 clarifies that obligation to comply with provisions of section 195(1) applies to all persons including non-residents whether or not non-resident payer has –
  - i. a residence or place of business or business connection in India or
  - ii. any other presence in any manner whatsoever in India
- Rates in force –
  - Section 2(37) - rate of tax specified in Finance Act or the DTAA, whichever is more beneficial
  - Reference to rates as per DTAA included from 1.6.1992
  - CBDT vide Circular No. 728 dated 30.11.95, rates as per DTAA to be applied where they are more favorable to the assessee

# Section 195(1) - Overview



- Objective of Section 195 is to ensure that –
  - i. Tax liability on income element of amount paid is deducted at source itself
  - ii. Tax department is not put to the hassles of recovering it from a non-resident whose connection with India may be temporary or whose assets in India may not be sufficient to meet the tax liability



# Section 195(1) – Chargeability under Act / DTAA



- Chargeability to tax governed by provisions of Act / DTAA:

Nature of Income	Act* (Section)	Treaty (Article)
Business / Profession	9(1)(i)	5, 7, & 14
Salary	9(1)(ii)	15
Dividend	9(1)(iv), 115A	10
Interest	9(1)(v), 115A	11
Royalties	9(1)(vi), 115A	12
FTS	9(1)(vii), 115A	12
Capital Gains	9(1)(i), 45	13

\* Apart from Section 5 wherever applicable

Act / DTAA, whichever is beneficial prevails

# Section 195(1) – Area of Litigation



Sr. No.	Area of Litigation
1.	Sum chargeable to tax
2.	Point of withholding of tax
3.	Payment towards reimbursement of expenses
4.	Payment to non-resident agent operating outside India
5.	Tax Withholdings from payments in kind
6.	Other Miscellaneous Issues





- **Sum chargeable to tax**

## **Transmission Corporation of A.P. Ltd. v. CIT (239 ITR 587) (SC)**

The Hon'ble Supreme Court has held that “..... Hence, there was no substance in the contention of the appellant that the expression ‘any other sum chargeable under the provisions of the Act’ would not include cases where any sum payable to the non-resident is a trading receipt which may or may not include ‘pure income’. The language of section 195(1) for deduction of income-tax by the payee is clear and unambiguous and casts an obligation to deduct appropriate tax at the rates in force.”

### **Brief Summary**

The Scheme applies not only to amounts which bear Income character wholly but also to Gross Sums, the whole of which may not be profits of the recipients. The consideration should be – whether payment of the sum to non-resident is chargeable to tax under the provisions of the Act or not? That sum may be Income or Income hidden or otherwise embedded therein. If so, tax is required to be deducted on the said sum; what would be the income is to be computed as per the Act and the assessee's obligation is to deduct tax on the appropriate proportion of income chargeable to tax

Assessee is required to make an application for determination of appropriate proportion of such sum so chargeable, or for grant of certificate authorising recipient to receive the amount without deduction of tax, or deduction of tax at any lower rates or no deduction. On such determination, tax at appropriate rate would be deducted at source.

If no application is filed, income tax on such sum is to be deducted by the payer as it is his statutory obligation to withhold tax thereon.



- **Sum chargeable to tax**

- **CIT v. Samsung Electronics Co. Ltd. (185 Taxman 313)(Kar)**

- **Payments to non-residents are subject to withholding tax on the whole of the sum, unless taxpayer obtains an order from tax authorities for determination of appropriate WH**
  - In absence of such order, taxpayer is liable to withhold tax on entire income paid
  - Lower / NIL withholding requires statutory dispensation from the tax officer
- **SC in Transmission Corporation has declared legal position with respect to withholding tax on payments to non-residents**
  - Binding on all High Courts in India
- **Any payment resulting in income in hands of non-resident would be subject to withholding tax**
  - Always open for non-resident to contend its tax liability by later filing a tax return
- **Is the HC suggesting that since income arises even in case of payments for purchase of goods from non-residents, unless AO's certificate is received, withholding from these payments should also be made?**



- **Sum chargeable to tax**

## **CIT v. GE India Technology Cen. (P.) Ltd. (SC) - [2010] 327 ITR 456**

- The moment a remittance is made to a non-resident, obligation to deduct tax at source does not arise; it arises only when such remittance is a sum chargeable under Act, i.e., chargeable under sections 4, 5 and 9
- Section 195(2) is not a mere provision to provide information to ITO(TDS) so that department can keep track of remittances being made to non-residents outside India; rather it gets attracted to cases where payment made is a composite payment in which certain proportion of payment has an element of 'income' chargeable to tax in India and payer seeks a determination of appropriate proportion of sum chargeable

### **Brief Summary**

- Overruled the decision of the Karnataka High Court in the case of Samsung Electronics Co. Ltd
- The words “chargeable under the provisions of the Act” used in Section 195(1) of the Act clearly indicate that payments made to non-residents should partake the character of income chargeable to tax in order to trigger withholding of tax
- Payers are obligated to withhold tax on pure income payments and on composite payments if they have an element of income embedded therein
- In case of composite payments, the obligation to withhold tax under Section 195 of the Act is limited to the proportion of income comprised in the payment based on the “principle of proportionality”
- Application to the Assessing Officer under Section 195(2) of the Act is necessary only when the payer is unsure of the portion of payment which would be subject to withholding tax or the quantum of withholding tax. Section 195(2) of the Act is only a safeguard as observed in the Transmission Corporation case
- **Thus the principle of Section 195 of the Act is that the underlying payment should bear the character of income. If the payment is not in the nature of income, he cannot be held as an “assessee in default” for failure to withhold tax**





# Point of tax withholding



- Tax is to be deducted at the time of credit or payment, whichever is earlier
- Payment of Royalty under DTAA - tax deductible only on payment?
  - OECD Commentary
  - Uhde GMBH (54 TTJ 355) (Bom)
  - National Organic (96 TTJ 765) (Bom)
  - Flakt (India) Ltd (267 ITR 727) (AAR)
  - DIT (IT) v. Siemens Aktiengesellschaft (124 of 2010) Bombay HC
  - Johnson & Johnson V. ADIT (7865 of 2010) Mumbai ITAT
  - Section 43(2) defines “Paid”
- Tax withholding in cases where RBI approval required before remitting the sum to NR-
  - United Breweries Ltd (211 ITR 256) (Kar)
  - Motor Industries Co. (249 ITR 141) (Kar)
  - Pfizer Corporation (259 ITR 391) (Mum)
- Tax to be withheld even when no remittance on adjustment of dues
  - Raymond Ltd. (86 ITD 791) (Bom)

# Reimbursement of expenses



- 'Reimbursement' not defined in the Act - divergent views expressed by Tribunals and Courts
- Pure reimbursement should not constitute a reward or a compensation paid for a service rendered and therefore not to be construed as 'fee'.
- Cases on reimbursement of incidental expenses in addition to payments of Fees for Technical Services:
  - Reimbursement considered not taxable:
    - Tata Engineering and Locomotive Co. Ltd., 245 ITR 823 (Bom)
    - Industrial Engg. Projects (P) Ltd., 202 ITR 1014 (Del)
    - Clifford Chance, United Kingdom, 82 ITD 106 (Mum. ITAT)
    - Bombay Tribunal in the case of Arthur Andersen (unreported)
    - Mahindra & Mahindra Ltd., 1 SOT 896 (Mum. ITAT)
  - Reimbursement considered taxable:
    - Cochin Refineries Ltd., 222 ITR 354 (Ker)
    - SRK Consulting Engineers & Scientists, 230 ITR 206 (AAR)
    - Hindalco Industries Ltd., 278 ITR (AT) 125 (Mum. ITAT)



# Reimbursement of expenses



- Cases on reimbursement of cost of services of a third party engaged by the non-resident
  - Reimbursement considered taxable:
    - Wallace Pharmaceuticals P. Ltd., 278 ITR 97 (AAR)
- Cases on reimbursement of allocated cost (similar to Cost Sharing)
  - Reimbursement considered not taxable:
    - Dunlop Rubber Co. Ltd., 142 ITR 493 (Cal)
  - Reimbursement considered taxable:
    - Danfoss Industries (India) Ltd., 268 ITR 1 (AAR) (where the reimbursement was not established as pure reimbursement while allocation happens)





- **Payments to Non resident agent operating outside India**
  - Circular No. 23 dt. 23 July 1969 and Circular No. 786 dt. 7 Feb. 2000 (both circulars withdrawn w.e.f 22 October 2009)
  - Post, withdrawal of the said circulars, is export commission subject to withholding tax in India?
  - Various authorities have consistently taken a view that Provisions of Section 195 are not applicable unless commission payments made to foreign agents of Indian entities is chargeable to tax in India as per domestic law and relevant tax treaty
- **Tax withholdings from payments in kind**
  - Kanchanganga Sea Foods Ltd. (265 ITR 644) (AP)





## Other Miscellaneous Issues

- Payment by NR to NR is covered?
- Payment by NR to Foreign Company (being resident in India) covered?
- Payment to be made on behalf of NR to 'Resident'. – Beneficial ownership
- Whether surcharge to be levied on Treaty rates
- Payment of interest under Section 244A by Govt. to NR





## Analysis of Section 195(2) to Section 195(6)



# Section 195(2) – Application by Payer



- Application to be made to AO when payer considers whole of sum would not become income (other than salary) chargeable to tax
- AO to determine the portion of payment chargeable to tax and issue a certificate accordingly
- Appeal against order under section 195(2) – Section 248: Amendment by Finance Act 2007
  - Section 248 allows the payer to file an appeal before the CIT(A) provided the tax is deposited by the payer in the exchequer of the Government
  - If tax is borne by the payee, a payer cannot file an appeal under section 248 of the Act
- Whether an application can be made under section 195(2) for NIL Withholding order?
  - Graphite Vicarb India Ltd (28 TTJ 425) (cal) has observed that section 195(2) envisages only a case where appellant accepts that certain positive portion of amount to be paid to a non resident is to be determined by it as taxable and not a case where applicant claims that no portion of sum to be remitted is liable to tax at all



# Section 195(3) – Application by Payee



- Recipient can apply to the AO for grant of certificate authorizing him to receive amount without deduction of tax
- Whether application u/s 195(3) can be made if there is no business or profession carried out in India through a branch?
- Rule 29B permits an application by a non resident person only if following conditions are satisfied:
  - Non resident has prior track record of assessment in India
  - Non resident has been carrying on business or profession in India continuously for a period of 5 years
  - Value of fixed assets in India exceeds Rs. 50 lakhs
  - Should not have been deemed to be an assessee in default
  - Not been subjected to penalty u/s 271(1)(iii)





# Comparative analysis of 195(2), 195(3) & 197



Particulars	195(2)	195(3)	197
Application by	Payer	Recipient under Rule 29B	Recipient
Purpose	To determine the appropriate proportion of sum chargeable as income	No deduction of tax	No deduction/ deduction at lower rate
Whether appealable?	Appeal u/s 248 denying liability to deduct tax after payment of tax	No appeal	No appeal

A revision petition under section 264 would lie against such orders

# Section 195(4) & 195(5)



## 195(4): Validity of a certificate

- Certificate granted under sub-section 3 shall remain in force till the expiry of the period specified therein or, if it is cancelled by AO before the expiry of such period, till such cancellation

## 195(5): Power of CBDT to issue notification

- Board may make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section 3



# Section 195(6) – Amendment by Finance Act 2015



- Pre Amendment:

Any person responsible for paying to a non-resident **any sum chargeable to tax** shall furnish information relating to the payment of such sums

- Post Amendment:

Any person responsible for payment of **any sum to non-resident whether or not chargeable to tax** shall furnish information in prescribed manner

- Non-compliance with the aforesaid provision shall attract penalty under section 271-I of INR 100,000
- Amendment is in conflict of Rule 37BB which states that information needs to be furnished on sum chargeable to tax – Act to prevail!!
- Rules not yet modified by CBDT





## Section 195A: Grossing up of Tax

- In case payment to non-resident is on “net of tax” basis in terms of agreement or arrangement
- Such amount need to be appropriately grossed up at appropriate tax rates considering that the amount paid is net of tax amount
- Not applicable in case of payments referred to in S.192(1A) - Non monetary perquisites taxable as salary
- Grossing up not to be done in case of presumptive tax
  - ONGC (264 ITR 340) (Uttaranchal)

## Section 197 – Certificate for deduction at lower rate

- On an application made by the assessee, the assessing officer on being satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income tax, may give the assessee the certificate.

## Section 198 - Tax deducted is income received

- All sums deducted in accordance with the foregoing provisions of this Chapter shall, for the purpose of computing the income of an assessee, be deemed to be income received



## Section 115A

- Deals with tax on income in the nature of dividends, royalty and technical service fees in case of foreign companies - Gross basis taxation

## Issue:

- If the nature of payment is royalty, can one take the rate as per section 115A?

## Approach

- Section 195 is withholding mechanism only
- Section 2(37A), the rates in force means the rates as per Finance act or as per DTAA
- Generally rate as per Finance Act & 115A coincides
- Finally, taxability of an assessee shall be as per the rates specified in Section 115A

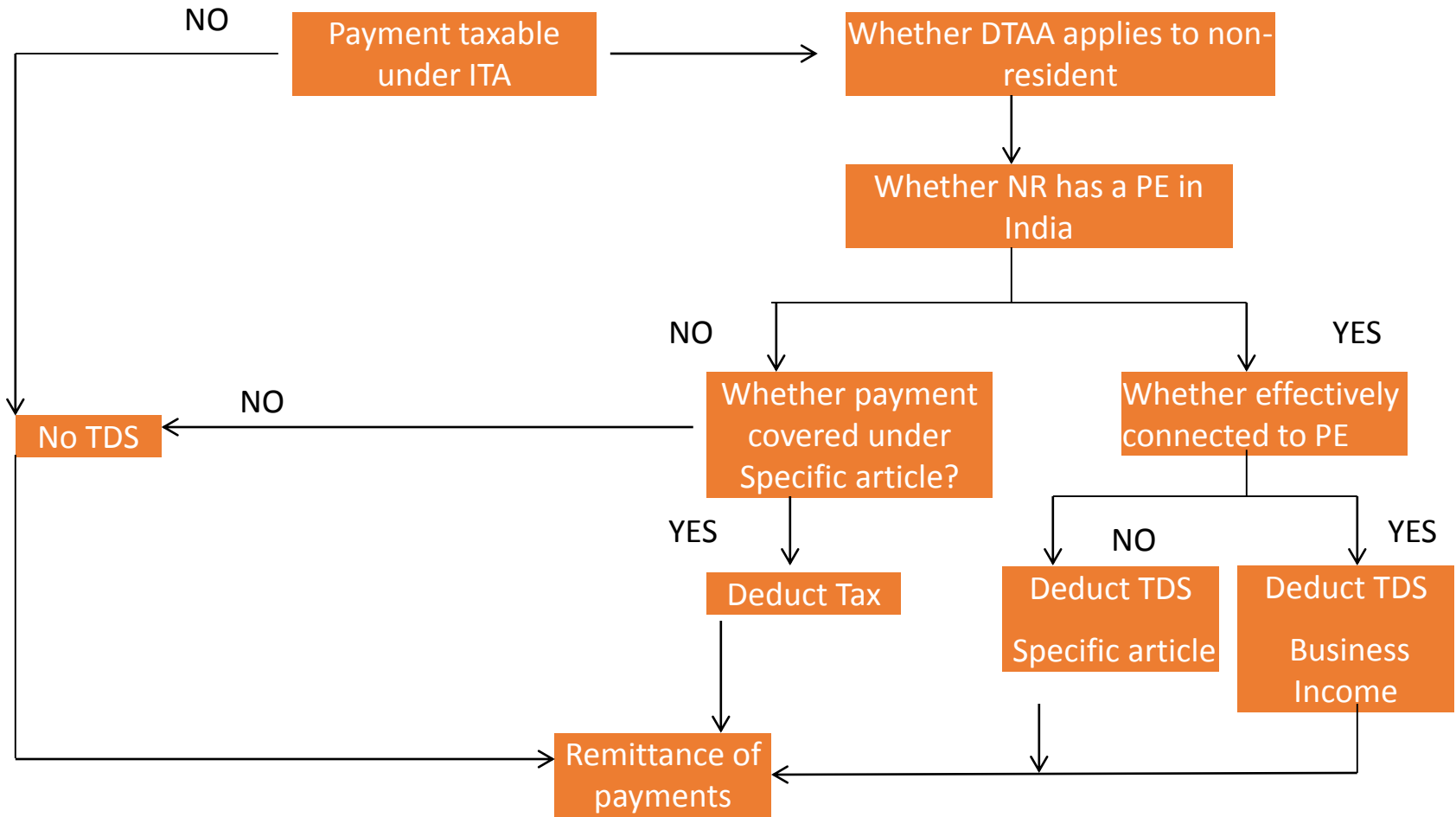




## Approach for tax withholding & Section 206AA



# Approach



# Section 206AA



- “(1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:-
  - at the rate specified in the relevant provision of this Act; or
  - at the rate or rates in force; or
  - at the rate of twenty percent......”





- Whether provisions of Section 206AA applies in case of payment made to non-residents?
  - Section 139A(8)(d) read with Rule 114C – Possible to argue that non-residents are not required to obtain PAN and hence they ought not suffer higher withholding
  - On conjoint reading of provisions of Section 206AA (which refers to ‘any person’) read with Memorandum explaining provisions of Finance Bill, 2009 and Press Release (No. 402/96/2006 – (MC 04 of 2010) dated 20 January, 2010, a possible view is even non-resident shall be required to obtain PAN to mitigate exposure of higher withholding as per section 206AA
- Whether provisions of Section 206AA override the tax treaties?
  - Literal reading of provisions of section 206AA suggests that it shall have an overriding effect over provisions of the Act including Tax Treaty
  - It is important to note that Section 206AA deals with rates of taxes to be withheld and doe not deal with any charge of tax
  - Section 206AA shall only lead to higher TDS and not taxation
  - Non-Resident can file a return and claim refunds of additional TDS amount



# Section 206AA – Various Issues



- Section 195A vis-à-vis Section 206AA
  - Section 195A requires grossing up of the rate in case of net of tax contract
  - Applicable rate for grossing up to be “rates in force”
  - In cases where rates in force is 10% as per DTAA – Whether grossing up should be on 10% being rates in force or on 20%
  - Bangalore Tribunal in case of Bosch Ltd. Vs. ITO 28 Taxmann.com 228 has taken a view that for grossing up principle 10% rate should be considered and not 20% (Refer next slide for detailed discussion)
- Whether surcharge or education cess on maximum rate of 20% as per section 206AA shall be levied?
  - Finance Act does not include Section 206AA in its ambit for the purpose of levy of surcharge or education Section 195A requires grossing up of the rate in case of net of tax contract
  - No surcharge and education cess would be leviable in case the tax is deducted under section 206AA provided maximum rate of 20% as per section 206AA is applied

# Section 206AA – Issues in case of ‘Net of Tax’ contracts



View	Description
View 1	Grossing up is required only when tax is deducted under section 195 and not in cases where section 206AA is applicable
View 2	Grossing up under section 195A is done at the 20% withholding rate set out in section 206AA based on the general principles of grossing up.
View 3	Grossing up under section 195A is done at the ‘rates in force’ and not at the rate set out in section 206AA
View 4	Grossing up under section 195A is done at the ‘rates in force’ and the amount so arrived at to be increased by the punitive rate (i.e. rate over and above the rates in force as compared to 20% rate)

View 3 meets literal interpretation test and the same has been considered by Bangalore Tribunal in case of Bosch Ltd.



# Section 206AA – Withholding Tax Scenarios



Particulars	View I	View II	View III	View IV
Net of tax payment to NR	100	100	100	100
(+) Grossing up	-	25	11.1*	20 + 1.11**
Total	100	125	111.1	121.11
(-) TDS	20	25	20	21.11
Payment to be made to NR	100	100	91.1(?)	100

\* Assuming a treaty rate of 10%

\*\*[1.11 percent - grossing up of 10 percent (on the basis of Section 195A referring to “foregoing provisions of the Act”) being added to 20 percent (deduction under Section 206AA – for non-production of PAN).



# Tax Residency Certificate



# Provisions of Tax Residency Certificate



- Section 90(4) provide that a non-resident taxpayer will be required to submit the Certificate of Resident if DTAA benefit is to be taken
- In the absence of a valid TRC, the treaty benefits cannot be availed
- As per Finance Act, 2013 a tax residency certificate will be a sufficient proof and the requirement of TRC to contain the prescribed particulars is deleted
- A new provision is inserted which provides that the non-resident taxpayer claiming Treaty relief shall be required to provide such other documents and information, 'as may be prescribed'
- Details as per Form 10F



# Provisions of Tax Residency Certificate



- Whether TRC is a MUST before making any payment to non-resident or to a foreign company
  - When tax liability is determined under the provisions of the Act – For eg. Tax payable on payment of royalty / FTS is determined under Section 115A of the Act – TRC may not be required
  - When tax liability is determined under Treaty at a rate beneficial under Treaty to give the benefit of Treaty - TRC is a must
  - When any income is considered as not taxable under specific provision of treaty – TRC is a must



# Documents to be obtained from non-resident payee



- The assessee should obtain the following for claiming the benefit of lower rate / nil rate of withholding tax under the relevant tax treaty
  - Tax residency certificate containing prescribed particulars
  - Self Certified copy of PAN
  - No Permanent Establishment declaration from the non-resident taxpayer
  - Declaration that the non-resident taxpayer is the beneficial owner of income
  - If possible obtain copy of challan of payment of tax







## Consequences of non-compliance



# Consequences of non compliance



Applicable Section	Nature of Default	Consequences
40(a)	Withholding tax not deducted or not deposited within prescribed time	Disallowance of expenses in computation of taxable income of payer; deduction in year of Payment
201(1)	Tax not withheld/ Deposited appropriately	Recovery of tax not withheld/deposited or short withheld/ Deposited
201(1A)	Tax not withheld/ Deposited appropriately	Interest @ 1% / 1.5% per month or part of the month
221	Tax withheld not Paid	Penalty, not exceeding the amount of tax not paid
271C	Tax not withheld or short withheld	Penalty, not exceeding the amount of tax not withheld

Prosecution u/s 276B can be invoked

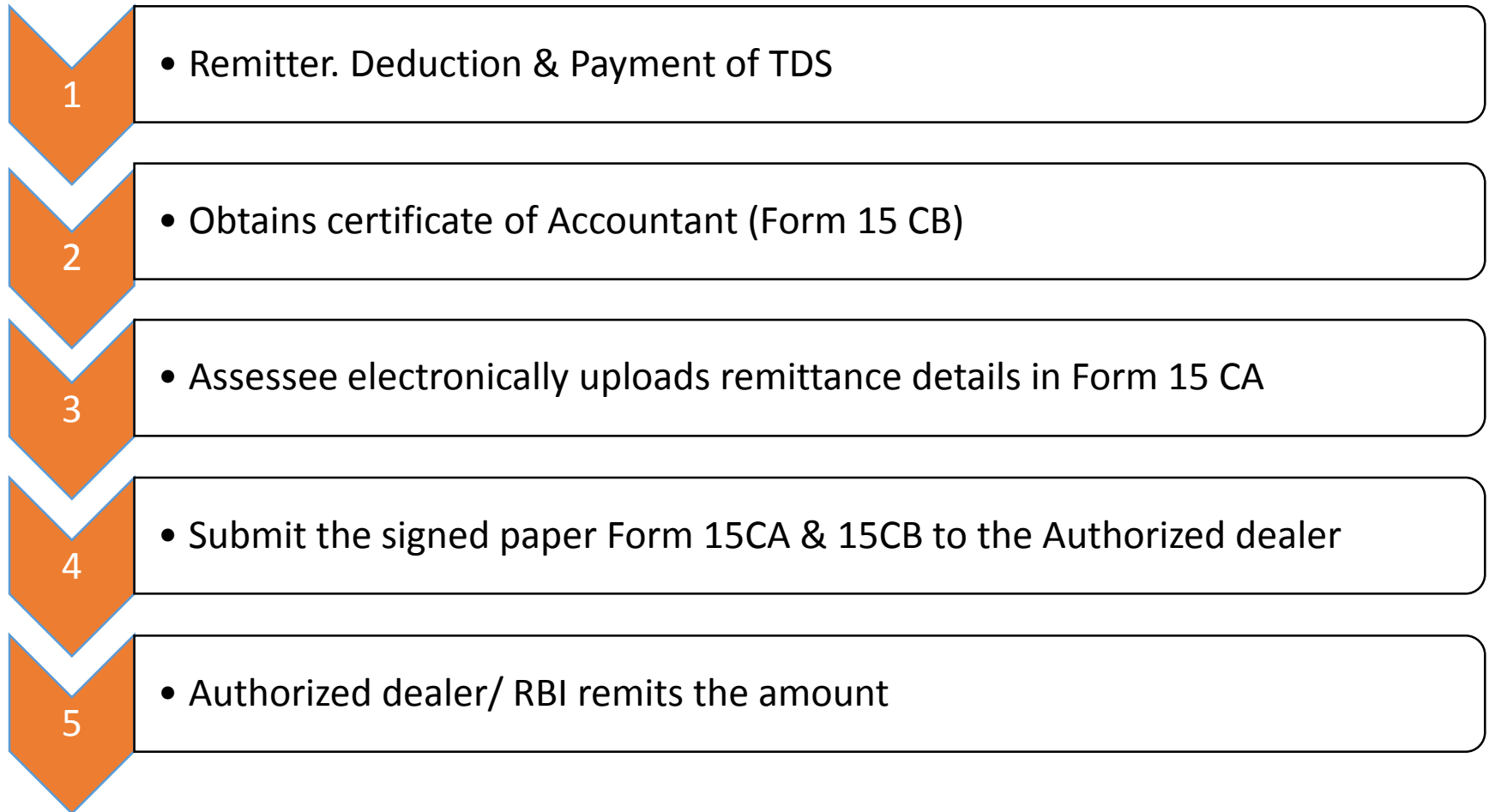




## Procedure for Remittance



# Procedure for Remittance



# Introduction of Form 15 CA and 15 CB



- Finance bill 2008 introduced the process of e-filing of information pertaining to payment to non-resident via certificate and undertaking
- Earlier, the person making a remittance to NR was required to furnish certificate in a specified format as per RBI
- Basic purpose was to collect taxes at a stage when the remittance is made as it may not be possible to collect tax from the NR at a later stage
- There was a substantial increase in foreign remittance making the manual handling and specially tracking of such payments difficult
- Thus to monitor and track transactions in an efficient manner, it was proposed to introduce e-filing of information in the certificates and undertaking



# Procedure for Remittance



- Any person responsible for making a payment to NR, any interest or any other sum chargeable under the provisions of Income Tax Act shall deduct tax from payment made or credits given to non-residents at the rates in force
- Section 195(6) - Person responsible for paying to NR, **any sum whether or not chargeable under the provisions of the act** shall furnish the information relating to payment of any sum in such form as prescribed in Rule 37BB
- Rule 37BB has been substituted by amendment rules 2013 w.e.f. 1<sup>st</sup> October 2013
- Rule 37BB - person responsible for making payment shall furnish the following:
  - Information in Part A of Form 15CA – if payment does not exceed 50,000 and aggregate of such payments made in Financial Year does not exceed 2,50,000
  - Information in Part B of Form 15CA for payments other than referred above after obtaining Accountant Certificate in Form 15CB or certificate from assessing officer (AO) u/s 197 or an order from AO u/s 195(2)/(3)

# Procedure for Remittance



- Information in Form 15 CA shall be furnished by the person electronically to the website designated by the Income-tax Department
- Thereafter a signed printout of the said certificate shall be submitted to the authorized dealer prior to remitting the payment to non-resident

## Issue:

- Rule 37BB says that Form 15CA and/or 15CB shall not be required to be submitted for payments in the nature as mentioned in the **Specified List** of Rule 37BB. However, the amendment to Section 195(6) by Finance Act 2015 says that person responsible for paying to NR, any sum, whether or not chargeable under the provisions of the Act shall furnish information in such form as per Rule 37BB.
- Whether as per the amendment for all the payments even though mentioned in the **Specified List** would require furnishing of information in Form 15CA & 15CB?



## Case Study





# Case Study 1



- X Limited a NR company filed its return of income for A.Y 2014-15 claiming a refund of INR 1,00,000
- The return was processed and the assessee was eligible for a refund of INR 1,00,000
- X Limited received an amount of INR 1,12,000 (including INR 12,000 as interest u/s 244A)
- Provisions of Section 195 applicable on the same?



# Case Study 2



- ABC Limited is an Indian company engaged in the process of manufacturing chemicals
- During the year, company imported a machinery of INR 1,00,00,000 from France
- ABC Limited approached the authorized dealer for remittance of this amount to the vendor in France
- Whether tax withholding provisions are applicable on this payment by ABC Limited since the payment is on account of Capital Purchase?
- If tax is not deductible at source, whether the procedure as prescribed under Rule 37BB of Income Tax Rules (filing form 15 CA and 15 CB) are applicable in this case?



# Case Study 3



- PQR Limited is an entity incorporated in the United States of America (USA) and has manufacturing activities in India through its Project Office
- Project office sells goods to XYZ Limited a resident in India
- XYZ Limited makes payment to the PE of PQR Limited in India
- Whether tax is to be withheld on such payment and at what rate?



# Case Study 4



- X a non resident have subscribed to long term infrastructure debt bonds issued by ABC Limited a domestic Indian company
- ABC pays interest to X at the rate of 10%
- ABC has withheld tax at the rate of 5% as per Section 194 LB
- Whether the procedure of issuance of Form 15CA and Form 15CB are required to be complied with while remitting such interest to the Non Resident?



# Case Study 5



- M INC, a company incorporated in USA is a tax **resident** of India due to POEM in India
- M INC holds 80% shares of ABC India Private Limited
- XYZ, a Mauritius company intends to purchase shares of an ABC India from M INC (a tax resident in India)
- Whether tax is to be withheld on such payment u/s 195?





# Thank You



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

