

Seminar on Tax Deducted at Source

- Payment to non-residents, issues and certifications



**TDS Seminar at the Institute
of Chartered Accountants of
India at ICAI Tower Mumbai
BKC**

by CA Shailendra Sharma

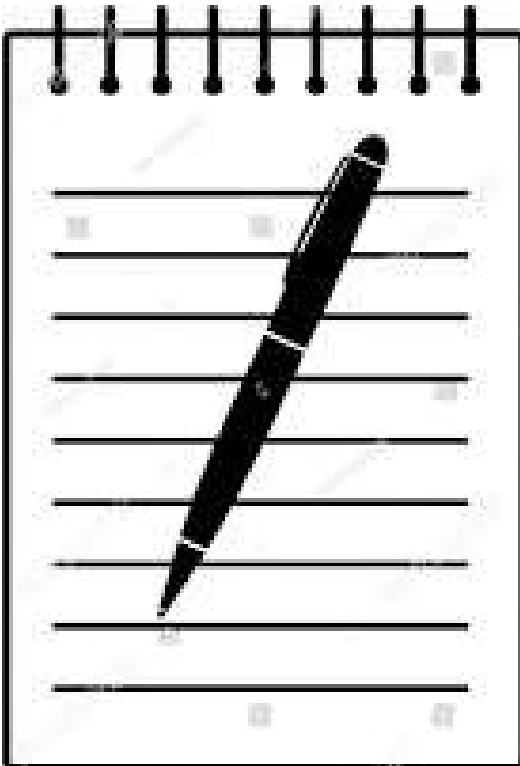
05 January 2019

Agenda

Brief overview of the TDS provisions

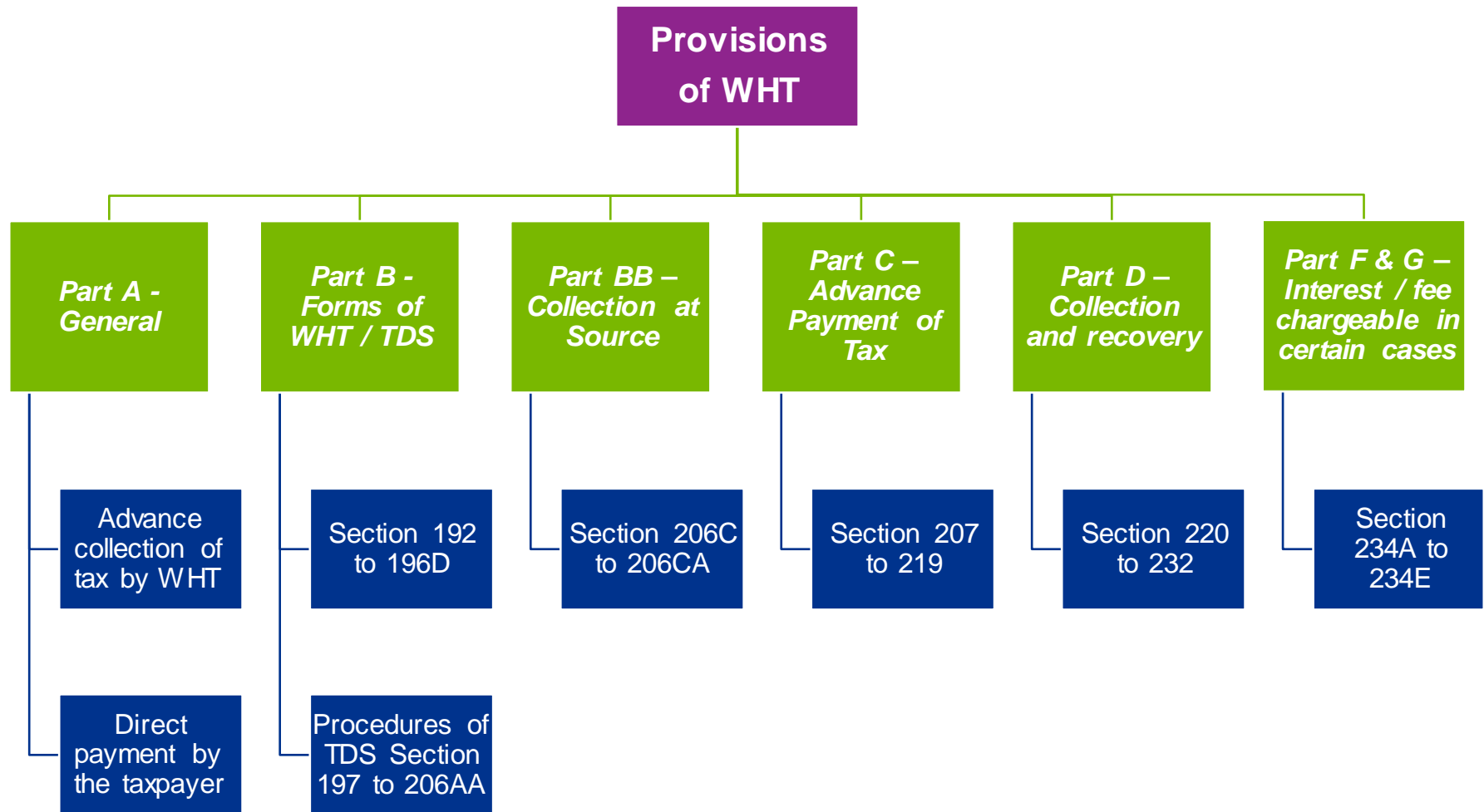
Withholding tax (WHT) concept for nonresident

Lifecycle of WHT provision under Section 195

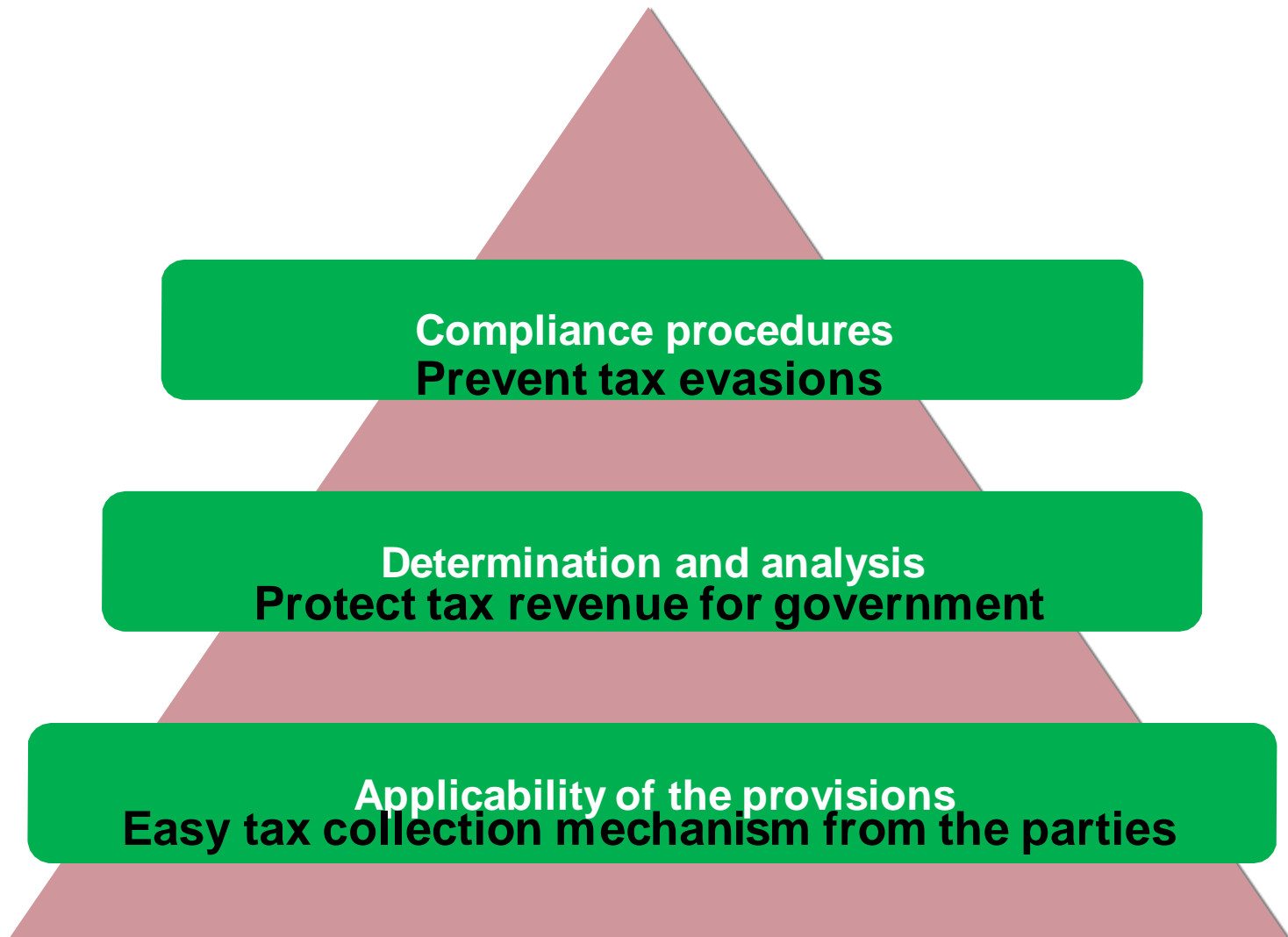


Part A

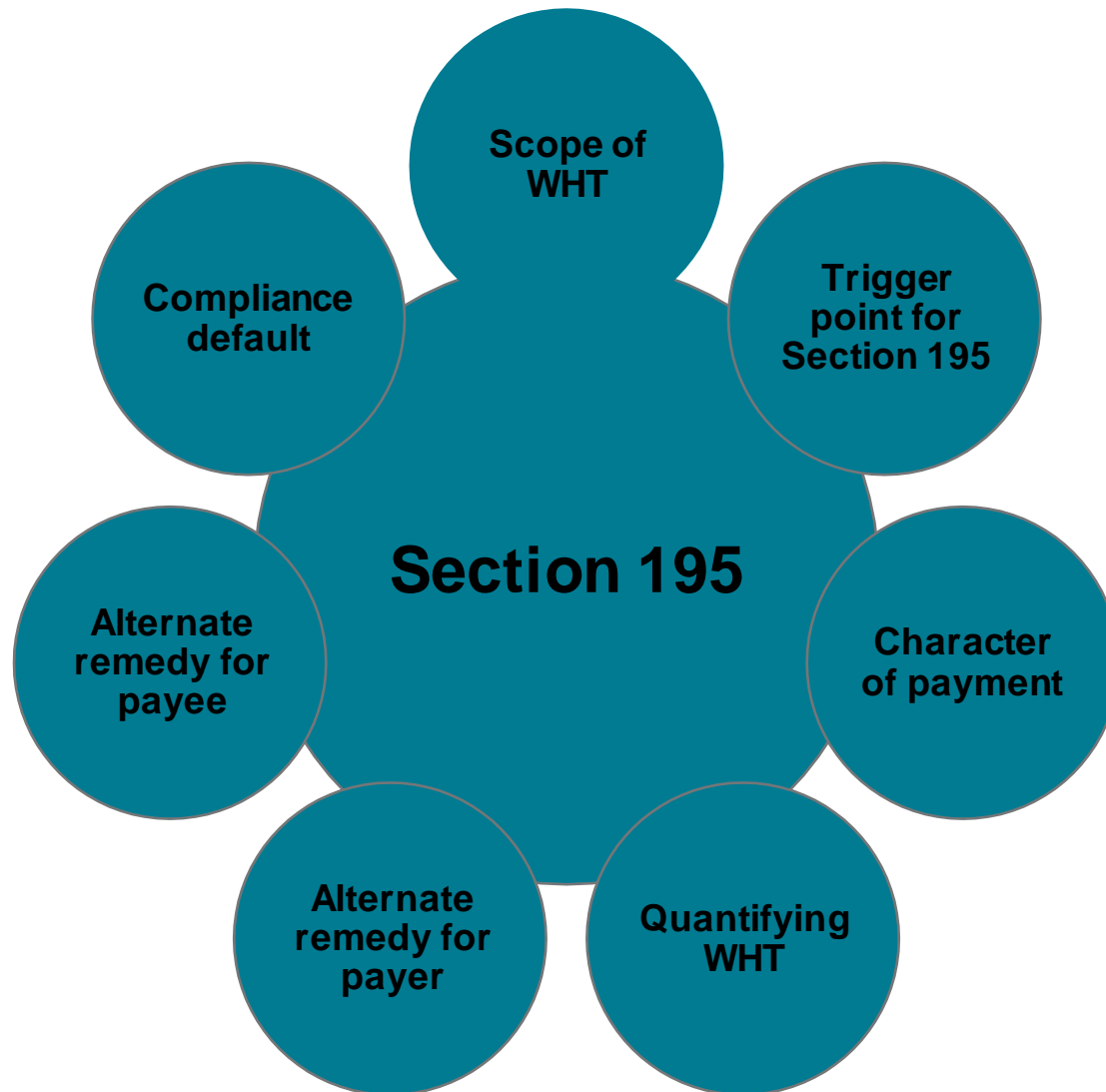
Overview of TDS provisions - Chapter XVII, Collection & Recovery of Tax Deduction at Source



WHT concept for nonresident



Lifecycle of WHT provisions under Section 195



Scope of WHT (1/2)

Operative provision of Section 195 of the Income-tax Act, 1961 (IT Act)

“Other sums.

195. [(1) **Any person** responsible for paying to a non-resident, not being a company, or to a foreign company, any interest [(not being interest referred to in section 194LB or section 194LC)] [or section 194LD] or **any other sum chargeable under the provisions of this Act** (not being income chargeable under the head “Salaries”) shall, **at the time of credit** of such income to the account of the payee or **at the time of payment** thereof in cash or by the issue of a cheque or draft or **by any other mode, whichever is earlier**, deduct **income-tax thereon at the rates in force...**”

Other clauses of Section 195

Clauses	Other provisions applicable for Section 195 of IT Act
195(2)	Application by “Payer” to Tax Authorities (AO) to determine appropriate proportion of income chargeable to tax
195(3)	Application by “Payee” to AO for NIL WHT certificate
195(4)	Validity of certificate issued by AO
195(5)	Powers of CBDT to issue Notifications
195(6)	Furnishing of information relating to payments
195(7)*	Authority of board to specify class of person or cases to make application under Section 195(2)
195A	Income payable “net of tax” Grossing-up

Scope of WHT (2/2)

Responsibility of WHT



Payers covered

- “Any person” covered irrespective of their status - Includes person under **Section 2(31)** responsible for paying (including individuals and HUF)
- Payer itself in case of company, and the company includes principal officer
- It also includes all nonresidents having taxable presence in India or not as per *Explanation 2 to Section 195 and Circular No. 726 dated 18 October 1995 or extra territorial jurisprudence*

Payees covered

- Nonresident Agent/ POA holder of a nonresident in India?
- Resident but not ordinary resident RNOR?
- Payment made to a foreign branch of an Indian Company?
- Foreign companies constituting PoEM in India?

Trigger point for Section 195 (1/3)

Applicability of Section 195

Sum chargeable to tax

- All payments covered (exclusions specified), no threshold limit prescribed
- “Any other sum chargeable” – Composite provision:
 - Extends to whole of India and Definition
 - Previous year and Charge of income-tax
 - Scope of Total Income:
 - Received or deemed to be received in India
 - Accrue or arises or deemed to accrue or arise in India
 - Residence in India
- Amount paid that bears character of income on Gross basis that may or may not represent income or profits, CBDT Circular No. 152 of 1974

Timing of WHT

- Tax to be withheld at the time of payment / credit whichever is earlier
- Tax to be withheld even where no remittance is made, adjustment of dues
- WHT in cases where RBI approval is required
- If no income accrues to nonresident irrespective of accounting system incorporating liability, no WHT. However, on cash basis
- Payee must be identifiable / ascertainable
- Time of deduction, from payers point of view and sum chargeable to tax in India from payee point of view

Trigger point for Section 195 (2/3)

Sum chargeable to tax..brief insight

- Where, payment made by resident to non-resident, was an amount not chargeable to tax in India, no tax is deductible at source as per CBDT Instruction No. 2/2014
- Assessee liable to deduct TDS under Section 195 on payment made to non-resident even though payment is not made in cash but made in kind
- Payer obligated to WHT, even if the receipt is not taxable in the hands of the payee in the country of residence
- Sums not liable to tax in India on satisfaction of conditions, the principles are enunciated under *Circular 23/1969 and 786/2000* (now withdrawn) like (P to P, nonresident operates outside India, contract signed outside India, title of goods passed outside India, payment is directly remitted abroad, etc.).
Payments to:
 - Agency commission payable to foreign agents;
 - Off-shore supply of goods and equipments;
 - Consideration paid for outright purchase of designs and drawings is not royalty;
 - Applicability of withholding tax to shipping Company taxed under Section 172; and
 - Does amount paid as penalty to the regulators chargeable to tax under Section 195?
- Any significant impact on withdrawal of the Circulars?

Trigger point for Section 195 (3/3)

Specific exclusions for WHT under 195



Sections	Particulars
115-O	Tax on distributed profits of domestic companies
192	Income from Salaries
194LB	Income by way of interest from infrastructure debt fund
194LBA	Income from units of a business trust
194LBB	Income from units of investment funds
194LBC	Income of investment in securitization trust
194LC	Income by way of interest from Indian company
194LD	Income by way of interest on certain bonds and Government securities
Other specific sections	
196B	Income from units
196C	Income from FCCBs or GDRs of Indian companies
196D	Income from FIIs now FPI except Capital Gains

Character of payment

Determining the nature of payment

Nature of Income (payee perspective)	Basis of tax	Income chargeable under	
		IT Act	Tax Treaty
Business / Profession income	Taxable if Business Connection in India or property or asset or source of income in India or transfer of a capital asset is situated in India	Section 9(1)(i)	Article 5, 7 and 14
Capital Gain	Taxable if situs of shares/ property is in India	Section 9(1)(i)	Article 6 and 13
Dividends*	Taxable if paid by an Indian company	Section 9(1)(iv) (subject to DDT)	Article 10
Interest	Taxable if sourced in India with certain exceptions	Section 9(1)(v)	Article 11
Royalties		Section 9(1)(vi)	Article 12
Fees for Technical Services (FTS)		Section 9(1)(vii)	
Salaries*	Taxable if services are rendered in India	Section 9(1)(ii)	Article 15

Provisions of the IT Act or Tax Treaty r.w. MLI to the extent more beneficial to the taxpayer to apply

The OECD BEPS Action Plan initiative

OECD BEPS Action Plan and India

Action Plan 1 – Digital Economy

- Introduction of equalization levy on online advertisements

Action Plan 2 – Hybrid mismatch & arrangements

- Part of MLI arrangement however, India has not included in its MLI commitment

Action Plan 3 – CFC rules

- Introduction of 'Place of Effective Management' Rules for tax residency

Action Plan 4 – Interest deduction

- Thin capitalisation regulations introduced under Transfer Pricing Regulations

Action Plan 5 – Harmful tax practices

- India not on the OECD harmful tax practices progress report list as update in May 2018

Action Plan 6 – Prevent tax treaty abuse

- Included in the MLI arrangement. India has accepted the simplified LOB and PPT rules under the MLI document

Action Plan 7 – Avoiding artificial PE status

- Forming part of its provisional MLI commitment

The OECD BEPS Action Plan initiative

OECD BEPS Action Plan and India

Action Plan 8-10 – Transfer Pricing recommendations

- Revised OECD commentary incorporates the recommendations in the Action Plans for intangibles, Risk and Capital, etc.

Action Plan 11 – Measuring and monitoring BEPS

- No action taken yet

Action Plan 12 – Disclosure rules

- India yet to notify regulations for disclosure of aggressive tax positions

Action Plan 13 – Country-by-Country Reporting

- Introduction of CbC reporting as per OECD norms

Action Plan 14 – Dispute resolution

- Forming part of its provisional MLI commitment

Action Plan 15 - Multilateral instrument (MLI)
India adopted and notified all its 93 DTAAAs to be covered under of MLIs with express reservations

Snapshot of India's major trading and investment partner countries

Applicable MLI with India



85 Countries signed MLI (as on 21 Dec 2018) with India adopting Art.7 PPT + S-LOB; Art.12 DAPE; Art.13 Option A + anti-fragmentation

Key India tax treaty partners not signed MLI yet – existing treaties remain unaffected

USA, Brazil, Thailand

India tax treaty partners signed MLI – existing treaties modified based on matching of MLI position of both countries

Australia, Canada, Cyprus, France, Japan, Netherlands, UK, Luxembourg, Ireland, Italy, Russia, South Africa, Singapore, Malaysia

Treaty partners signed MLI but not included India in their provisional lists – existing treaties remain unaffected

Mauritius, China, Germany

Implementation of MLI

- 17 Countries over all till 21 December 2018
- Notable list of countries making effective are:

Ratified

Australia, Austria, France, IoM, Israel, Japan, New Zealand, Sweden, UK

Proposed to be ratified

Singapore,

Quantifying WHT

Rates in force



- Rates in force as defined under Section 2(37A) of the IT Act
- Rates of income-tax specified in IT Act/ Tax Treaty under Section 2(37A)(iii), beneficial rates to apply
 - CBDT Circular No. 728 dated 30 October 1995 or 740 dated 17/04/1996
- The exchange rate is applicable as per Rule 26 – SBI TT buying rate, what about rate fluctuations?
- Rates prescribed under the tax treaty are inclusive of surcharge and education cess?
- Tax to be withheld under Section 195:
 - Is on gross basis; and
 - Withholding tax rate under Section 195 is final
- Interplay between proposed Equalization levy under Finance Act, 2016 and the Income-tax Act, 1961
- Significance to obtain PAN while making the remittance to nonresidents
 - Section 206AA, is a non-obstante provision that overrides the IT Act effective 1-4-2010

Detailed provision of Section 206AA and nuances discussed in the ensuing slides

Quantifying WHT

Section 195A – Income payable “net of tax” (Grossing-up)

- In the event of tax chargeable on any income is borne by the payer
- For the purposes of WHT under Section 195, income should be increased to such amount as would, after WHT thereon at the rates in force, be equal to the net amount payable to the payee
- Section 195A does not apply on notional income under Section 44BB
- Tax credit claimed by the payee to be restricted commercially – Compliance under Section 203?
- Can refund be claimed if taxes are withheld erroneously under Section 195?

Illustration of Section 195A:

Particulars	Amount in INR
Amount payable to nonresident	100
Add: WHT (assumed to be 10% as per the tax treaty) grossed-up ($10 \times 100 / 90$)	11.11
Total income	111.11
Less: WHT applicable at 10%	11.11
Net amount payable to the nonresident (Recipient)	100

Friction between Section 206AA and 195A – is Section 206AA applicable for grossing purposes and its legitimacy?

Alternate remedy for the payer

Application by payer to the AO under Section 195(2) and (4)

Application by whom?

The application to be made by the payer before the jurisdictional tax authority

When to apply?

When the payer is in doubt and believes that the whole of sum payable is not chargeable to tax in India

Process

- Payer to approach tax authority to determine portion of income chargeable to tax
- Online system validated certificate prescribed

Consequence

- AO may issue a certificate, determining the portion of income chargeable to tax
- The permission is valid for the period specified
- No specified time limit available to pass the order under Section 195(2)

- Order under Section 195(2) is:
 - appealable after payment of tax
 - amenable to revision under Section 263
- Decision under Section 195(2) is inconclusive in determination of income in case of foreign entity

Alternate remedy for the payee

Application by payee to the AO under Section 195(3),(4) and (5)

- Payee to make application in the prescribed form (Form 15C or form 15D) for no WHT
- Prescribed conditions under Rule 29B:
 - carries on business / profession in India for 5 years and has prescribed value of assets in India;
 - been regularly assessed to Income-tax;
 - not defaulted in tax, interest, penalty, fine or any other sum payable; and
 - not been subjected to penalty under Section 271(1)
- AO may issue provisional Nil WHT certificate
- Certificate issued by the AO valid for the Financial Year mentioned therein or until cancelled
- Renewal after the expiry or within 3 months before expiry of the certificate
- Certificate issued by AO can be prospective only
- Application after the payment of tax not entertained - *Circular 774 dated 17 March 1999*

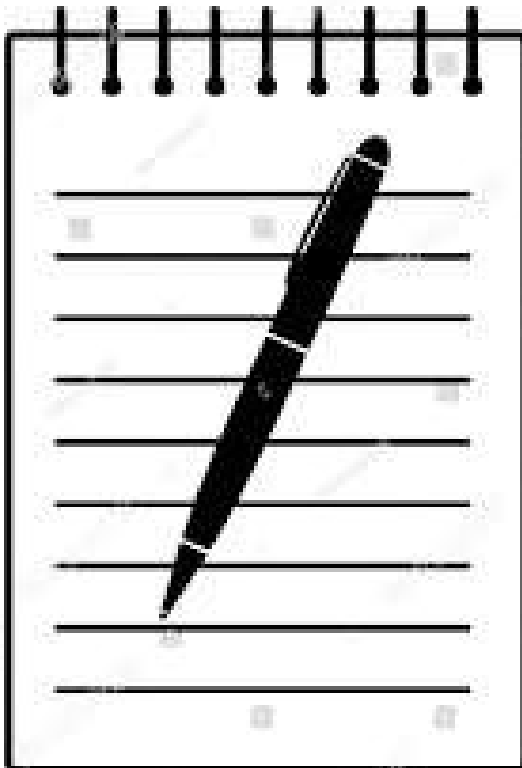
Application by payee to the AO under Section 197(1)

- Application to be made by the payee under Section 197(1) for lower / no WHT online in the prescribed form (Form 13)
- Prescribed conditions under Rule 28AA:
 - Tax payable on estimated or existing income;
 - Tax paid of last 3 previous years; and
 - Details of advance tax, TDS & TCS
- AO to issue certificate indicating rate / rates of tax whichever is higher of the following:
 - Average rate determined on the basis of advance tax; or
 - Average of average rates of tax paid in last 3 years
- AO to issue certificate for lower / Nil WHT
- Certificate issued by the AO valid for such period mentioned therein or until cancelled
- Application to be made before the payment / credit whichever is earlier

Advisory for
online
application &
system validated
certificate
prescribed
under 195(3) and
197

Agenda

Part B



Practice and Operational rules

Issues, concerns and Illustrations

Key takeaways

Questions

Practice and Operational rules

Provisions for CA Certificate



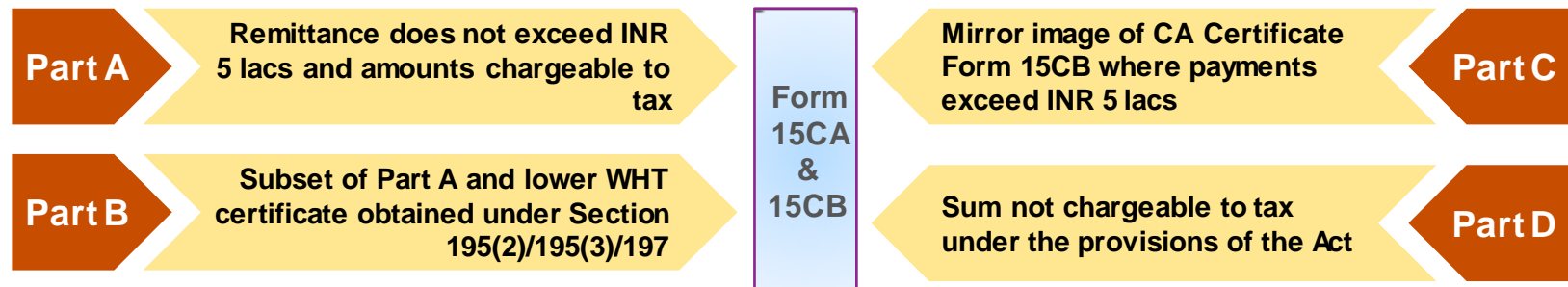
- *Circular 10/2002* authorizes remittance of money through a CA Certificate
- CA Certificate required also for trade payments – *RBI Circular No. 32 dated 19 July 2007*
- Provision under Section 195(6) introduced by the Finance Act, 2008 for CA certificate
- Rule 37BB introduced by CBDT vide *Notification 30/2009 dated 25/03/2009* :
 - Forms 15CA and 15CB to remit payments to nonresidents and intimate the manner of disclosure:
 - Form 15CA, prescribes information to be furnished online by the payer; and
 - Form 15CB, prescribes format of CA Certificate to be obtained
- Taxpayer not absolved from penalty / prosecution if found that WHT was lower than required
- CA certificate merely acts as a guidance and is not a substitute to adjudication by the AO
- Procedure for remittance was amended from 01 October 2013, with significant change in the procedure, being more technological robust and detailed
 - Specified list of 28 payments like outbound investments, gifts, etc. exempt from the procedures
- **Notification issued on 16 December 2015 to amend Rule 37BB for new forms and compliances**
- Remittance certificate issued by CA subject to penal provisions prescribed per default

Practice and Operational rules

Rule 37BB amended effective 1 April 2016 with an aim to strike balance between burden of compliance and collection of information

- Individuals exempt to comply with Form 15CA and 15CB procedures if:
 - Payment or aggregate of such payment does not exceed INR 5 lacs or Specified List; and
 - Remittance does not require RBI approval under LRS and Current Account Transactions
- Specified list of remittances expanded to 33 for non applicability of Rule and additions include:

1. Advance payment against imports	2. Payment towards imports-settlement of invoice	3. Imports by diplomatic missions	4. Intermediary trade	5. Imports below INR 5 lacs (for use by ECD offices)
------------------------------------	--	-----------------------------------	-----------------------	--
- Enhanced compliance of 15CA and 15CB information to be shared with Principal Director of Income-tax (Systems) including filing of quarterly information on remittance by the AD in Form 15CC
- Revised Form Nos. 15CA and 15CB divided in 4 parts:



Practice and Operational rules

Amended procedures for CA Certificate

- Only taxable remittances to be reported in Form 15CA
- Select Form 15CA in Parts:
 - **Part A:** Applicable to remittances chargeable to tax for small payments that does not exceed INR 5 lacs or aggregate of such payments during the Financial
 - **Part B:** For any other payments chargeable to tax and lower / NIL WHT certificate is obtained
 - **Part C:** Form 15CA after obtaining CA certificate in Form 15CB for sums chargeable to tax
 - **Part D:** Information of any sum not chargeable to tax
- Form 15CA to be electronically uploaded on income-tax website. Amended process through generation of digital signatures for every payment
- Specific declaration / indemnity to be obtained by the payer for taxes and interest if payment is liable for WHT
- **Undertaking to be obtained from the payee**

Sample declaration from the Payee

<< On the letterhead of Payee >>

Date: _____

TO WHOMSOEVER IT MAY CONCERN

We, the Payee, hereby confirm as follows:

1. We are a Limited Company incorporated and registered in ___with Unique Entity Number _____.
2. We are a tax resident of ___as per Article 4 of the tax treaty and the place of world assessment of our income is in _____
3. We do not have any Permanent Establishment / Fixed place in India as defined under Article 5 of the Treaty. Also we will not have a Permanent Establishment / Fixed place in India within the meaning of the Treaty for the financial year.
4. The amount payable and its nature under the tax treaty
5. The amount is to be remitted to payee are the beneficiaries hereof.
6. In the event there is any income-tax demand (include interest etc) raised in India in respect of this remittance we undertake to pay the demand forthwith and provide ___with all information/documents that may be necessary for any proceedings before income tax/appellate authority in India.
7. Indemnity to protect from General Anti-Avoidance Rules

For Payee

Practice and Operational rules

Suggested method for CA Certificate

Steps	Action plan and approach
Payment covered under Section 195	Payment from resident or from non resident to nonresident
Verify factual documents	Invoice, Contracts, Legal Status, obtain declaration, PAN, etc.
Determine character	Classification of payment, Business profits, Royalty, FTS, etc.
Evaluate taxability under the	
• IT Act	Income-tax rates, Grossing-up, Section 206AA, Case law update
• Tax treaty	No PE, TP analysis, beneficial owner, entity characterization, Article, LOB clause, Obtain TRC , MFN, Protocol to the DTAA, MLI, OECD BEPS Technical explanation to the DTAA, Model commentaries
Specific orders	Verify specific orders received from tax authorities, 195(2), 195(3), etc.
Follow compliance	Complete the Form to comply with WHT deadlines for deposit

Tax Residency Certificate (TRC)

- TRC requirement for nonresidents to claim tax treaty benefits
- Also confirmed by Circular on Section 206AA
- Furnishing of TRC mandatory to avail tax treaty benefits:
 - *SC in the case of UOI v. Azadi Bachao Andolan [2003] 263 ITR 706 (SC)*
 - *Circular 789 dated 13 April 2000*
 - Shome Committee report on GAAR recommends that *Circular 789 of 2000* should be retained
- Prescribed additional information to be furnished along with TRC
- CBDT clarified that the additional information prescribed may not be required if it already forms part of the TRC



Notification No. 57/2013 dated 1/08/2013 [F.No.142/16/2013-TPL] revised the Rule 21AB

Practice and Operational rules

Prescribed Form 10F

The additional details required to be furnished in Form 10F under Rule 21AB:

1. Status (Individual, Company, Firm, etc.) of the taxpayer
2. PAN of the taxpayer, if allotted
3. Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others)
4. Taxpayer's tax identification number or a unique number, as the case may be
5. Period for which the residential status, as mentioned in the TRC, is applicable and
6. Address of the taxpayer during the period for which the certificate is applicable

CBDT clarified that declaration may not be required if TRC contains above particulars

Sample TRC

Tax Reference No.
Date

SINGAPORE 018982

INLAND REVENUE AUTHORITY OF SINGAPORE

55 Newton Road
Singapore 307987
Tel: 1800-3568622
Fax: 63514360

Dear Sir/Madam

CERTIFICATE OF RESIDENCE FOR THE PURPOSE OF CLAIMING BENEFIT UNDER THE SINGAPORE / INDIA AVOIDANCE OF DOUBLE TAXATION AGREEMENT FOR INTEREST AND FEES

I refer to your request dated

Based on your confirmation that the control and management of your business for the whole of 2013 will be exercised in Singapore, it is confirmed that your company will be regarded as resident in Singapore for income tax purposes for the Year of Assessment 2014.

Based on the records available, the country or specified territory of incorporation or registration is Singapore.

Yours faithfully

TAX DIRECTOR
CORPORATE TAX DIVISION
for COMPTROLLER OF INCOME TAX

Practice and Operational rules

Form 15CA– Part A

Income Tax Department		FORM NO. 15CA (See rule 37BB)	Ack. No. <input type="text"/>
Information to be furnished for payments to a non-resident not being a company, or to a foreign company			
Part A			
(To be filled up if the remittance is chargeable to tax under the provisions of the Income-tax Act, 1961 and the remittance or the aggregate of such remittances, as the case may be, does not exceed five lakh rupees during the financial year)			
REMITTER	Name of remitter		
	PAN of the remitter (if available)		
	TAN of the remitter (if available)		
REMITTEE	Complete address, email and phone number of the remitter		
	Status of remitter ¹		<input type="checkbox"/>
	Residential status of remitter ²		
REMITTEE	Name of recipient of remittance		
	PAN of the recipient of remittance, if available ³		
	Complete address, email ³ and phone number ³ of the recipient of remittance		
REMITTANCE	Country to which remittance is made		
	Amount payable before TDS (In Indian Currency)		
	Aggregate amount of remittances made during the financial year including this proposed remittance		
	Name of bank		
	Name of the branch of the bank		
	Proposed date of remittance		
	Nature of remittance		
	Please furnish the relevant purpose code as per RBI		
Amount of TDS			
Rate of TDS			
Date of deduction			
VERIFICATION			
I/We* _____ (full name in block letters), son/daughter of _____ in the capacity of _____ (designation) solemnly declare that the information given above is true to the best of my knowledge and belief and no relevant information has been concealed. I/We* further undertake to submit the requisite documents for enabling the income-tax authorities to determine the nature and amount of income of the recipient of the above remittance as well as documents required for determining my liability under the Income-tax Act as a person responsible for deduction of tax at source.			
Place:	Signature of the person responsible for paying to non-resident		
Date:	Name and Designation of the person responsible for paying to non-resident		

Form 15CA– Part B

Part B			
(To be filled up if the remittance is chargeable to tax under the provisions of the Income-tax Act, 1961 and the remittance or the aggregate of such remittances, as the case may be, does not exceed five lakh rupees during the financial year and an order/certificate nos 195(2)/195(3)/197 of Income-tax Act has been obtained from the Assessing Officer.)			
REMITTER	Name of remitter		
	PAN of the remitter		
	TAN of the remitter ¹		
REMITTEE	Complete address, email and phone number of the remitter		
	Status of remitter		<input type="checkbox"/>
	Residential status of remitter ¹		
REMITTEE	Name of recipient of remittance		
	PAN of the recipient of remittance, if available ³		
	Complete address, email ³ and phone number ³ of the recipient of remittance		
A.O. ORDER	Section under which order/certificate has been obtained		
	Name and designation of the Assessing Officer who issued the order/certificate		
	Date of order/certificate		
	Order/certificate number		
REMITTANCE	Country to which remittance is made	Country:	Currency:
	Amount payable	In foreign currency:	In Indian Rs.
	Name of the Bank	Branch of the Bank	
	BSR Code of the bank branch (7 digit)		
	Proposed date of remittance		(DDMM/YYYY)
	Nature of remittance as per agreement/document		
	Please furnish the relevant purpose code as per RBI		
	Amount of TDS		
Rate of TDS			
Date of deduction			
VERIFICATION			
I/We* _____ (full name in block letters), son/daughter of _____ in the capacity of _____ (designation) solemnly declare that the information given above is true to the best of my knowledge and belief and no relevant information has been concealed. I/We* certify that a certificate/order under section 195(2)/195(3)/197 of the Income-tax Act, 1961 has been obtained, particulars of which are given in this Form. I/We* further undertake to submit the requisite documents for enabling the income-tax authorities to determine the nature and amount of income of the recipient of the above remittance as well as documents required for determining my liability under the Income-tax Act as a person responsible for deduction of tax at source.			
Place:	Signature of the person responsible for paying to non-resident		
Date:	Name and Designation of the person responsible for paying to non-resident		

Practice and Operational rules

Form 15CA- Part C

Part C

(To be filled up if the remittance is chargeable to tax under the provisions of Income-tax Act, 1961 and the remittance or the aggregate of such remittances, as the case may be, exceeds five lakh rupees during the financial year and a certificate in Form No. 15CB from an accountant as defined in the Explanation below sub-section (2) of section 288 has been obtained)

Section 288

GENERAL INFORMATION

REMITTER	Name of the remitter		Act Code	AO Type	Emp Code	AO No
	PAN of remitter		TAN of remitter ¹			
	Principal Place of Business					
REMITTEE	Complete address, email and phone number of the remitter					
	Status ² <input type="checkbox"/> Residential status of remitter ² <input type="checkbox"/>					
	Name of recipient of remittance		PAN of recipient of remittance ³			
ACCOUNTANT	Status ⁴ <input type="checkbox"/>					
	Address		Country to which remittance is made			
	Principal place of business		Email address			
A.O. ORDER	(a) Name of the Accountant ⁵ signing the certificate					
	(b) Name of the proprietorship firm of the accountant					
	(c) Address					
	(d) Registration no. of the accountant					
	(e) Date of certificate (DD/MM/YYYY)			Certificate No. ⁶		
REMITTANCE	(a) Whether any order/certificate in s/s 195(2)/195(3)/197 of Income-tax Act has been obtained from the Assessing Officer (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No					
	(b) Section under which order/certificate has been obtained					
	(c) Name and designation of the Assessing Officer who issued the order/certificate					
	(d) Date of order/certificate					
	(e) Order/certificate number					
TAX ACT	PARTICULARS OF REMITTANCE AND TDS (As per certificate of the accountant)					
	1	Country to which remittance is made	Country	Currency		
	2	Amount payable	In foreign currency	In Indian Rs.		
	3	Name of the Bank	Branch of the Bank			
	4	BSR Code of the bank branch (7 digit)				
	5	Proposed date of remittance	(DD/MM/YYYY)			
	6	Nature of remittance as per agreement document				
	7	Relevant paragraph code as per RBI				
	8	In case the remittance is net of taxes, whether tax payable has been grossed up ⁷	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No			
9	Taxability under the provisions of the Income-tax Act (without considering DTAA)	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No				
		(i) if not reasons thereof				
		(ii) if yes, (a) the relevant section of the Act under which the remittance is covered				
		(b) the amount of income chargeable to tax				
		(c) the tax liability				
		(d) basis of determining taxable income and tax liability				

Form 15CB

Form No. 15CB
(See rule 37BB)
Certificate of an accountant¹

I/We² have examined the agreement (wherever applicable) between Mr. Ms./M/s³..... and Mr./Ms./M/s⁴.....
(Remitters) (Beneficiary)

requiring the above remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source as per provisions of Chapter- XVII-B.

We hereby certify the following :-

A	Name and address of the beneficiary of the remittance		
B	1	Country to which remittance is made	Country
	2	Amount payable	In foreign currency
	3	Name of the bank	Branch of the bank
	4	BSR Code of the bank branch (7 digit)	
	5	Proposed date of remittance	(DD/MM/YYYY)
	6	Nature of remittance as per agreement document	
	7	In case the remittance is net of taxes, whether tax payable has been grossed up ⁷	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
		Taxability under the provisions of the Income-tax Act (without considering DTAA)	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
		(i) if not reasons thereof	
		(ii) if yes, (a) the relevant section of the Act under which the remittance is covered	
		(b) the amount of income chargeable to tax	
		(c) the tax liability	
		(d) basis of determining taxable income and tax liability	

Practice and Operational rules

Form 15CA- Part C

	tax	
	(c) the tax liability	
	(d) basis of determining taxable income and tax liability	
DTAA	10. If any relief is claimed under DTAA- (i) whether tax residency certificate is obtained from the recipient of remittance	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
	(ii) please specify relevant DTAA	
	(iii) please specify relevant article of DTAA	Nature of payment as per DTAA
	(iv) taxable income as per DTAA	In Indian Rs.
	(v) tax liability as per DTAA	In Indian Rs.
	A. If the remittance is for royalties, fee for technical services, interest, dividend, etc. (not connected with permanent establishment) please indicate -	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
	(a) Article of DTAA	
	(b) Rate of TDS required to be deducted in terms of such article of the applicable DTAA	As per DTAA (%)
	B. In case the remittance is on account of business income, please indicate -	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
	(a) The amount of income liable to tax in India	
(b) The basis of arriving at the rate of deduction of tax.		

Form 15CB

DTAA	9. If income is chargeable to tax in India and any relief is claimed under DTAA- (i) whether tax residency certificate is obtained from the recipient of remittance	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
	(ii) please specify relevant DTAA	
	(iii) please specify relevant article of DTAA	Nature of payment as per DTAA
	(iv) taxable income as per DTAA	In Indian Rs.
	(v) tax liability as per DTAA	In Indian Rs.
	A. If the remittance is for royalties, fee for technical services, interest, dividend, etc. (not connected with permanent establishment) please indicate -	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
	(a) The amount of income liable to tax in India	
(b) The basis of arriving at the rate of deduction of tax.		

Practice and Operational rules

Form 15CA- Part C

C. In case the remittance is on account of capital gains, please indicate -		(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
(a) amount of long term capital gains		
(b) amount of short-term capital gains		
(c) basis of arriving at taxable income		
D. In case of other remittance not covered by sub-items A,B and C		(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
(a) Please specify nature of remittance		
(b) Whether taxable in India as per DTAA		
(c) If yes, rate of TDS required to be deducted in terms of such article of the applicable DTAA		
(d) if not, please furnish brief reasons thereof specifying relevant article of DTAA		
TDS	11. Amount of tax deducted at source	In foreign currency
	12. Rate of TDS	In Indian Rs. As per Income-tax Act (%) or As per DTAA (%)
	13. Actual amount of remittance after TDS	In foreign currency
	14. Date of deduction of tax at source, if any	(DDMMYYYY)

VERIFICATION

I, I/We* (Full name in block letters) son/daughter of _____ as the capacity of _____ (designation) solemnly declare that the information given above is true to the best of my/our* knowledge and belief and no relevant information has been concealed. I/We* certify that a certificate has been obtained from an accountant, particulars of which are given in this Form, certifying the amount, nature and correctness of deduction of tax at source. In case where it is found that the tax actually deductible on the amount of remittance has not been deducted or after deduction has not been paid or not paid in full, I/We* undertake to pay the amount of tax not deducted or not paid, as the case may be, along with interest due. I/We* shall also be subject to the provisions of penalty for the usual default as per the provisions of the Income-tax Act, 1961. I/We* further undertake to submit the requisite documents for enabling the income-tax authorities to determine the nature and amount of income of the recipient of the above remittance as well as documents required for determining my/our liability under the Income-tax Act, 1961 as a person responsible for deduction of tax at source.

Place: _____ Signature of the person responsible for paying to non-resident
Date: _____ Name and Designation of the person responsible for paying to non-resident

Form 15CB

(a) Article of DTAA		As per DTAA (%)
(b) Rate of TDS required to be deducted in terms of such article of the applicable DTAA		
B. In case the remittance is on account of business income, please indicate -		(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
(a) Whether such income is liable to tax in India		(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
(b) If so, the basis of arriving at the rate of deduction of tax		
(c) If not, please furnish brief reasons thereof, specifying relevant article of DTAA		
C. In case the remittance is on account of capital gains, please indicate -		(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
(a) amount of long term capital gains		
(b) amount of short-term capital gains		
(c) basis of arriving at taxable income		
D. In case of other remittance not covered by sub-items A,B and C		(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
(a) Please specify nature of remittance		
(b) Whether taxable in India as per DTAA		
(c) If yes, rate of TDS required to be deducted in terms of such article of the applicable DTAA		
(d) if not, please furnish brief reasons thereof, specifying relevant article of DTAA		
10. Amount of TDS	In foreign currency	
11. Rate of TDS	In Indian Rs. As per Income-tax Act (%) or As per DTAA (%)	
12. Actual amount of remittance after TDS	In foreign currency	
13. Date of deduction of tax at source, if any	(DDMMYYYY)	

Certificate No.

Signature :
Name :
Name of the proprietorship/ firm :
Address :
Registration No. :

Practice and Operational rules

Form 15CA– Part D

Part D

[To be filled up if the remittance is not chargeable to tax under the provisions of the Income-tax Act, 1961 (other than payments referred to in rule 37BB(1) by the person referred to in rule 37BB(2)]

REMITTER	Name of the remitter	
	PAN of the remitter, if available	
	TAN of the remitter, if available	
	Complete address, email and phone number of the remitter	
RECIPIENT	Status of remitter ¹	<input type="checkbox"/>
	Residential status of the remitter ²	
	Name of recipient of remittance	
	PAN of the recipient of remittance, if available	
REMITTANCE	Complete address, email and phone number ⁴ of the recipient of remittance	
	Country to which remittance is made	Country
	Country of which the recipient of remittance is resident, if available	
	Amount payable	In Indian Ru.
REMITTANCE	Name of the bank	
	Name of the branch of the bank	
	BSR code of the bank branch (7 digit)	
	Proposed date of remittance (DD-MM/YYYY)	
Nature of remittance		
Please furnish the relevant purpose code as per RBI		

2. I certify that I have reason to believe that the remittance as above is not chargeable under the provision of Income-tax Act 1961 and is not liable for deduction of tax at source

VERIFICATION

I/We*, _____ (full name in block letters), son/daughter of _____ in the capacity of _____ (designation) solemnly declare that the information given above is true to the best of my/our* knowledge and belief and no relevant information has been concealed. In a case where it is found that the tax actually deductible on the amount of remittance has not been deducted or after deduction has not been paid or not paid in full, I/We* undertake to pay the amount of tax not deducted or not paid, as the case may be, along with interest due. I/We* shall also be subject to the provisions of penalty for the said default as per the provisions of the Income-tax Act, 1961. I/We* further undertake to submit the requisite documents for enabling the income-tax authorities to determine the nature and amount of income of the recipient of the above remittance as well as documents required for determining my/our* liability under the Income-tax Act as a person responsible for deduction of tax at source.

Place: _____ Signature of the person responsible for paying to non-resident

Date: _____ Name and Designation of the person responsible for paying to non-resident

Form 15CC

Form No.15CC
(See rule 37BB)

Quarterly statement to be furnished by an authorised dealer in respect of remittances made for the quarter of of (Financial Year)

- Name and address of the authorised dealer:
- Permanent Account Number:
- Details of remittances made:

Sl. No.	Name of the remitter	PAN of the remitter	Name of the remitee	PAN of the remitee, if available	Amount of remittance	Date of remittance	Country to which remittance is made	Purpose Code as per RBI

Verification

I _____ (full name in block letters), son/daughter of _____ solemnly declare that to the best of my knowledge and belief, the information given above are correct and complete.

Place: _____ Signature: _____

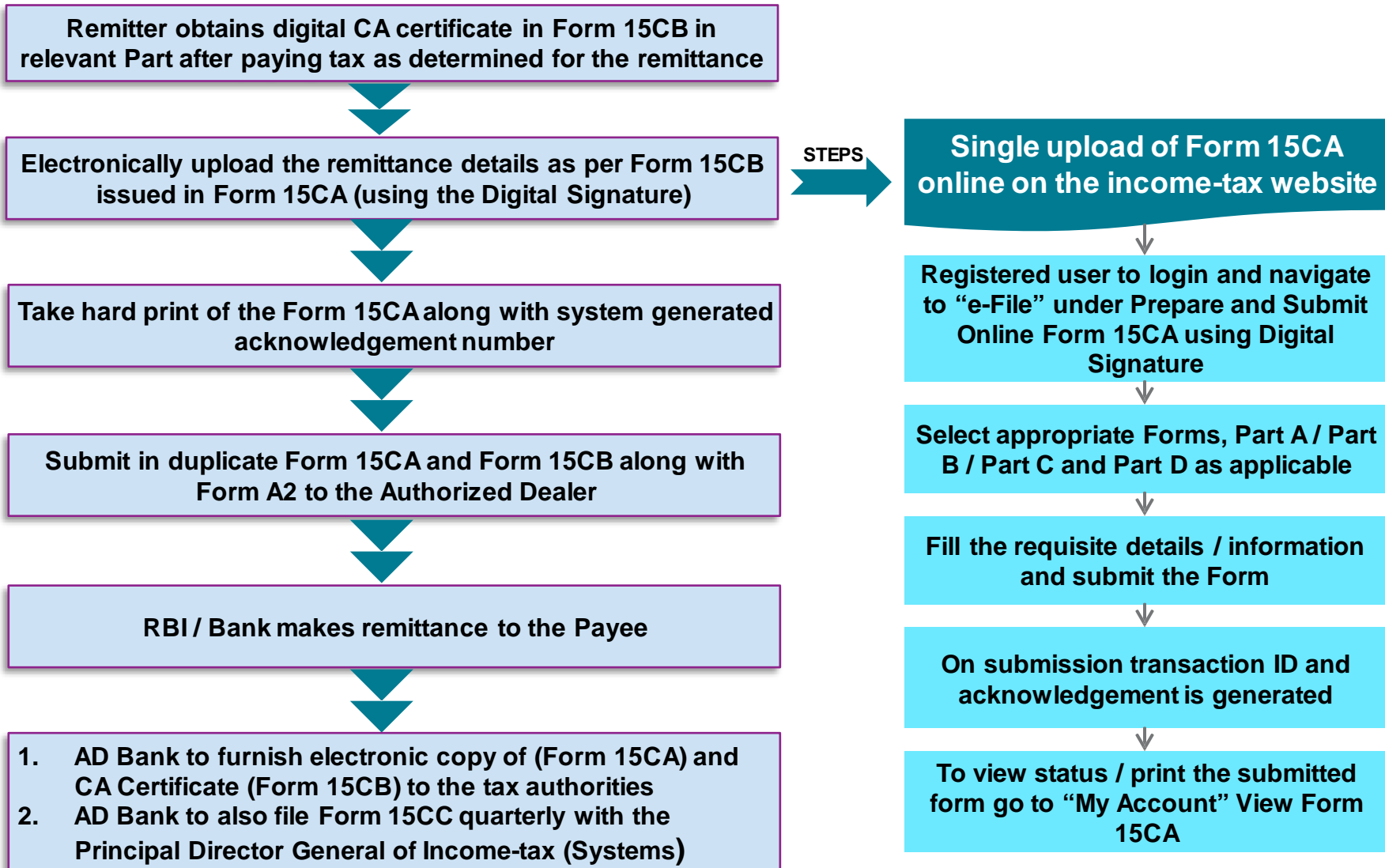
Date: _____ Name and Designation: _____

[Notification No. 93/2015, F.No.133/41/2015-TPL]

(PITAMBAR DAS)
DIRECTOR (TAX POLICY AND LEGISLATION)

Note.— The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (iii) vide notification number S.O. 969(E), dated the 26th March, 1962 and last amended vide notification number S.O.3557 (E), dated the 11th December, 2015.

Practice and Operational rules



Typical concerns of withholding tax for non-residents

Salary payment of deputed employees

Payment for software, use of / access to database

Reimbursement of actual expenses

Third party cost sharing reimbursement to parent

Online advertisement or related services

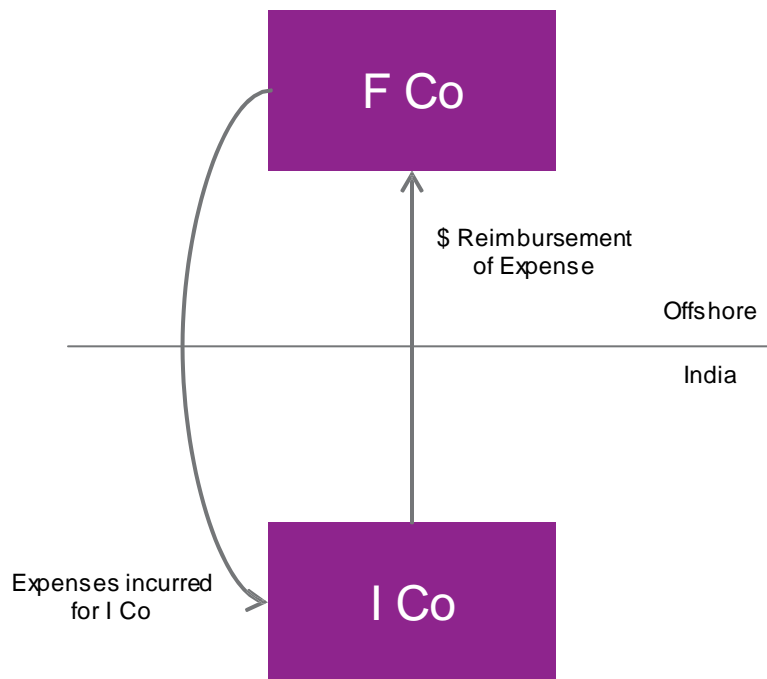
Payment towards significant economic presence

Tax deduction for transfer of immovable by NRI

Payment for export or supply of equipment's / goods

Marketing survey and testing charges

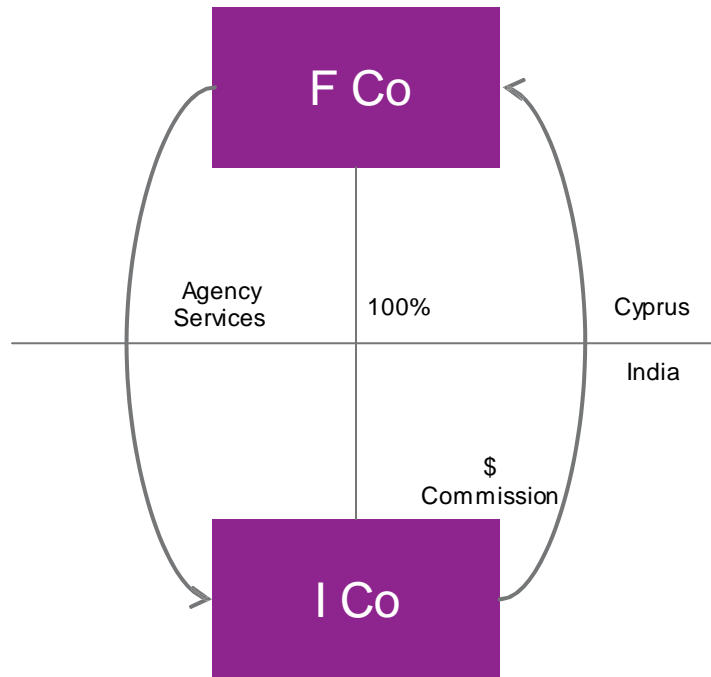
Illustration 1 – Reimbursement of expense



Applicable WHT rate for F Co in absence of PAN

- Section 206AA provides for WHT at the higher of the following rates, namely:
 - Specified rate in the relevant provisions of the IT Act; or
 - Rate / rates in force; or
 - 20%
- F Co has a valid TRC
- What should be the WHT rate under Section 195?

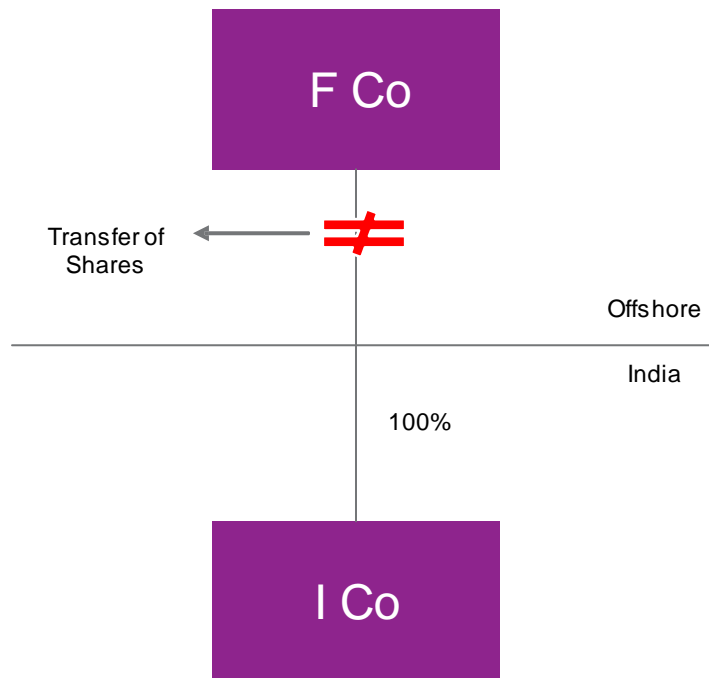
Illustration 2 – Export Commission



Applicable WHT rate for F Co in absence of PAN

- Implications when commission income paid to an associate enterprise?
- If payment is made to Cyprus?

Illustration 3 – Group Restructuring

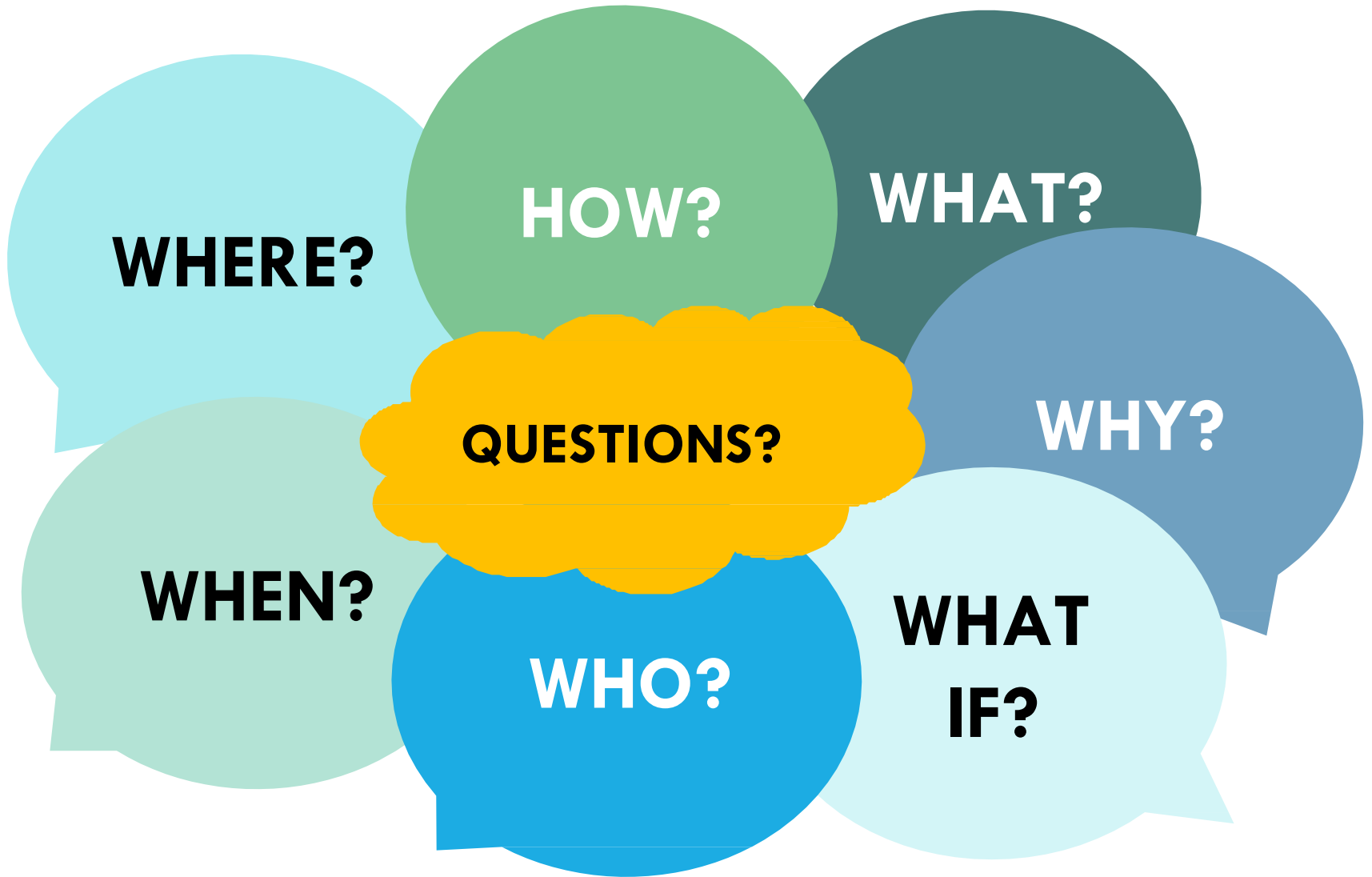


Applicable WHT provisions for F Co case of share sale

- Gains arising on transfer of shares are exempt under the applicable tax treaty
- Is a PAN required?
- Is withholding tax provisions applicable?
- Does F Co has to file a return of income in India?

Key takeaways and safeguards

1. Ignorance of rules may lead to undesirable litigation and cost, thus impacting business focus
2. Other business functions should also support on the foreign payments made by the clients
3. Preliminary assessment of transfer pricing would be essential for related party transactions
4. Cumbersome compliance process for non-resident payers', noncompliance result in penalty
5. Safeguard to the taxpayer by taking an opinion and suggest paper trail if Part D is opted
6. Ensure patience and trust in Indian tax judiciary, accurate interpretation will lead to success



Thank you!



Your feedback is valuable and will help me improvise my skill-sets

Disclaimer note: The views / opinions explicit or implicit expressed during the presentation of the tax technical paper, is exclusively that of the author being personal in nature, based on his professional practical experience. The content of the tax technical paper are general in nature and does not reflect / resemble any client advice delivered directly / indirectly. The participant relying on the tax technical paper is expected to consult his / her tax advisors before implementing the ideas suggested during the presentation. The presenter is in no case liable for any damages incurred by relying on the ideas implemented without adequate consultation with the competent tax professional on the instant facts and legal arguments