

PRACTICAL ASPECTS OF SECTION 195, FORM 15CA, 15CB

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Nature of TDS obligation

- Section 4(1) – Charge of income tax
- Section 4(2) – Income tax shall be deducted at source or paid in advance “in respect of income chargeable under subsection (1)”
- Chapter XVII – Collection and recovery of tax
- Section 190 – Tax on income shall be payable by TDS, TCS and advance payment

Nature of TDS obligation

- Section 190 – Notwithstanding regular assessment in a later assessment year
- Section 191 – Payment of tax by the assessee directly where
 - No provision is made for TDS
 - No tax is deducted at source
- Explanation to Section 191 – Deductor - assessee in default only when deductee or payee has also failed to pay tax

Nature of TDS obligation

- Primary liability to pay tax is on recipient
- TDS is tentative deduction subject to final assessment
- TDS is substitutionary or vicarious liability
- TDS provisions are complimentary in nature
- Enables the discharge of the primary liability
- Section 202 – Recovery of tax by TDS is without prejudice to any other mode of recovery

Nature of TDS obligation

- TDS liability is tentative subject to final assessment in the hands of recipient – decisions
- Transmission Corporation of AP v CIT (1999) 239 ITR 587 (SC)
- CIT v Eli Lilly & Co P Ltd (2009) 312 ITR 225 (SC)
- IDBI v ITO 293 ITR (AT) 267 (Mum)

TDS provisions specifically applicable to non residents

- Section 194E – Payments to non resident sportsmen or sports associations
- Section 194LB – Income by way of interest from infrastructure debt fund
- Section 194LBA(2) / (3) – Distributed income referred to in S. 115UA – 10(23FC) and 10(23FCA)
- Section 194LC – Interest payable by a specified company or the business trust
- Section 194LD – Interest payable to FII or QFI
- Section 195 – Other sums
- Section 196A – Income in respect of units of non residents

TDS provisions specifically applicable to non residents

- Section 196B – Income from units
- Section 196C – Income from foreign currency bonds or shares of Indian Company
- Section 196D – Income of Foreign Institutional Investors from securities

TDS provisions applicable to non residents along with resident

- Section 192 – Salary
- Section 192A – Payment of accumulated balance due to an employee
- Section 194B – Winnings from lottery or crossword puzzle
- Section 194BB – Winnings from horse race
- Section 194G – Commission etc on sale of lottery tickets
- Section 194LBB – 10(23FBB) r.w.s 115UB

Objective of section 195

- **CBDT Circular No. 152 dated 27.11.1974 - 98 ITR (St.) 19**

“The object of section 195 is to ensure that the tax due from non resident persons is secured at the earliest point of time so that there is no difficulty in collection of tax subsequently at the time of regular assessment. Failure to deduct tax at source from payments to a non resident may result in loss of revenue as the non resident may sometimes have no assets in India from which tax could be collected at a later stage.”

Objective of section 195

- *Tax should, therefore, be deducted in all cases where it is required to be deducted under section 195 before the payment is made to the credit of the Central Government as required by section 200 of the Income tax Act read with rule 30 of the Income tax rules, 1962. Failure to do so would render a person liable to penalty under section 201 read with section 221 of the Income tax Act, and would also constitute an offence under section 276B of the Income tax Act.”*

Objective of section 195

- ***Vodafone International Holdings B.V. v. Union of India (2012) 341 ITR 1 (SC)***
- *“The object of Section 195 is to ensure that tax due from non-resident persons is secured at the earliest point of time so that there is no difficulty in collection of tax subsequently at the time of regular assessment.”*

Objective of section 195

- Hyderabad Industries Ltd v ITO [1991] 188 ITR 749 (Kar)
- *“The purpose of deduction of tax at source is not to collect a sum which is not a tax levied under the Act; it is to facilitate the collection of the tax lawfully leviable under the Act.”*

Section 195(1) reads as under

- *Any person*
- *Responsible for paying to*
- *A non-resident, not being a company*
- *Or to a foreign company*
- *Any interest*
- *Or any other sum*
- *Chargeable under the provisions of this Act*

Section 195(1) reads as under

- *(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*

Section 195(1) reads as under

- *In cash or by the issue of cheque or draft or by any other mode*
- *Whichever is earlier*
- *Deduct income tax*
- *Thereon*
- *At the rates in force*

Meaning of 'any person'

- Definition of 'person' under section 2(31)
- Individual or HUF is also covered
- Payer may be 'resident' or 'not ordinarily resident' or 'non resident'

Meaning of 'any person'

- Supreme Court in Vodafone's case (By S H Kapadia and Swatanter Kumar JJ)
- *"If in law the responsibility for payment is on a non-resident, the fact that the payment was made, under the instructions of the non-resident, to its Agent/Nominee in India or its PE/Branch Office will not absolve the payer of his liability under Section 195 to deduct TAS."*

Meaning of 'any person'

- Supreme Court in Vodafone's case (By K.S. Radhakrishnan, J)
- *"A literal construction of the words "any person responsible for paying" as including non-residents would lead to absurd consequences.....*
- *The expression "any person", in our view, looking at the context in which Section 195 has been placed, would mean any person who is a resident in India."*

Meaning of 'any person'

- Finance Act 2012 – Explanation 2 to section 195 – includes a non resident – retrospective effect from 1.4.1962
- Budget Memorandum – *“Person”, here, will take its meaning from section 2 and would include all persons, whether resident or non resident*”
- Circular No. 726 dt. 18.10.1995 exempting foreign law and accountancy from TDS provision is restricted to section 194J – does not extend to s. 195

Meaning of 'responsible'

- No obligation on payer, no right to receive by recipient, payment not arising out of contract or obligation, payment made voluntarily - generally, not an income – no TDS u/s 195?
- Observations of the SC in GE's case 327 ITR 456
- Ad. CIT v K Ramabrahmam & Sons 115 ITR 369 (AP)
- Payments made voluntarily, freely without any contractual obligation – even if the same partakes the character of income in the hands of non resident – whether liable for TDS u/s 195??
- Gift to non resident who is not a relative – Taxable u/s section 56(2)(vii) – TDS u/s 195??
- Definition of 'person responsible for paying' – section 204

Meaning of 'non resident'

- *Any person responsible for paying to a non resident, not being a company*
- Definition of 'non resident' – S. 2(30)
 - Who is not a 'resident'
 - Includes a 'person who is not ordinarily resident' for the purposes of ss. 92,93 and 168
- Generally, payments to 'not ordinarily residents' not liable for TDS u/s 195

Meaning of 'non resident'

- Status of 'resident' to be determined as per s. 6(1)
- Time of determination of residential status of payee
 - whether at the time of payment? If so how?
 - whether after the end of the year?

Meaning of 'non resident'

- Whether residential status for the preceding year?
- Yes – as per AAR ruling in 237 ITR 382, 237 ITR 827
- Whether declaration from payee would be sufficient?

Meaning of 'Foreign company'

- Definition of foreign company – s. 2(23A) – means a company which is not a domestic company
- Definition of 'domestic company' – s. 2(22A)
Indian Company or any other company which has made prescribed arrangement for payment of dividend within India in respect of its income liable to tax under the IT Act

Meaning of 'Foreign company'

- Company incorporated outside India but satisfying the definition of 'domestic company' – will not be a foreign company – S. 195 does not apply
- At the same time, such company may also be a non resident under section 2(30) rws 6(3) – as a result, TDS provisions applicable to a 'resident' will also not apply to such company
- However, S. 194LD, 196B, 196C, 196D which are entity specific provisions will apply

Meaning of 'Foreign company'

- 'Foreign company' whose POEM is in India is a 'resident' u/s 6(3)
- Whether payment to such 'resident' 'foreign company' is liable for TDS u/s 195?
- Wordings of s. 195 – *'any person responsible for paying to a non-resident, not being a company, or to a foreign company,'*

Payments on behalf of non resident

- Payment to agent, nominee, branch or PE of a non resident – liable for TDS u/s 195 – observations of SC in vodafone's case
- Payment to resident agent of a non resident and TDS u/s 195
- Yes - Narsee Nagsee & Co v CIT [1959] 35 ITR 134 (Bom)
- No – as per Tecumesh Products (I) Ltd. vs. Dy. CIT (2007) 13 SOT 489 (Hyd)
- Reverse situation – payment to non resident agent of a resident – s. 195?

Payments on behalf of non resident

- Payment to POA holder of a non resident – Section 195 not applicable – Rakesh Chauhan v DDIT (2010) 128 TTJ 116 (Chandigarh)
- Test - Person who has right to receive the amount or right to enforce the payment
- The other person who receives the amount for and on behalf of non resident may be resident or non resident

Payments from Branch to HO, HO to branch and branches interse

- Payment by branch of a non resident to other branch or to head office outside India – applicability of s. 195?
- Yes – as per circular no. 740 dt. 17.4.1996
- No – as per
- ABN Amro Bank v CIT (2011) 241 CTR 552 (CALCUTTA)
- Sumitomo Mitsui Banking Corporation v DDIT 5 member special bench mumbai dt. 30.3.12

Payments from Branch to HO, HO to branch and branches interse

- Amount received by HO or BO outside India not chargeable to tax in India
- Not liable for TDS u/s 195
- No disallowance u/s 40(a)(i)
- However, expenditure paid by Indian PE to its Ho or branch outside India is deductible in computing the profits of PE taxable in India – Article 7 of the treaty

Payments from Branch to HO, HO to branch and branches interse

- Introduction of Explanation to section 9(1)(v)
- With effect from 1.4.2016 – AY 2016-17
- Explanation applicable only for non resident being a person engaged in the business of banking and having a PE in India
- Interest paid by such PE to head office or any PE or any other part of such non resident is deemed to accrue or arise in India u/s 9(1)(v)
- Accordingly s. 195 will apply in respect of such payments

Meaning of 'any interest or any other sum'

- Definition of 'interest' – s. 2(28A)
- Definition of 'interest' as per various treaties
- Interest exempt section 10 - Few instances
- 10(4)(ii) – Interest in NRE a/c
- 10(15) – Interest received by certain non resident entities
- 10(23BBB) – Income of European Economic Community by way of interest

Meaning of 'any interest or any other sum'

- No TDS in respect of income exempt at source
- **CIRCULAR NO. 5-P, DT. 9-10-1967**
- **CIRCULAR NO. 4/2002, DATED 16-7-2002**
- Section 195 does not apply to salary payments
- Meaning of 'sum' in section 195
- 'sum' in section 80G – does not include payment in kind - H.H. Sri Rama Verma vs. CIT (1991) 187 ITR 308 (SC)

Meaning of 'sum'

- 'Sum' in section 56(2)(v), (vi) (vii) – does not include payment in kind
- ACIT v Anuj Agarwal (2010) 130 TTJ 49 (MUMBAI)
- ITO v Komal Kumar Bader (2009) 33 SOT 58 (JAIPUR)
- Decision of the Supreme Court in Kanchanganga Sea Foods Ltd. v. CIT [2010] 325 ITR 540
- ITAT Bangalore Bench decision in Biocon Biopharmaceuticals P Ltd – S. 195 is applicable for issue of shares
- CIT v BBMP – Kar HC – 29.9.15 – No TDS on payment in kind

Chargeable under the provisions of this Act

- Chargeability under the Act to be tested as per
- Section 5(2), Section 9(1)(i), 9(1)(iv), 9(1)(v), 9(1)(vi), 9(1)(vii)
- Treaty provisions if beneficial can be applied – s. 90(2), UOI v Azadi Bachao Andolan [2003] 263 ITR 706 (SC)
- Beneficial treaty provisions could be in respect of exemption, narrow scope of chargeability, lower tax rate

Chargeable under the provisions of this Act

- Computation of income under the Act – rate of tax as per treaty – selective treaty benefit – not permissible -
- Dresdner Bank Ag. Vs. Addl. CIT(105 TTJ 149) (Mum)
- Applicability of treaty provisions – at what stage?? For each source of income or on an aggregate basis?
- IBM World Trade Corporation v DDIT – dt. 13.4.2012 – Bangalore ITAT
- Assessment as per the provisions of the Act in one year – provisions of the treaty for the second year – permissible - DCIT Vs. Patni Computers Systems Ltd. (109 TTJ 742) (Pune)

Chargeable under the provisions of this Act

- Pure income payments
- Pure capital payments
- Payments partly representing income payments
- No TDS on pure capital payments
- Section 195 inapplicable if payment is not at all chargeable to tax

Chargeable under the Act

- Section 195 applicable for payment having income and capital element – SC decisions 239 ITR 587, 327 ITR 456
- Expression used is ‘sum’ chargeable and not ‘income’ chargeable
- Nature of payment – whether capital or otherwise – to be determined from view point of payee and not payer
- Reimbursement of expenses

Amendments by Finance Act, 2012 on chargeability of income

- Direct or indirect transfer of shares read with latest amendments (Expl 6 and 7 to s. 9(1)(i))
- Software payments
- Lease line charges
- Transponder charges

Explanation to s. 9(2)

- To overcome observations of the supreme court in Ishikawajima 288 ITR 408 and Kar Hc decision in Jindal Thermal 321 ITR 31
- Explanation is retrospective from 1.6.1976
- However, no retrospective liability to deduct tax at source
- Canara Bank v ITO 319 ITR (AT) 63 Nagpur
- State bank of India v DCIT 2010-TIOL-231-ITAT-Hyd

Time of deduction

- TDS on credit – by Finance Act, 1987 w.e.f 1.6.1987
- Earlier to that – TDS only on payment
- Credit to non resident a/c is constructive receipt or deemed receipt - Raghava Reddi v CIT 44 ITR 720 (SC)
- Credit to non resident a/c cannot be regarded as receipt – CIT v Toshoku Ltd 125 ITR 525 (SC)

Time of deduction

- Present law
- Credit or payment – whichever is earlier
- Credit to suspense account or any other account by whatever name called is also covered
- Explanation may not apply when income does not accrue to non resident although entry is passed in books of account
- CBDT Circular No. 3 of 2010 – No TDS on interest credited to provision a/c by banks following CBS software

Time of deduction

- ACIT v Motor Industries Co 249 ITR 141 (Kar)
- Credit to non resident a/c from 1985 to 1989 during which there was no collaboration agreement – relevant observations of the court-
- *“The liability under section 195 of the Act would begin to operate only with effect from the date when the collaboration agreement was concluded and not earlier. This is so because the foreign collaborator would get a **right to enforce his right to receive payment** only on conclusion of the collaboration agreement. The mere fact that the assessee was crediting a certain amount to the credit of suspense account would not alter this situation in anyway.*

Time of deduction

- Twin conditions for attracting section 195
- For payer – credit or payment of income
- For payee – sum chargeable to tax in India
- In particular situations there could be disconnect between the two

Time of deduction

- Time between date of application u/s 195(2), 195(3), 197, to AAR and date of determination by the authorities – TDS applicability?
- No mandate that certificate u/s 197 should be obtained before date of credit
- Rule 29D(2) – 2nd proviso to s. 194(3)(i) – old provision – declaration to be submitted before the date of credit

Time of deduction

- Payer has to act according to certificate issued to payee u/s 197
- Circular no. 774 – certificate u/s 197 cannot be issued if credit entries are made unless CBDT condones the delay
- However, certificate issued wrongly by the AO after the date of credit does not become invalid

Time of deduction

- Revenue cannot take advantage of its wrong
- Payer cannot be regarded as 'assessee in default'
- Bovis lend lease India P Ltd v ITO 127 TTJ 25 (BANGALORE)
- Departmental appeal dismissed by Kar HC and Supreme Court

Time of deduction

- Rule 26 – rate of exchange for TDS on income payable in foreign currency
- TT buying rate as on the date on which the tax is required to be deducted at source under s. 195
- Higher payment made due to exchange fluctuation – whether liable for TDS u/s 195?
Whether to be disallowed u/s 40(a)(i)
- No – as per Kar HC in CIT v Mac Charles India Ltd
195 Taxman 296

TDS on year end provisions?

- Conflicting decisions
- Yes – IBM India P Ltd v ITO (LTU) – ITAT Bangalore
- No - Industrial Development Bank of India v ITO [2007] 293 ITR (AT) 267 (Mumbai)
- DCIT v Telco Construction Equipment Co Ltd ITA No. 478/B/2012 dated 7.3.2014 – ITAT Bangalore
- DCIT v Yeola Merchants Co-op Bank Ltd ITA No. 805/PN/2011 – Pune ITAT
- Dishnet Wireless Limited v DCIT – Chennai ITAT
- DIT v Ericsson Communications Ltd – Del HC

TDS on year end provisions?

- Bosch Ltd ITA No. 1583/B/2014 – 1.3.16 – ITAT Bangalore
- Karnataka Power Transmission Corporation Ltd v DCIT [2016] 383 ITR 59 (Kar)
- TE Connectivity India P Ltd v ITO ITA No. 3/B/15 – 25.5.16 – ITAT Bangalore

Mode of payment

- Payment by cash or cheque or by any other mode
- Income not involving payment or credit – not liable for TDS
- ALP adjustment in the hands of non resident
- NR taxable u/s 93 – although taxable under the Act, no TDS u/s 195
- Advance payment adjustable against final sum – TDS u/s 195 – P C Roy & Co India P Ltd v ITO 36 ITR 365 (Cal)
- Scope of ‘any other mode’
- Adjustment of the amount payable against receivable from non resident or from third parties

Mode of payment

- Adjustment of the amount payable against future performance?
- Retention of income (commission etc) by non resident amounts to 'payment'
- Two way traffic is unnecessary
- Raza Textiles Ltd v ITO 46 ITR 466
- *J.B. Boda & Co. (P.) Ltd. v. CBDT* [1997] [223 ITR 271](#) (SC)
- Mahindra & Mahindra Ltd v DCIT 313 ITR (AT) 263 ITAT Mum SB

Quantum of TDS

- Deduct income tax 'thereon'
- 'thereon' refers to 'income' element and does not refer to 'sum' chargeable
- **Instruction No. 02/2014, Dated 26.02.2014 – Mandates AO to compute TDS only on Income element –**
- **Whether assessee can take benefit of this Instruction?**
- Rates in force – s. 2(37A)(iii)
- Rate as per part II of the first schedule to Finance Act or rate as per the treaty, as the case may be
- Tax free payments – requirement of grossing up – s. 195A – whether TDS certificate to be issued – Circular No. 785

Section 206AA

- Implications of section 206AA
- As per circular no. 5 of 2010 - Section 206AA is applicable to non residents
- Applicability of s. 206AA where income is taxable at a rate lower than 20%
- Section 206AA v Treaty provisions

ITAT Pune – Serum Institute

ITAT Bangalore – Infosys BPO Limited

- Obligation to furnish PAN
- Obligation to obtain PAN
- Section 139A

Section 206AA

- Rule 114C(1)(b) – provisions of s. 139A does not apply to non residents referred to in s. 2(30)
- Rule 114(3)(iv) – from 1.11.11
- An application under subsection (1), (1A), (2), (3) of s. 139A shall be made
- *(iv) in the case of a person who is entitled to receive any sum or income or amount, on which is tax is deductible under Chapter XVIIIB in any financial year, before the end of such financial year”*

Section 206AA

- Conflict between rule 114C(1)(b) and rule 114(3)(iv)
- Which rule will prevail
- General v specific
- Which rule is general and which rule is specific?
- Whether latest rule should prevail over old rule?
- **Notification No. 53/2016 dated 24.6.2016 – TDS at rates in force even in the absence of PAN**
- Applicability of s. 206AA in case of grossing up under s. 195A

Section 195

- Proviso to s. 195(1) – interest payable by Govt, Public sector bank or public financial institution – TDS on payment basis
- Exemption from withholding on dividends referred to in section 115O

Section 195(2)

- S. 195(2) – Requirement to apply to AO for determination of appropriate portion of sum chargeable in case of doubt
- S. 195(2) not applicable if payment to NR is not chargeable to tax
- Bona fide belief that payment not chargeable to tax – no requirement to apply u/s 195(2) – ITO v Prasad Production Ltd 3 ITR (Trib) 58 Chennai

Section 195(2)

- *The expression "the whole of such sum would not be income chargeable", of sub-section (2) is to be understood as that only part of such sum has income character, and it is not to be understood to mean that the entire payment is without income character. – Prasad Production*
- If part of payment is chargeable to tax and no application is made u/s 195(2) – TDS on entire payment
- No statutory form of application u/s 195(2)

Section 195(2)

- Application u/s 195(2) for nil rate
- Contrary views
- CIT v Jay Engineering Works Ltd 149 ITR 425 (Del)
- Graphite Vicarb India Ltd v ITO 18 ITD 58 (Cal)
- Czechoslovak Ocean Shipping International Joint Stock Co. v. ITO 81 ITR 162 (Cal)
- ITAT Bangalore – 195(2) application cannot be made for NIL TDS
- Order under section 195(2) appealable or not?
- Section 248 – requirement that tax should be borne by the payer
- Section 264 – revision

Section 195(2)

- Order under section 195(2) can be revised by CIT – BCCI v DIT(E) 278 ITR (AT) 83 ITAT Mum
- Payer cannot be regarded as assessee in default if determination is made by the AO under section 195(2) – Mangalore Refinery and petrochemicals Ltd v DCIT (2008) 113 ITD 85 (Mumbai)

Section 195(3)

- Application by payee
- For nil deduction certificate
- Payee can also go under section 197
- Conditions to be fulfilled u/s 195(3) – rule 29B
 - Applicant should be carrying on business in India through a branch
 - Applicant has filed returns and has been regularly assessed for all past applicable years
 - He is not in default or deemed to be in default – for tax, advance tax or self assessment tax, interest, penalty, fine or any other sum
 - He is not subject to penalty for concealment of income

Section 195(3)

- Non banking applicant – Additional conditions
 - Continuously in business in India for 5 years
 - Value of fixed assets as at end of preceding PY > Rs 50L
- Stay of demand, MAP proceedings or DRP proceedings – 195(3) application can be made - McKinsey and Co. Inc. v. UOI 323 ITR 544 (Bom)

Section 195(3)

- Rejection of application u/s 197, 195(2) – remedy
- Revision under section 264
- Writ petition
- Larsen and Toubro Ltd v ACIT(TDS) 326 ITR 514 (Bom)
- SIS Live v ITO 333 ITR 13 (Del)

Section 195(6)

- Amendment of s. 195(6) w.e.f. 1.6.2015
- Requirement on person responsible for paying u/s 195 to furnish the information as may be prescribed
- Whether or not the sum payable is chargeable to tax
- Rule 37BB substituted vide Notification dt. 16.12.2015 w.e.f. 1.4.2016

FORM 15CA

- Form 15CA to be filed electronically
- Form 15CA divided into 4 parts – Part A, B, C and D
- Part A – Rule 37BB(1)(i) - Applicable if payment is chargeable under the provisions of the Act and the amount of payment or aggregate of such payments made during the FY does not exceed INR 5 lakhs

FORM 15CA

- Whether limit of INR 5 lakhs is per payee or for all payments made by the payer?
- Part B – Rule 37BB(1)(ii) - Applicable for sum chargeable + payments other than payments referred to in clause (i) i.e., payment or aggregate of payments exceeding INR 5 lakhs in the FY
- However, as per heading of Part B, it is applicable only if remittance or aggregate of such remittance does not exceed INR 5 lakhs
- Part B – will be applicable only if a certificate u/s 197 or order u/s 195(2)/(3) is available

Form 15CA

- Part C – Applicable if sum chargeable + payment/aggregate payments exceeds INR 5 lakhs + CA certificate in Form 15CB is obtained
- Part D – Applicable if sum is NOT chargeable
- Exceptions to Part D – When Part D is not applicable
- If remittance is made by Individual and it does not require prior approval of RBI as per s. 5 of FEMA, 1999 r/w schedule III to Foreign exchange (current account transaction) Rules, 2000

Form 15CA

- The remittance is of the nature included in specified list
- First exception – S. 5 of FEMA
- *5. Current account transactions.- Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawl is a current account transaction: Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.*

Form 15CA

- Sch III to Foreign exchange (current account transaction) Rules, 2000
- Rule 5 – No person shall draw foreign exchange for a transaction included in the sch. III without the prior approval of RBI
- Sch. III list – Requires RBI permission
- Hence, for sch. III payments, part D has to be filled provided payment is not chargeable under the IT Act

Form 15CA

- Part D not to be filled if remittance is included in specified list
- Specified list includes remittances which are capital in nature like investment in equity shares, debt securities, loans
- Some issues in specified list – advance payment against imports, settlement of invoice – whether it includes import of services, software?

Form 15CA

- Form 15CA to be electronically filed under the digital signature
- In case Form 15CB is applicable, 15CB to be efiled first and then 15CA to be efiled as Ack number of 15CB needs to be keyed in Form 15CA

Form 15CB

- Issue of CA certificate
- Disclosure by way of notes regarding PE, residential status, nature of income, rate of tax, applicability of s. 206AA, grossing up, exchange rate
- Diplomatic missions not taxable in India – self certified F. 15CA to be electronically uploaded and signed form to be submitted in duplicate to banker – Circular No 9 of 2009

Section 195(6)

- Deductor liable for all consequences even on furnishing of F. 15CA and 15CB
- CA certificate is not appealable – Mahindra and Mahindra Ltd v Ad. DIT (2007) 106 ITD 521 (Mumbai)
- Form No. 15CB – CA certificate to be obtained first
- Then, Form No. 15CA to be electronically filed
- F. 15CA to be signed by person competent to sign the return of income under section 140

S. 194(7)

- Subsection 7 applicable from 1.7.2012
- Overrides section 195(1) and 195(2)
- CBDT to specify class of persons or cases by notification
- In such circumstances, application to AO mandatory whether or not sum payable is chargeable under the Act

S. 194(7)

- AO to determine appropriate portion of sum chargeable
- Where payment to non resident is not at all chargeable to tax, whether AO can still say that a part of it is chargeable?
- Remedy?
- Appeal u/s 248? – only if TDS is borne by deductor

Other aspects

- S. 195 not applicable when s. 172 applies – circular no. 623
- 40(a)(ia) - applicable only in the event of non deduction of tax at source or non payment of TDS after deduction – not applicable for short deduction of tax at source - as per the decision in DCIT v Chandabhoy & Jassobhoy Mumbai ITAT
- Whether ratio of the above decision is applicable under s. 40(a)(i)

Other aspects

- Section 40(a)(ia) applicable only for amount 'payable' as on 31st March of every year – not applicable in respect of expenditure actually paid during the year without TDS – as per the Special bench decision in M/s Marilyn Shipping & Transports v ACIT dt. 29.3.2012
- Subsequent conflicting decisions
- Whether ratio of the above decision apply for section 40(a)(i)

Other aspects

- TDS to be paid within 7 days from the end of the month in which deduction is made
- Exception – TDS to be paid on or before 30th April if amount or income is credited or paid in the month of March
- Issue of TDS certificate in Form 16A – within 15 days from due date for filing quarterly TDS returns
- Issue of TDS Certificate in Form 16 – by 31st May
- Option to authenticate F 16 by digital signature
- TDS from 1.4.2012
- Compulsory issue of F 16A by downloading from Tin website

Other aspects

- Time limit for passing order u/s 201(1) (1A)
- Section 201(3) applicable only in respect of TDS from payments to residents
- Non resident payments – 4 years or 6 years from the end of the relevant assessment year, as the case may be
- 4 years – CIT v Bharat Hotels Ltd [2015] 64 taxmann.com 325 (Karnataka)

Other aspects

- CIT v UB Electronic Instruments Ltd T&AP HC
- CIT v NHK Japan Broadcasting Corpn [2008] 305 ITR 137 (Del)
- CIT v Hutchison Essar Telecom Ltd [2010] 323 ITR 230 (Delhi)
- CIT v Satluj Jal Vidyut Nigam Ltd [2012] 345 ITR 552 (HP)
- CIT v CJ International Hotels P Ltd Del HC
- Mahindra & Mahindra Ltd v DCIT 313 ITR (AT) 263 ITAT Mum SB – 4 years or 6 years as the case may be
- Idea Cellular Ltd v ACIT [2014] 34 ITR (Tri)Hyd

Other aspects

- Refund of TDS u/s 195 – Circular No. 7 of 2007 & Circular No. 7 of 2011
- Interest on such refund – Circular No. 11 of 2016
- No TDS on interest on deposits of non resident and interest on borrowings from non resident by offshore banking unit – s. 197A(1D)
- S. 197A(1D) applicable for IFSC banking units – Cir. 26 of 2016
- Payee cannot furnish form 15G / 15H for non deduction of tax at source
- Processing of TDS returns u/s 200A
- Meaning of 'arithmetical error' or 'incorrect claim'
- Circular no. 2 of 2011

Other aspects

- Remedy against intimation u/s 200A – 154? 246A? 264? Amendments by Finance Act 2012
- Consequences of default
- Disallowance of expenditure u/s 40(a)(i)
- Recovery of TDS u/s 201(1)
- Recovery of interest u/s 201(1A)
- Penalty u/s 221 upto 100% of tax
- Penalty u/s 271C upto 100% of tax
- Imprisonment and fine – s. 276B

THANK YOU