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paymEnt To NRs

Deduction of tax at source from non-resident's income

- Salaries payments to non-residents
- Other payments to non-residents

Salaries payments to non-residents

- If the non-resident renders
  - technical services **in the capacity of an employee**
  - to the Indian enterprise
  - and the payment for such technical services becomes liable to be taxed in India under the head 'salaries',
  - the tax payable thereon should be deducted at source by the Indian enterprise
  - Before making the payment of remuneration or crediting the amount thereof to the account of the non-resident ***under section 192***.

- Failure on the part of the **Indian enterprise**
  - to deduct the tax at source
  - would disentitle it to claim the remuneration paid or payable to the non-resident employee
  - as an expenditure in computing its taxable income
  - Because of the mandatory provisions for disallowance contained in ***section 40(a)(iii) of the Income-tax Act, 1961***.

- Further, the Indian enterprise
  - would also attract liability for prosecution besides the liability to penalty and fine
  - over and above the obligation to pay the amount of tax which ought to have been deducted, with interest, to the government.

- For this purpose all the provisions for collection and recovery of tax would be applicable since the employer in India would be deemed to be the assessee in default in such a case.

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Other payments to non-residents

- According to **section 195(1) any person**
  - ✓ who is responsible for paying to a non-resident
  - ✓ any interest or any other sum **(not being salaries)** chargeable to income-tax under the Income-tax Act, 1961,
    - Must deduct income-tax payable thereon at the rates in force
    - at the time of credit of such income to the account of the payee or at the time of making the payment thereof in cash or by the issue of a cheque or draft or any mode, whichever is earlier,

- **Sub-section (2) to section 195 provides** that
  - in cases where the person is responsible
  - for paying any sum chargeable to income-tax in India
  - to a non-resident and
  - he considers that the whole of the amount of payment may not be income assessable to tax in the hands of the recipient,
  - he may make an application to the Assessing Officer to determine,
  - by a general or special order, the appropriate proportion of the sum payable as being chargeable to tax and
  - thereby obtain an advance ruling from the Assessing Officer
  - with regard to the income assessable and the tax payable thereon.
  - If that is done, the tax shall be deducted under section 195(1) only in that proportion in which the payment to the non-resident becomes taxable in India.

- In this context, it may be noted that **section 40(a)(i) provides**
  - for disallowance of any interest, royalty, fees for technical services or other sum chargeable under this Act,
  - which is payable,
    - outside India;
    - in India to a non-resident, not being a company or to a foreign company,
    - on which tax is deductible at source under Chapter XVIIB and
    - such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under section 200(1).

It is also provided that where in respect of any such sum, where tax has been deducted in any subsequent year, or has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under section 200(1), **such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid**.