TDS on Sale of Immovable Properties By Non Resident Indian

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- In case of Transfer of Immovable property situated in India by Non-Residents Indian to Residents in India, issue arises is TDS to be deducted U/s 195 is on the amount payable to the nonresident as a sales consideration **OR** on the amount of gain arising to the Non Resident from sale of immovable property.
- This particular question can be answered with the help of two aspects as follows:-
- CBDT Foreign Tax & Tax Research Division I - Instruction No 02/2014 Dated 26/02/2014
- Rule 37 BB – New Form 15CA & Form 15CB

CBDT Instruction No 02/2014 Dated 26/02/2014:-

"In a case where the assesse fails to deduct tax under section 195 of the act , the assessing officer shall determine the appropriate proportion of the sum chargeable to tax as mentioned in sub section (1) of section 195 to ascertain the tax liability on which the deductor shall be deemed to be an assessee in default under section 201 of the act , and appropriate proportion of the sum will depend on the facts and circumstances of the case taking into account nature of remittances , income component therein or any other fact relevant to determine such appropriate proportion.

- As per CBDT Instruction no 02/2014 in case of default in TDS U/s 195 circular states as follows:
- Assessing officer shall determine the appropriate proportion of the sum chargeable to tax as mentioned in sub section (1) of section 195. This means assessing officer need to determine amount of income on which tax need to be deducted and for this amount the deductor shall be deemed to be an assess in default u /s 201.
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- **Rule 37 BB – New Form 15CA & Form 15CB:-**
- Rule 37 BB states that any person responsible for making payment to nonresident Indian, not being company, any sum chargeable to tax shall follow the following procedure:
- If the amount of payment does not exceed Rs 250000/- then submit information in form 15 CA – Part A electronically
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Part A contains following information

REMITTER
Name of Remitter*
ADDRESS OF THE REMITTER

REMITTEE
Name of recipient of remittance*
PAN of the recipient of remittance, if available
ADDRESS OF THE RECIPIENT OF REMITTANCE

REMITTANCE
Amount payable before TDS, if any (In Indian Currency) (₹)*

Aggregate amount of remittance made during the financial year including this proposed remittance (₹)*

Name of bank* **Select**

Name of the branch of the bank*

Proposed date of remittance (DD/MM/YYYY)*

Nature of remittance* **Select**

Tax Deducted :

(a) Amount of tax deducted (₹)*

(b) Date of deduction (DD/MM/YYYY)

This means that no certificate is required to be obtained in case of Part A of Form 15 CA

- If the amount of payment exceed Rs 250000/- then submit information in Part B of Form 15 CA electronically after obtaining certificate from chartered accountant in form 15 CB or after obtaining certificate of tax deduction from the assessing officer.
- It is difficult and time consuming process to obtain certificate of lower deduction from assessing officer therefore it is advisable to obtain certificate from chartered accountant in form 15CB.

Form 15 CB is a certificate of Chartered accountant which contains the following particulars regarding capital gain.

	C. In case ofremittance is on account of capital gains, please indicate:-	(Tick)	Yes		No
	(a) Amount of long term capital gains				
	(b) Amount of short term capital gains				
	© basis of arriving at taxable income				
	D. In case of other remittance not covered by sub-items A,B and C	(Tick)	Yes		No
	(a) Please specify nature of remittance				
	(b) Whether taxable in India as per DTAA				
	© If yes, rate of TDS required to be deducted in terms of such article of applicalbe DTAA				
	(d) If not, the please furnish brief reason theror, specifying relevant article of DTAA				
10	Amount of TDS	In foreign currency			
		In Indian Rs.			
11	Rate of TDS	As per Income-tax Act (%)			
		As per DTAA (%)			
12	Actual amount of remittance after TDS	In foreign currency			
		In Indian Rs.			
13	Date of deduction of tax at source.				

- Therefore it can be understood that that Form 15 CA part B requires certificate either from Chartered accountant or from Assessing officer. Chartered accountant has to calculate amount of capital gain in the sales transaction and tax need to be deducted from this capital gain.
- CA has to mention the basis of arriving at taxable capital gain. Normally CA can take into consideration direct expenses in connection with transfer, index cost of acquisition and index cost of improvement as a deduction from net sales consideration while calculating chargeable capital gain.
- Future investments by transferor eligible for deductions u/s 54 should not be considered while calculating capital gain chargeable to tax for the purpose of Tax deduction at source under section 195.
- **Thus from the above discussion we can conclude that TDS under section 195 in case of Nonresident shall be deducted from the *sum chargeable to tax*.**
- **Sum chargeable to tax will be the *amount of capital gain and not the entire amount of sales consideration*.**

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