

Section 195

TDS on Non-Resident Payments

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 :

Provided that in the case of interest payable by the Government or a public sector bank within the meaning of clause (23D) of [section 10](#) or a public financial institution within the meaning of that clause, deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode.

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Explanation 1.—For the purposes of this section, where any interest or other sum as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

Explanation 2.—For the removal of doubts, it is hereby clarified that the obligation to comply with sub-section (1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has—

- (i) a residence or place of business or business connection in India; or
- (ii) any other presence in any manner whatsoever in India.

(2) Where the person responsible for paying any such sum chargeable under this Act (other than salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application ⁷¹[in such form and manner to the Assessing Officer, to determine in such manner, as may be prescribed], the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

(3) Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

(4) A certificate granted under sub-section (3) shall remain in force till the expiry of the period specified therein or, if it is cancelled by the Assessing Officer before the expiry of such period, till such cancellation.

(5) The Board may, having regard to the convenience of assesseees and the interests of revenue, by notification in the Official Gazette, 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) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

(6) The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.

(7) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Board may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application ⁷²[in such form and manner to the Assessing Officer, to determine in such manner, as may be prescribed], the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.

1) Who is responsible to deduct tax u/s 195?

Any person responsible for paying to a non-resident, not being a company, or to a foreign company, shall deduct income-tax thereon at the rates in force.

2) Nature of Payment

a) Any interest (not being interest referred to in section 194LB, 194LC and 194LD)

b) Any other sum chargeable under the provision of this Act (not being income chargeable under the head “Salaries”)

3) When to Deduct TDS under Section 195?

At the time of credit of such income to the account of payee or at the time of payment, whichever is earlier.

For this purpose credit to “Interest payable account” or “Suspense account” or any other name shall be deemed to be a credit of such income to the account of the payee.

For this purpose, “payment” can be in cash or by issue of a cheque or draft or by any other mode.

If interest is payable by the Government or a public sector bank or a public financial institution, then tax deduction shall be made only at the time of payment thereof in cash or by cheque or draft or any other mode.

Second Provisio to Section 195(1) exempting TDS on dividend referred to in Section 115-O has been deleted.[Finance Act 2020]

4) Threshold limit

No threshold limit. However, tax shall be deducted on sum chargeable to tax. Therefore, if no sum is chargeable to tax in India, then no tax is required to be deducted.

5) Other sums under Section 195

- **Applicability:** TDS to be deducted on **any sum chargeable under the provisions of Income Tax Act, 1961** not being income chargeable under the head 'Salaries'. (E.g. Payments such as interest, royalty, fees for technical services are liable for tax deduction u/s. 195 of the Act)
- **Payer:** Any person (both Resident and Non-resident)
- **Payee:** Non-residents / Foreign Company
- **Threshold limit:** NIL i.e. **No Threshold limit.**
- No TDS u/s. 195 on payment of Income chargeable under the head 'Salaries' or payments covered u/s. 194LB or 194LC or 194LD.
- TDS to be deducted at the time of **payment or credit, whichever is earlier.**

6) Income Deemed to Accrue or Arise In India

- As per the provisions of Section 5(2)(b) of the Act, the total income of a non-resident also includes all income which **accrues or arises** or is **deemed to accrue or arise in India** to the non-resident.
- **To check whether the income of the non-resident is deemed to accrue or arise in India–We have to refer Section 9.**
- If the income is deemed to accrue or arise in India, then the payer is liable to withhold taxes in India.
- **Following shall be deemed to accrue or arise in India:**
 - ✓ **Section 9(1)(ii)–** Income which falls under the head "Salaries" ,if it is earned in India, i.e. when the services are rendered in India [**Tax deductible u/s. 192**]
 - ✓ **Section 9(1)(iii)–** Salary payable by the Central Govt. to a **citizen of India** for services rendered outside India [**Tax deductible u/s. 192**]
 - ✓ **Section 9(1)(iv)–** Dividend paid by an Indian company outside India
- **SECTION 9(1)(v) –INTEREST**
Income by way of **interest** payable by a **Resident** shall be deemed to accrue or arise in India except if amount used for business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India

➤ **SECTION 9(1)(vi) –ROYALTY**

Income by way of **royalty** payable by a **Resident** shall be deemed to accrue or arise in India except where the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.

➤ **SECTION 9(1)(vii) –FEES FOR TECHNICAL SERVICES**

Income by way of **fees for technical services** payable by a **Resident**, except where the fees are payable in respect of services utilized in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.

➤ **SECTION 9(1)(viii) –SUM OF MONEY**

✓ Income arising outside India, being **any sum of money** referred to in Section 2(24)(xviii), paid on or after 5th July, 2019 by a resident to a non-resident / foreign company shall be deemed to accrue or arise in India.

✓ **Section 2(24)(xviii)** includes in Income-any sum of money covered u/s. **56(2)(x)** of the Act.

✓ However, Gift of any sum of money **from relative** shall not be liable for withholding tax obligation u/s. 195.

➤ **SECTION 9(1)(i) – Income other than Interest / Royalty FTS / Salaries / Dividend**

All income accruing or arising, whether directly or indirectly, through or from

✓ **Business connection in India**

✓ **Property in India**

✓ **Asset or source of income in India**

✓ **Transfer of a Capital asset situated in India**

➤ **EXPLANATION TO SECTION 9**

For the removal of doubts, it is hereby declared that for the purposes of this section, income of a **non-resident** shall be deemed to accrue or arise in India under **clause (v) [Interest]** or clause (vi) **[Royalty]** or clause (vii) **[Fees for technical services]** of sub-section (1) and shall be included in the total income of the non-resident, **whether or not:**

✓ **The non-resident has a residence or place of business or business connection in India; or**

✓ **The non-resident has rendered services in India.**

7) **WITHHOLDING TAX OBLIGATION u/s. 195**

➤ If the payment to non-resident or a foreign company is covered u/s. 9 of the Act and chargeable to tax, the provisions of Section 195 of the Act shall come into play.

➤ As per **Section 195 (1)**–Tax is required to be deducted at the time of payment or credit, whichever is earlier at the **rates in force**.

- Further, **TDS u/s. 195 is also required to be withheld at the time of making provision on accrual basis** the payee is identified and amount is ascertainable.
- **RATES IN FORCE –Section 2(37A)(iii)**
 - **Rate or Rates in force means**-The rates of income tax specified in the
 - ✓ **Finance Act of the relevant previous year**, or
 - ✓ **DTAA** (Double Taxation Avoidance Agreement)
 - **Section 90(2)**-The provisions of the Act or the DTAA, whichever is **more beneficial to the assessee** shall be applied.
 - **Surcharge and Education Cess** – Not required to be added separately if the rates mentioned in DTAA are applied.
- **RATES IN FORCE –Finance Act, 2020**
 - Some Important rates mentioned in the Finance Act, 2020 for the purpose of withholding tax u/s.195 are as under:
 - ✓ **Dividend**–20%
 - ✓ **Royalty**–10%
 - ✓ **Fees for technical services**–10%
 - ✓ **Interest** (other than 194LB / 194LC / 194LD) –20%
 - The above rates shall be increased by education cess @4% and applicable surcharge to corporate / non-corporate assessee. Rates mentioned in DTAA should be applied if they are more beneficial.

8) **PERMANENT ESTABLISHMENT**

- Any person who is responsible for paying any sum being royalty or fees for technical services to a non-resident / foreign company carrying on business through a **Permanent Establishment (PE)** in India shall deduct tax u/s. 195 of the Act at the rate of tax at applicable rates.
- **Thus, for payments to Foreign Companies having a PE in India:**
 - ✓ If amount exceeds Rs.1 Crore: 40% + 4% Cess + 2% Surcharge (42.432%)
 - ✓ If amount exceeds Rs.10 Crores: 40% + 4% Cess + 5% Surcharge (43.68%)

9) **LOWER / NIL DEDUCTION CERTIFICATE–Application By Payer u/s. 195(2)**

- Application to be made by the the **Payer**.
- **When?**–When the payer considers that the whole of such sum would not be income chargeable in the case of the recipient
- The Assessing Officer shall determine the appropriate proportion of such sum, on which tax is required to be deducted u/s. 195 of the Act.
- **Nil Deduction Certificate** can also be obtained u/s. 195(2) by the payer.

10) NIL DEDUCTION CERTIFICATE–Application By Payee u/s. 195(3)

- The recipient of income (Payee) can apply to the Assessing Officer for receiving payment without deduction of tax at source.
- For.E.g. In case of transfer of Capital Asset, if the payee wants to claim exemption u/s. 54 or 54F, he can apply to the Assessing Officer for receiving payment without deduction at source.

11) NIL / LOWER DEDUCTION CERTIFICATE u/s. 197 -FORM 13

- The recipient of income can apply to the Assessing Officer for Lower Deduction Certificate u/s. 197 of the Act.
- Application to be made in prescribed **Form No.13** electronically.
- Lower Rate to be determined keeping in view the estimated total income, total income of previous 3 years, taxes paid for the current year.
- Tax to be deducted by the payer at the rate mentioned in Lower Deduction Certificate issued by the AO .

12) FORM 15CA & FORM 15CB

❖ Introduction:

As per section 195 of the Income Tax Act, tax is required to be deducted for any sum which is taxable under the Income Tax Act. So when a person desires to make any payment or remit any money to non-resident, the bank will require to check whether the tax was paid or not. If not paid; it will be checked if it is certified by the Chartered accountant or the Assessing Officer. But there are at least 33 types of foreign remittance where assessee do not require any submission of Form 15CA or Form 15CB.

❖ Need of 15CA and 15CB:

Earlier, the person making a remittance to Non-Resident was required to furnish a certificate in specified format circulated by RBI. Basic purpose was to collect the taxes at a stage when the remittance is made as it may not be possible to collect the tax from the Non-Resident at a later stage. Thus to monitor and track the transactions in an efficient manner, it was proposed to introduce e-filling of information in the certificates. Section 195 of Income tax act, 1961 mandates the deduction of Income tax from payments made to Non Resident. The person making the remittance to non – resident needs to furnish an undertaking (in form 15CA) accompanied by a Chartered Accountants Certificate in Form 15CB.

❖ 15CA**1. What is Form 15CA?**

Form 15CA is a Declaration of Remitter and is considered as a tool for collecting information in lieu of payments which are chargeable for tax in the hands of recipient non-resident of India. This is starting of an effective Information Processing System which may be utilized by the Income tax Department to freely track the foreign remittances and their source to determine tax liability.

Financial Institutions are now more vigilant in seeking such Forms before remittance is effected since now as per revised Rule 37BB a duty is implied on them to furnish Form 15CA received from remitter to an income-tax authority for the uses of any proceedings under the Income-tax Act.

2. Parts of Form 15CA

- **Part A** – Section A of Form 15CA is filled in by the remitter when the payment or the total sum of the payment extended by the remitter to NRI recipient during a particular Financial Year is Rs. 5 Lakhs or less.
- **Part B** – Section B of Form 15CA is in the role when such payments are more than Rs. 5 Lakhs. Information is entered by the filer in Section B after acquiring a certificate from Assessing Officer (valid under section 197) or the order from Assessing Officer (valid under sub-section (2) or sub-section (3) of section 195).
- **Part C** – If such payments made during a particular FY exceed Rs. 5 Lakhs, the related information has to be entered in Section C of Form 15CA after acquiring the Tax Determination Certificate or Form 15CB from **authorized CA** (valid under sub-section (2) of section 288).
- **Part D** – Payments made by the remitter during a particular FY which is not referred to in sub-section 37BB or in other words **is not taxable** under law, the information related to such payments is to be entered in Section D of Form 15CA.

Note: Form 15CB is required to be filled only when the remittance exceeds Rs 5 Lakh in the said fiscal under the income tax act 1961.

Analysis:-

A person responsible for making a payment to a non-resident or to a foreign company has to provide the following details –

(i) When payment made is below Rs 5 lakh

For such payments information is required in Part A of Form 15CA

(ii) When payment made exceeds Rs 5 lakh

- Part B of Form 15CA has to be provided
- Certificate in Form 15CB from an authorized CA.
- Part C of Form 15CA

(iii) When the payment made is not chargeable to tax under IT Act

- Part D of Form 15CA
- In the following cases, no submission of information is required

- The remittance is made by an individual and it does not require prior approval of Reserve Bank of India [as per the provisions of section 5 of the Foreign Exchange Management Act, 1999 (42 of 1999) read with Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000]

There are at least 33 types of foreign remittances where you do not require any submission of Form 15CA or Form 15CB under rule 37BB:

Sl. No.	Nature of Payment
1	Indian investment abroad – in equity capital (shares)
2	Indian investment abroad – in debt securities
3	Indian investment abroad- in branches and wholly owned subsidiaries
4	Indian investment abroad – in subsidiaries and associates
5	Indian investment abroad – in real estate
6	Loans extended to Non-Residents
7	Advance payment against imports
8	Payment towards imports- settlement of invoice
9	Imports by diplomatic missions
10	Intermediary trade
11	Imports below Rs.5,00,000- (For use by ECD offices)
12	Payment- for operating expenses of Indian shipping companies operating abroad.
13	Operating expenses of Indian Airlines companies operating abroad
14	Booking of passages abroad -Airlines companies
15	Remittance towards business travel.
16	Travel under basic travel quota (BTQ)
17	Travel for pilgrimage
18	Travel for medical treatment
19	Travel for education (including fees, hostel expenses etc.)
20	Postal Services
21	Construction of projects abroad by Indian companies including import of goods at project site
22	Freight insurance – relating to import and export of goods
23	Payments for maintenance of offices abroad
24	Maintenance of Indian embassies abroad
25	Remittances by foreign embassies in India
26	Remittance by non-residents towards family maintenance and savings
27	Remittance towards personal gifts and donations
28	Remittance towards donations to religious and charitable institutions abroad
29	Remittance towards grants and donations to other Governments and

	charitable institutions established by the Governments.
30	Contributions or donations by the Government to international institutions
31	Remittance towards payment or refund of taxes.
32	Refunds or rebates or reduction in invoice value on account of exports
33	Payments by residents for international bidding.

❖ 15CB

1. What is Form 15CB?

Form 15CB liability can be ascertained and certified by obtaining the Certificate from a Chartered Accountant in Form no. 15CB. This certificate has been prescribed under Section 195(6) of the Income-tax Act and is an alternate channel of obtaining Tax clearance apart from Certificate from Assessing Officer.

