

(4) Furnishing information by the person responsible for making payment

The person responsible for paying to a non-resident or to a foreign company, any sum shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.

Such information has to be furnished whether or not any sum is chargeable under the provisions of this Act.

(5) Mandatory application to the assessing officer by the person responsible for making payment to non-resident or foreign company:

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 or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application *[in such form and manner to the Assessing Officer, as may be prescribed – [Amendment made by Finance Act (No.2), 2019 w.e.f. 01.11.2019]* for determination of appropriate proportion of sum so chargeable.

Thereafter, assessing officer shall determine the appropriate proportion of such sum so chargeable, ~~by general or special order~~ *in such manner as may be prescribed. – [Amendment made by Finance Act (No.2), 2019 w.e.f. 01.11.2019]*

Upon such determination, tax shall be deducted under this section only on that proportion of the sum which is so chargeable.

Objective behind amending section 195

Section 195(2) and section 195(7) are being used by a person making payment to non-resident to obtain certificate / order from the assessing officer for lower or nil withholding tax. However, the process is currently manual. In order to use technology to streamline the process and to monitor such payments, the amendments were made under section 195(2) and 195(7).

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Omega Ltd., an event management company, organized a concert of international artists in India. In this connection, it engaged the services of an overseas agent Mr. John from UK to bring artists to India. He contacted the artists and negotiated with them for performance in India in terms of the authority given by the company. He did not take part in event organized in India. The company made the payment of commission of Rs. one lac to the overseas agent. Discuss the liability of Omega Ltd. to deduct tax at source.

Solution

- Under section 195 of the Act, TDS shall be deducted while making payment to non-resident on sum chargeable to tax in India. If no sum is chargeable to tax in India, then there is no liability on payer to deduct tax at source.
- An overseas agent of an Indian company operates in his own country (and does not have PE in India) and no part of his income accrues or arises in India. His commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. The commission paid to the non-resident agent for services rendered outside India is, thus, not chargeable to tax in India.
- Therefore, in the present case, commission income earned by Mr. John (assuming that it is not received in India and Mr. John does not have PE in India) is not subject to tax in India, consequently, there is no liability for deduction of tax at source.

Reader's Note: