

TDS on payments to non-residents

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Contents

Provisions of Section 195(1) – Analysis

Options for Lower WHT

Grossing-up Provisions

Impact of Section 206AA

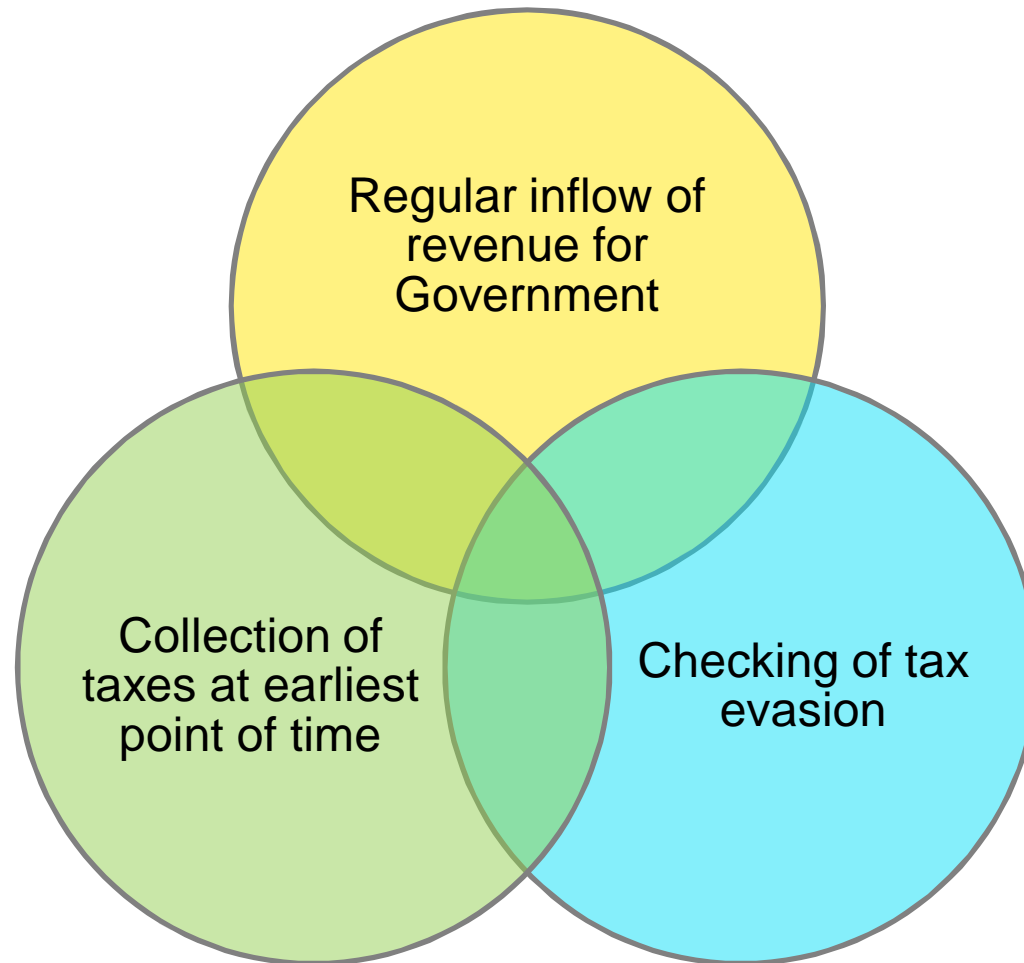
Remittance by CA Certificate Route

Refund of WHT

Consequence of Default

Provisions of Section 195(1) - Analysis

Objectives of section 195 of the I.T. Act



Section 195 – Overview applicability

Section	Provisions
195(1)	Scope and conditions for applicability
195(2)	Application by the 'Payer' for determining sum chargeable
195(3)	Application by the 'Payee' for lower or Nil withholding
195(4)	Validity of certificate issued by the AO u/s 195(3)
195(5)	CBDT empowered to make Rules in respect of sec 195(3)
195(6)	CBDT empowered to provide forms in which information to be furnished
195(7)*	CBDT empowered to specify class of persons or cases (where recipient is NR) who will be mandated to furnish application to AO for determination of withholding rate

** Introduced by Finance Act, 2012, no notification issued till date*

Section 195(1) – Scope and applicability

- Applicable on any sum (other than salary)
 - All types of payments covered unlike domestic WHT provisions wherein specific payments are covered
- payable by any person to a non-resident
 - Transactions between Resident to Non-Resident as well as between Non-Resident & Non-Resident also covered
- which is chargeable to tax in India
 - Provisions of the Act or DTAA, whichever is beneficial shall apply
- Deduction at the time of credit of payment, whichever is earlier
at rates in force

Payee covered ??

- Agent of non-resident in India
- Branch/PE of non-resident assessee
- Resident but not ordinary resident
- Foreign branch of Indian Bank
- Payee is non-resident as per DTAA but resident as per Act

Meaning of 'Any sums chargeable'

- Any sum chargeable to tax means
 - Amount paid which wholly bears the character of income or
 - Gross amount, the whole of which may or may not represent income or profits

Transmission Corporation of AP Ltd. (1999) (239 ITR 587) (SC)
Headstart Business Solutions (P) Ltd (2006) (285 ITR 530) (AAR)

- Section 195 does not apply if sums paid to NR is exempt from tax

Hyderabad Industries Limited (188 ITR 749) (Kar HC),
GE India Pvt Ltd (SC)

Meaning of 'Any sums chargeable'

- Scope of Total Income under section 5
 - Income received or deemed to be received in India
 - Kanchenjunga Sea Foods (325 ITR 540) (SC)
 - Income accruing or deemed to accrue in India
 - Explained in Section 9

 - Accrual - Whether it includes credit of amount to the account of foreign payee?
 - Toshoku Ltd. (125 ITR 525) (SC)
 - Kanchenjunga Sea Foods (325 ITR 540) (SC)
-

Determination of 'Any sums chargeable to tax'

Nature of Income	Act	Treaty/DTAA
Business/Profession	Section 9(1)(i): Concept of Business Connection	Article 5;7; 14: Concept of PE or Fixed Base
Salary Income	Section 9(1)(ii)	Article 15
Dividend Income	Section 9(1)(iv) and section 115A	Article 10
Interest Income	Section 9(1)(v) and section 115A	Article 11
Royalties	Section 9(1)(vi) and section 115A	Article 12
FTS	Section 9(1)(vii) and section 115A	Article 12
Capital Gains	Section 9(1)(i) and section 45	Article 13

Provision of Act or DTAA, whichever is beneficial shall apply

Time of Deduction & Payment Covered

- Tax shall be withheld at the time of credit or payment whichever is earlier
- Payment of Royalty under DTAA - tax deductible on payment?
 - Affirmed by - National Organic (96 TTJ 765) (Mum) (ITAT)
 - Contrary View - Flakt (India) Ltd (267 ITR 727) (AAR)
- Tax to be withheld even when no remittance on adjustment of dues
 - Raymond Ltd. – (86 ITD 791) (Mum) (ITAT)
- Tax withholding on ‘payments in kind’?
 - Yes (Kanchenjunga Sea Foods (325 ITR 540) (SC))
- Tax withholding in cases where RBI approval required
 - Adverse view in case of United Breweries Ltd – (211 ITR 256) (Kar) (HC)
 - Favorable view for dividend in case of Pfizer Corporation – (259 ITR 391) (Mum) (HC)

Time of Deduction & Payment Covered

- Adhoc provisions – Whether attracts WHT liability ?
 - Possible view WHT liability is attracted when service provider etc can claim payment of amount credited

- Payment of Advance:
 - If NR Payee follows accrual system- possible view- no chargeable income arises so as to attract WHT u/s 195
 - However contra observations in Flakt (I) Ltd., In re [AAR at 267 ITR 727]

- Interest on income tax refund
 - WHT applicable u/s 195
 - Dispute on whether such income covered under Article 12 - Interest income or Article 7 - business income
 - Held by Del ITAT in Pride Foramer 116 TTJ 369 covered under Article 12

Rates in force - Section 2(37A)(iii)

- Rates of income-tax specified in the Act or DTAA – Beneficial rates to be applied
 - Circular No 728, dated 30 October 1995

- Rates prescribed by DTAA generally inclusive of surcharge and education cess
 - Term “taxes” used in DTAA - “the income-tax including any surcharge thereon”
 - Education cess levied as additional surcharge
 - Supported by decision of Cochin ITAT in case of ITO v/s Far Hotels Ltd (2013) & CIT vs. Arthusa Offshore (Uttarakhand High Court)
 - Contrary ruling in case of Bank of America Vs. DCIT 73 TTJ 51 Mum ITAT

- Exchange Rate Applicable (Rule 26)
 - SBI buying TT rate

Overview of DTAA

- An agreement between the government of two countries to distribute tax on the income earned by any 'person' through cross-border activities.
- Who can access to DTAA ?
 - Residents of either country can avail the benefits of the DTAA.
 - TRC is a must to have access to the relevant DTAA

Furnishing TRC mandatory requirement

- Furnishing of Tax Residency Certificate ('TRC') containing the prescribed particulars was made mandatory by Finance Act 2012
 - 9 particulars prescribed by CBDT vide notification dated 17 September 2012

- Finance Act 2013 has made the following amendment (retrospectively for 01/04/2012):
 - Done away with the requirement of TRC should contain prescribed particulars
 - The assessee also provide such other documents and information as may be prescribed – Form 10F Notification 57/2013 issued recently

Furnishing TRC mandatory requirement

- Notification 57/2013 dated 1 August 2013 issued by CDBT, which mandates submission of following information in Form 10F:
 - Status (individual, company, etc) of the assessee
 - Nationality or country or specified territory of incorporation or registration
 - Assessee's tax identification number in the country or specified territory of residence and in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident;
 - Period for which the residential status, as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A, is applicable; and
 - Address of the assessee in the country or specified territory outside India, during the period for which the certificate, as mentioned in (iv) above, is applicable.
 - Declaration not required, if TRC contains above particulars
-

Imp checks before applying DTAA Provisions

Basic:

Entry into force & termination, Access to Tax Treaty, TRC, Declaration for no PE, beneficial owner & payment basis (for few incomes)

Additional:

LOB Clause; MFN Clause; Protocols and Memorandum of Understanding

Guidance:

Technical Explanation to DTAA by treaty partners(eg USA to India-US DTAA) ; Jurisprudence/Case Laws(including foreign courts); OECD Commentary and UN Model Convention Commentary; etc

Few Common issues/concepts

- Tax withholding on 'inter-adjustment of dues'?
 - Yes {J.B.Boda vs CBDT [1996] 223 ITR 271) (SC)}
- Tax withholding on year-end provisions?
 - In cases where it is possible to suggest that the right to receive amount has not crystallized in favour of an identified person, there is no obligation to deduct tax at source. The obligation will need to be discharged as soon as the right is crystallized
- **Practical considerations** – where a doubt arises as regards the applicability of Section 195 provisions to a particular payment, advisable to obtain clarity by
 - Obtaining a lower or Nil withholding order from the AO
 - Obtaining an advance ruling from the Authority for Advance rulings (would need to be evaluated having regard to the facts of each case)

Few Common issues/concepts

- Payer can make an application to the AO for determining portion of income liable for tax withholding
 - Review restricted to payment to be made by the payer, total income of the payee not under scrutiny
- Whether an application can be made u/s 195(2) for Nil withholding order?
 - Yes- {Mangalore Refinery and Petrochemicals Ltd (113 ITD 85) (Mum ITAT)}
 - No – {Czechoslovak Ocean [1971] 81 ITR 162 (Cal HC)}; {Graphite Vicarb India Ltd. Vs ITO [1986] 18 ITD 58 (Kolkata ITAT)}; {BIOCON Biopharmaceuticals Private Ltd. v. ITO [2013] TS-347-ITAT-2013-Bang (Bang)}
 - **Practically, application u/s 195(2) is filed for both nil as well as lower withholding tax rate order**
- Whether the order passed u/s 195(2) is conclusive and can tax authorities take a contrary view in the assessment proceedings of the payee?
 - Order u/s 195(2) not conclusive. Department may take a contrary view {CIT vs. Elbee Services Pvt. Ltd. 247 ITR 109 (Bom)}

Few Common issues/concepts

- Whether order passed u/s 195(2) challengeable before higher authorities?
 - Appeal can be filed before the Commissioner of Income (Appeals) ['CIT(A)'] under Section 248 where tax is to be borne by the payer and such taxes have been deposited
 - Revision application before the Commissioner of Income tax ('CIT') u/s 264
 - Writ petition before the jurisdictional High Court
- Whether any time limit for passing order u/s 195(2)?
 - No time limit {Blackwood Hodge (India) Pvt. Ltd. 81 ITR 807 (Cal)}; {Central Associated Pigment Ltd. 80 ITR 631 (Cal)}

Few Common issues/concepts

- **Lease Line Charges, Mobile, Telephone, etc**
 - Insertion of Explanation 6 to section 9(1)(vi) with retrospective effect via Finance Act 2012.
 - Definition of Royalty widened to include transmission by
 - Satellite;
 - Cable, optic fiber;
 - any other similar technology
 - *whether or not such process is secret*
 - Payment for all types of connectivity charges such as transmission by satellite, cable or optic fibre could be subjected to withholding of tax

Amendment cannot over-ride DTAA
B4U International Holdings Ltd. (148 TTJ 237) (Mum ITAT)

Few Common issues/concepts

- **Commission paid to foreign agents**
- **Professional fees paid to foreign lawyers/accountants**
- **Interest payment on borrowings**

Few Common issues/concepts

➤ Copyright v/s Copyrighted Articles

- Controversy on taxation of software embedded in hardware or shrink wrapped software being copyright or copyrighted article
- FA 2012 w.r.e.f. 1 June 1976 amended the royalty definition to include:
 - Right to use computer software including the granting of a license, irrespective of the medium through which such right is transferred
 - Location, possession or control of right, property or information with the payer no more relevant for taxing royalty
- Definition of “royalty” under tax treaties has not been specifically amended to include computer software, therefore, the meaning of “royalty” under the treaty is still open to the judicial interpretation:
 - Ruling in favour of revenue – PSI Data System, Reliance Communication Ltd., Samsung Electronics Ltd. (Kar), Infrasoftware (Del)
 - Ruling in favour of assessee – Nokia Networks

Few Common issues/concepts

➤ **Concept of Make Available**

- Provided in Fees for Technical Services Clause for few tax treaties of India like US, UK, Singapore, Australia, Canada, etc
- “Make Available” significantly narrows down the scope of FIS/FTS
- Person acquiring the service is enabled to apply the technology embedded in the services provided to him independent of the service provider
- Mere requirement of technical input by a person providing services does not necessarily mean that technical knowledge is “made available”

Few Common issues/concepts

- **Reimbursement of Cost v cost plus model**
 - Reimbursement of cost defrayed on behalf of service availer is not consideration for service
 - Contrast: Consideration for services calculated based on cost (+) model
 - Bangalore ITAT in Bovis Lend Lease devised a six point test for reimbursement. All six conditions to be cumulatively satisfied:
 - Actual liability to pay of person who is reimbursing
 - Liability should be clearly determinable
 - Liability should have crystallized
 - Clear ascertainable relationship between the paying and reimbursing parties
 - The payment is first made by person who is not liable ; subsequently, repayment to that person to square off the account
 - There should be clearly three parties existing—the payer, the payee and the reimbursing party
 - Litmus test:
 - Payee has resort to payer
 - Payer triggers consequences of default

Options for Lower WHT

Section 195(2) – Application by the ‘Payer’ for determining sum chargeable

- Application by whom: Payer
- When: Payer considers that the whole of sum payable to NR would not be income chargeable in the case of the recipient
- Process: Payer **may** make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable;
- Upon determination: Tax shall be withheld only on that proportion of the sum which is so chargeable.

Section 195(2) – Application by the ‘Payer’ for determining sum chargeable

- May - Is it obligatory to approach AO for non-withholding of taxes?
 - Once sum is ascertained to be even partially chargeable to tax in India, tax is required to be withheld at full rates, unless an order u/s 195(2) or a certificate u/s 197 obtained - GE India Technology Centre (P) Ltd. vs CIT (327 ITR 456) (SC)
- Appeal against order u/s 195(2)?
 - In case tax borne by the payee – Taxpayer may, after payment of the taxes, file an appeal before CIT Appeals (Section 248)
- Revision of order u/s 263/ 264?
 - Yes. Board of Control for Cricket in India (278 ITR 83) (Mum ITAT)
- Whether an application can be made u/s 195(2) for Nil withholding order?
 - No – Czechoslovak Ocean (81 ITR 162) (Cal HC); Graphite Vicarb India Ltd. (18 ITD 58) (Kolkata ITAT)

Section 195(2) – Application by the ‘Payer’ for determining sum chargeable

- Payee can make an application in prescribed form (Form 15C and 15D) to the AO for non withholding of tax at source
 - Review restricted to the specified receipt, total income of the payee not under scrutiny
 - Payee to satisfy the conditions prescribed under Rule 29B before making any application
- Validity of certificate issued u/s 195(3)
 - Valid till expiry of period mentioned therein unless cancelled [Section 195(4)]
- CBDT empowered to notify rules in connection with Section 195(3) - circumstances for making an application, condition for grant of certificate and any other related matters [Section 195(5)]
- Order passed under Section 195(3) challengeable before higher authorities?
 - Revision application before the CIT u/s 264
 - Writ petition before the jurisdictional High Court

Section 195(3) - Application by the payee for nil WHT Certificate

- Payee can make an application in prescribed form (Form 15C and 15D) to the AO for nil WHT certificate
- Subject to stringent conditions prescribed under Rule 29B:
 - Assessee has been regularly assessed to tax and has filed all returns of income due as on the date of filing of application;
 - Not in default in respect of any tax interest, penalty, fine, or any other sum;
 - Not subjected to penalty u/s 271(1)(iii) of the Act;
 - Carrying on business in India continuously for at least five years and the value of the fixed assets in India exceeds Rs 50 lakhs
- Whether appeal or revision by CIT against certificate issued by AO possible ?

Section 195(4) – Validity of certificate issued by AO

- A certificate granted u/s 195(3) shall remain in force:
 - for the FY mentioned therein, or
 - until cancelled by the AO before expiry of FY

- Filing of subsequent application?
 - After the expiry of the period of validity of the earlier certificate, or within three months before the expiry thereof

Section 197 – Application by lower or nil certificate by payee

- Application by whom: Payee
- When : If payee considers that tax withholding can be at 'nil' or 'lower rate'.
- Process : Application can be made to the AO in Form 13 to determine the tax rate. Application to be made before the payment/ credit, whichever is earlier
- Upon determination : Tax shall be withheld only at the rate provided in the certificate issued by the A.O.

Section 197 – Application by lower or nil certificate by payee

- A.O shall issue a 'Lower' or 'NIL' withholding certificate upon satisfaction of the fact that existing and estimated tax liability of a person justifies the deduction of tax at Nil or Lower Rate.
- In determining the existing and estimated liability, the A.O shall consider the tax payable on the estimated income of the current year , tax payable in the last 3 years, existing liability, advance tax payments of current year, WHT & TCS in the current year.
- The certificate shall be valid for such period as mentioned in it, unless cancelled by the A.O.
- Whether appeal or revision by CIT against certificate issued by AO possible ?

Comparative analysis of 195(2), 195(3) and 197

Particulars	195(2)	195(3)	197(1)
Applicant	Payer	Payee (who satisfies conditions specified in Rule 29B – refer slide 4)	Payee
Purpose	To determine the portion of income liable for tax withholding	To receive a specified payment without deduction of tax at source	To obtain nil/ lower tax withholding rate for all receipts
Applicability	Applicable to specified payments	Applicable to specified receipts	Applicable to all receipts
Whether appealable under Section 248?	Yes – where the tax is deposited by the payer	No	No
Whether revisable under Section 264	Yes	Yes	Yes
Whether Writ can be filed before High Court	Yes	Yes	Yes

Grossing-up Provisions

Section 195A - Grossing-up of taxes

- In case the tax chargeable on any income is to be borne by the payer,
- then, for the purposes of withholding of taxes under section 195 such income shall be increased
- to such amount as would, after withholding of tax thereon at the rates in force, be equal to the net amount payable to payee.

Particulars	Amount
Amount payable to non-resident (net of tax)	INR100
Tax rate applicable	20%
Gross-up income: $100/80(100-20) * 100$	INR 125
Tax payable (INR 125 * 20%)	INR 25
Net amount paid to non-resident (INR 125 – INR 25)	INR 100

Impact of Section 206AA

Section 206AA : Rate of WHT when PAN of deductee is not available?

- Provision with non-obstante clause
- Section 206AA is attracted when the payee -
 - Does not have a PAN, or
 - Discloses incorrect PAN to the payer
- Section 206AA provides for Deduction of Tax at a rate higher of the following-
 - Rate prescribed in the relevant provision of the Act,
 - Rate or Rates in force,
 - 20%

Whether 206AA applicable in DTAA scenario ?

Impact of 25% tax rate amendment on above ?

Whether 206AA applicable when tax is grossed up u/s 195A?

Section 206AA v/s Tax Treaty

View 1: section 206AA overrides the Treaty provisions :

- 206AA starts with a non-obstante clause
- Allotment of PAN serves the primary purpose of providing elementary satisfaction to the country of source as to treaty residency of NR.
- Assessee can file return and claim refund later on. The system is, in no way, unfair.
- CBDT vide press release had clarified in case of QFI that they need to obtain PAN to claim lower rate under the Tax Treaty

View 2: section 206AA does not overrides the Treaty provisions :

- The avowed object behind insertion of Section 206AA as stated in the Explanatory Memorandum is that 'non quoting of PANs by deductees is creating problems in the processing of returns of income and in granting credit for tax deducted at source leading to delays in issue of refunds'. The object behind insertion nowhere talks of facilitating verification of treaty residency.
- The tax treaty is self contained code and is a mini legislation as accepted by Supreme Court in the case of UOI v Azadi Bachao Andolan (263 ITR 706).

Impact of 25% tax rate on section 206AA

View 1: 25% rate will apply:

- Rate to be applied as per section 206AA is higher of following :
- Rate prescribed under the section 115A of the Act is 25% (first limb of 206AA)
- 25% or 10 % (say the DTAA rate) i.e. 10 %or
- 20%

View 2: 20% will apply:

- Rate prescribed under the Act for withholding has been determined as per DTAA (considering provisions per section 90 of the Act) say 10%;
- 20%

Section 195A read with section 206AA of the Act

View-1: Section 206AA not applicable for grossing up under Section 195A of the Act

- Section 206AA of the Act were introduced with the object of improving compliance and not to impose any punitive tax incidence on the payee.
- Section 206AA starts with non-obstante clause.

View 2: Section 206AA applicable for grossing up under Section 195A of the Act:

- Section 206AA does not by itself create any withholding obligation.
- Section 206AA supplements the primary withholding section in case of default in PAN.
- Thus, the rate of 20% as provided in section 206AA would be substituted for the rate provided under the respective provisions which creates the withholding tax obligation.

View 1 upheld by Bangalore ITAT in case of Bosch Ltd

Section 94A – Transactions with person located in notified jurisdictional area.

- Cyprus is notified under this section on 1st November, 2013.
- If an assessee enters into a transaction with a person in Cyprus, then all the parties to the transaction shall be treated as associated enterprises and the transaction shall be treated as an international transaction resulting in application of transfer-pricing regulations including maintenance of documentations [Section 94A(2)].
- No deduction in respect of any payment made to any financial institution in Cyprus shall be allowed unless the assessee furnishes an authorization allowing for seeking relevant information from the said financial institution [Section 94A(3)(a) read with Rule 21AC and Form 10FC].
- No deduction in respect of any other expenditure or allowance arising from the transaction with a person located in Cyprus shall be allowed unless the assessee maintains and furnishes the prescribed information [Section 94A(3)(b) read with Rule 21AC].
- If any sum is received from a person located in Cyprus, then the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner, and in case of his failure to do so, the amount shall be deemed to be the income of the assessee [Section 94A(4)].
- Any payment made to a person located in Cyprus shall be liable for withholding tax at 30 per cent or a rate prescribed in Act, whichever is higher [Section 94A(5)].

Remittance by CA Certificate Route

Section 195(6) – CA Certificate for remittance

- Provision introduced by Finance Act, 2008 (earlier certificate required to be issued in view of FEMA provisions)
- Rule 37BB introduced by CBDT Notification 30/2009 dated 25 March 2009 - substituted w.e.f. 1st October, 2013.
 - Introduced Forms 15CA and 15CB for intimating payments to non-residents and manner in which it would need to be disclosed
 - Form 15CA - Prescribes the information to be furnished by the Remitter
 - Form 15CB - Prescribes the format of the Certificate to be obtained from a CA by the Remitter

Applicability in cases where tax is not required to be withheld u/s 195(1)?

Section 195(6) – CA Certificate for remittance

- New Procedure introduced from 1 October 2013
- No change in electronic filing process by assessee:
 - Form 15CA to be filed electronically
 - Form 15CA divided into two parts viz. Part A & B;
- Part A: Applicable to following remittances chargeable to tax :
 - Small payments by Remitter not exceeding INR 50,000 and aggregate of such payments during the tax year not exceeding INR 250,000;
 - New undertaking by payer to pay taxes eventually if found transaction liable to WHT
 - 28 transactions mainly on capital account are exempted from furnishing of certificate.
- Part B: Any other payments chargeable to tax
 - Based on CA Certificate in Form 15CB or order u/s 195(2) or certificate u/s 195(3) or 197

Section 195(6) – CA Certificate for remittance

- Documentation by CA while issuing Form 15CB
 - Agreement and Invoices;
 - Tax Residency Certificate of the payee
 - **Declaration/Certificate from payee** for – no PE, tax residency, beneficial owner, treaty entitlement, etc and/or indemnification from payee
 - Payment details
 - Correspondences
 - Technical Advice, if any
 - Proof of services being rendered and pricing in case of Group Company transactions

Approach for applying provisions of section 195

Sr . No.	Step	Remark
1	Check if payment is covered by section 195	Payment from Resident to Non – Resident Non – Resident to Non – Resident covered
2	Verify the factual and basic documents	Like invoice, contract, Legal status of payee, Tax Residency (TRC), No PE Declaration, PAN, etc
2	Make Classification of transaction	Business income, FTS, Royalty, etc
3	Check taxability under the Act	Check taxability as well as rate of tax including applicability of section 195A or 206AA
4	Check taxability as per DTAA	Ensure special checks discussed in earlier slide
5	Check if order or certificate for 'NIL' or 'Lower' rate available	Either by payer or payee (also possibility of obtaining same can be explored)

Illustration – Applicability of Section 195(6)

Applicability in cases where tax is not required to be withheld u/s 195(1)?

S. No.	Scenarios		Provisions u/s 195(6)
	Remittance taxable in India	Payment from India	
1	✓	✓	Applicable
2	✓	✗	Applicable
3	✗	✓	Not applicable (But practically insisted upon by Banks)
4	✗	✗	Not applicable

Refund of WHT

Refund of Tax Withheld u/s 195

- Payer is entitled to claim refund in prescribed cases (Circular No. 7/ 2007 dt. 23-10-2007):
 - Contract is cancelled and no remittance is made to the non-resident;
 - Remittance is made to the non-resident but the contract is cancelled and remittance is received back;
 - Contract is cancelled after partial execution;
 - Retrospective amendment in law/ exemption by way of notification making the sum remitted exempt from tax
 - Order u/s 154/ 248/ 264 reducing WHT liability of deductor
 - Tax deducted twice on the same income by mistake
 - Grossing up done when not required to do so;
 - WHT at higher rate as per domestic tax law when lower rate prescribed under DTAA

Refund of Tax Withheld u/s 195

- Undertaking to be given by deductor
 - No TDS certificate has been issued;
 - If TDS Certificate is issued –
 - It is obtained back by the applicant, or
 - Applicant must indemnify the department from any possible loss arising out of any delicacy of refund claim.

- Refund should be granted only if the deductee has not filed return of income and the time for filing of return of income has expired.
- Prior Approval of CCIT or DGIT required;
- No interest payable under section 244A;
- Adjustment of refund against existing liability by AO possible after intimating assessee;
- Refund claim must be made within 2 years from the end of F.Y in which the tax has been deducted

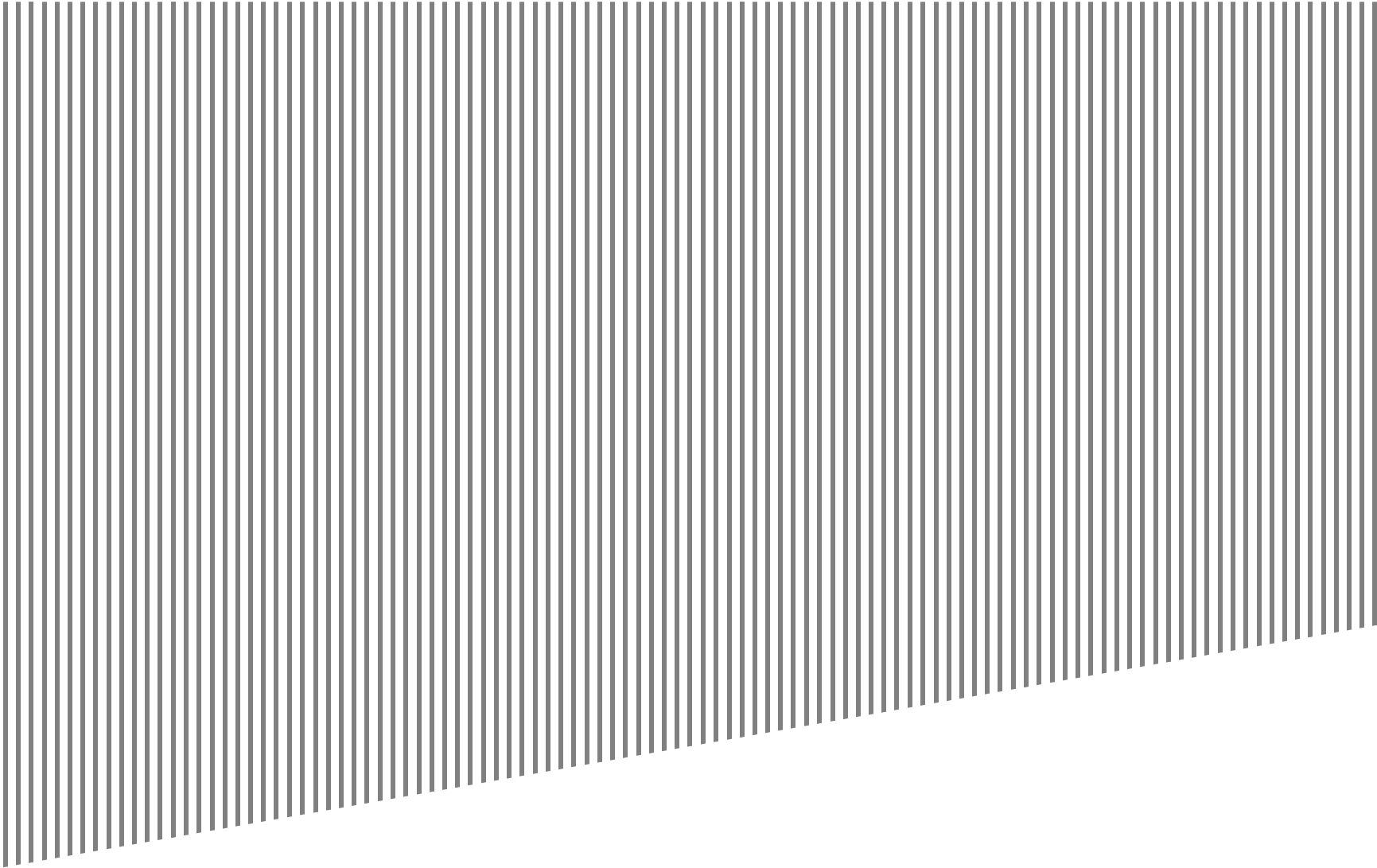
Consequence of Default

Consequences of Non-Compliance

- Disallowance of payments u/s. 40(a)(i)
 - Tax deductible but not deducted or after deduction not paid within prescribed time
 - Allowable in the year of payment
- Disallowance of interest and salary payable outside India u/s. 58(1)(a)(ii) and 58(1)(a)(iii)
- Levy of interest u/s. 201(1A) - simple interest
 - Failure to deduct tax - @ 1%
 - Failure to pay tax to the government after deduction – @ 1.5%
- Levy of penalty
 - U/s. 221 - Failure to pay tax
 - U/s. 271C - Failure to deduct tax
- Invoking of prosecution u/s. 276B

Non compliance results in severe consequences

Recent key developments



Recent key developments

➤ **CBDT Instruction no 2 of 2014**

- In light of certain judicial developments in India, the CBDT has directed the Tax Authority to determine the appropriate portion of payments which is chargeable to tax in India and has issued the circular, which provides that a payer can be treated as a defaulter for not withholding tax only in respect of such portion of the payment which is chargeable to tax in India under the Act
- CBDT may specify person or class of persons or cases where payer (whether recipient is non-resident) would be mandatorily required to furnish application to AO for determination of withholding rate
 - Notification specifying such class of persons or cases not yet issued by CBDT

Thank You