

***TDS provisions for  
payment to nonresident  
under Section 195 of the  
Income-tax Act***

***Seminar on issues in TDS  
ICAI, Mumbai***

***CA Shailendra S. Sharma  
23 January 2016***

# Agenda



**Brief overview of TDS provisions**

**Concept of withholding tax (WHT) provisions for nonresident**

**Lifecycle of the WHT provisions under Section 195**

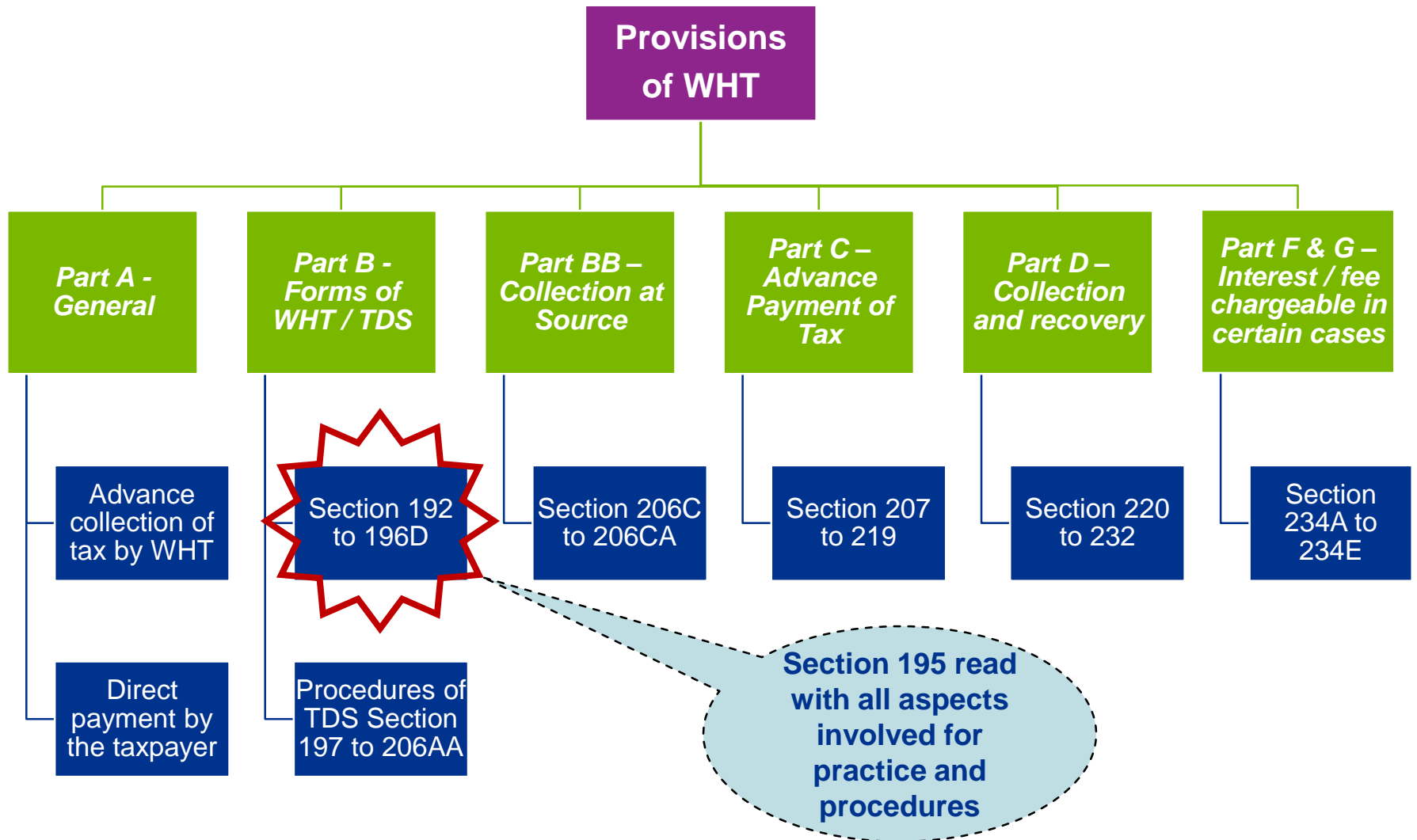
**Operational rules**

**Case study**

**Key takeaways**

**Questions**

# Overview of TDS provisions - Chapter XVII, Collection & Recovery of Tax Deduction at Source



# Concept of WHT provisions for nonresident

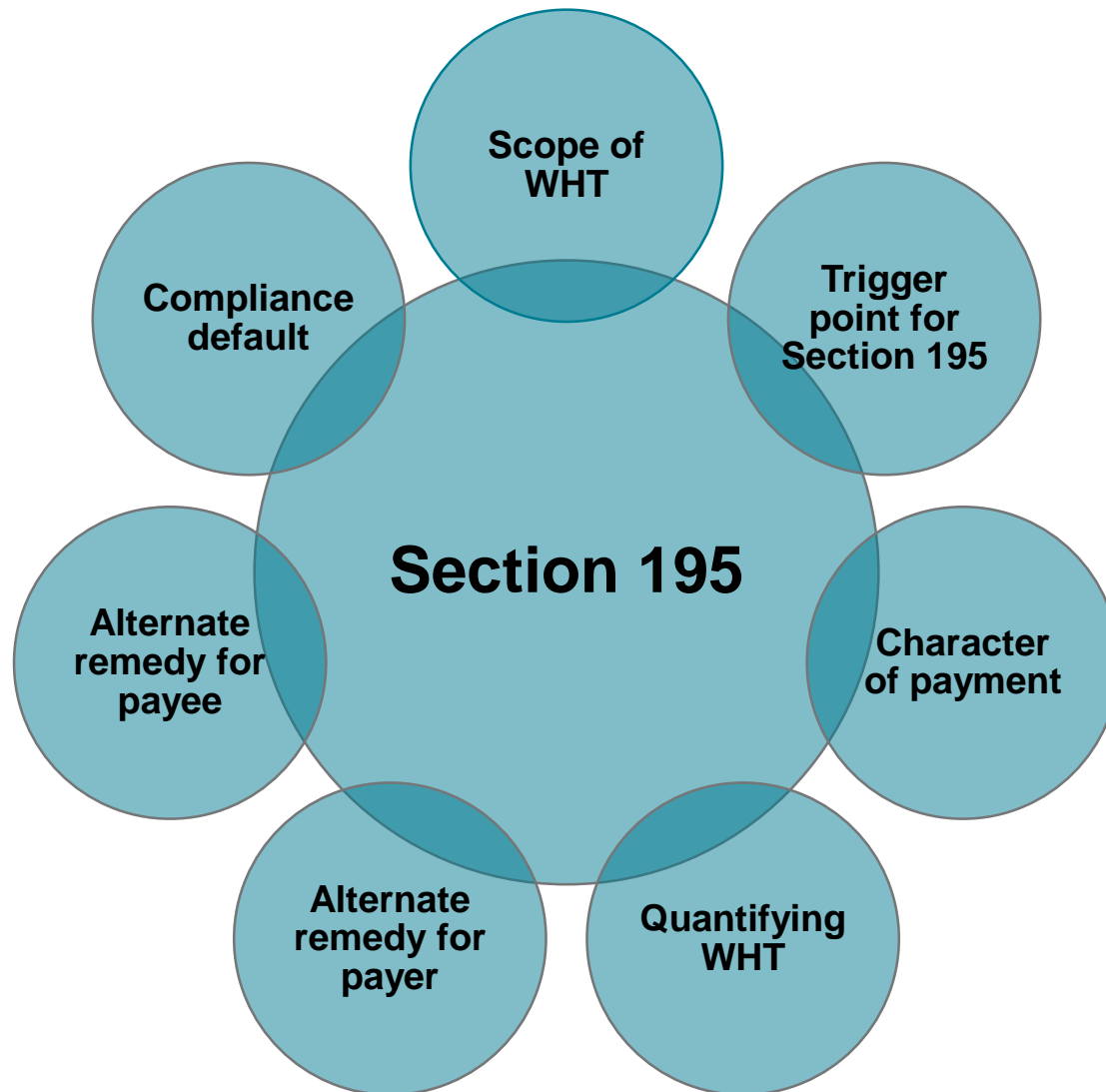
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itself**

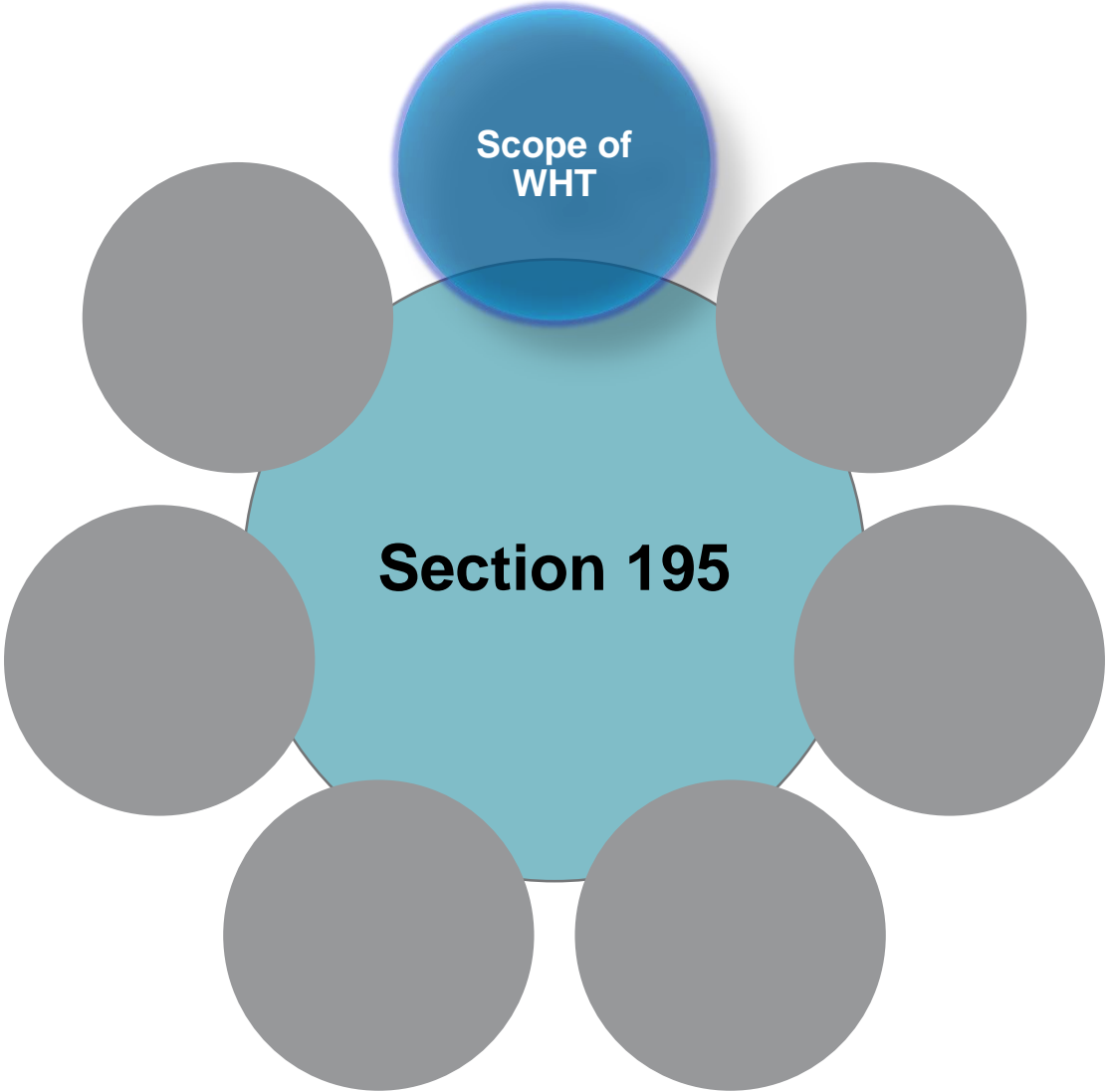
**Compliance procedures**

**Determination and analysis**

**Applicability of the provisions**

# Lifecycle of the WHT provisions under Section 195





## Scope of WHT (1/2)

### Operative provision of Section 195 of the Income-tax Act, 1961 (IT Act)

“Other sums.

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...**”

### Other clauses of Section 195

Clauses	Other provisions applicable for Section 195 of IT Act
195(2)	Application by “Payer” to Tax Authorities (AO) to determine appropriate proportion of income chargeable to tax
195(3)	
195(4)	
195(5)	Powers of CBDT to issue Notifications
195(6)	Furnishing of information relating to payments
195(7)	Authority of board to specify class of person or cases to make application under Section 195(2)
195A	Income payable “net of tax” Grossing-up

## Scope of WHT (2/2)

### Responsibility of WHT



#### Payers covered

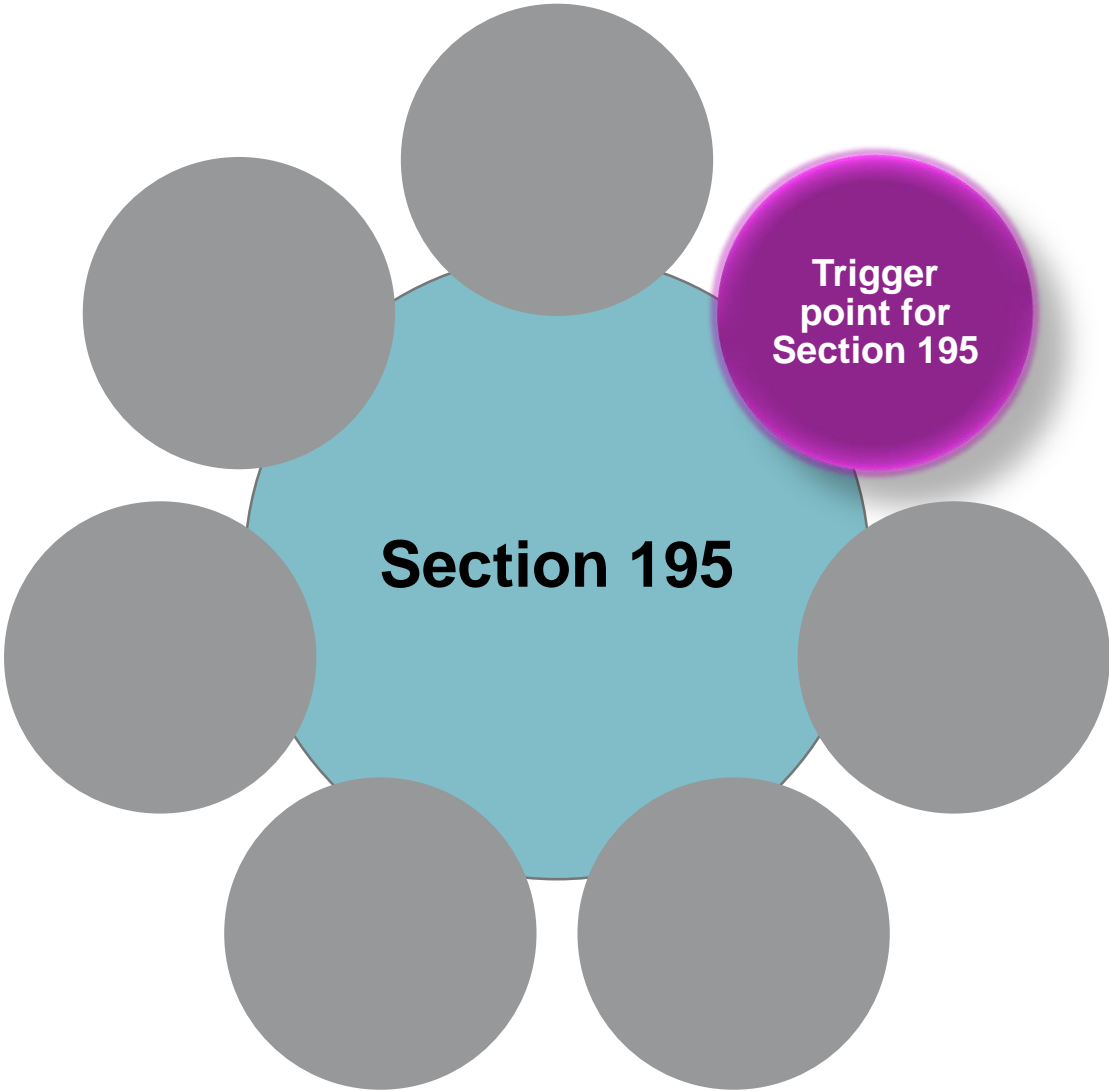
- “Any person” covered irrespective of their status - Includes person under Section 2(31) responsible for paying (including individuals and HUF)
- Payer itself in case of company, and the company includes principle officer
- It also includes all nonresidents having taxable presence in India or not – *Explanation 2 to Section 195; Circular No. 726 dated 18 October 1995*

#### Payees covered

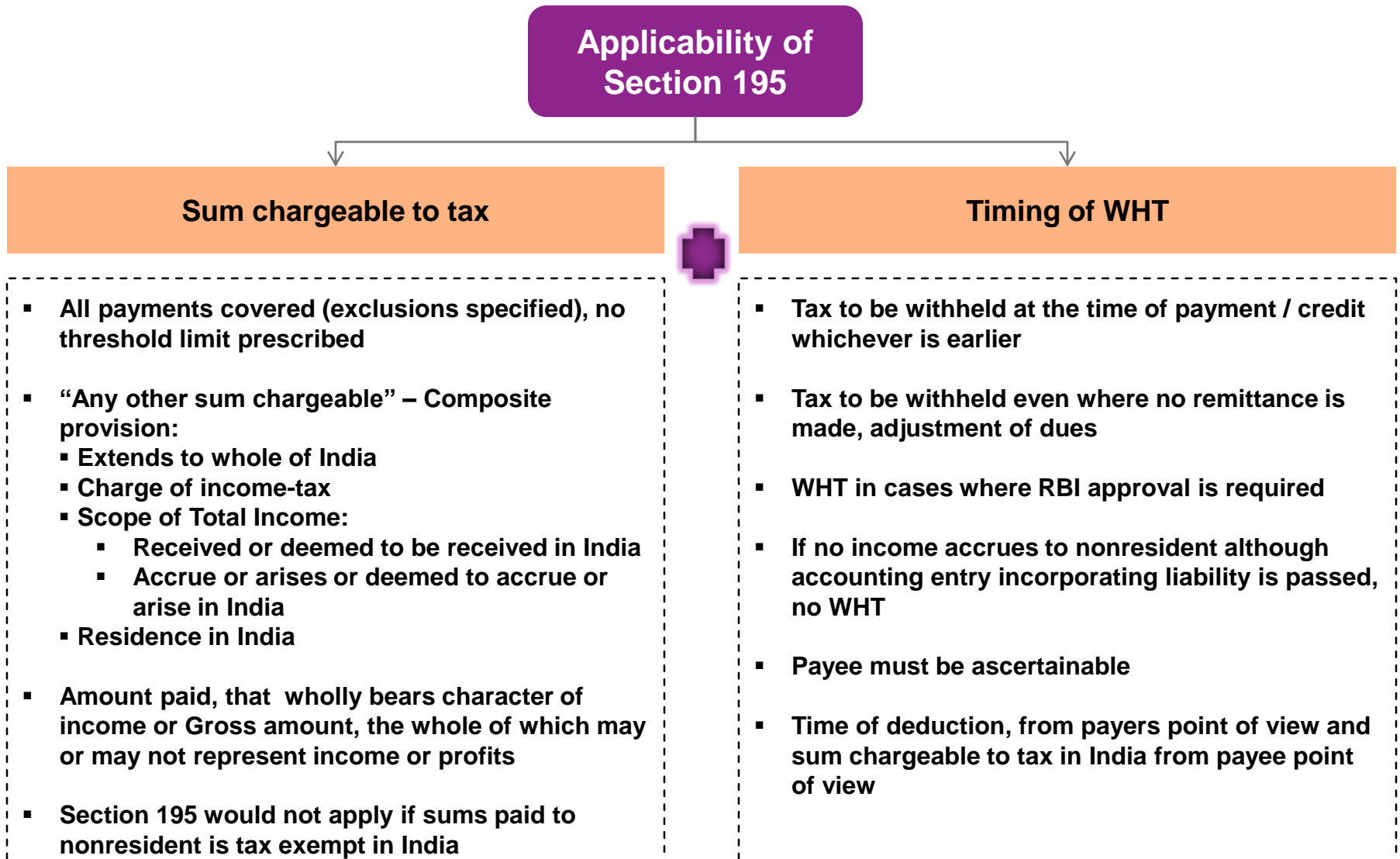
- Agent of a nonresident in India?
- Resident but not ordinary resident RNOR?
- Payment made to a foreign branch of an Indian Company?

**Virtually includes EVERYONE**





# Trigger point for Section 195 (1/3)



## Trigger point for Section 195 (2/3)

### Sum chargeable to tax..brief insight

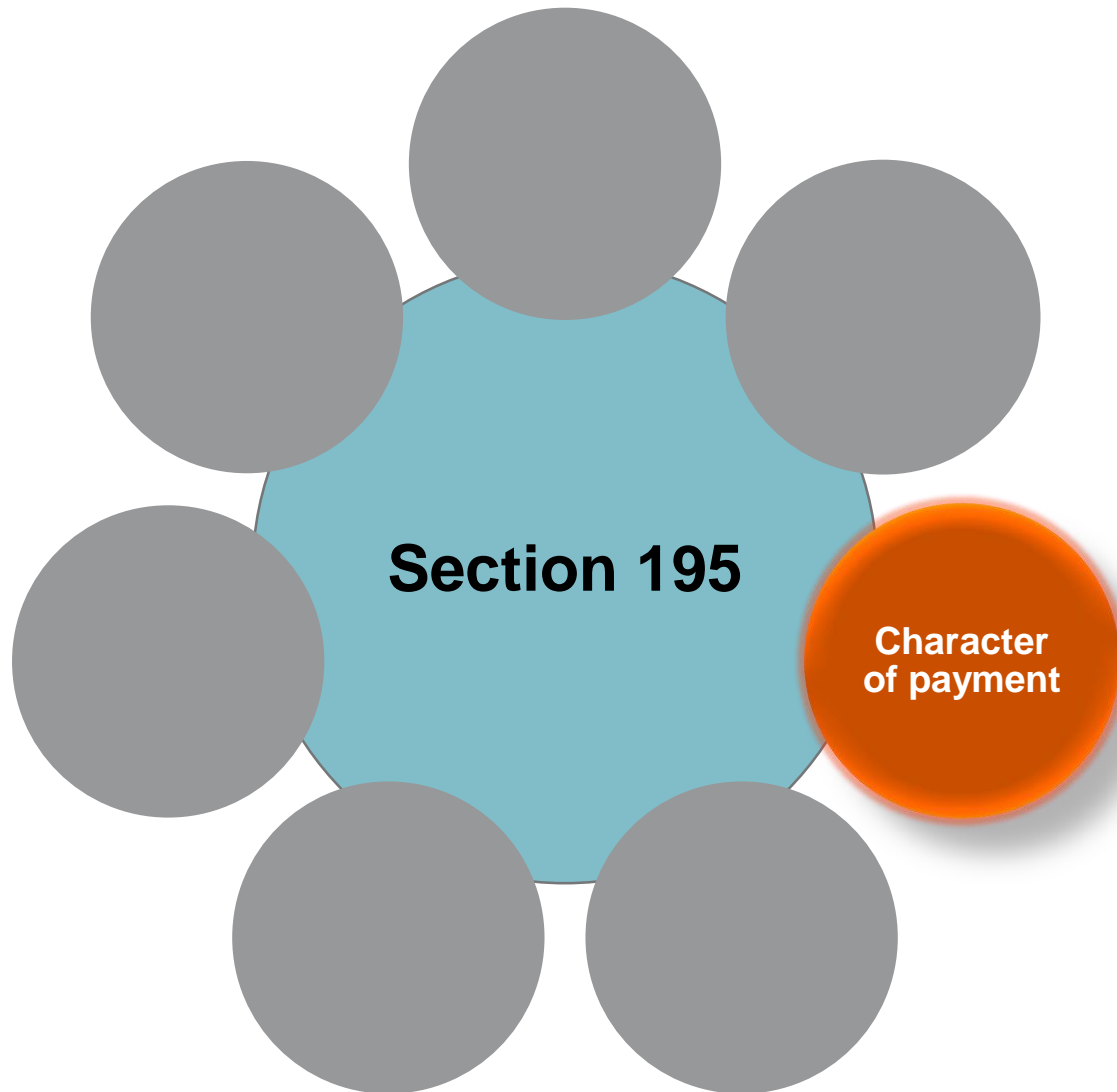
- Where, payment made by resident to non-resident, was an amount not chargeable to tax in India, no tax is deductible at source
- Assessee liable to deduct TDS under Section 195 on payment made to non-resident even though payment is not made in cash but made in kind
- Payer obligated to WHT, even if the receipt is not taxable in the hands of the payee in the country of residence
- Sums not liable to tax in India on satisfaction of conditions, the principles are enunciated under *Circular 23/1969 and 786/2000* (now withdrawn) like (P to P, nonresident operates outside India, contract signed outside India, title of goods passed outside India, payment is directly remitted abroad, etc.).  
Payments to:
  - Agency commission payable to foreign agents;
  - Off-shore supply of goods and equipments; and
  - Consideration paid for outright purchase of designs and drawings is not royalty
- No significant impact of withdrawal of the Circulars
- Does amount paid as penalty to the regulators chargeable to tax under Section 195?

## Trigger point for Section 195 (3/3)

### Specific exclusions for WHT



Sections	Particulars
115-O	Tax on distributed profits of domestic companies
192	Income from Salaries
194LB	Income by way of interest from infrastructure debt fund
194LC	Income by way of interest from Indian company
194LD	Income by way of interest on certain bonds and Government securities
<b>Other specific sections</b>	
196A	Income in respect of units of NR
196B	Income from units
196C	Income from FCCBs or GDRs of Indian companies
196D	Income from FIIs now FPI except Capital Gains

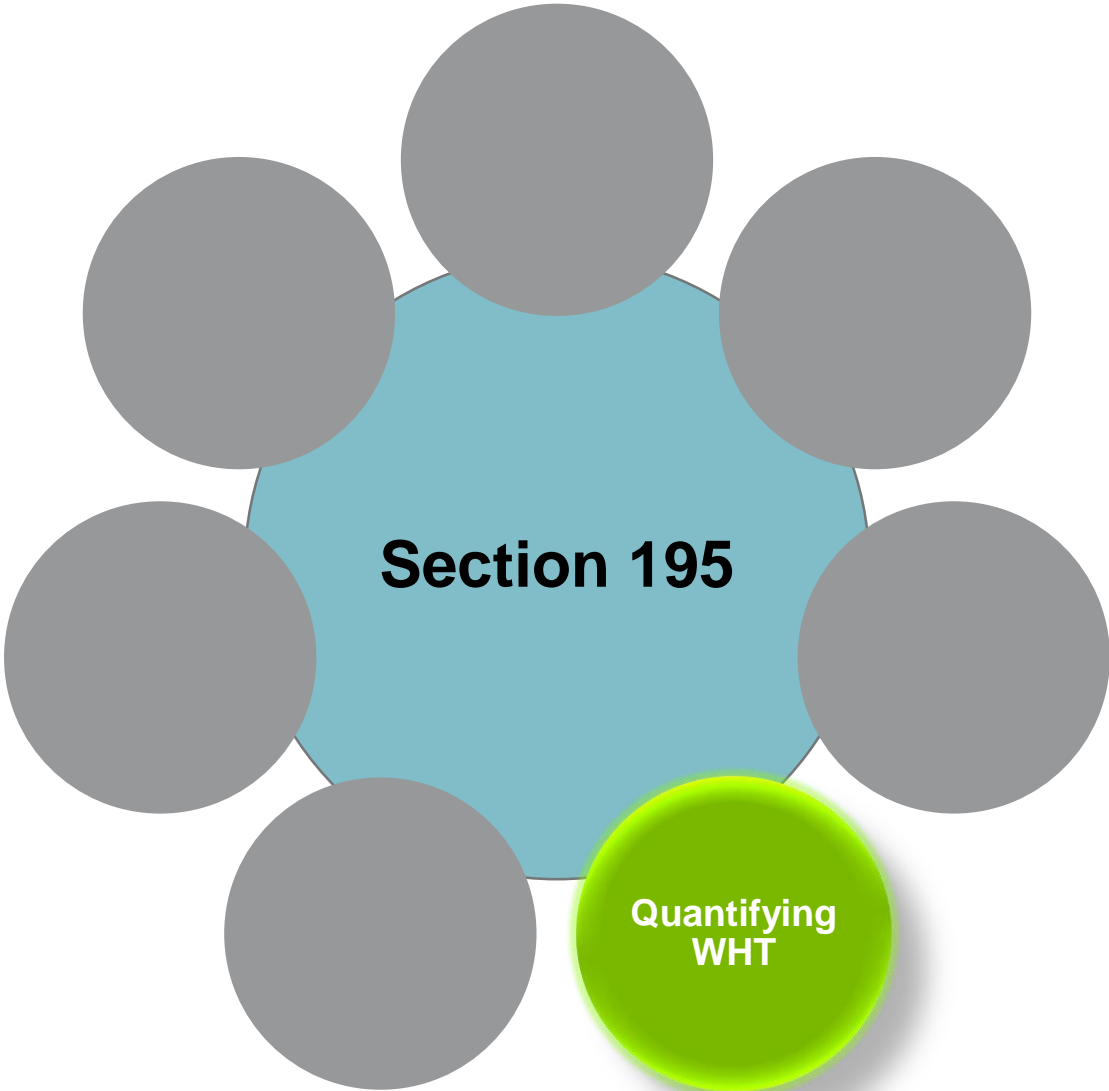


# Character of payment

## Determining the nature of payment

Nature of Income (payee perspective)	Basis of tax	Income chargeable under	
		IT Act	Tax Treaty
<b>Business / Profession income</b>	Taxable if Business Connection in India or property or asset or source of income in India or transfer of a capital asset situate in India	Section 9(1)(i)	Article 5, 7 and 14
<b>Capital Gain</b>	Taxable if situs of shares/ property is in India	Section 9(1)(i)	Article 6 and 13
<b>Dividends</b>	Taxable if paid by an Indian company	Section 9(1)(iv) (subject to DDT)	Article 10
<b>Interest</b>	Taxable if sourced in India	Section 9(1)(v)	Article 11
<b>Royalties</b>		Section 9(1)(vi)	Article 12
<b>Fees for Technical Services (FTS)</b>		Section 9(1)(vii)	
<b>Salaries</b>	Taxable if services are rendered in India	Section 9(1)(ii)	Article 15

**Provisions of the IT Act or Tax Treaty, to the extent more beneficial to the taxpayer to apply**



# Quantifying WHT (1/3)

## Rates in force



- Rates in force as defined under Section 2(37A) of the IT Act
- Rates of income-tax specified in IT Act / Tax Treaty under Section 2(37A)(iii), beneficial rates to apply
- The exchange rate is applicable as per Rule 26 – SBI TT buying rate
- Rates prescribed by tax treaty is generally inclusive of surcharge and education cess
- Tax to be withheld under Section 195 is on gross basis

### ***If PAN not furnished under IT Act, then?***

- Section 206AA, is a non-obstante provision that overrides the IT Act effective 1-4-2010
- Attracted when the payee does not have a PAN or discloses incorrect PAN to the payer
- Section 206AA provides for WHT at the higher of the following rates, namely:
  - Specified rate in the relevant provisions of the IT Act; or
  - Rate / rates in force; or
  - 20%



## Quantifying WHT (2/3)

### Section 195A – Income payable “net of tax” (Grossing-up)



- In the event of tax chargeable on any income is borne by the payer
- For the purposes of WHT under Section 195, income should be increased to such amount as would, after WHT thereon at the rates in force, be equal to the net amount payable to the payee
- Section 195A does not apply on notional income under Section 44BB
- Friction between Section 206AA and 195A – Section 206AA applicable or not for grossing-up under Section 195A of IT Act?
- Tax credit claimed by the payee to be restricted commercially – Compliance under Section 203?

#### Illustration of Section 195A

Particulars	Amount in INR
Amount payable to nonresident	100
Add: WHT (assumed to be 10% as per the tax treaty) grossed-up ( $10 \times 100 / 90$ )	11.11
<b>Total income</b>	<b>111.11</b>
Less: WHT applicable at 10%	11.11
<b>Net amount payable to the nonresident (Recipient)</b>	<b>100</b>

# Quantifying WHT (3/3)

## Development on Section 206AA



- Overriding provision specifically dealt in Tribunal rulings where PAN was not obtained by nonresident
- Considering the matter will be settled at the Tribunal level, initial demand may be raised
- The ruling requires a careful analysis on the following premises being unaddressed

**Meshing issue of section 2(37A), 200A read with section 206AA**

**WHT rate is not final payment**

**No specific discussion or reference on these particular aspects**

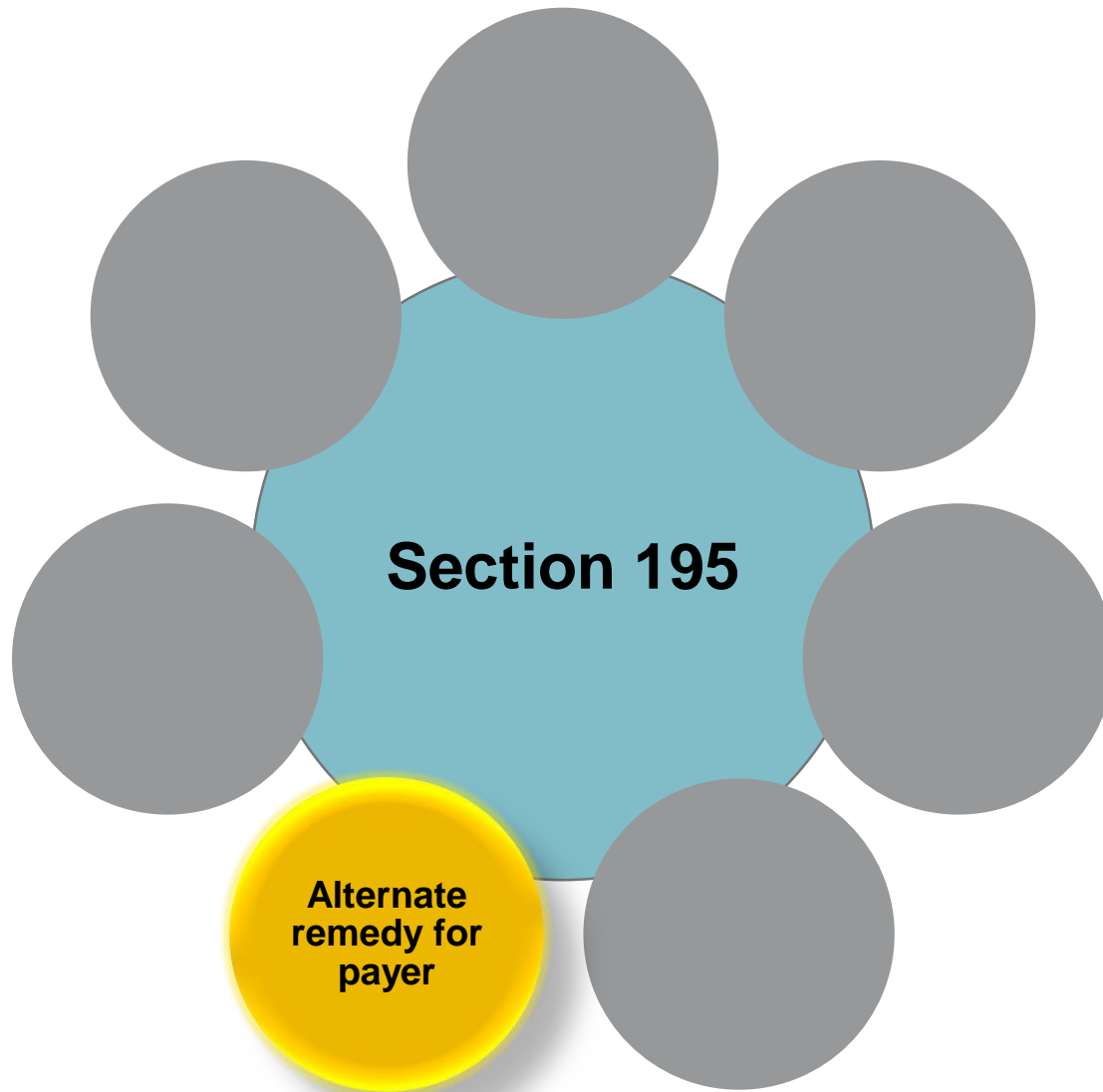
**Rates in force**

**Rulings**

**Ruling of Bosch Ltd was not considered and distinguished**

**The context of Eli Lily ruling on taxability is not referred**

**Applicability of Eli Lily was restricted to Section 192(1) salary**



# Alternate remedy for payer

## Application by payer to the AO under Section 195(2) and (4)

### Application by whom?

The application to be made by the payer before the jurisdictional tax authority

### When to apply?

When the payer is in doubt and believes that the whole of sum payable is not chargeable to tax in India

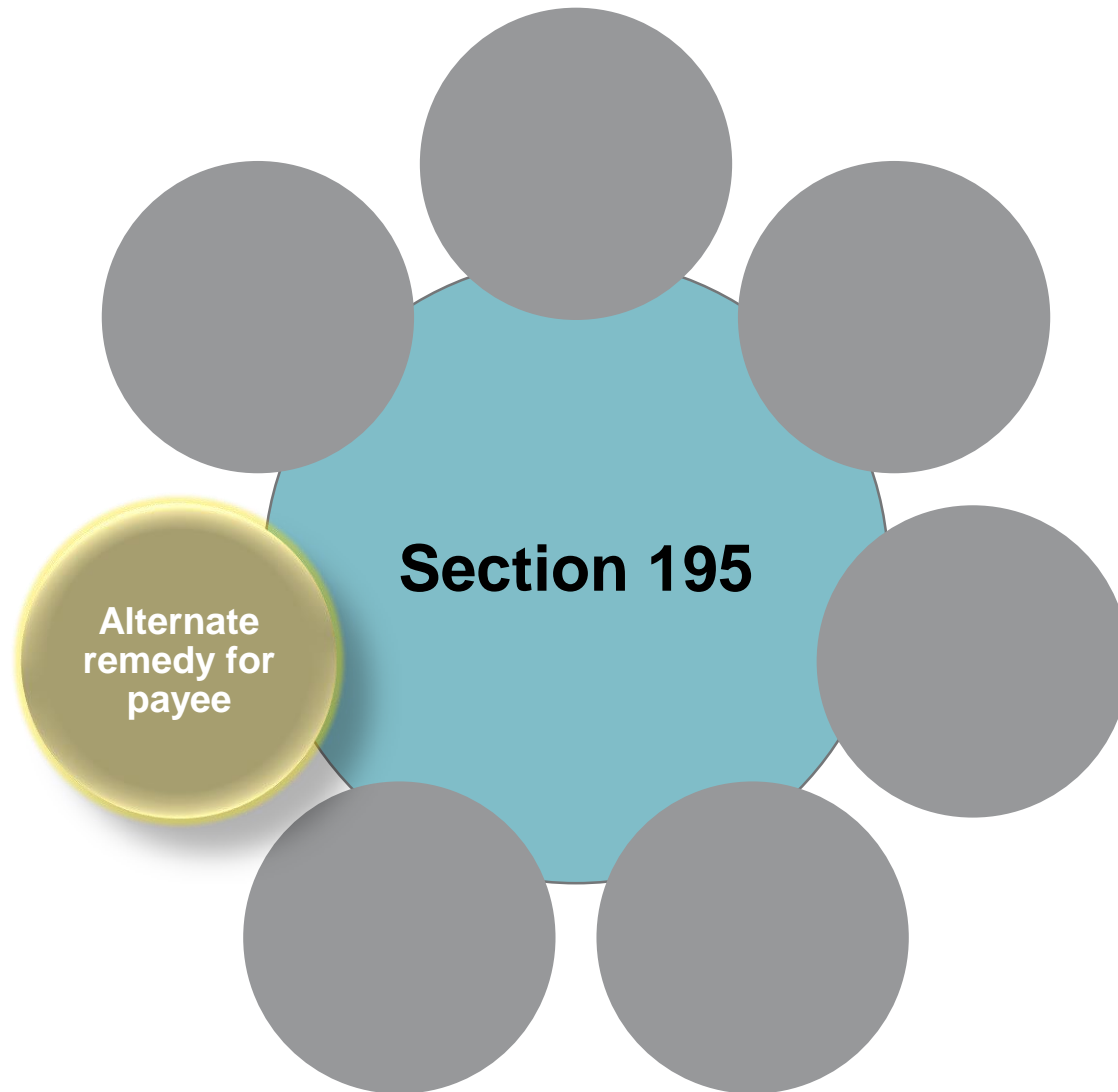
### Process

The payer may approach the tax authority to determine the portion of income chargeable to tax in India

### Consequence

- AO may issue a certificate, determining the portion of income chargeable to tax
- The permission is valid for the period specified
- No specified time limit available to pass the order under Section 195(2)

- Order under Section 195(2) is:
  - appealable after payment of tax
  - amenable to revision under Section 263
- Decision under Section 195(2) is inconclusive in determination of income in case of foreign entity



# Alternate remedy for payee

## Application by payee to the AO under Section 195(3),(4) and (5)

- Payee to make application in the prescribed form (Form 15C or form 15D) for no WHT
- Prescribed conditions under Rule 29B:
  - carries on business / profession in India for 5 years and has prescribed value of assets in India;
  - been regularly assessed to Income-tax;
  - not defaulted in tax, interest, penalty, fine or any other sum payable; and
  - not been subjected to penalty under Section 271(1)
- AO may issue provisional Nil WHT certificate
- Certificate issued by the AO valid for the Financial Year mentioned therein or until cancelled
- Renewal after the expiry or within 3 months before expiry of the certificate
- Certificate issued by AO can be prospective only
- Application after the payment of tax not entertained - *Circular 774 dated 17 March 1999*

**O  
R**

## Application by payee to the AO under Section 197(1)

- Application to be made by the payee under Section 197(1) for lower / no WHT in prescribed form (Form 13)
- Prescribed conditions under Rule 28AA:
  - Tax payable on estimated or existing income;
  - Tax paid of last 3 previous years; and
  - Details of advance tax, TDS & TCS
- AO to issue certificate indicating rate / rates of tax whichever is higher of the following:
  - Average rate determined on the basis of advance tax; or
  - Average of average rates of tax paid in last 3 years
- AO to issue certificate for lower / Nil WHT
- Certificate issued by the AO valid for such period mentioned therein or until cancelled
- Application to be made before the payment / credit whichever is earlier
- Advisory for system validated 197 certificate issued

# Alternate remedy for payer and payee

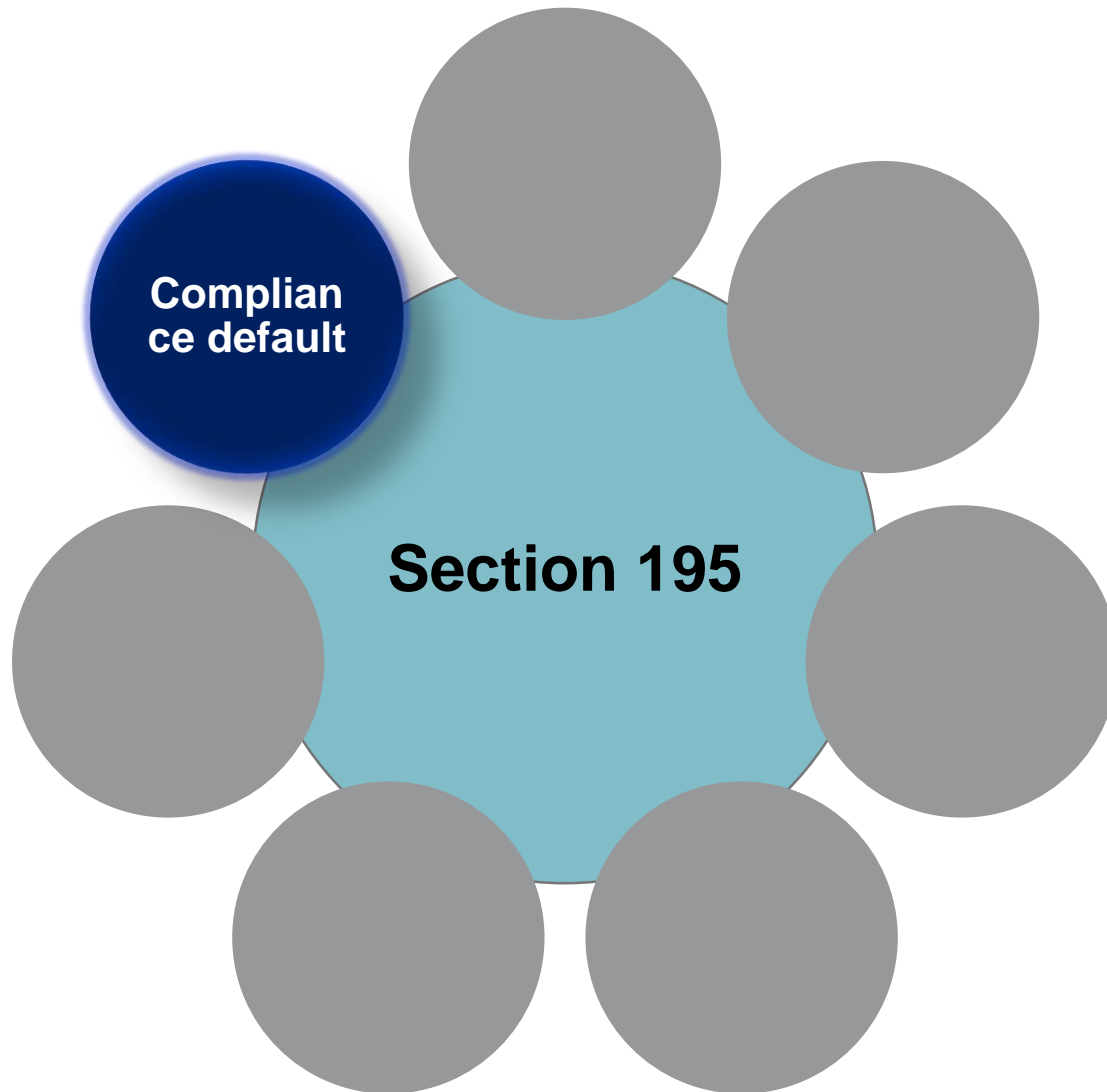
## Chartered Accountants' (CA) Certificate under Section 195(6)

- Payment to nonresident also permitted by obtaining CA certificate as prescribed under *Circular 759*, read with *Circular 10/2002 dated 9/10/2002*
- Rule introduced by CBDT Notification

*Detailed procedures discussed in the ensuing slides of operational rules*

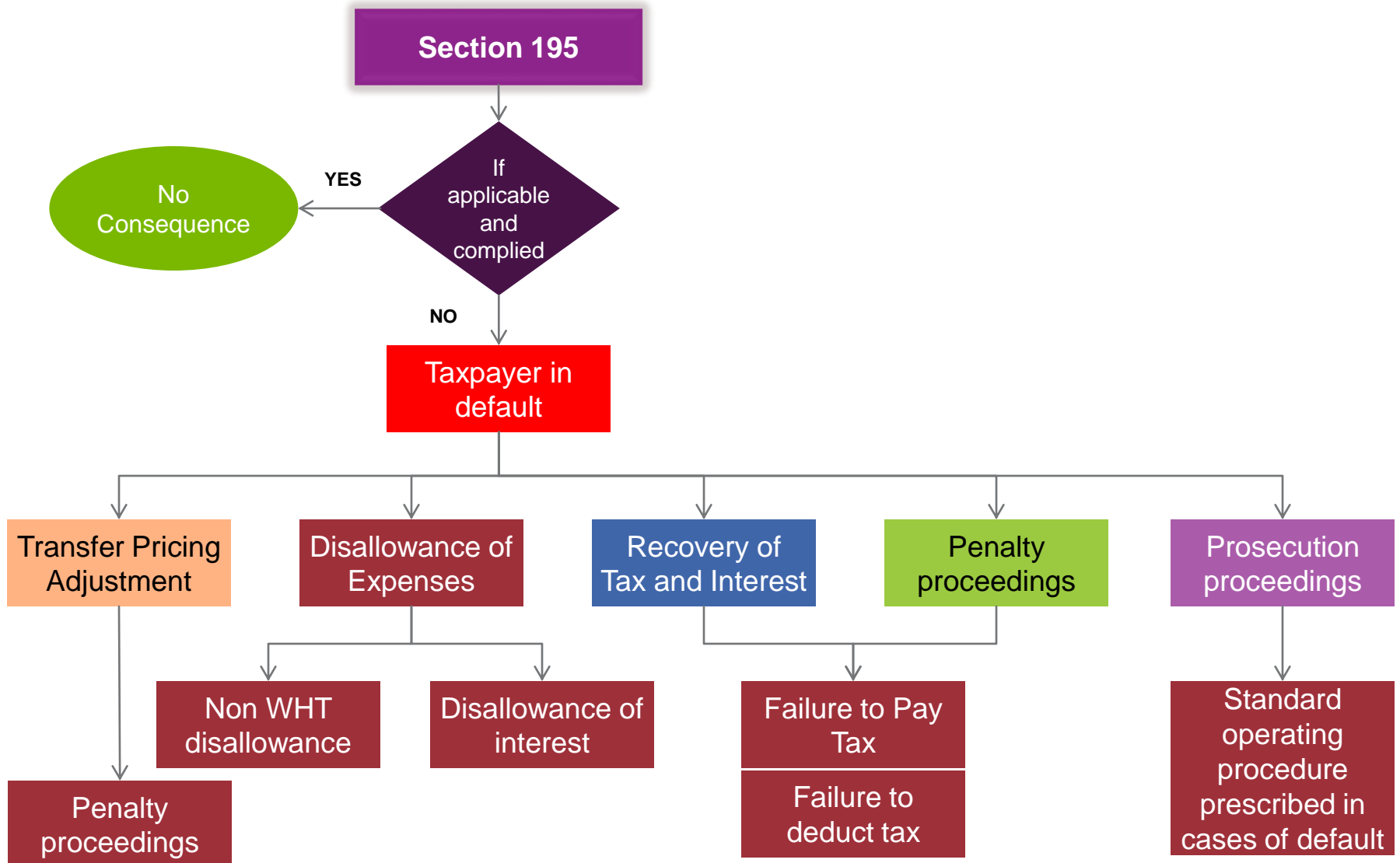
## Advance Ruling under Chapter XIX-B of IT Act

- Ruling by quasi-judicial authority on reference by payer / payee
- Binding ruling on applicant as well as tax authorities unless change in facts / law (diluted)
- Upfront determination of taxability of transactions undertaken by nonresidents
- Fast track mechanism, protracted litigation may be avoided with certainty in tax treatment
- Ruling is appealable before the High Court





# Compliance default



# Operational rules (1/9)

## Provisions for CA Certificate



- *Circular 10/2002* authorizes remittance of money through a CA Certificate
- CA Certificate required also for trade payments – *RBI Circular No. 32 dated 19 July 2007*
- Provision under Section 195(6) introduced by Finance Act, 2008 for CA certificate
- Rule 37BB introduced by CBDT vide *Notification 30/2009 dated 25/03/2009* :
  - Forms 15CA and 15CB to intimate payments to nonresidents and manner of disclosing amount:
    - Form 15CA, prescribes information to be furnished online by the payer; and
    - Form 15CB, prescribes format of CA Certificate to be obtained
- Taxpayer not absolved from penalty / prosecution if found that WHT was lower than required
- CA certificate merely acts as a guidance and is not a substitute to adjudication by the AO
- Procedure for remittance was amended from 01 October 2013, with significant change in the procedure, being more technological robust and detailed
  - Specified list of 28 payments like outbound investments, gifts, etc. exempt from the procedures
- **Notification issued on 16 December 2015 to amend Rule 37BB for new forms and compliances**

## Operational rules (2/9)

**Furnish information pertaining to foreign payment in the prescribed form and manner**

**Prescribed form and manner is as per Rule 37BB and Form Nos. 15CA and 15CB**

**Disclosure provision prescribed under Section 195(6) (effective 1-6-2015)**

**Applicable to any person responsible of making payment to non-resident under section 195(1) any sum, whether or not chargeable to tax**

**Penalty for non-furnishing or inaccurate filing of information – INR 100,000**

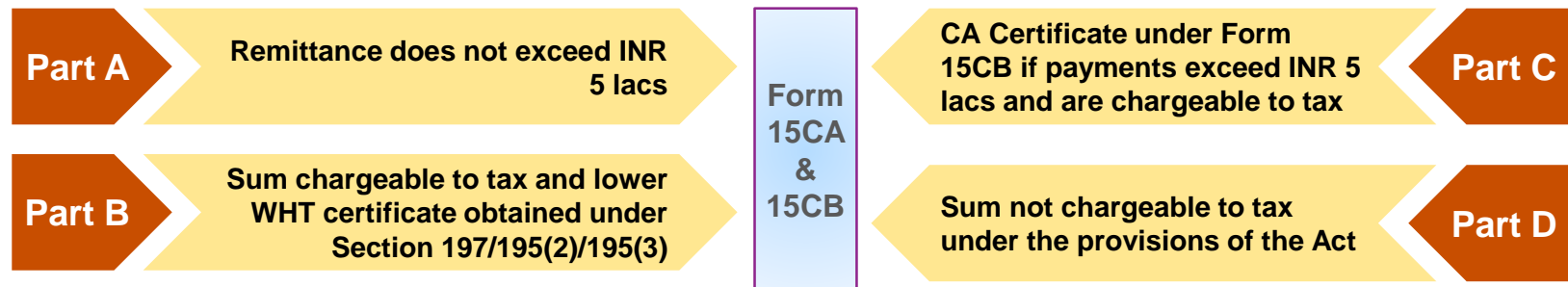
## Operational rules (3/9)

**Rule 37BB amended effective 1 April 2016 with an aim to strike balance between burden of compliance and collection of information**

- Individuals exempt to comply with Form 15CA and 15CB procedures if:
  - Payment or aggregate of such payment does not exceed INR 5 lacs; and
  - Remittance does not require RBI approval under LRS and Current Account Transactions
- Specified list of remittances expanded to 33 for non compliance of Rule and additions include:

1. Advance payment against imports	2. Payment towards imports-settlement of invoice	3. Imports by diplomatic missions	4. Intermediary trade	5. Imports below INR 5 lacs (for use by ECD offices)
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- Enhanced compliance of 15CA and 15CB information to be shared with Principal Director of Income-tax (Systems) including filing of quarterly information on remittance by the AD in Form 15CC
- Revised Form Nos. 15CA and 15CB divided in 4 parts:



# Operational rules (4/9)

## Suggested method for CA Certificate

Steps	Action plan
<b>Payment covered under Section 195</b>	Payment from resident or from non resident to nonresident
<b>Verify factual documents</b>	Invoice, Contracts, Legal Status, obtain declaration, PAN, etc.
<b>Determine character</b>	Classification of payment, Business, Royalty, FTS, etc.
<b>Evaluate taxability</b>	
• <b>Under IT Act</b>	Income-tax rates, Grossing-up, Section 206AA , Case law update
• <b>Under tax treaty</b>	No PE, TP analysis, beneficial owner, entity characterization, Article, LOB clause, <u>Obtain TRC</u> , MFN, Protocol to the tax treaty, Technical explanation to the tax treaty, Model commentaries
<b>Specific orders</b>	Verify specific orders received from tax authorities, 195(2), etc.
<b>Follow compliance</b>	Complete the Form comply with WHT deadlines for deposit

## Tax Residency Certificate (TRC)

- TRC requirement for all nonresidents to claim tax treaty benefits
- Furnishing of TRC mandatory to avail tax treaty benefits:
  - *SC in the case of UOI v. Azadi Bachao Andolan [2003] 263 ITR 706 (SC)*
  - *Circular 789 dated 13 April 2000*
  - Shome Committee report on GAAR recommends that *Circular 789 of 2000* should be retained
- Prescribed additional information to be furnished along with TRC
- CBDT clarified that the additional information prescribed may not be required if it already forms part of the TRC



**Notification No. 57/2013 dated 1/08/2013 [F.No.142/16/2013-TPL] revised the Rule 21AB**

# Operational rules (5/9)

## Prescribed Form 10F

The additional details required to be furnished in Form 10F under Rule 21AB:

1. Status (Individual, Company, Firm, etc.) of the taxpayer
2. PAN of the taxpayer, if allotted
3. Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others)
4. Taxpayer's tax identification number or a unique number, as the case may be
5. Period for which the residential status, as mentioned in the TRC, is applicable and
6. Address of the taxpayer during the period for which the certificate is applicable

**CBDT clarified that declaration may not be required if TRC contains above particulars**

## Sample TRC

Tax Reference No. [redacted]  
Date [redacted]

SINGAPORE 018982

55 Newton Road  
Singapore 307987  
Tel: 1800-3568622  
Fax: 63514360

Dear Sir/Madam

**CERTIFICATE OF RESIDENCE FOR THE PURPOSE OF CLAIMING BENEFIT UNDER THE SINGAPORE / INDIA AVOIDANCE OF DOUBLE TAXATION AGREEMENT FOR INTEREST AND FEES**

I refer to your request dated [redacted]

Based on your confirmation that the control and management of your business for the whole of 2013 will be exercised in Singapore, it is confirmed that your company will be regarded as resident in Singapore for income tax purposes for the Year of Assessment 2014.

Based on the records available, the country or specified territory of incorporation or registration is Singapore.

Yours faithfully

TAX DIRECTOR  
CORPORATE TAX DIVISION  
for COMPTROLLER OF INCOME TAX

# Operational rules (6/9)

## Form 15CA

**Part B**

(To be filled up if the remittance is chargeable to tax and exceeds fifty thousand rupees and the aggregate of such remittances made during the financial year exceeds two lakh fifty thousand rupees)

Section A		GENERAL INFORMATION			
REMITTER	Name of the remitter				
	PAN of remitter		Area Code	AO Type	Range Code AO No
	Area Code				
	Principal Place of Business	TAN of remitter <sup>1</sup>			
	Complete address, email and phone number of the remitter				
Status <sup>ii</sup>	<input type="checkbox"/>	In case of company - If domestic, write '1' and if other than domestic, --write '2'			
REMIITEE	Name of recipient of remittance		PAN of recipient of remittance <sup>iii</sup>		
	Status <sup>iv</sup>	<input type="checkbox"/>			
	Address		Country to which remittance is made:		
	Principal place of business	Email address	(ISD code)	-Phone Number	
ACCOUNTANT	(a) Name of the Accountant <sup>v</sup> signing the certificate				
	(b) Name of the proprietorship/firm of the accountant				
	(c) Address				
	(d) Registration no. of the accountant				
	(e) Date of certificate (DD/MM/YYYY)	Certificate No. <sup>vi</sup>			
A.O. ORDER	(a) Whether any order/ certificate u/s 195(2)/195(3)/ 197 of Income-tax Act has been obtained from the Assessing Officer. (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No				
	(b) Section under which order/certificate has been obtained				
	(c) Name and designation of the Assessing Officer who issued the order/certificate				
	(d) Date of order/certificate				
	(e) Order/certificate number				

## Form 15CB

Form No. 15CB  
(See rule 37BB)

Certificate of an accountant<sup>1</sup>

I/We\* have examined the agreement (wherever applicable) between Mr./Ms./M/s\*.....(Remitters) ..... and Mr./Ms./M/s\* ..... (Beneficiary)..... requiring the above remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source as per provisions of Charter- XVII-B.

We hereby certify the following :-

A	Name and address of the beneficiary of the remittance		
B 1.	Country to which remittance is made	Country: _____	Currency: _____
2.	Amount payable	In foreign currency : _____	In Indian Rs. _____
3.	Name of the bank	Branch of the bank _____	
4.	BSR Code of the bank branch (7 digit)	_____	
5.	Proposed date of remittance	_____ (DD/MM/YYYY)	
6.	Nature of remittance as per agreement/ document		
7.	In case the remittance is net of taxes, whether tax payable has been grossed up?	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No	

# Operational rules (7/9)

## Form 15CA

Section B		PARTICULARS OF REMITTANCE AND TDS (as per certificate of the accountant)	
REMITTANCE	1.	Country to which remittance is made	Country : _____ Currency : _____
	2.	Amount payable	In foreign currency _____ In Indian Rs. _____
	3.	Name of the Bank	Branch of the Bank _____
	4.	BSR Code of the bank branch (7 digit)	_____
	5.	Proposed date of remittance	____/____/____ (DD/MM/YYYY)
	6.	Nature of remittance as per agreement/document	_____
	7.	In case the remittance is net of taxes, whether tax payable has been grossed up?	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
I.T. ACT	8.	Taxability under the provisions of the Income-tax Act (without considering DTAA)	
		(a) the relevant section of the Act under which the remittance is covered	
		(b) the amount of income chargeable to tax	
		(c) the tax liability	
	(d) basis of determining taxable income and tax liability		
DTAA	9.	If any relief is claimed under DTAA-	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
		(i) Whether tax residency certificate is obtained from the recipient of remittance	
		(ii) Please specify relevant DTAA	
		(iii) Please specify relevant article of DTAA	Nature of payment as per DTAA _____
		(iv) Taxable income as per DTAA	In Indian Rs. _____
		(v) Tax liability as per DTAA	In Indian Rs. _____
		A. If the remittance is for royalties, fee for technical services, interest, dividend, etc. (not connected with permanent establishment) please indicate :-	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
		(a) Article of DTAA	
	(b) Rate of TDS required to be deducted in terms of such article of the applicable DTAA	As per DTAA (%) _____	
	B. In case the remittance is on account of business income, please indicate:-	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(a) The amount of income liable to tax in India		

## Form 15CB

8.	Taxability under the provisions of the Income-tax Act (without considering DTAA)	
	(a) the relevant section of the Act under which the remittance is covered	
	(b) the amount of income chargeable to tax	
	(c) the tax liability	
	(d) basis of determining taxable income and tax liability	
9.	If any relief is claimed under DTAA -	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
	(i) whether tax residency certificate is obtained from the recipient of remittance	
	(ii) please specify relevant DTAA	
	(iii) please specify relevant article of DTAA	Nature of payment as per DTAA _____
	(iv) taxable income as per DTAA	In Indian Rs. _____
	(v) tax liability as per DTAA	In Indian Rs. _____
	A. If the remittance is for royalties, fee for technical services, interest, dividend, etc. (not connected with permanent establishment) please indicate:-	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
	(a) Article of DTAA	
	(b) Rate of TDS required to be deducted in terms of such article of the applicable DTAA	As per DTAA (%) _____
	B. In case the remittance is on account of business income, please indicate	(Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No
	(a) The amount of income liable to tax in India	
	(b) The basis of arriving at the rate of deduction of tax	



# Operational rules (8/9)

## Form 15CA

	(b) The basis of arriving at the rate of deduction of tax.	
	C. In case the remittance is on account of capital gains, please indicate:- (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(a) amount of long term capital gains	
	(b) amount of short-term capital gains	
	(c) basis of arriving at taxable income	
	D. In case of other remittance not covered by sub-items A, B and C (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(a) Please specify nature of remittance	
	(b) Whether taxable in India as per DTAA	
	(c) If yes, rate of TDS required to be deducted in terms of such article of the applicable DTAA	
	(d) if not, please furnish brief reasons thereof specifying relevant article of DTAA	
TDS	10. Amount of tax deducted at source	In foreign currency _____ In Indian Rs. _____
	11. Rate of TDS	As per Income-tax Act (%) _____ or As per DTAA (%) _____
	12. Actual amount of remittance after TDS	In foreign currency _____
	13. Date of deduction of tax at source, if any	_____ (DD/MM/YYYY)

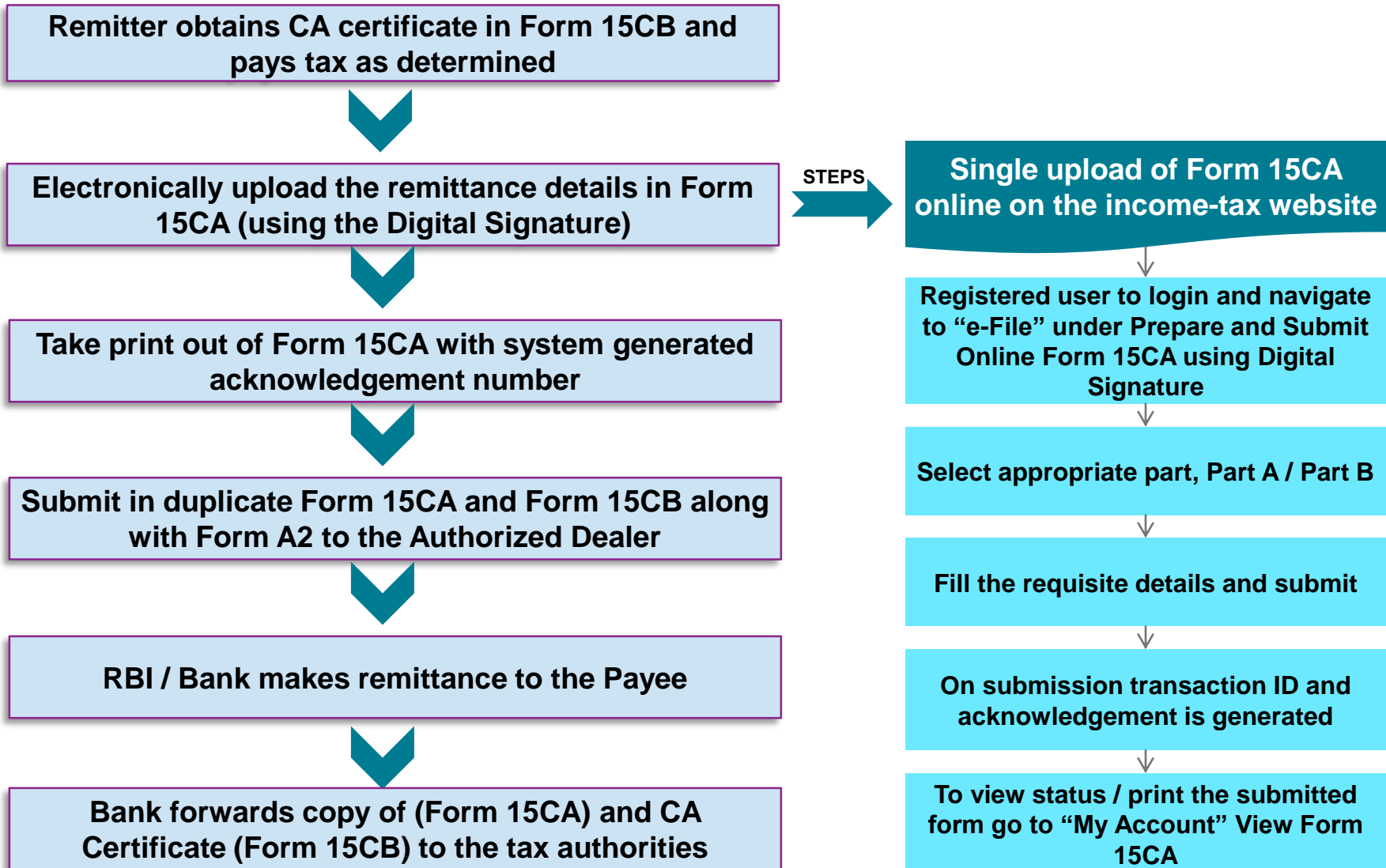
### VERIFICATION

- I/We\* \_\_\_\_\_ (full name in block letters), son/daughter of \_\_\_\_\_ in the capacity of \_\_\_\_\_ (designation) solemnly declare that the information given above is true to the best of my/our\* knowledge and belief and no relevant information has been concealed.
- I/We\* certify that a certificate has been obtained from an accountant, particulars of which are given in this Form, certifying the amount, nature and correctness of deduction of tax at source. I/We\* certify that certificate/order under section 195(2)/195(3)/197 of the Income-tax Act, 1961, particulars of which are given in this Form\*.
- In case where it is found that the tax actually deductible on the amount of remittance has not been deducted or after deduction has not been paid or not paid in full, I/We\* undertake to pay the amount of tax not deducted or not paid, as the case may be along with interest due. I/We\* shall also be subject to the provisions of penalty for the said default as per the provisions of the Income-tax Act, 1961.
- I/We\* further undertake to submit the requisite documents for enabling the Income-tax Authorities to determine the nature and amount of income of the recipient of the above remittance as well as documents required for determining my/our liability under the Income-tax Act, 1961 as a person responsible for deduction of tax at source.
- I/We\* further declare that I/we\* am/are\* furnishing this information in my/our\* capacity as and I/we\* am/are\* also competent to sign the return of income as per provisions of section 140 of the Income-tax Act, 1961 and verify it.

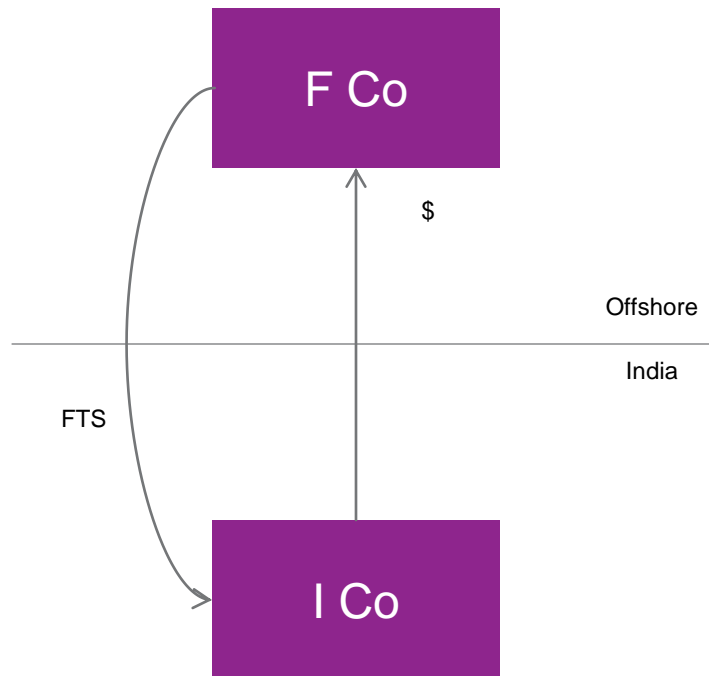
## Form 15CB

	C. In case the remittance is on account of capital gains, please indicate:- (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(a) amount of long term capital gains	
	(b) amount of short-term capital gains	
	(c) basis of arriving at taxable income	
	D. In case of other remittance not covered by sub-items A, B and C (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No	
	(a) Please specific nature of remittance	
	(b) Whether taxable in India as per DTAA	
	(c) If yes, rate of TDS required to be deducted in terms of such article of the applicable DTAA	
	(d) if not, the please furnish brief reasons thereof specifying relevant article of DTAA	
	10 Amount of TDS	In foreign currency _____ In Indian Rs. _____
	11 Rate of TDS	As per Income-tax Act (%) _____ or As per DTAA (%) _____
	12 Actual amount of remittance after TDS	In foreign currency _____
	13 Date of deduction of tax at source, if any	_____ (DD/MM/YYYY)

## Operational rules (9/9)



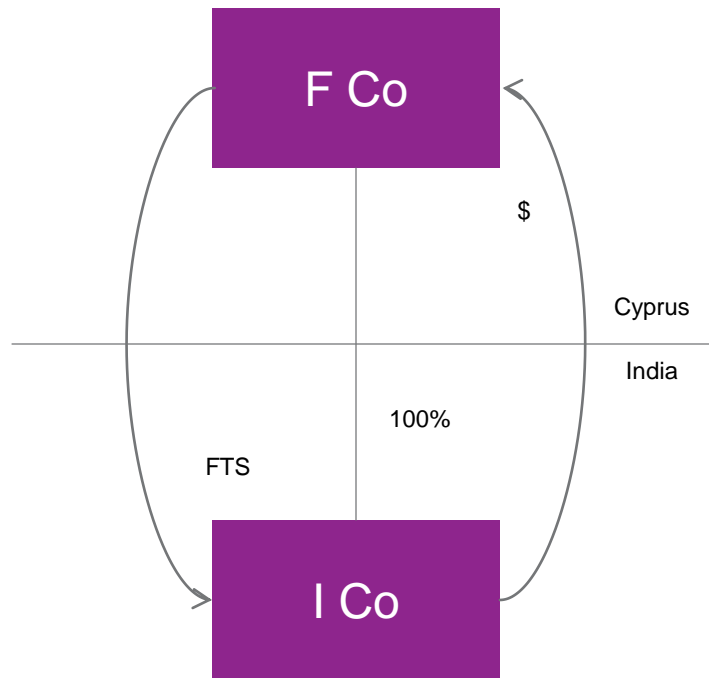
# Case Study



## Applicable WHT rate for F Co in absence of PAN

- Section 206AA provides for WHT at the higher of the following rates, namely:
  - Specified rate in the relevant provisions of the IT Act; or
  - Rate / rates in force; or
  - 20%
- F Co has a valid TRC
- What should be the WHT rate for Section 195?

# Case Study (Variation)



Applicable WHT rate for F Co in absence of PAN

- Implications when payment made to AE?
- If payment made to Cyprus?

# Key takeaways

1.

Ignorance of rules may lead to undesirable litigation and cost, thus impacting business focus

2.

Alternate remedy of application before tax authority conservative, but time consuming

3.

Enhanced onerous provisions to comply with issue of CA Certificate after 01 April 2016

4.

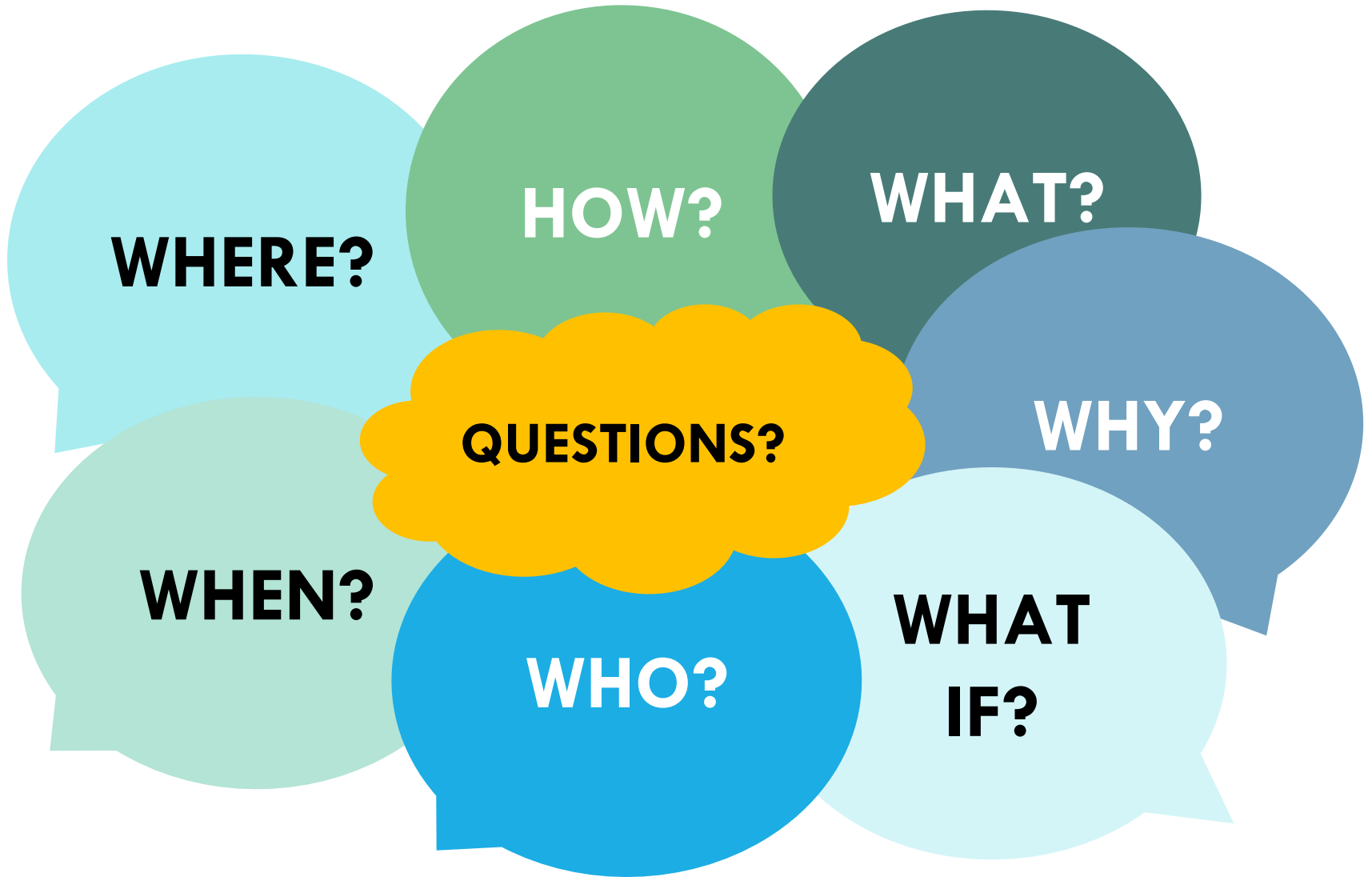
Cumbersome compliance provisions for non-resident payers'

5.

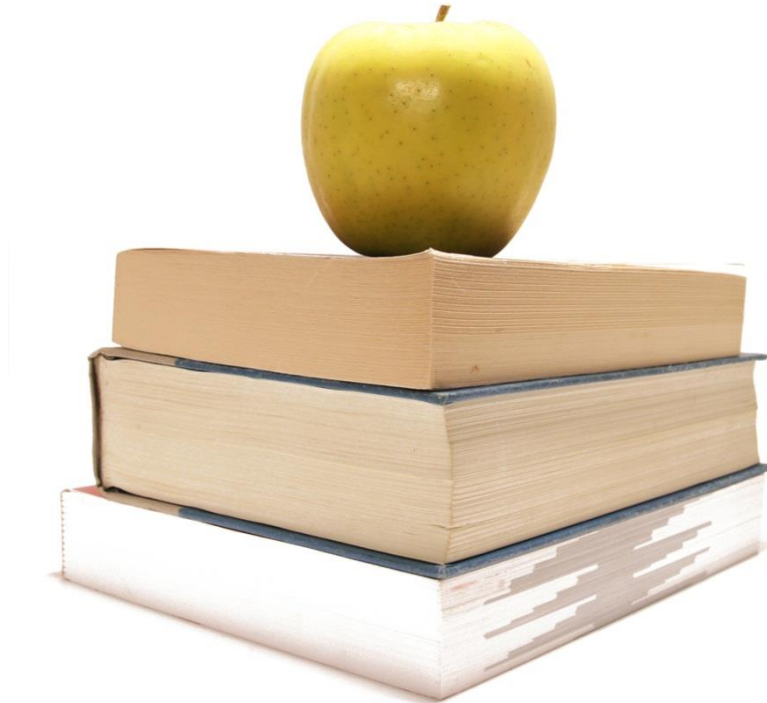
Stay updated or hire competent professionals for a comprehensive assessment

6.

Have patience and trust in Indian tax judiciary, accurate interpretation will lead to success



# Thank you!



Your feedback is valuable and will help me improve my skill-sets

*Disclaimer note: The views / opinions explicit or implicit expressed during the presentation of the tax technical paper, is exclusively that of the author being personal in nature, based on his professional practical experience. The content of the tax technical paper are general in nature and does not reflect / resemble any client advice delivered directly / indirectly. The participant relying on the tax technical paper is expected to consult his / her tax advisors before implementing the ideas suggested during the presentation. The presenter is in no case liable for any damages incurred by relying on the ideas implemented without adequate consultation with the competent tax professional on the instant facts and legal arguments*

# Biography



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Shailendra is an international tax professional with over 10 years' of experience in Big 4 accounting firm in India and Singapore. He has in-depth knowledge in consulting multinational corporations on cross-border strategies (inbound and outbound), M&A transactions, overseas listing and regulatory advisory services. He has assisted diversified clients on M&A deals in the Private Equity, Real Estate and Infrastructure sector.

Shailendra is a frequent speaker at forums on international tax issues affecting investment within Asia Pacific. He has authored technical columns on tax issues with The International Bureau of Fiscal Documentation (IBFD), CCH Wolters Kluwer, Bloomberg BNA, British Chamber of Commerce, The Economic Times, Journal of the Institute of Chartered Accountants of India, Infrastructure magazine EPC Age.

Shailendra is a member of the Institute of Chartered Accountants of India (India CPA) and a Bachelor in Business Administration in Finance



# Evaluation Form (1/2)

I strive for excellence in all the sessions conducted. Your comments are valuable in achieving this goal. Therefore, please assist me by completing this form and providing constructive comments wherever appropriate, or where you feel necessary. This information will be used confidentially.

## 1. TECHNICAL LEVEL

(a) Was the technical level of Sessions (please tick the appropriate box)

At the correct level ?

Too advanced?

Too basic ?

(b) How many years' experience in International Corporate Tax do you have?

0-3 Year

5-8 Years

10 Years or more

## 2. OVERALL ASSESSMENT

To answer the questions below, please use the following numbering system and if you would like to give a supporting explanation please do so.

Parameters	5	4	3	2	1
	Excellent	Good	Average	Room for improvement	Poor
Does the topic covered in the session encourage you to attend the meeting?					
Were all the relevant topics covered in the presentation and clear your doubts about the subject?					
Were the explanations during the session elaborate enough to make you understand the subject?					

# Evaluation Form (2/2)

3. PLEASE GIVE YOUR ASSESSMENT OF THE SESSION USING THE FOLLOWING NUMBERING:

5 = Excellent	4 = Good	3 = Average	2 = Room for improvement	1 = Poor
				Assessment Figure
Withholding tax provisions for payments to nonresident				

4. What was your overall assessment of the course?

-----

Did the session meet your expectations? Please suggest a supporting explanation.

Yes  -----

No  -----

5. OTHER COMMENTS

-----

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6. Details

Name : -----

Organization : -----

THANK YOU FOR YOUR ASSISTANCE