

***An overview and practice
aspects of withholding tax
under Section 195 of the
Income-tax Act***

***Seminar on TDS, ICAI Western
Region Mumbai***

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Agenda



Brief overview of TDS provisions

Withholding tax (WHT) concept for nonresident

Lifecycle of WHT provisions under Section 195

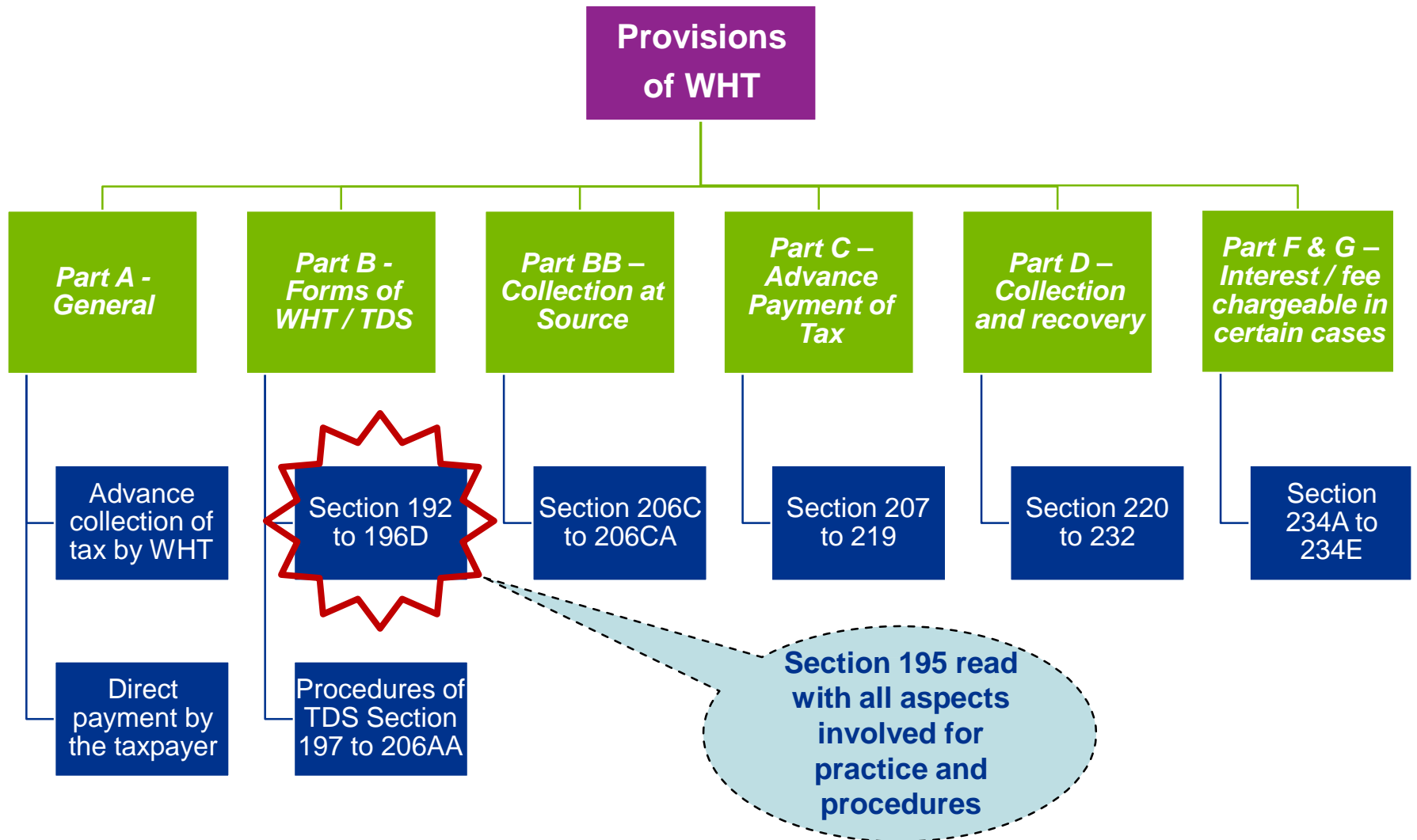
Practice and Operational rules

Illustrations

Key takeaways

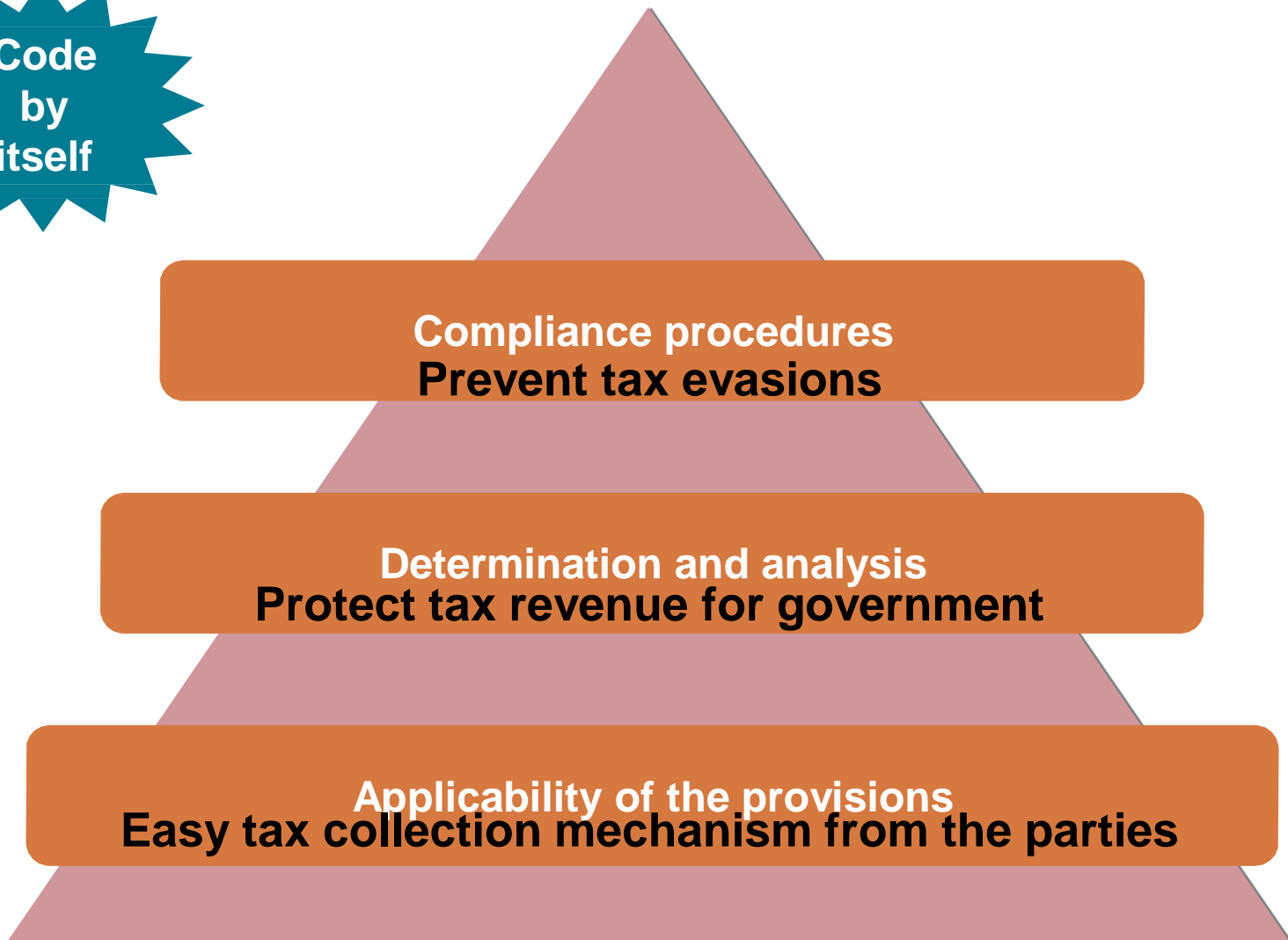
Questions

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

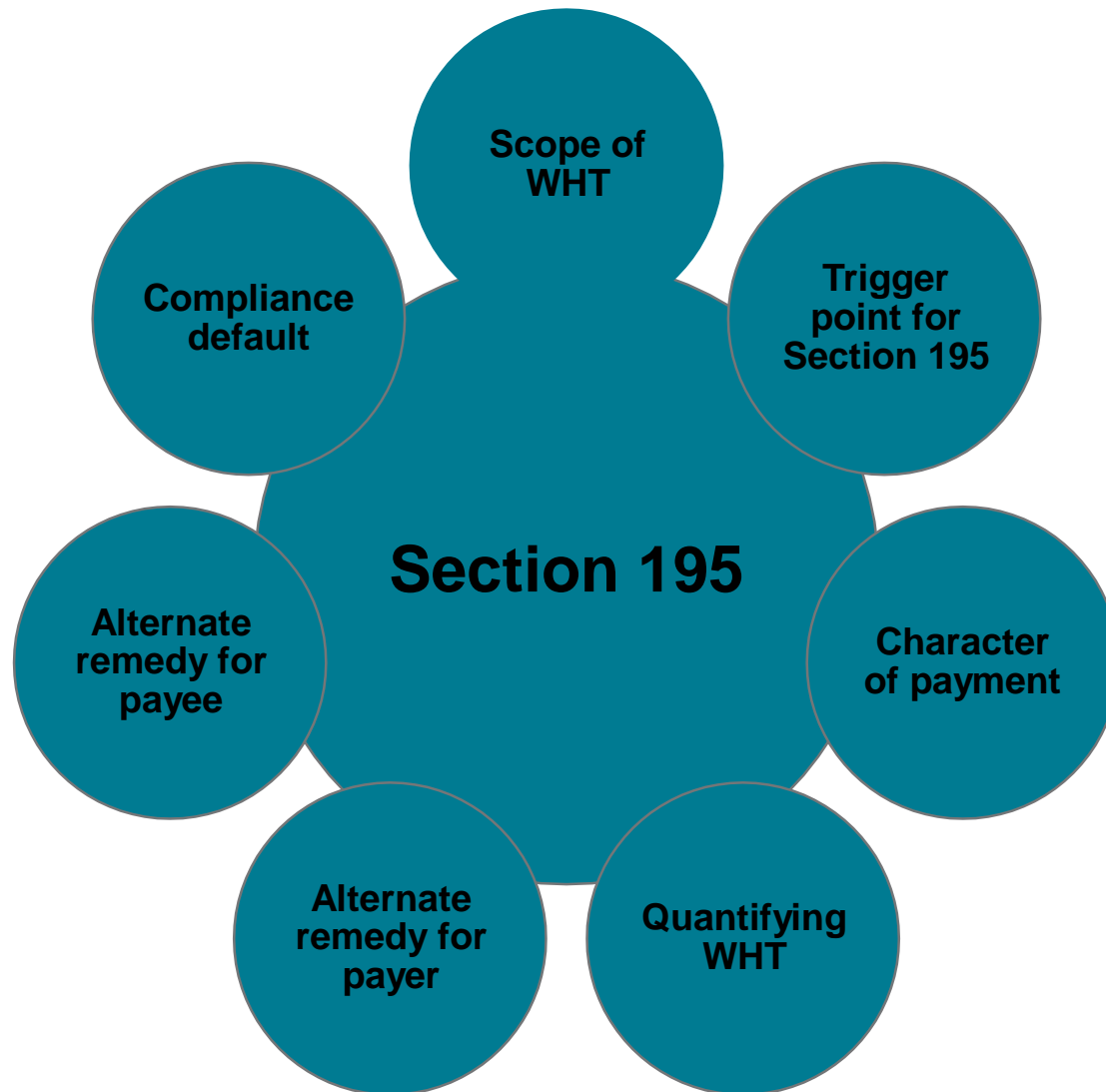


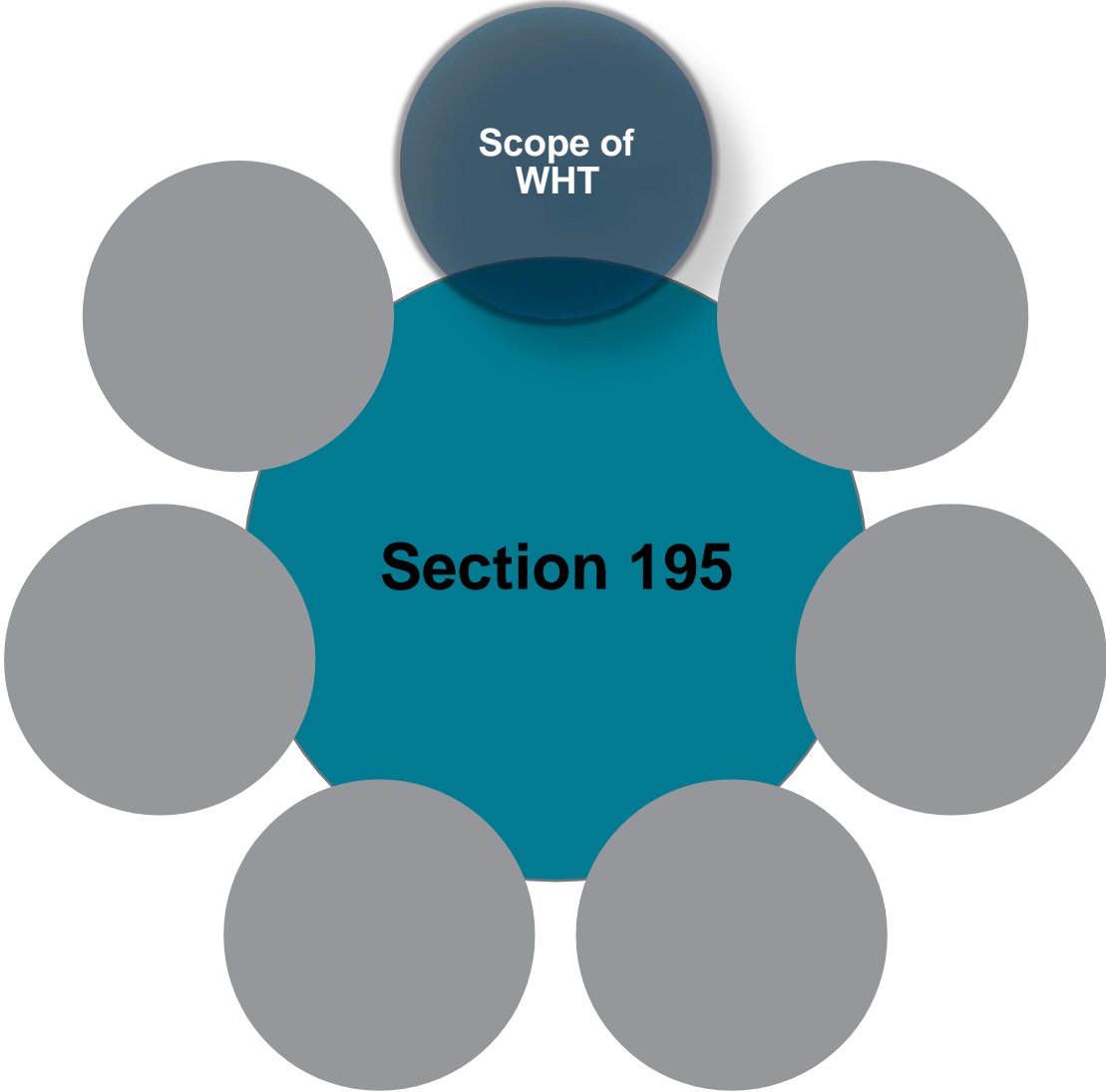
WHT concept for nonresident

Code
by
itself



Lifecycle of 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) | Application by “Payee” to AO for NIL WHT certificate |
| 195(4) | Validity of certificate issued by AO |
| 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



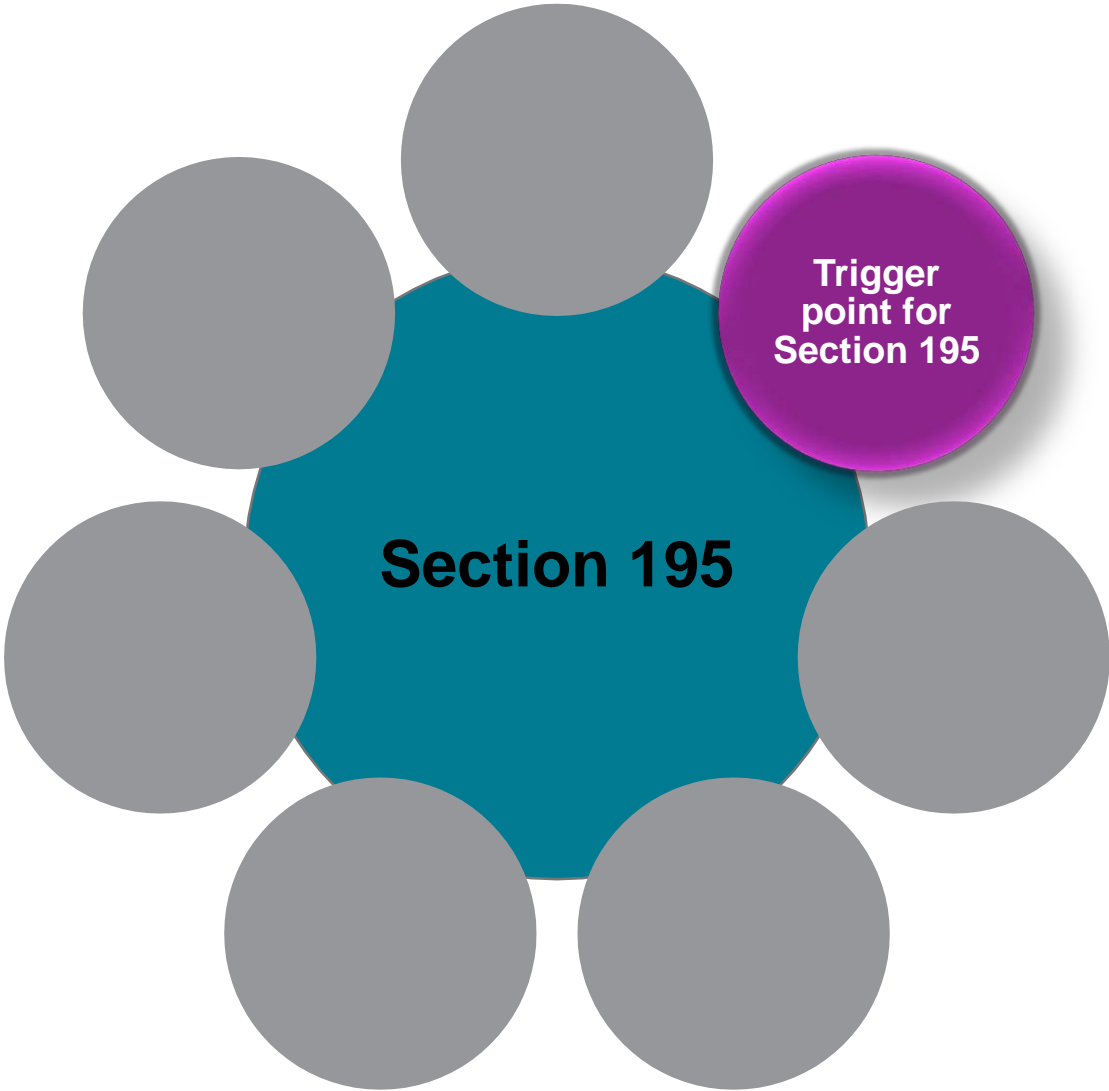
Payers covered

- “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*

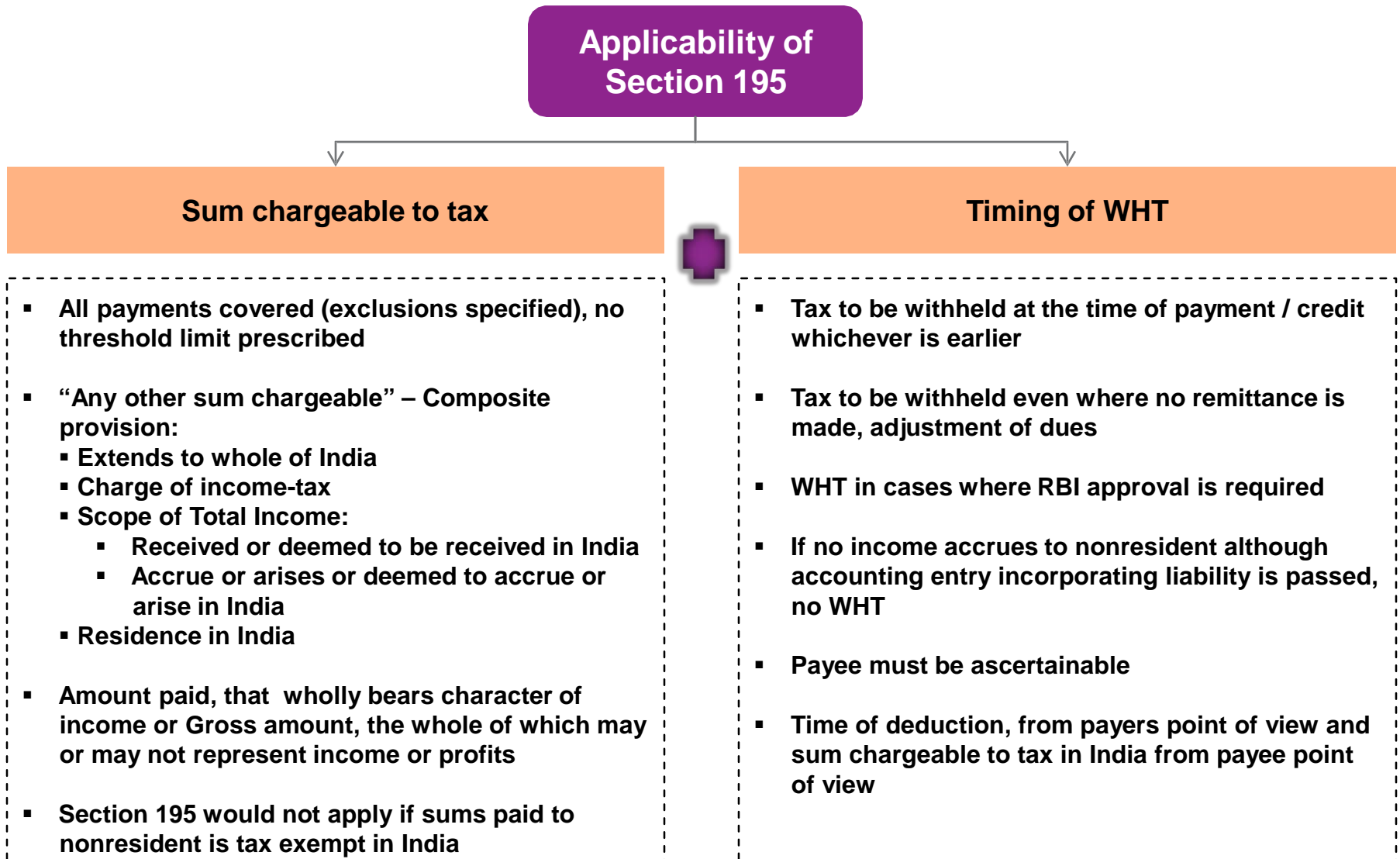
Payees covered

- 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



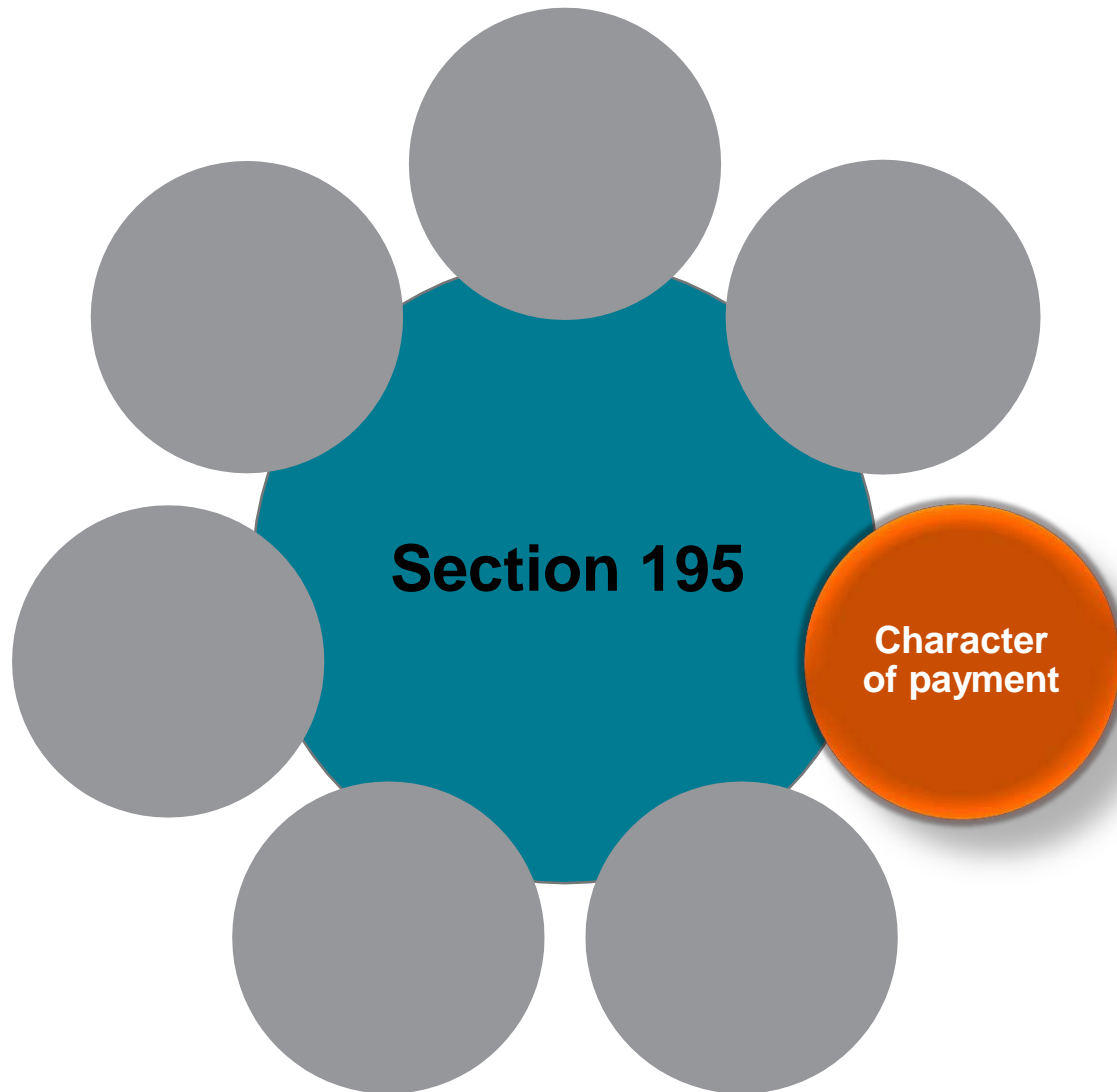
- Where, payment made by resident to non-resident, was an amount not chargeable to tax in India, no tax is deductible at source
- Assessee liable to deduct TDS under Section 195 on payment made to non-resident even though payment is not made in cash but made in kind
- Payer obligated to WHT, even if 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;
 - Consideration paid for outright purchase of designs and drawings is not royalty;
 - Applicability of withholding tax to shipping Company taxed under Section 172; and
 - Does amount paid as penalty to the regulators chargeable to tax under Section 195?
- No significant impact of withdrawal of the Circulars

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 |
| Other specific sections | |
| 196B | Income from units |
| 196C | Income from FCCBs or GDRs of Indian companies |
| 196D | Income from FIIs now FPI except Capital Gains |

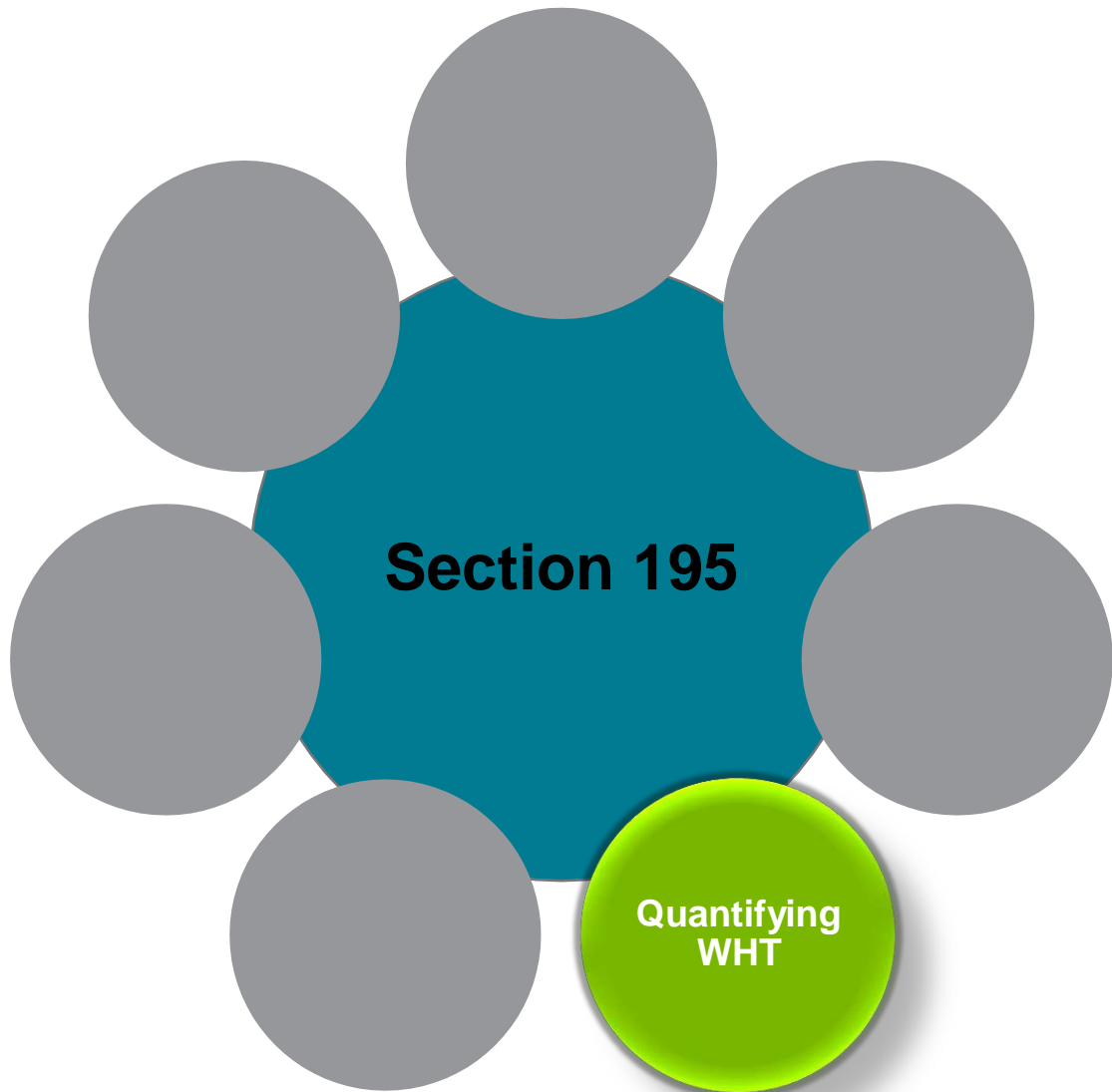


Character of payment

Determining the nature of payment

| | | IT Act | Tax Treaty |
|--|---|--------------------------------------|---------------------|
| Business / Profession income | 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 |
| Capital Gain | Taxable if situs of shares/ property is in India | Section 9(1)(i) | Article 6 and 13 |
| Dividends | Taxable if paid by an Indian company | Section 9(1)(iv) (subject to DDT) | Article 10 |
| Interest | Taxable if sourced in India | Section 9(1)(v) | Article 11 |
| Royalties | | Section 9(1)(vi) | Article 12 |
| Fees for Technical Services (FTS) | | Section 9(1)(vii) | |
| Salaries | 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 (1/4)

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
 - CBDT circular 728 dated 30 October 1995
- The exchange rate is applicable as per Rule 26 – SBI TT buying rate
- Rates prescribed under the tax treaty are inclusive of surcharge and education cess?
- Tax to be withheld under Section 195:
 - Is on gross basis; and
 - Withholding tax rate under Section 195 is final
- Interplay between proposed Equalization levy under Finance Bill, 2016 and the Income-tax Act, 1961
- What is the significance to obtain PAN while making the remittance to nonresidents
 - Section 206AA, is a non-obstante provision that overrides the IT Act effective 1-4-2010

Detailed provision of Section 206AA & nuances discussed in the ensuing slides

Quantifying WHT (2/4)

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

Ruling of Bosch Ltd was not considered and distinguished

The context of Eli Lilly ruling on taxability is not referred

Rulings

New Provisions

Practical difficulty to implement 206AA due to DTAA override

Easwar Committee on tax simplification recommended to dilute 206AA provisions

The Finance Bill, 2016 accepted the Easwar Committee Recommendation on 206AA

Quantifying WHT (3/4)

Existing provisions under section 206AA

- 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%

India Budget 2016 proposal

Amendment under the Finance Bill, 2016

Section 206AA amended to exclude non-resident on satisfaction of the prescribed conditions

Points to ponder:

- Form and the methods of conditions that will be prescribed? Can it be complied by nonresidents?
- Since PAN not obtained, is nonresident then obligated to file tax returns in India? Impact of 270A

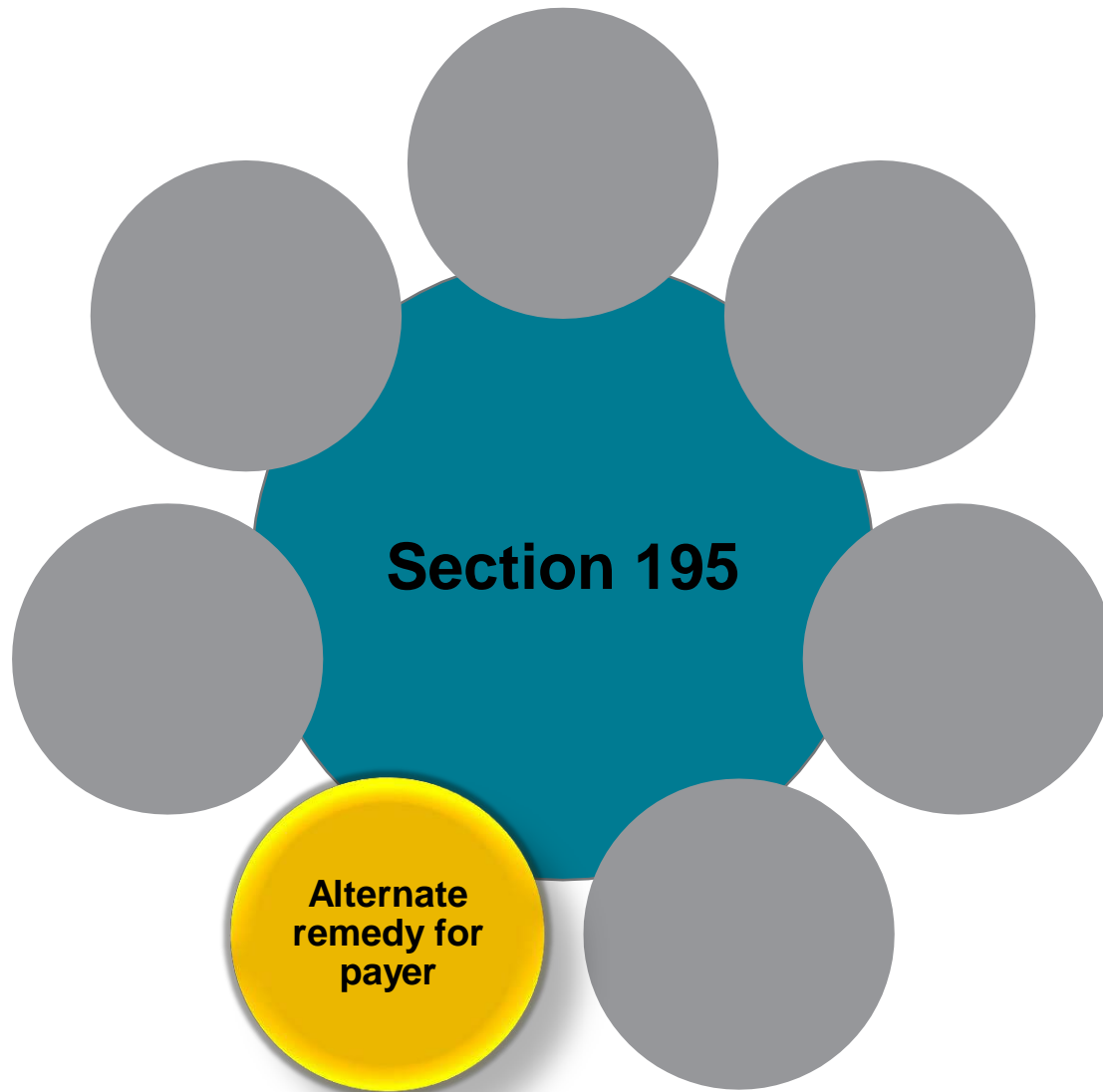
Quantifying WHT (4/4)

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 – is Section 206AA applicable for grossing purposes?
- Tax credit claimed by the payee to be restricted commercially – Compliance under Section 203?
- Can refund be claimed if taxes are withheld erroneously under Section 195?

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 |
| Total income | 111.11 |
| Less: WHT applicable at 10% | 11.11 |
| Net amount payable to the nonresident (Recipient) | 100 |



Alternate remedy for the 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

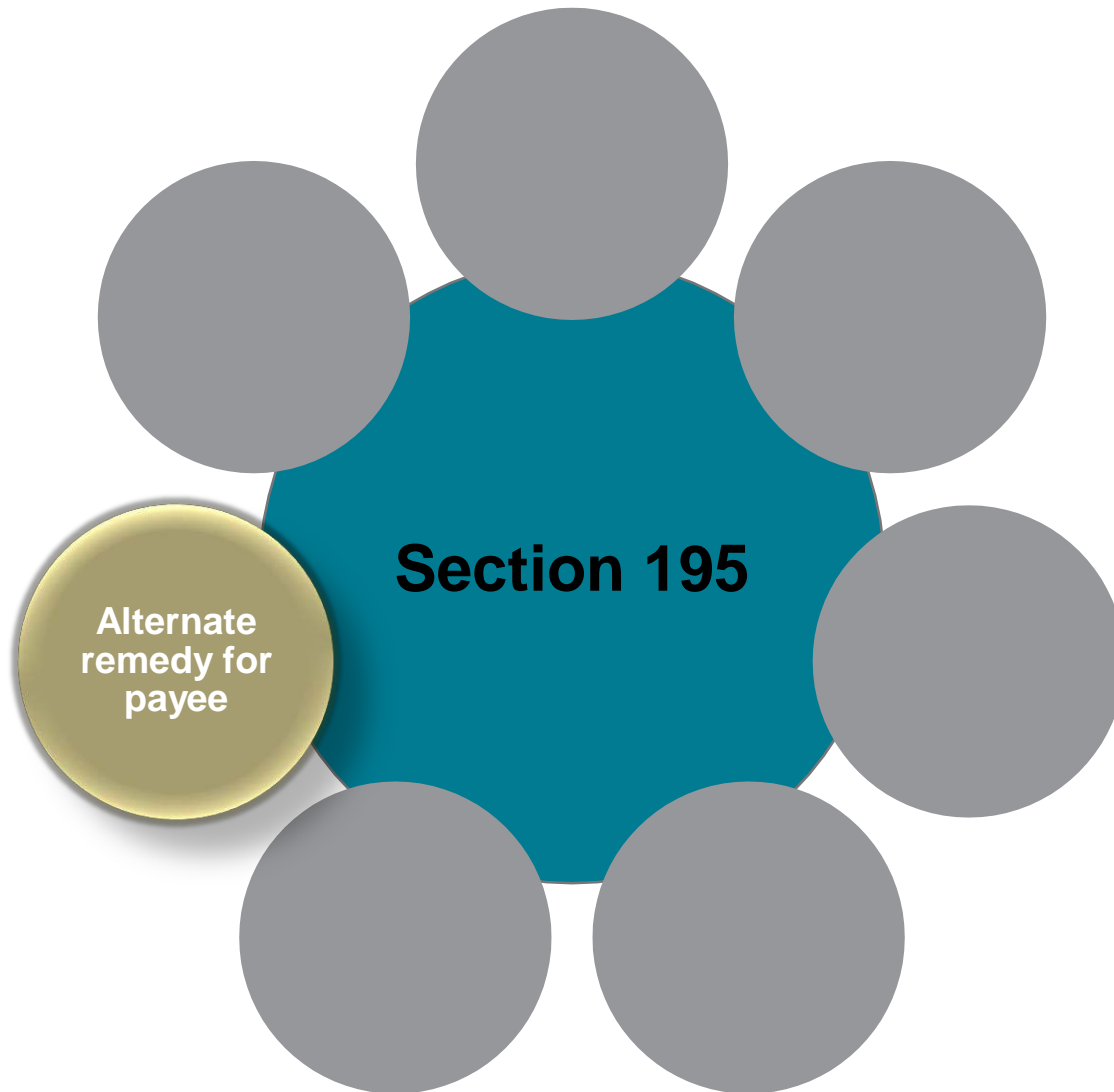
Process

- Payer to approach tax authority to determine portion of income chargeable to tax
- Online system validated certificate prescribed

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 the 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

Alternate remedy for payer and payee

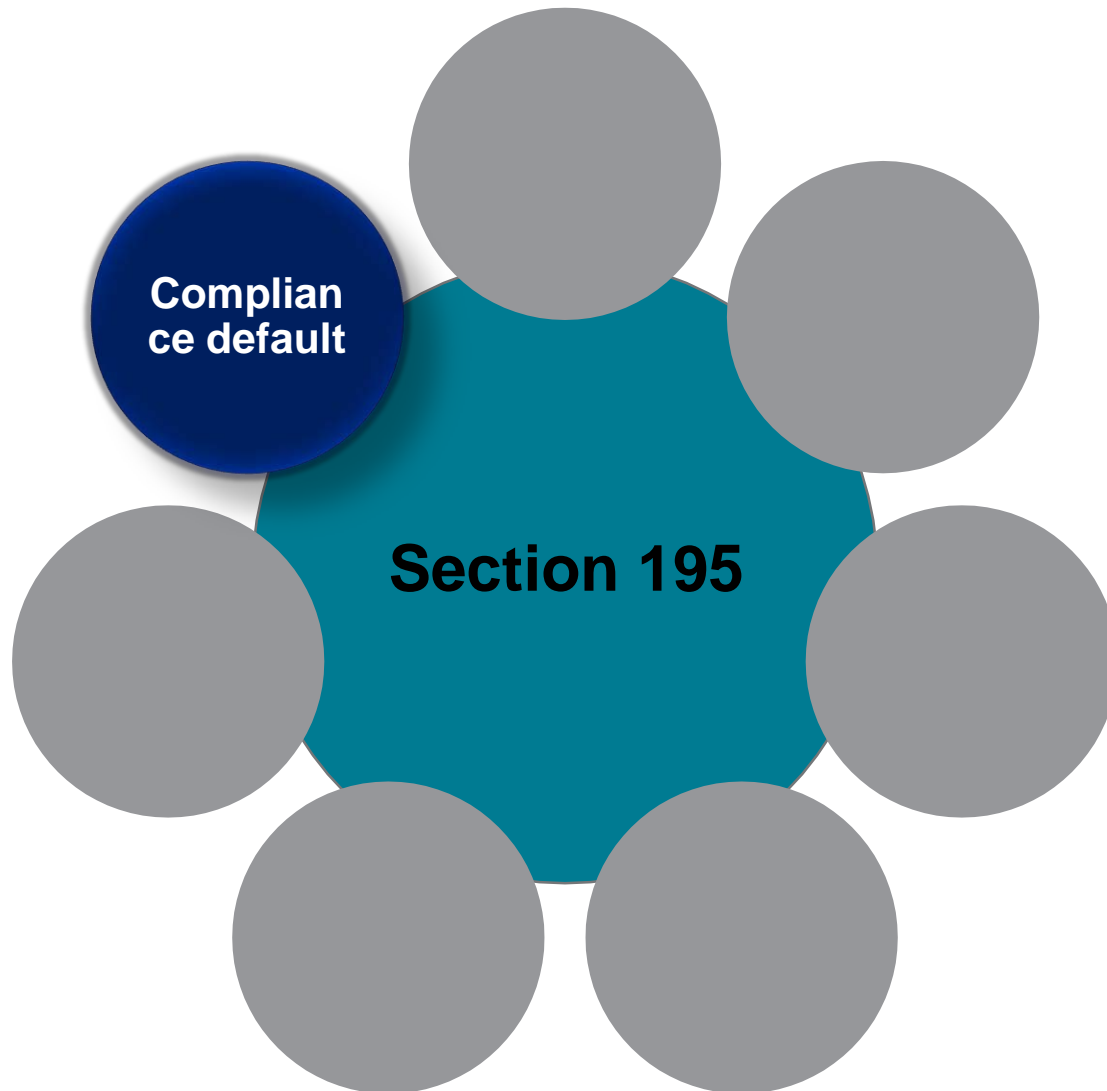
Chartered Accountants' (CA) Certificate under Section 195(6)

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

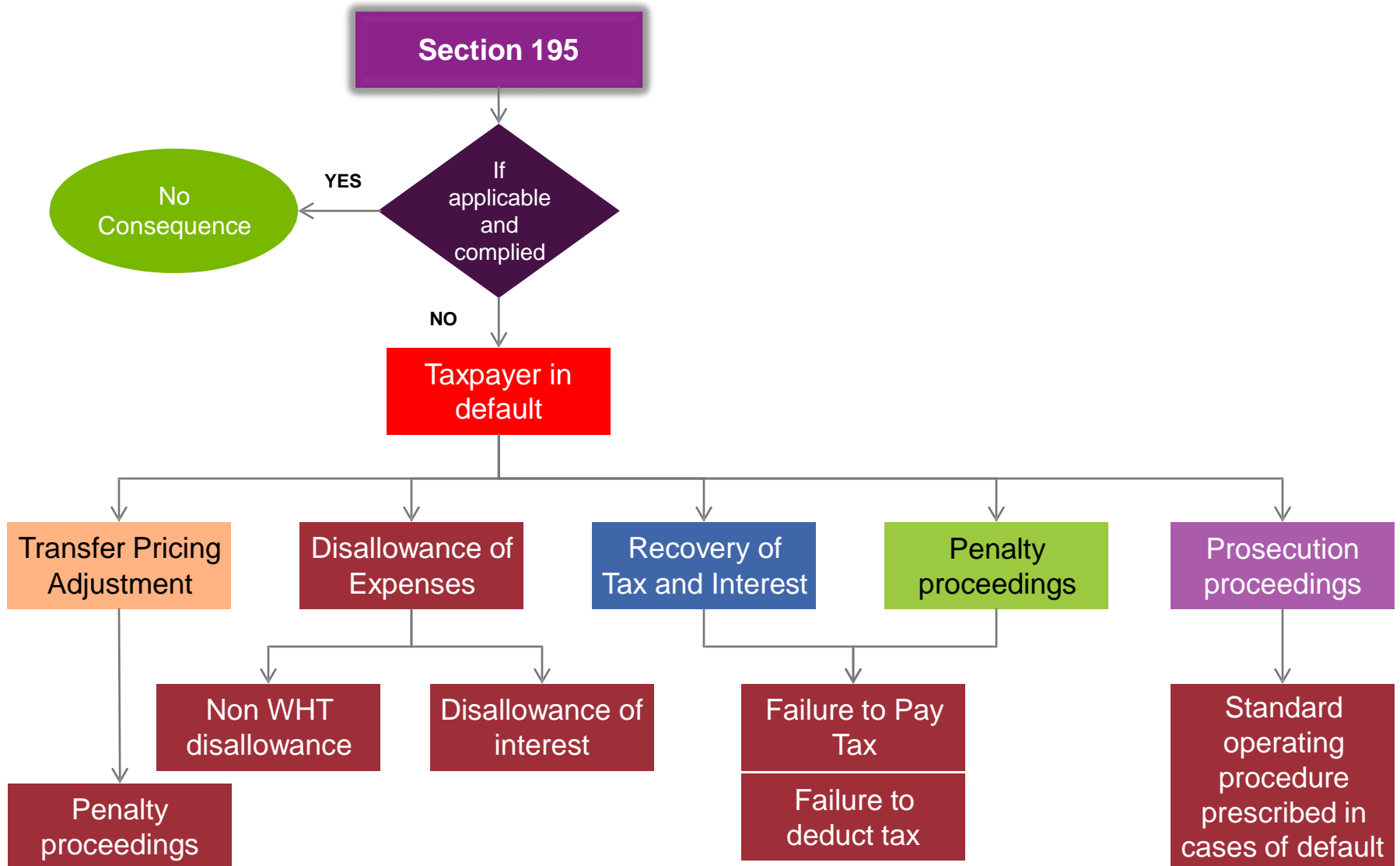
Detailed procedures discussed in the ensuing slides of operational rules

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



Practice and Operational rules (1/12)

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 the Finance Act, 2008 for CA certificate
- Rule 37BB introduced by CBDT vide *Notification 30/2009 dated 25/03/2009* :
 - Forms 15CA and 15CB to remit payments to nonresidents and intimate the manner of disclosure:
 - 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**

Practice and Operational rules (2/12)

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 issued in December 2015

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

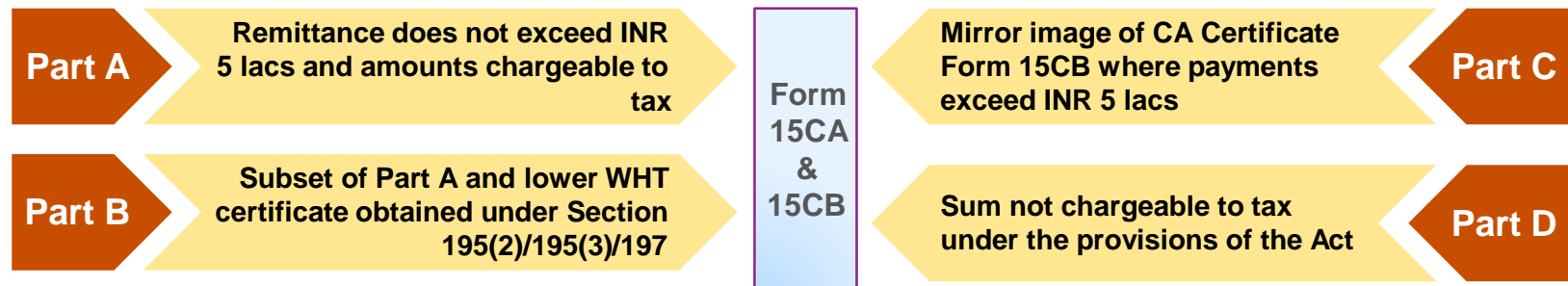
Penalty for non-furnishing or inaccurate filing of information – INR 100,000

Practice and Operational rules (3/12)

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 or Specified List; 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) |
|------------------------------------|--|-----------------------------------|-----------------------|--|
- 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:



Practice and Operational rules (4/12)

Amended procedures for CA Certificate

- Only taxable remittances to be reported in Form 15CA
- Select Form 15CA in Parts:
 - **Part A:** Applicable to remittances chargeable to tax for small payments that does not exceed INR 5 lacs or aggregate of such payments during the Financial
 - **Part B:** For any other payments chargeable to tax and lower / NIL WHT certificate is obtained
 - **Part C:** Form 15CA after obtaining CA certificate in Form 15CB for sums chargeable to tax
 - **Part D:** Information of any sum not chargeable to tax
- Specific declaration / indemnity to be obtained by the payer for taxes and interest if payment is liable for WHT
- **Undertaking in prescribed format from payee**
- Form 15CA to be electronically uploaded on income-tax website. Amended process through generation of digital signatures for every payment

Sample declaration from the Payee

<< On the letterhead of Payee >>

Date: _____

TO WHOMSOEVER IT MAY CONCERN

We, the Payee, hereby confirm as follows:

1. We are a Limited Company incorporated and registered in ___with Unique Entity Number _____.
2. We are a tax resident of ___as per Article 4 of the tax treaty
3. We do not have any Permanent Establishment / Fixed place in India as defined under Article 5 of the Treaty. Also we will not have a Permanent Establishment / Fixed place in India within the meaning of the Treaty for the financial year.
4. The amount payable and its nature under the tax treaty
5. The amount is to be remitted to payee are the beneficiaries hereof.
6. The place of world assessment of our income is _____
7. In the event there is any income-tax demand (include interest etc) raised in India in respect of this remittance we undertake to pay the demand forthwith and provide _____with all information/documents that may be necessary for any proceedings before income tax/appellate authority in India.

For Payee

Practice and Operational rules (5/12)

Suggested method for CA Certificate

| Steps | Action plan |
|--|--|
| Payment covered under Section 195 | Payment from resident or from non resident to nonresident |
| Verify factual documents | Invoice, Contracts, Legal Status, obtain declaration, PAN, etc. |
| Determine character | Classification of payment, Business, Royalty, FTS, etc. |
| Evaluate taxability | |
| • Under IT Act | Income-tax rates, Grossing-up, Section 206AA , Case law update |
| • Under tax treaty | 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 |
| Specific orders | Verify specific orders received from tax authorities, 195(2), etc. |
| Follow compliance | 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

Practice and Operational rules (6/12)

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 :
Date :

SINGAPORE 018982

INLAND REVENUE
AUTHORITY
OF SINGAPORE

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 .

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

Practice and Operational rules (7/12)

Form 15CA

| | | |
|---|---|-------------------------------|
| Income-Tax Department | "FORM NO. 15CA (See rule 37BB) Information to be furnished for payments to a non-resident not being a company, or to a foreign company | Ack. No. <input type="text"/> |
| Part A (To be filled up if the remittance is chargeable to tax under the provisions of the Income-tax Act, 1961 and the remittance or the aggregate of such remittances, as the case may be, does not exceed five lakh rupees during the financial year) | | |
| REMITTER | Name of remitter | |
| | PAN of the remitter (if available) | |
| | TAN of the remitter (if available) | |
| | Complete address, email and phone number of the remitter | |
| | Status of remitter ¹ | <input type="checkbox"/> |
| Residential status of remitter ² | | |
| REMITTEE | Name of recipient of remittance | |
| | PAN of the recipient of remittance, if available ³ | |
| | Complete address, email ⁴ and phone number ⁵ of the recipient of remittance | |
| Country to which remittance is made | | |
| REMITTANCE | Amount payable before TDS (In Indian Currency) | |
| | Aggregate amount of remittances made during the financial year including this proposed remittance | |
| | Name of bank | |
| | Name of the branch of the bank | |
| | Proposed date of remittance | |
| | Nature of remittance | |
| | Please furnish the relevant purpose code as per RBI | |
| | Amount of TDS | |
| Rate of TDS | | |
| Date of deduction | | |
| 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 knowledge and belief and no relevant information has been concealed. 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 liability under the Income-tax Act as a person responsible for deduction of tax at source. | | |
| Place: | Signature of the person responsible for paying to non-resident | |
| Date: | Name and Designation of the person responsible for paying to non-resident | |

Form 15CA

| | | |
|--|---|--|
| Part B (To be filled up if the remittance is chargeable to tax under the provisions of the Income-tax Act, 1961 and the remittance or the aggregate of such remittances, as the case may be, does not exceed five lakh rupees during the financial year and an order/certificate u/s 195(2)/ 195(3)/ 197 of Income-tax Act has been obtained from the Assessing Officer.) | | |
| REMITTER | Name of remitter | |
| | PAN of the remitter | |
| | TAN of the remitter ¹ | |
| | Complete address, email and phone number of the remitter | |
| | Status of remitter ² | <input type="checkbox"/> |
| Residential status of remitter ³ | | |
| REMITTEE | Name of recipient of remittance | |
| | PAN of the recipient of remittance, if available ⁴ | |
| | Complete address, email ⁵ and phone number ⁶ of the recipient of remittance | |
| A.O. ORDER | Section under which order/certificate has been obtained | |
| | Name and designation of the Assessing Officer who issued the order/certificate | |
| | Date of order/certificate | |
| | Order/ certificate number | |
| REMITTANCE | Country to which remittance is made | Country: _____ Currency: _____ |
| | Amount payable | In foreign currency: _____ In Indian Rs. _____ |
| | Name of the Bank | Branch of the Bank |
| | BSR Code of the bank branch (7 digit) | |
| | Proposed date of remittance | (DD/MM/YYYY) |
| | Nature of remittance as per agreement/ document | |
| | Please furnish the relevant purpose code as per RBI | |
| | Amount of TDS | |
| Rate of TDS | | |
| Date of deduction | | |
| 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 knowledge and belief and no relevant information has been concealed. I/We* certify that a certificate/order under section 195(2)/195(3)/197 of the Income-tax Act, 1961 has been obtained, particulars of which are given in this Form. 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 liability under the Income-tax Act as a person responsible for deduction of tax at source. | | |
| Place: | Signature of the person responsible for paying to non-resident | |
| Date: | Name and Designation of the person responsible for paying to non-resident | |

Practice and Operational rules (8/12)

Form 15CA

Part C

(To be filled up if the remittance is chargeable to tax under the provisions of Income-tax Act, 1961 and the remittance or the aggregate of such remittances, as the case may be, exceeds five lakh rupees during the financial year and a certificate in Form No. 15CB from an accountant as defined in the Explanation below sub-section (2) of section 288 has been obtained)

| Section A | | GENERAL INFORMATION | | | | |
|------------|--|--|---|---|-------|--|
| REMITTER | Name of the remitter | | | | | |
| | PAN of remitter | Area Code | AO Type | Range Code | AO No | |
| | Principal Place of Business | TAN of remitter ¹ | | | | |
| | Complete address, email and phone number of the remitter | | | | | |
| REMITTEE | Status ² | <input type="checkbox"/> Residential status of remitter ³ | | | | |
| | Name of recipient of remittance | PAN of recipient of remittance ⁴ | | | | |
| | Status ² | <input type="checkbox"/> | | | | |
| | Address | Country to which remittance is made: | | | | |
| ACCOUNTANT | Principal place of business | Email address | (ISD code)-Phone Number | | | |
| | (a) | Name of the Accountant ⁶ signing the certificate | | | | |
| | (b) | Name of the proprietorship/firm of the accountant | | | | |
| | (c) | Address | | | | |
| | (d) | Registration no. of the accountant | | | | |
| A.O. ORDER | (e) | Date of certificate (DD/MM/YYYY) | | Certificate No. ⁷ | | |
| | (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 | | | | |
| REMITTANCE | (e) | Order/ certificate number | | | | |
| | Section B PARTICULARS OF REMITTANCE AND TDS (as per certificate of the accountant) | | | | | |
| | 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 | Relevant purpose code as per RBI | | | | |
| 8 | In case the remittance is net of taxes, whether tax payable has been grossed up? | | (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| ITACT | 9 | 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 | | | | |

Form 15CB

Form No. 15CB
(See rule 37BB)
Certificate of an accountant¹

I/We* have examined the agreement (wherever applicable) between Mr./Ms./M/s*..... and Mr./Ms./M/s*.....
(Remitters) (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 Chapter- 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 |
| | 8. | Taxability under the provisions of the Income-tax Act (without considering DTAA) | (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | (i) is remittance chargeable to tax in India | |
| | | (ii) if not reasons thereof | |
| | (iii) if yes, | | |
| | (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 | | |

Practice and Operational rules (9/12)

Form 15CA

| | | |
|---|---|---|
| DTAA | tax | |
| | (c) the tax liability | |
| | (d) basis of determining taxable income and tax liability | |
| | 10. If any relief is claimed under DTAA- (i) whether tax residency certificate is obtained from the recipient of remittance | (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | (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. | | |

Form 15CB

| | | |
|----|---|---|
| 9. | If income is chargeable to tax in India and any relief is claimed under DTAA- (i) whether tax residency certificate is obtained from the recipient of remittance | (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | (ii) please specify relevant DTAA | |
| | (ii) please specify relevant article of DTAA | Nature of payment as per DTAA |
| | (iii) taxable income as per DTAA | In Indian Rs. |
| | (iv) 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 |

Practice and Operational rules (10/12)

Form 15CA

| | | |
|-----|---|---|
| | 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 | 11. Amount of tax deducted at source | In foreign currency In Indian Rs. |
| | 12. Rate of TDS | As per Income-tax Act (%) or As per DTAA (%) |
| | 13. Actual amount of remittance after TDS | In foreign currency |
| | 14. Date of deduction of tax at source, if any | (DD/MM/YYYY) |

VERIFICATION

1. 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. 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.

Place: _____
Signature of the person responsible for paying to non-resident

Date: _____
Name and Designation of the person responsible for paying to non-resident

Form 15CB

| | | |
|-----|---|---|
| | (a) Article of DTAA | As per DTAA (%) |
| | (b) Rate of TDS required to be deducted in terms of such article of the applicable DTAA | |
| | B. In case the remittance is on account of business income, please indicate:- | (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | (a) Whether such income is liable to tax in India | (Tick) <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | (b) If so, the basis of arriving at the rate of deduction of tax. | |
| | (c) If not, please furnish brief reasons thereof, specifying relevant article of DTAA | |
| | 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 | |
| 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) |

Certificate No.:

Signature :
Name:

Name of the proprietorship/ firm:

Address:

Registration No.:

Practice and Operational rules (11/12)

Form 15CA

Part D

[To be filled up if the remittance is not chargeable to tax under the provisions of the Income-tax Act, 1961 (other than payments referred to in rule 37BB(3)) by the person referred to in rule 37BB(2)]

| | | | |
|------------|--|----------------------|--------------------------------|
| REMITTER | Name of the remitter | | |
| | PAN of the remitter, if available | | |
| | TAN of the remitter, if available | | |
| | Complete address, email and phone number of the remitter | | |
| | Status of remitter ¹ | | <input type="checkbox"/> |
| | Residential status of the remitter ² | | |
| REMITTEE | Name of recipient of remittance | | |
| | PAN of the recipient of remittance, if available | | |
| | Complete address, email and phone number ⁴ of the recipient of remittance | | |
| | Country to which remittance is made | Country: | Currency: |
| | Country of which the recipient of remittance is resident, if available | | |
| | Amount payable | In foreign currency: | In Indian Rs. |
| REMITTANCE | Name of the bank | | Name of the branch of the bank |
| | BSR code of the bank branch (7 digit) | | |
| | Proposed date of remittance | | (DD/MM/YYYY) |
| | Nature of remittance | | |
| | Please furnish the relevant purpose code as per RBI | | |

2. I certify that I have reason to believe that the remittance as above is not chargeable under the provision of Income-tax Act 1961 and is not liable for deduction of tax at source.

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. In a 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 as a person responsible for deduction of tax at source.

Place: _____ Signature of the person responsible for paying to non-resident

Date: _____ Name and Designation of the person responsible for paying to non-resident

Form 15CC

Form No.15CC
(See rule 37BB)

Quarterly statement to be furnished by an authorised dealer in respect of remittances made for the quarter of of (Financial Year)

- Name and address of the authorised dealer:
- Permanent Account Number:
- Details of remittances made:

| Sl. No. | Name of the remitter | PAN of the remitter | Name of the remitee | PAN of the remitee, if available | Amount of remittance | Date of remittance | Country to which remittance is made | Purpose Code as per RBI |
|---------|----------------------|---------------------|---------------------|----------------------------------|----------------------|--------------------|-------------------------------------|-------------------------|
| | | | | | | | | |

Verification

I (full name in block letters), son/daughter of solemnly declare that to the best of my knowledge and belief, the information given above are correct and complete.

Place Signature

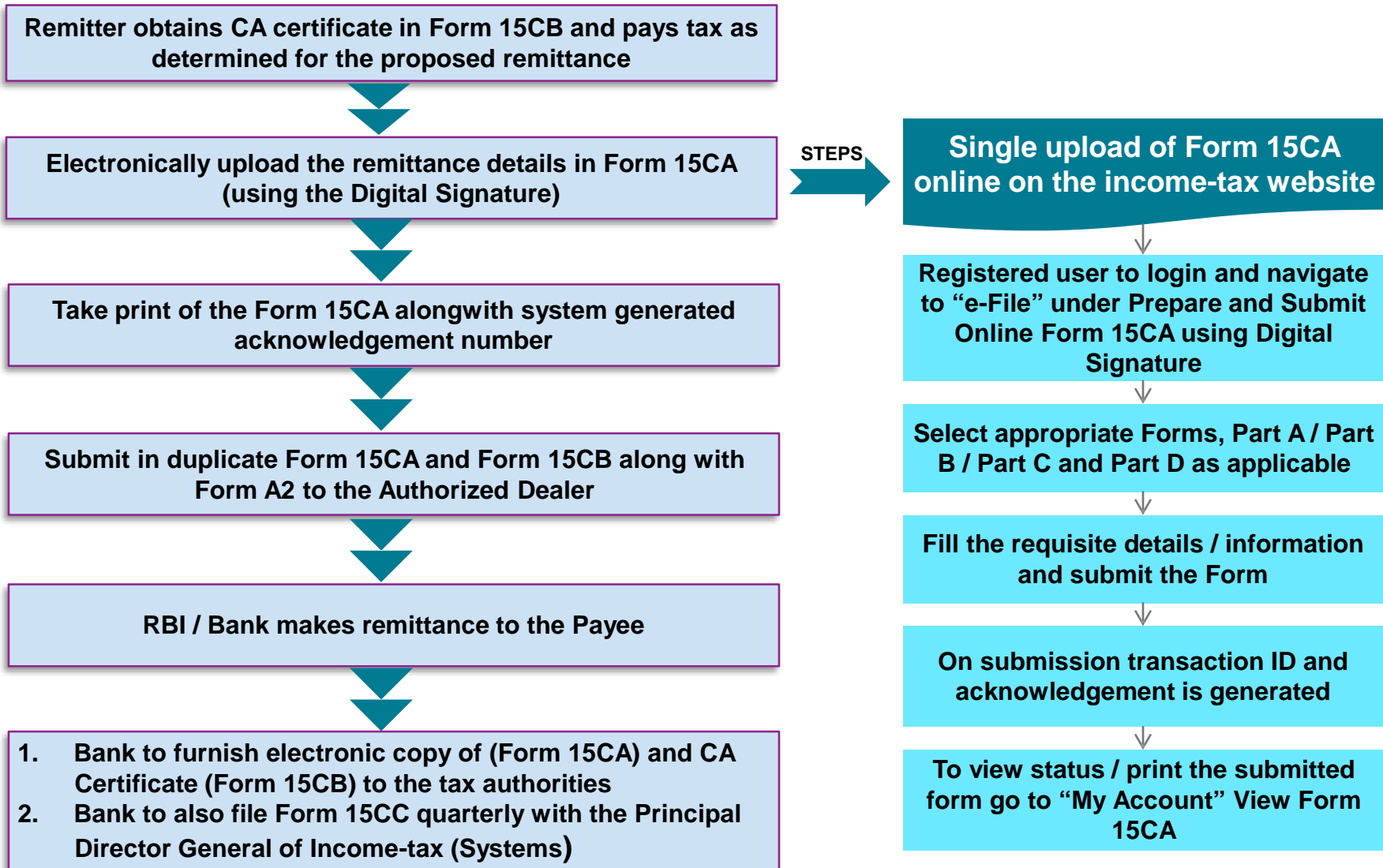
Date Name and Designation

[Notification No. 93/2015, F.No.133/41/2015-TPL]

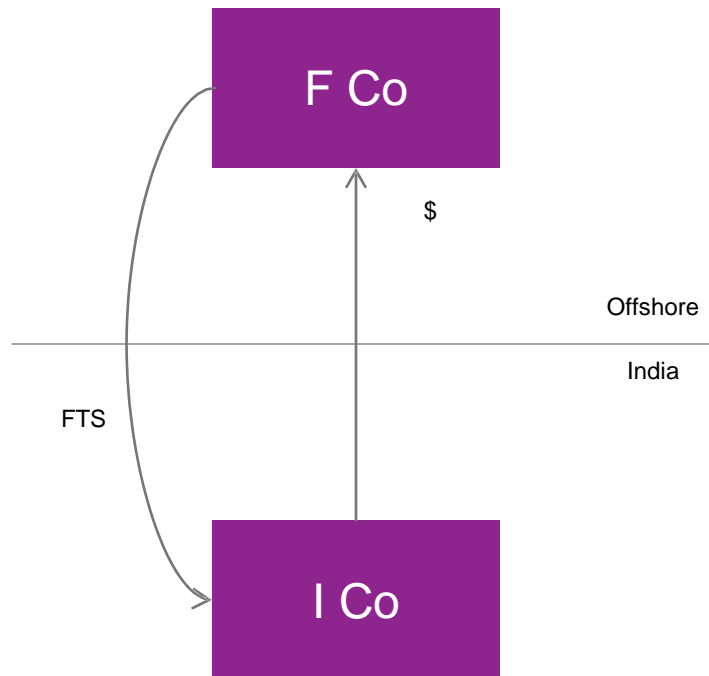
(PITAMBAR DAS)
DIRECTOR (TAX POLICY AND LEGISLATION)

Note.— The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide notification number S.O. 969(E), dated the 26th March, 1962 and last amended vide notification number S.O.3357 (E), dated the 11th December, 2015 .

Practice and Operational rules (12/12)



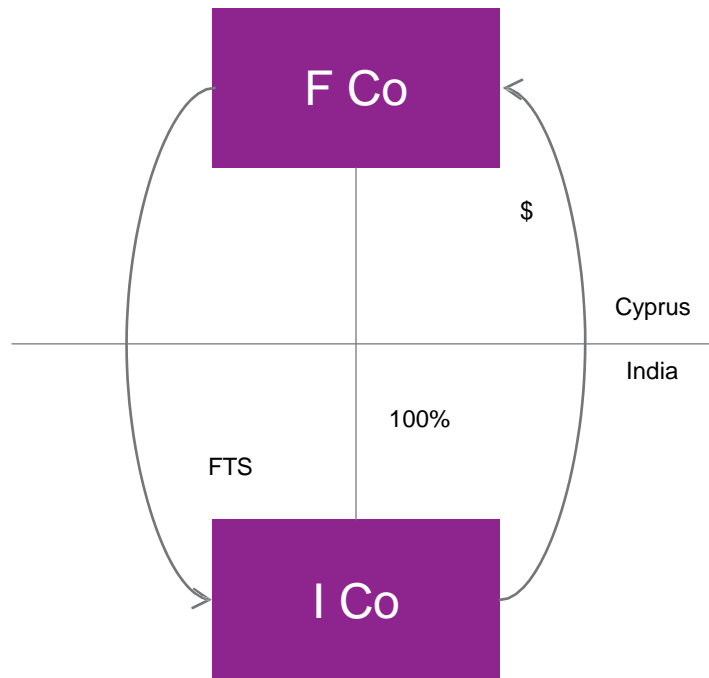
Illustration



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?

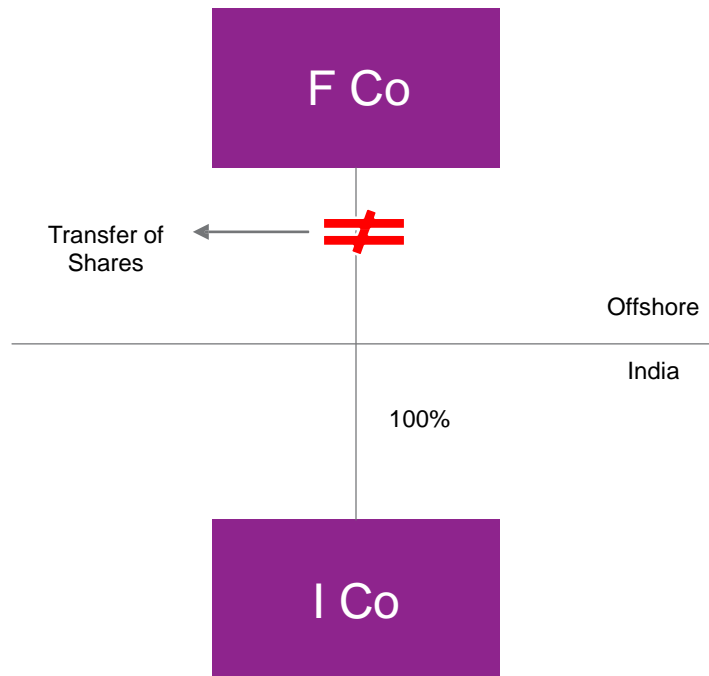
Illustration (Variation)



Applicable WHT rate for F Co in absence of PAN

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

Illustration - Group Restructuring



Applicable WHT provisions for F Co case of share sale

- Gains arising on transfer of shares are exempt under the applicable tax treaty
- Is a PAN required?
- Is withholding tax provisions applicable?
- Does F Co have to file a return of income in India?

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.

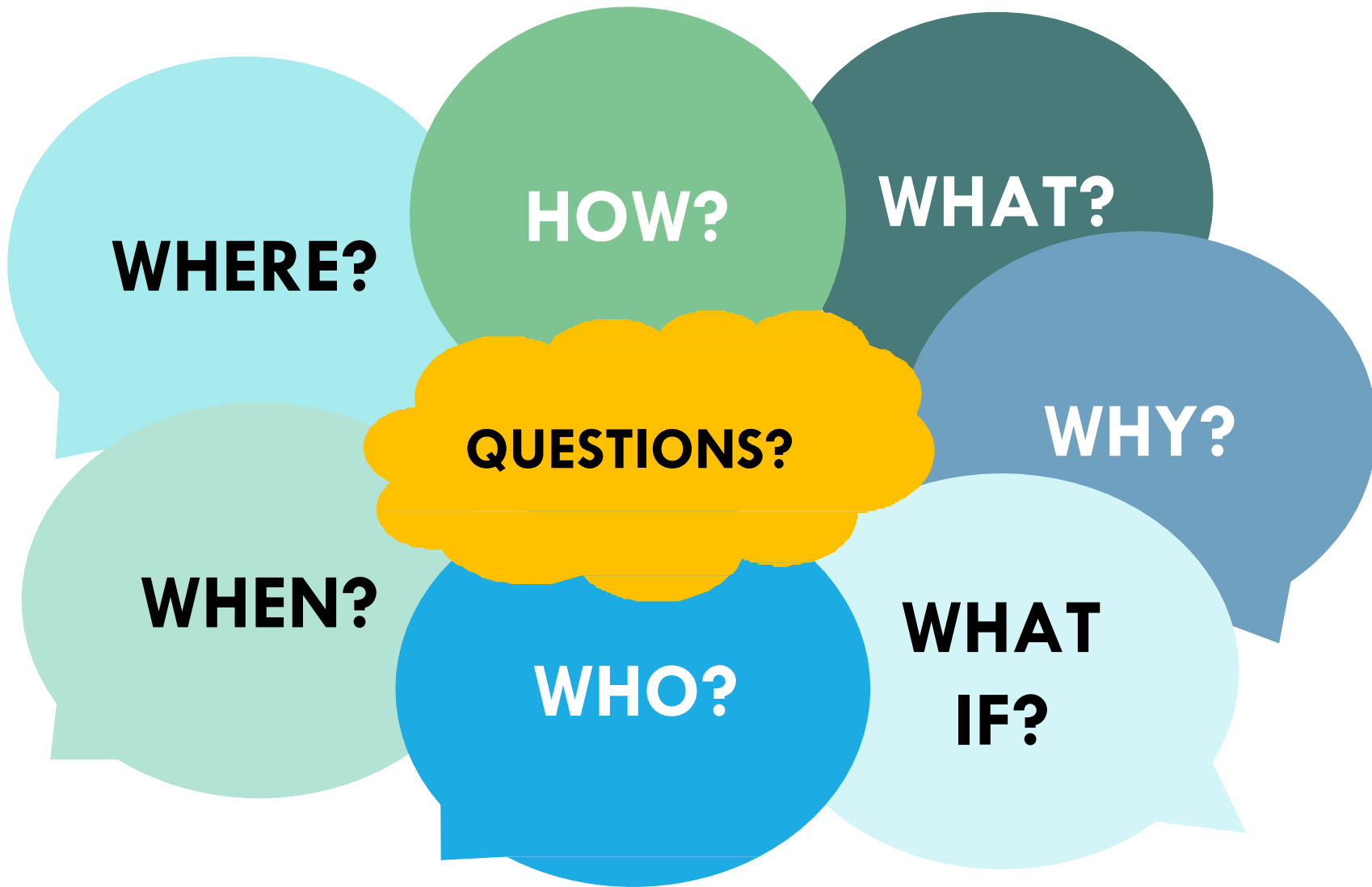
Cumbersome compliance provisions for non-resident payers'

5.

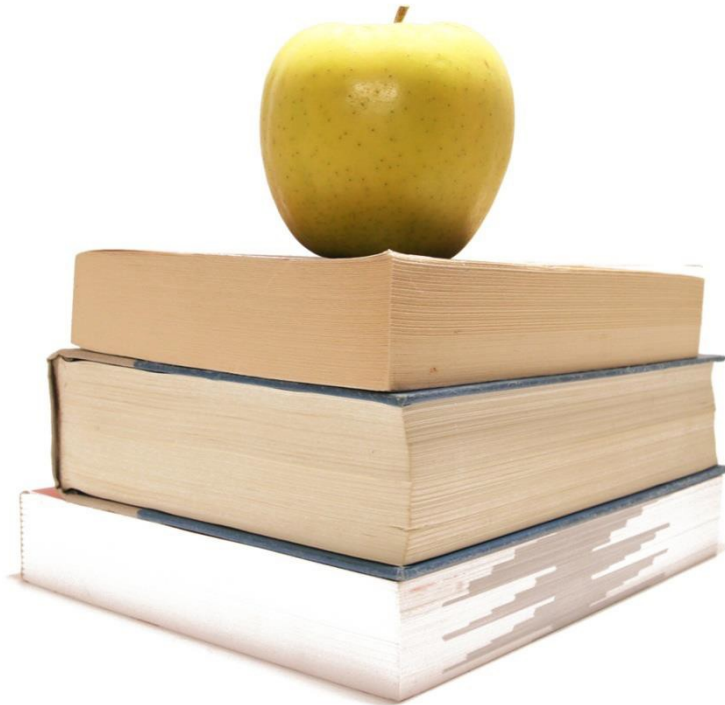
Stay updated or hire competent professionals for a comprehensive assessment

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 improvise 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