

Overview of International Tax & Form 15CA / 15CB Practical Issues & Challenges



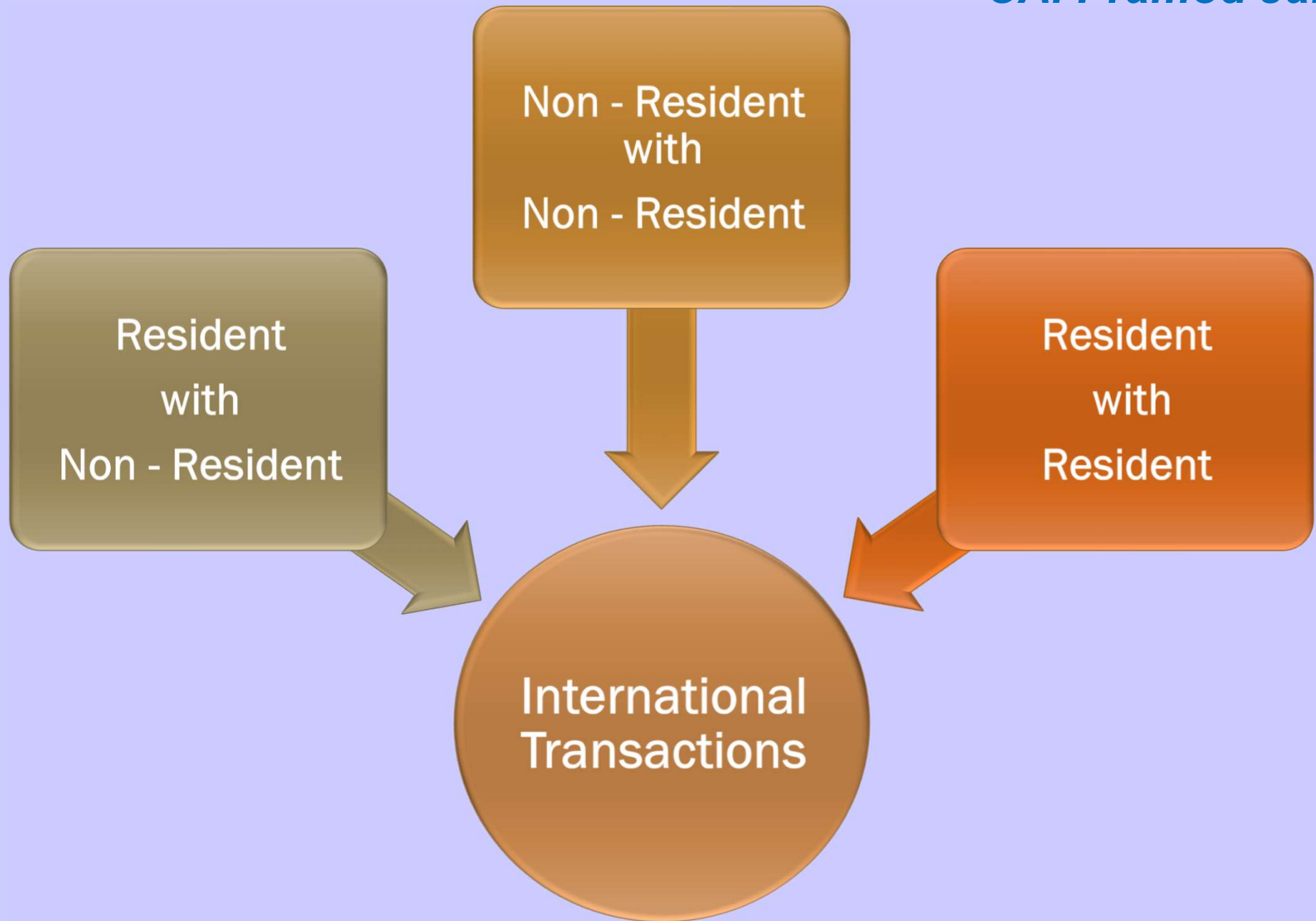
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B. COM (H), FCA, FCS, FCMA, LL.B, MIMA, DISA, IP

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OVERVIEW

- **IT provisions**
- **When to have PAN**
- **When to file ITR**
- **When to withhold tax**
- **DTAA**
- **MLI**

OVERVIEW

- **TP**
- **Equalization Levy**
- **Black Money**
- **CBC**
- **FATCA / CRC**
- **Salary, HP, CG, Business, OS, Royalty, FTS, Interest**

TAXABILITY IN INDIA

Taxability

- Depends on Residential Status

Residence

- Broadly into Resident or Non - Resident
- Resident further into 'Ordinary Resident' (ROR) or 'Not Ordinary Resident' (RNOR)

Scope of Taxation

- ROR – Global Income
- NR – Income received in India or accrues or arise in India.
- RNOR - Income received in India or accrues or arise in India. Income accrues or arise outside India BUT is derived from a business controlled in or profession set up in India

DEFINITIONS

- ✗ **Non Residents Indians (NRI) – S. 115 (c)(e):**
 - + **An individual**
 - + **Being a Citizen of India or a Person of Indian Origin (PIO)**
 - + **Who is not a Resident.**
- ✗ **PIO - A Person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand parents , was born in undivided India**
- ✗ **Indian Citizen - Holder of Indian Passport**

NON- RESIDENT

- ❖ **Section 2(30) – “non-resident” means a person who is not a "resident", and for the purposes of sections 92 , 93 & 168, includes a person who is not ordinarily resident within the meaning of section 6(6)**

RESIDENTIAL STATUS – S. 6

1. For the purposes of this Act,—

(1) An individual is said to be resident in India in any previous year, if he—

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

(b) [*]**

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

***Explanation 1.*—In the case of an individual,—**

(a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted ;

RESIDENTIAL STATUS – S. 6

(b) being a citizen of India, or a person of Indian origin within the meaning of *Explanation* to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted ***and in case of the citizen or person of Indian origin the citizen or person of Indian origin having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, for the words "sixty days" occurring therein, the words "one hundred and twenty days" had been substituted.***

RESIDENTIAL STATUS OF NR

- **Till end of FY 2019-20, NRIs (Indian Citizens & PIO) included those individuals who visited India for less than 182 days in a FY.**
- **Finance Act 2020 reduced the period to 120 days.**
- **Reduced 120 days shall apply, only in case where total Indian income of such visiting individuals during the FY is more than Rs. 15 lakh.**
- **Impact of amendment is only on such Indian citizens:**
 - **having income from Other than Foreign Sources exceeding Rs. 15 lakhs; and**
 - **who being outside India comes to visit in India for a period exceeding 119 days (instead 181 days earlier); and**
 - **their period of stay in the immediately preceding 4 years is 365 days or more.**

FOREIGN SOURCE (FS)

- **Example of incomes not being Foreign Source**
 - Dividend or Interest income received from resident in India
 - Income from business or profession set up in India
 - CG from property situated in India / shares of Indian Co.
 - CG from shares of a company which derive its value substantially from property situated in India
 - Rental Income from property situated in India
- **Example of incomes being Foreign Source**
 - Salary from services rendered outside India
 - Dividend or Interest income received from overseas
 - Income from business or profession from overseas having no nexus with India
 - CG from property situated outside India / shares of Foreign Co.
 - Rental Income from property situated outside India

IMPACT OF AMENDMENT

- In such case they would be RNOR u/s 6(6)(c)
- RNOR is considered to be resident under the Act for deductions, exemptions, TDS, etc. They are considered NR only for purposes of s. 92, 93 & 168.

S. N	Nature of Income	ROR	RNOR	NR
1	Income received in India or deem to receive in India.	Y	Y	Y
2	Income accrue or arise in India or deem to accrue or arise in India	Y	Y	Y
3	Income though accrues or arise outside India BUT derive from business controlled or profession set up in India	Y	Y	N
4	Income accrue or arise outside India other than 3 above	Y	N	N
5	Income received outside India	Y	N	N

PROVISIONS UNDER IT ACT

S. No.	Section	Provision
1	2(30)	Definition of Non- Resident
2	4	Charge of Income
3	6	Residence in India
4	7	Income deemed to be Received
5	9	Income deemed to accrue or arise in India
6	9A	Certain activities not to constitute business connection in India
7	10(4)/(4B) /(15)	Interest – NRE, FCNR etc
8	10(6B)	Tax Paid by Employer / Indian Government
9	10(8A)/(8B)/9	Exemption to Consultant
10	40(a)(i)	Disallowance for not deducting tax
11	44B, 172	Shipping Business – 7.5%
12	44BB	Business of prospecting Mineral Oil – 10%

PROVISIONS UNDER IT ACT

S. No.	Section	Provision
13	44BBA	Business of Operation of Aircraft – 5%
14	44BBB	Civil construction, etc in Turnkey Projects – 10%
15	44C	Head Office Expenditure
16	44DA	Royalty, FTS - when PE / Business Con. In India
17	47(viia)	Not Transfer GDR – NR to NR
18	Chapter IX	DTAA Relief – Ss. 90 / 90A / 91
19	92 to 92F	Transfer Pricing
20	93	Avoidance of income-tax by transactions resulting in transfer of income to non-residents.
21	94B	Limitation of interest paid to AE > Rs. 1 Cr.
22	115A	Tax on Dividend, Royalty, FTS and Interest
23	115AB	Tax on Income / CG on Units purchased in Foreign Currency by Offshore Funds

PROVISIONS UNDER IT ACT

S. No.	Section	Provision
24	115AC	Income / CG on Bond / shares / GDR purchased in Foreign Currency
25	115AD	Tax on income of FII from securities
26	115BBA	Tax on Entertainer / Sportsmen / Sports association
27	115BBD	Tax on dividend received from certain Foreign Companies
28	Chapter XII-A	Spl provisions for NR – SS. 115 C to 115 - I
29	115C	Few Definitions – convertible foreign exchange, NRI, LTCG, etc
30	115D	Special provisions for computation of Income
31	115E	Tax on Investment income & LTCG
32	115G	Return of Income not to be filed in certain cases

PROVISIONS UNDER IT ACT

S. N.	Section	Provision
33	115H	Benefit of Scheme available in certain cases even after becoming resident
34	115-I	Non-application of the scheme if NR so chooses
35	160 / 163	Agent
36	173	Recovery of Tax from his asset
37	194E	TDS – Entertainer / Sportsmen/Sports association
38	194LBA/LC/ LD	TDS - Interest
39	195	TDS
40	196A	TDS on Units
41	285	Statement by non-resident having liaison Office
42	286	Reporting of International Group
43		DTAA, BEPS, MLI
44	Other Acts	Equalization Levy, Black Money Act

CERTIFICATION IN FORM 15CA & 15CB

- **Twin Objective - As per memorandum explaining provisions of the Finance Bill, 2015**
- **Ensuring deduction** of tax at appropriate rate from taxable remittances
- **Identifying** remittances on which tax was deductible but payer **failed to deduct the tax**

BASIC PROVISIONS

Sections

- **195, 271 - I**

Rules

- **37BB, 37BC, 21AB**

Forms

- **15CA / 15CB / 15CC**

COMPLIANCE

Withholding

- At the time of payment or credit whichever is earlier
- At TT buying rate (SBI)

Remittance

- Certification in Form 15CA and undertaking in Form 15CB

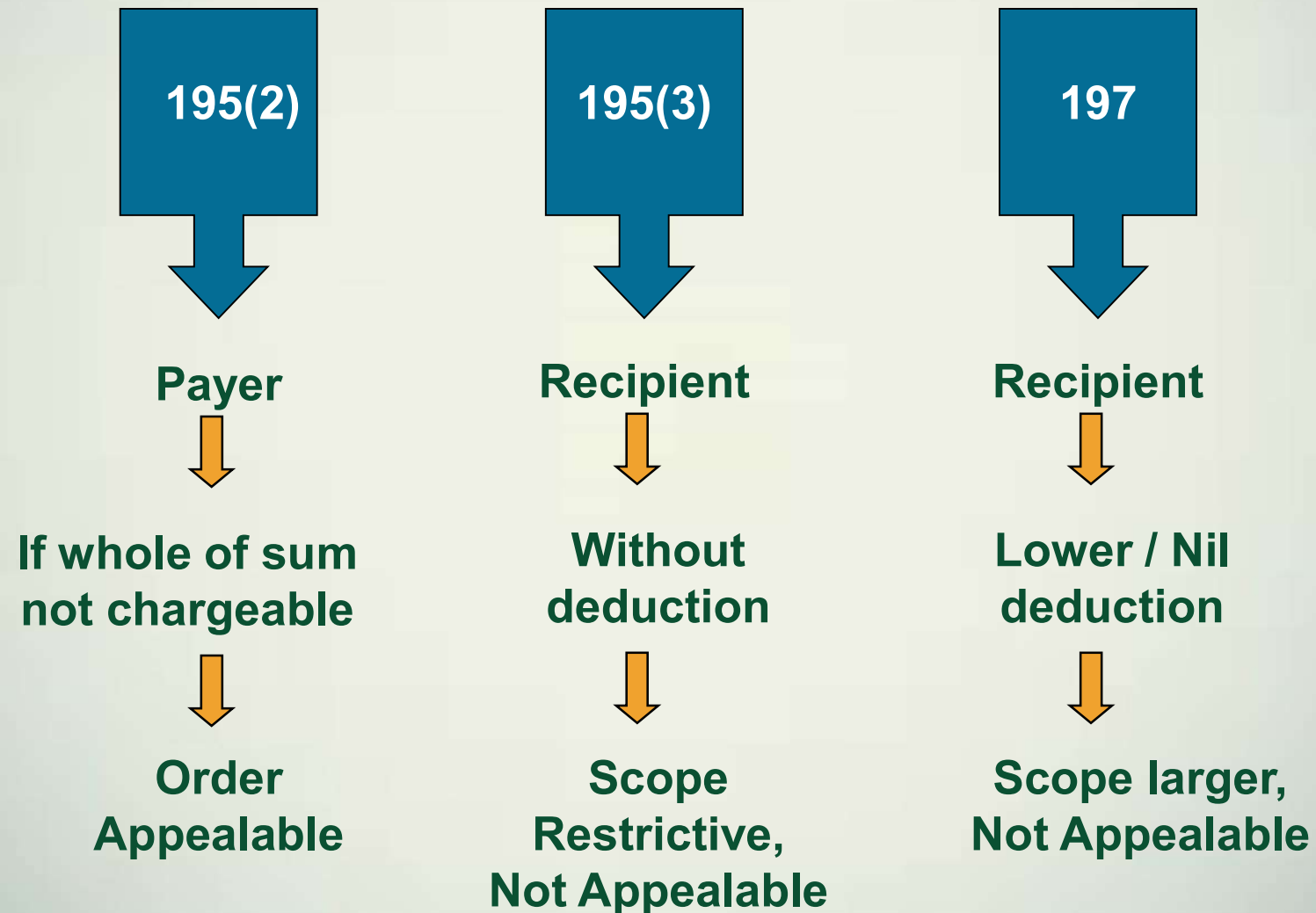
Disclosure

- TDS Returns

195 VS. 194A, 194C, ETC.

	S. 195	Other sections, 194A, 194C, 194J, etc
Payer	Any Person	Specified
Payee	Non-Resident	Resident
Nature of payment	Income chargeable under IT Act	Specified, whether income or not
Minimum Threshold	No Threshold	Specified
Certificate for payment	Mandatory in specified cases	Not Required
Disallowance for non-deduction	S. 40(a)(i)	S. 40(a)(ia)
Lower TDS certificate	Payer as well as Payee can apply	Only Payee can apply
Requirement of TAN	Mandatory	Not required in 194-IA, IB

LOWER TDS – 195 VS. 197



GROSS OR INCOME

- ❖ S. 195(2) is based on 'principle of proportionality' & is attracted only in case of a composite payment having an element of taxable income.
- ❖ The obligation to deduct tax on composite payments would be limited to the appropriate proportion of income forming part of the gross sum remitted
 - ❖ *GE India Technology Centre (P.) Ltd. [2010] 193 Taxman 234 (SC)*

GROSS OR INCOME

- ❖ If no application was made u/s 195(2) & the payer failed to deduct tax, liability u/s 201 to be computed on taxable portion & not whole sum remitted
 - ❖ CBDT Inst. No. 2/2014 dt. 26.2.2014
- ❖ Disallowance u/s 40(a)(i) to be computed on the taxable portion & not the whole sum remitted
 - ❖ CBDT Circular No. 3/2015 dt 12.2.2015

IS WHT ON ALL PAYMENTS?

- ❖ Not all. Examples could be:
 - ❖ Capital payments being gift, loan, repayment of loan, etc. - Rule 37BB / Schedule III of CAT Rules
 - ❖ Specifically exempt – dividend u/s 115 O, salaries
 - ❖ Revenue payments not chargeable to tax in India
- ❖ Exchange rate fluctuation between date of TDS i.e. credit to the payee's account and the remittance date
 - ❖ *Sandvik Asia Ltd [2012] 49 SOT 554 (Pun ITAT)*

DETERMINATION OF TDS

- ✖ Check whether payment covered within s. 195
- ✖ Other sections for 192, 194LC, 194LD etc
- ✖ Based on documents, determine nature of payments & applicable provisions
- ✖ Certificate u/s 195(2) / 195(3) / 197
- ✖ Determine whether payee eligible for treaty benefits and whether relevant documents obtained to grant treaty relief

RATE OF TDS

- ✖ Rates in force - section 2(37A)(iii) - For the purpose of TDS u/s 195, rates in force mean the beneficial of:
 - + Rates specified in Part II of First Schedule to the Finance Act of the relevant year; or
 - + Rates specified under the applicable DTAA
- ✖ Rule 21AB – To claim DTAA benefit, NR to furnish TRC (A certificate of residence in that country) & Form 10F
- ✖ Surcharge & Education cess not to be added to the tax rate specified under DTAA

S. 206AA W.R. RULE 37BC

- ✖ **Not applicable for payments in nature of interest, royalty, FTS & transfer of any capital asset, if following details submitted to deductor:**
 - + **Name, e-mail id, contact no**
 - + **Address in country or specified territory outside India of which deductee is resident**
 - + **Certificate of he being resident of other country by Govt. of that country, if law of that country permits**
 - + **Tax identification No. and in case no such no. is available then unique no. on the basis of which deductee is identified by government of that country**

RATE U/S 115A

- ✖ In case of a non-resident taxpayer where the total income of such taxpayer includes:
 - + Income by way of Royalty and
 - + Fees for technical services (FTS) from Government or an Indian concern after 31.03.1976
 - + AND which is not effectively connected with permanent establishment, if any, of the non resident in India
 - + Tax shall be levied at the rate of 10% on the gross amount of such income

FORM 15CA

- ✖ It is a Declaration given by Remitter & is used as a tool by statutory authorities for collecting information in respect of payments which are chargeable to tax in hands of recipient non-resident.
- ✖ This is an effective Information Processing System which is utilized by ITD to independently track foreign remittances and their nature to determine tax liability.

FORM 15CB

- ✖ **Its a certificate from a Chartered Accountant.**
- ✖ **It is Tax Determination Certificate where the issuer CA examines the remittance having regard to chargeability provisions u/s 5 & 9 along with provisions of DTAA with Recipient's Residence Country.**

FORM 15CB

**WHO CAN ISSUE
FORM 15CB ??**

PARTS OF 15CA – RULE 37BB(1)/(2)

A

- If aggregate of such remittances does not exceed Rs. 5 Lacs during the FY

B

- If aggregate of such remittances exceed Rs. 5 Lacs & order / certificate u/s 195(2)/ 195(3)/ 197 obtained

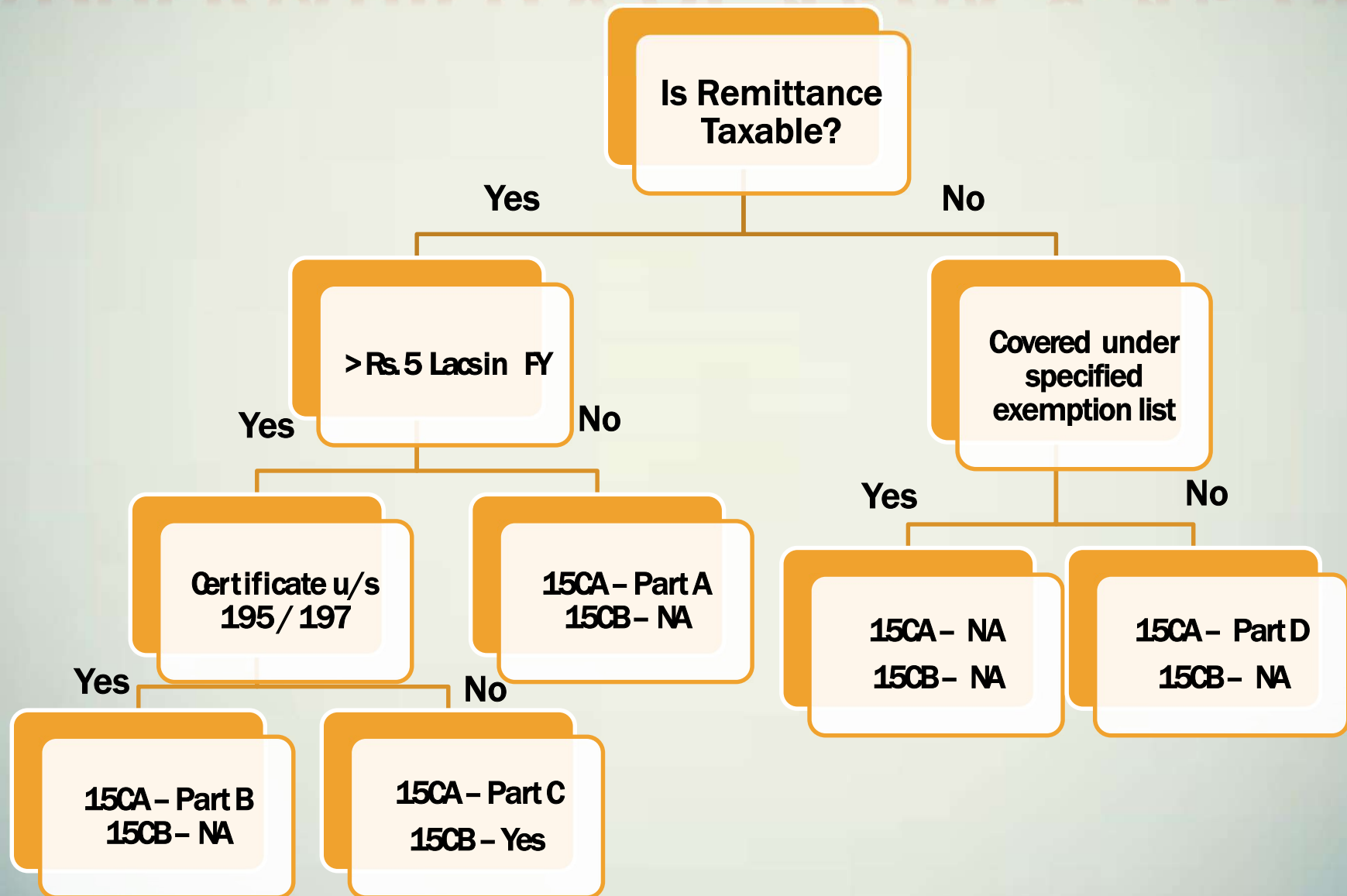
C

- If aggregate of such remittances exceed Rs. 5 Lacs & certificate in Form 15CB obtained from CA

D

- If remittance is not chargeable to Tax

APPLICABILITY OF 15CA & 15 CB



RULE 37BB

- ✖ (3) Notwithstanding anything contained in sub-rule (2) [Part D of 15CA], no information is required to be furnished (15CA / 15CB) for any sum which is not chargeable under the provisions of the Act, if,—
 - + Remittance is made by an **individual** and it does not require prior approval of RBI as per the provisions of section 5 of the FEMA read with Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000;
 - + Schedule list

FEMA

- ✖ **S. 5 of FEMA Act**
- ✖ **Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction**
- ✖ **Provided that the CG, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed**

SCH. III - FOREIGN EXCHANGE (CAT) RULES

✖ Within limit of USD \$250000

- + Private visits to any country (except Nepal & Bhutan)**
- + Gift or donation.**
- + Going abroad for employment**
- + Emigration**
- + Maintenance of close relatives abroad**
- + Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment / check-up.**
- + Expenses in connection with medical treatment abroad**
- + Studies abroad**

SPECIFIED LIST

Sl. No	Purpose code as per RBI	Nature of payment
1	S0001	Indian investment abroad -in equity capital (shares)
2	S0002	Indian investment abroad -in debt securities
3	S0003	Indian investment abroad -in branches and wholly owned subsidiaries
4	S0004	Indian investment abroad -in subsidiaries and associates
5	S0005	Indian investment abroad -in real estate
6	S0011	Loans extended to Non-Residents
7	S0101	Advance payment against imports

Sl. No	Purpose code as per RBI	Nature of payment
8	S0102	Payment towards imports - settlement of invoice
9	S0103	Imports by diplomatic missions
10	S0104	Intermediary trade
11	S0190	Imports below Rs.5,00,000 - (For use by ECD offices)
12	S0202	Payment for operating expenses of Indian shipping companies operating abroad
13	S0208	Operating expenses of Indian Airlines companies operating abroad
14	S0212	Booking of passages abroad - Airlines companies

Sl. No	Purpose code as per RBI	Nature of payment
15	S0301	Remittance towards business travel
16	S0302	Travel under basic travel quota (BTQ)
17	S0303	Travel for pilgrimage
18	S0304	Travel for medical treatment
19	S0305	Travel for education (including fees, hostel expenses etc.)
20	S0401	Postal services
21	S0501	Construction of projects abroad by Indian companies including import of goods at project site
22	S0602	Freight insurance - relating to import and export of goods

Sl. No	Purpose code as per RBI	Nature of payment
23	S1011	Payments for maintenance of offices abroad
24	S1201	Maintenance of Indian embassies abroad
25	S1202	Remittances by foreign embassies in India
26	S1301	Remittance by non-residents towards family maintenance and savings
27	S1302	Remittance towards personal gifts and donations
28	S1303	Remittance towards donations to religious and charitable institutions abroad

Sl. No	<i>Purpose code as per RBI</i>	<i>Nature of payment</i>
29	S1304	Remittance towards grants and donations to other Governments and charitable institutions established by the Governments
30	S1305	Contributions or donations by the Government to international institutions
31	S1306	Remittance towards payment or refund of taxes
32	S1501	Refunds or rebates or reduction in invoice value on account of exports
33	S1503	Payments by residents for international bidding.

PART D OF 15CA

- ✖ To be filled up if the remittance is not chargeable to tax in India {other than payments referred to in rule 37BB(3)} by the person referred to in rule 37BB(2).
Information required to be furnished under this part:

Remitter	Remmitee	Currency	Bank	Remittance
Name	Name	Country to which remittance to be made	Name of bank	Date of remittance
Pan	Pan	Currency	Name of branch	Nature of remittance
Tan	Address	Amount in foreign currency	BSR code of bank	Purpose code as per RBI

PART D OF 15CA

Remitter	Remmited	Currency	Bank	Remittance
Address	Email & mobile no.	Amount in Indian currency		
Email & mobile no.				
Status				
Residential status				

PART A OF 15CA

- ✖ To be filled up if the remittance is chargeable to tax in India and the remittance or the aggregate of such remittances, as the case may be, does not exceed Rs. 5 Lacs during FY
- ✖ In addition to Part D information required:

TDS

AMOUNT PAYABLE BEFORE TDS

AMOUNT OF TDS

RATE OF TDS

DATE OF DEDUCTION

PART B OF 15CB

- ✖ To be filled up if the remittance is chargeable to tax in India and the remittance or the aggregate of such remittances, as the case may be, exceeds Rs. 5 Lacs during the FY AND an order / certificate u/s 195(2)/ 195(3)/ 197 of Income-tax Act has been obtained from the Assessing Officer

PART B OF 15CB

**INFORMATION REQUIRED IN ADDITION TO
ALREADY MENTIONED IN PART A & D :**

A.O. ORDER

**Section under which order/certificate has
been obtained**

**Name & designation of assessing officer who
issued the order/certificate**

Date of order/certificate

Order/certificate number

PART C OF 15CA

- ✗ To be filled up if remittance is chargeable to tax and remittance / aggregate of such remittances, as the case may be, exceeds Rs. 5 Lacs during FY AND a certificate in Form No. 15CB from CA. Further details in addition to A, B & D:

<u>Remitter</u>	<u>Remmited</u>	<u>Accountant</u>	<u>Taxes</u>	<u>DTAA*</u>
Principal place of the business	Principal place of the business	Name of the accountant signing certificate	Relevant section applicable	Applicability of DTAA
Area code	Status	Name of the proprietorship/firm of accountant	Amount of taxable income	Relevant DTAA

<u>Remitter</u>	<u>Remmited</u>	<u>Accountant</u>	<u>Taxes</u>	<u>DTAA*</u>
Range code	country to which remittance is made	Registration no. Of the accountant	Tax amount	Relevant article of DTAA
		Date of certificate	Basis of determining taxable income and tax liability	

***DTAA- Double Tax Avoidance Agreement**

****This part C of Form 15CA includes all particulars of Form 15CB in itself.**

FORM 15CB - PART A

- ✖ Clause A - “name & address of the beneficiary” of the remittance.
- ✖ Beneficiary is the “legal owner” of the remittance. When the remittance is made to a third person on behalf of the “legal owner”, the clause requires details of the legal beneficiary.
- ✖ Applicable DTAA will be decided on the basis of the residential status of the beneficiary

FORM 15CB

- ✖ **Clause B6 - requires nature of the remittance as per agreement/ document. This involves characterization of Income and is very crucial in determination of tax withholding liability and rate of tax.**
- ✖ **Clause B7 – requires grossing up of income in a case the remittance is “net of tax” payments**
- ✖ **In “net of tax” agreements, where tax liability is borne by the remitter, the payment needs to be grossed up in accordance with the provisions of section 195A.**

FORM 15CB

- ✗ **Clause B8 - requires computation of tax liability under provisions of the Income-tax Act (without considering DTAA)**
 - + If taxable, relevant section
 - + The amount of income and chargeability
 - + Basis of determining taxable income and tax liability.
- ✗ **Clause B9 – If income is chargeable to tax in India and relief claimed in DTAA**
 - + Whether TRC obtained
 - + Relevant DTAA & its article
 - + Taxable income as per DTAA and tax liability

FORM 15CB

- ✗ **Clause B9 – A – If remittance is for Royalty, FTS, Interest, Dividend, etc (Not connected with PE)**
 - + **Article of DTAA & rate as per DTAA**
- ✗ **Clause B9 – B - If remittance is for Business Income**
 - + **Whether liable to tax in India**
 - + **If, so basis of rate of TDS**
 - + **If, not reason in brief, specifying relevant article of DTAA**

FORM 15CB

- ✗ **Clause B9 – C – If remittance is on account of Capital Gain**
 - + Amount of LTCG
 - + Amount of STCG
 - + Basis for arriving at taxable income
- ✗ **Clause B9 – D - If remittance is any other**
 - + Specify nature
 - + Whether Taxable in India as per DTAA
 - + If yes, rate of TDS
 - + If not, reason in brief specifying article of DTAA

FORM 15CB

- ✖ **Submission of FORM 15CB is mandatory before the Submitting FORM 15CA.**
- ✖ **FORM 15CA gives details about remittances rather than FORM 15CB is an assurance as to whether the applicable provisions of Income tax act and DTAA are being followed or not.**
- ✖ **To prefill the details in Part C of Form 15CA, the Acknowledgment number of e-Filed Form 15CB should be provided**

DOCUMENTS FOR 15CB

- ❖ **For characterization of transaction**
 - ❖ **Agreement / Purchase order & Invoice**
 - ❖ **Transaction details and correspondence**
 - ❖ **Technical advice (if obtained / required)**
 - ❖ **Any other proof of services rendered (e.g. copy of report furnished by the NR / FC, etc.)**
- ❖ **Payee's certificate that it has No PE and / or Business Connection in India**
- ❖ **SBI's TTBR certificate**

DOCUMENTS FOR 15CB

- ❖ If availing DTAA benefit
 - ❖ Valid TRC
 - ❖ Form 10F (if TRC doesn't contain prescribed details – discussed earlier)
 - ❖ Payee's certification of its DTAA entitlement and Beneficial ownership of payments made to it
- ❖ Indemnification: Not a statutory requirement, but may be considered on a case-to-case basis

S. 44AB / 44ADA

- ❖ **Extensions !!!!**
- ❖ **S. 44AB (a), if 5% criteria met for receipts & payments**
 - ❖ **1 Cr to 5 Cr from AY 2020-21**
 - ❖ **5 Cr to 10 Cr from AY 2021-22**
 - ❖ **Can we do audit even if not required?!!**
 - ❖ **Non -A/c Payee Cheque/ Draft - Cash**
- ❖ **S. 44ADA – HUF, LLP excluded**

TDS – 194Q

- ❖ **W.e.f. 1.7.2021. Similar to 206C(1H) !!**
- ❖ **Exceptions - Tax is collectible u/s. 206C other than transaction to which s. 206C(1H) applies**
- ❖ **Memorandum - If on a transaction TCS u/s 206C(1H) is required as well as TDS u/s 194Q, then on that transaction only TDS shall be there**
- ❖ **Cases where 50L condition is met:**
 - ❖ **Turnover in PY: Seller - 25 Cr, Buyer 5 Cr**
 - ❖ **Turnover in PY: Seller - 5 Cr, Buyer 25 Cr**
 - ❖ **Turnover in PY: Seller - 25 Cr, Buyer 25 Cr**

TDS - 194Q

FY ending	Seller 206C(1H)			Buyer (194-Q)			Bal.
	Sale	Receipt	TCS	Purchases	Payment	TDS	
2021	80	40	Nil	80	40	NA	40
2022	50	60	On 10	50	60	Nil	30
2023	80	50	Nil	80	50	On 30	60
2024	80	140	On 90?? 30?? 60??	80	140	On 30	Nil

194Q vs. 206C(1H)

- ✖ S. 194Q(6)(b) - Provisions of this section shall not apply to a **transaction on which tax is collectible u/s 206C** other than a transaction to which s. 206C(1H) applies
- ✖ S. 206C(1H) – Exceptother than goods being exported out of India or **goods covered in** s.s. (1) / (1F) / (1G)
- ✖ CBDT clarification on S. 206C(1H) vs. 206C(1F) - (1F) is for a single motor vehicle
 - + Receipt from dealer of motor vehicle covered u/s 206C(1H), if not subjected to s. 206C(1F)
 - + Sale to consumer:
 - ✖ Receipt of Rs. 10 L or less from buyer would be subjected to 206C(1H), if receipt of sale consideration for such vehicles during PY > Rs. 50 L
 - ✖ Receipt of sale consideration for sale of motor vehicle exceeding Rs. 10 L would not be subjected to 206C(1H) if subjected to 206C(1F)

CBDT GUIDELINES

- ✖ **Circular No. 13 of 2021 dt. 30th June 2021**
- ✖ **Exemption to:**
 - + **Transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre (IFSC)**
 - + **Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of CERC**

CBDT GUIDELINES

- ✖ **Calculation of threshold for FY 2021-22**
 - + **Non-applicability on Payments / Crs prior to 1.7.2021**
 - + **Limit of Rs. 50L from 1.4.2021**
- ✖ **GST & Purchase Return**
 - + **No TDS on GST portion unless GST not charged separately**
 - + **TDS on purchase return can be adjusted against next purchase from same seller**

CBDT GUIDELINES

- ✖ **Not applicable to non-resident whose purchase of goods from seller resident in India is not effectively connected with his PE (Exports exempted)**
- ✖ **Not applicable if seller's whole income is exempt u/s 10 or any other act passed by Parliament. – farmers exempt – similar for 206C(1H)**
- ✖ **TDS on advance payment is required**

CBDT GUIDELINES

- ✗ Not applicable to buyer in year of incorporation
- ✗ For 10 Cr limit - sales or gross receipts or turnover **from business** carried on by him must exceed Rs 10 crore
- ✗ If TDS by e-commerce operator u/s 194-0 [including transactions on which there is no TDS due to s. 194-0(2)], then no TDS u/s 194Q
- ✗ If TDS by e-commerce operator u/s 194-0 then no TCS u/s 206C(1H)
- ✗ If transaction is both within the purview of s. 194-0 as well as s.194Q, then TDS u/s 194-0 only and not u/s 194Q.

CBDT GUIDELINES

- ✖ If a transaction is both within purview of s. 194-0 as well as u/s 206C(1H), tax is required to be deducted u/s 194-0.
- ✖ Transaction shall come out of purview of s. 206C(1H) after tax has been deducted by e-commerce operator.
- ✖ Here primary responsibility is on e-commerce operator for TDS u/s 194-0 and that responsibility cannot be condoned if the seller has collected tax u/s 206C(1H).
- ✖ **Reason - rate of TDS u/s 194-0 is higher than rate of TCS u/s 206C(1H)**

CBDT GUIDELINES

- ✖ If a transaction is both within the purview of s. 194-Q as well as s. 206C(1H) , tax is required to be deducted u/s 194-Q.
- ✖ The transaction shall come out of the purview of s. 206C(1H) after tax has been deducted by the buyer on that transaction.
- ✖ However, if, for any reason, tax has been collected by the seller u/ s. 206C(1H), before the buyer could deduct tax u/s 194-Q on the same transaction, such transaction would not be subjected to tax deduction again by the buyer.
- ✖ Reason - tax rate of deduction and collection are same in section 194Q and s. 206C(1H) .

S. 194 Q EXEMPTIONS

- ✖ Purchases from Non- Residents (Imports)
- ✖ Non-resident whose purchase of goods from seller resident in India is not effectively connected with his PE (Exports exempted)
- ✖ If on a transaction TDS is deducted under any other section.. Say 194C / 194 -0.
- ✖ Transactions in electricity, renewable energy certificates & energy saving certificates traded through power exchanges
- ✖ Transactions in securities & commodities which are traded through recognized SE or cleared & settled by recognized clearing corporation including recognized SEs or recognized clearing corporation located in IFSC

S. 194 Q EXEMPTIONS

- ✗ If buyer's sales or gross receipts or turnover **from business** does not exceed Rs 10 crore – Schools, Hospitals...
- ✗ If seller's whole income is exempt u/s 10 or any other Act passed by Parliament – farmer...
- ✗ Transaction on which tax is collectible u/s 206C other than a transaction to which s. 206C(1H) applies.
- ✗ If tax has been collected by seller u/ s. 206C(1H), before buyer could deduct tax u/s 194-Q on the same transaction.
- ✗ Though CG, SG, Embassy, High Commission, etc. Local authority, exempt from s. 206C(1H) but s. 194Q !!!

TDS / TCS ON NON-ITR FILERS

- ❖ S. 206AB (TDS) / 206CCA (TCS)
- ❖ Higher rate of TDS u/s 206AA / TCS u/s 206CC or new sections (except for non-residents not having a PE in India, and where TDS is u/ss 192, 192A, 194B, 194BB, 194LBC or 194N) for **non-filers of ITR**:
 - ❖ For both of 2 consecutive yrs (for which time limit u/s 139(1) has not expired) **AND**
 - ❖ TDS & TCS \geq Rs. 50000/- in **each** year.
 - ❖ TDS would be at higher of:
 - ❖ Twice the rate specified in the relevant provisions of the Act
 - ❖ Twice the rate or rate in force or
 - ❖ 5%

S. 206AB / 206CCA COMPLIANCE

- ❖ **Functionality through Reporting Portal of ITD - <https://report.insight.gov.in>**
- ❖ **Registration of Tax Deductors / Collectors on Reporting Portal –TAN mode - Principal Officer**
- ❖ **Accessing the compliance check facility**
- ❖ **PAN search mode**
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