

Form 15CA / 15CB

Practical Issues & Challenges



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Shared at

Gurgaon Branch of NIRC of ICAI

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OBJECTIVE OF S. 195

- ❖ CBDT circular No. 152 dt. 27.11.1974
- ❖ Tax is collected at earliest point of time
- ❖ There is no difficulty in collection of time at the time of assessment
- ❖ To avoid loss of revenue – as non-residents may not have any assets in India from which subsequent recovery can be made

COMPONENTS OF S. 195

Payer

- Any person responsible for paying
- Includes NR, whether or not such NR has presence in India

Payee

- NR not being a company
- Foreign Company

Nature of Payment

- Interest or any other sum chargeable to tax
- Excludes salary, dividend subject to DDT

TDS

- At time of payment or credit whichever is less
- At the rates in force, only if subject matter is income chargeable to tax

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

Section

- **195, 271 -I**

Rule

- **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

PAYEE

- ✗ Are the following covered?
- ✗ Non resident Agent / POA holder of a non resident in India?
 - ✗ Yes
- ✗ Resident but not ordinary resident (RNOR)?
 - ✗ No
- ✗ Payment made to a foreign branch of an Indian Company?
 - ✗ Yes
- ✗ For status see s. 6 or DTAA

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 dated 12.2.2015

IS TDS 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 is 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 the 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 & Form 10F
- ✖ Surcharge & Education cess not to be added to the tax rate specified under DTAA

S. 206AA W.R. R. 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

PAYMENT TO POA HOLDER

- ✖ Where payment is made by assessee to an individual Resident say (P) in India in respect of purchase of land which belonged to non-residents but rights therein were assigned unequivocally to said resident as POA holder, such payment could not be regarded as payment to non-resident so as to require TDS u/s 195
- ✖ When non-resident himself nominates a particular agent to whom payment should be made and pursuant to that direction, the assessee pays the sum to the agent so nominated, the provisions of s. 195 will apply

✖ *Rakesh Chauhan vs DDIT (International Taxation) [2010] 128 TTJ 116 (CHD)*

FORM 15CA

- ✖ Form 15CA is a Declaration given by Remitter and is used as a tool by statutory authorities for collecting information in respect of payments which are chargeable to tax in the hands of recipient non-resident.
- ✖ This is an effective Information Processing System which is utilized by the Income tax Department to independently track the foreign remittances and their nature to determine tax liability.

FORM 15CB

- ✖ The person making the payment needs to obtain a certificate from a Chartered Accountant in Form 15CB.
- ✖ Form 15CB is the Tax Determination Certificate where the issuer CA examines the remittance having regard to chargeability provisions u/s 5 and 9 of Income tax Act along with provisions of Double tax Avoidance Agreements with the Recipient's Residence Country.

FORM 15CB

WHO CAN ISSUE FORM 15CB ??

SECTION 195(6)

- ❖ **Sec. 195(6), as substituted by Finance Act, 2015**
- ❖ ***“(6) The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.”***

SECTION 195(6) - ANALYSIS

- ❖ **Information to be furnished by payer to a NR / FC**
- ❖ **Filing may be required even if payment is not taxable, say, due to:**
 - ❖ **Non-accrual in India (Sec. 9)**
 - ❖ **Income that has accrued in India, but has been expressly exempted (Sec. 10)**
 - ❖ **Treaty benefit (Sec. 90)**
- ❖ **Filing to be made in prescribed form, manner (Rule 37BB)**

SECTION 271 -I

- ❖ S. 271-I, as inserted by Finance Act, 2015
- ❖ *“If a person, who is required to furnish information u/s 195(6), fails to furnish such information, or furnishes inaccurate information, the AO may direct that such person shall pay, by way of penalty, a sum of Rs. 1 Lakh”*

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

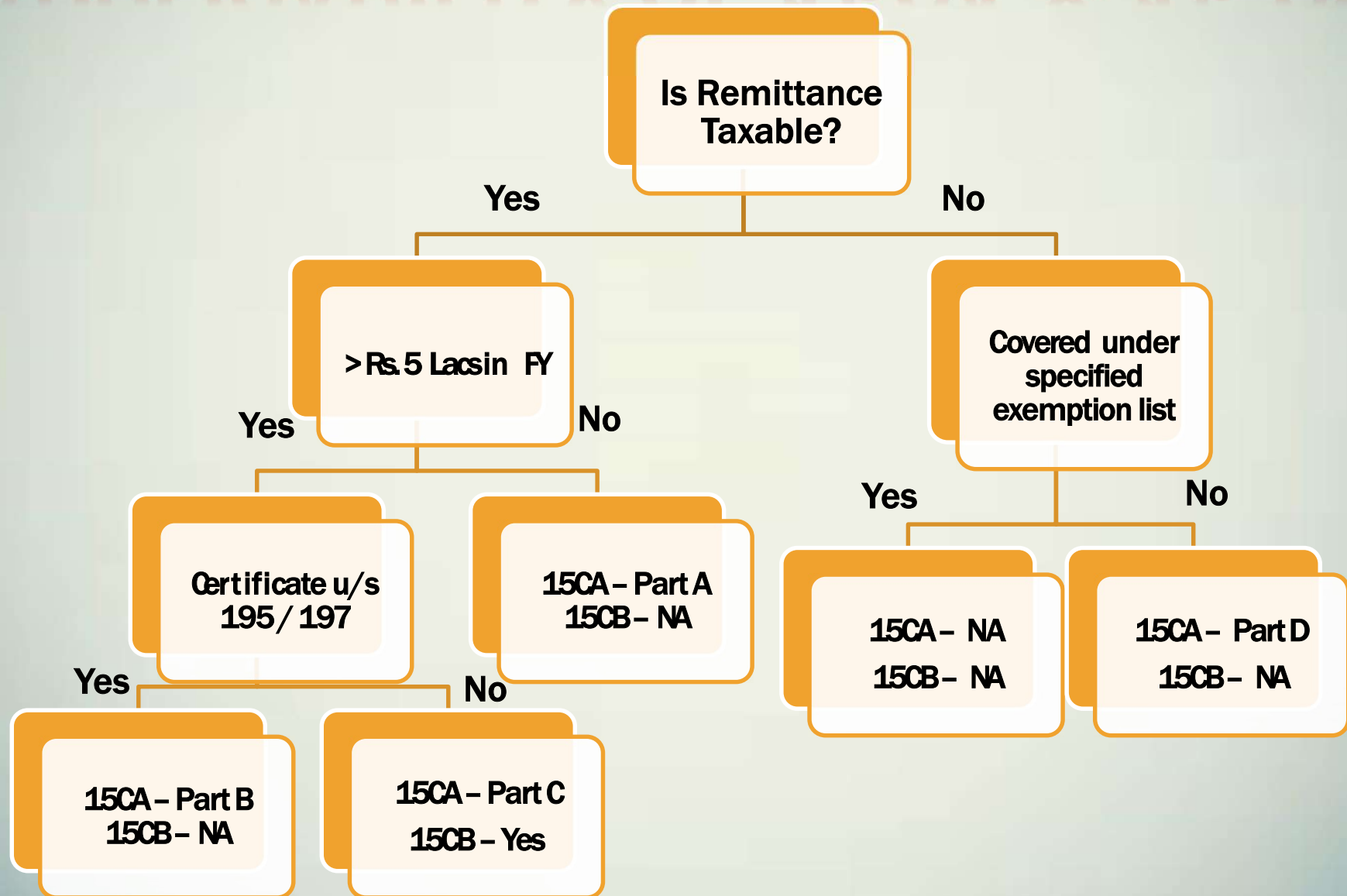
C

- 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.

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answer

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Q. How I file income tax return

11 views

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