

Withholding of Tax u/s 195

Form 15CA / 15CB



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

Shared at

Panipat Branch of NIRC of ICAI

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OBJECTIVE OF S. 195

- ✖ Tax is collected at the earliest point of time
- ✖ No difficulty in collection of tax at the time of assessment
- ✖ Avoiding loss of revenue as non residents may have no assets in India for subsequent recovery

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

SECTION 195

- ✦ 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 s. 194LB or s. 194LC or s. 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 a/c 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...”

WHAT IS COVERED?

- ✖ Salaries
- ✖ Dividend u/s 115- 0
- ✖ Interest referred to in s. 194LB or s. 194LC or s. 194LD
- ✖ Even Re 10/- is covered – no basic limit
- ✖ All payers covered including individuals, HUF doing business or not.
- ✖ Requires understanding of DTAA

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

SECTION 195

- ✗ **195 (2) - Application by “Payer” to AO for determining of lower income for WHT certificate**
- ✗ **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**

SECTION 195 & OTHERS

- ✗ **195 (7) - Authority of board to specify class of person or cases to make application u/s 195(2)**
- ✗ **195A - Income payable “net of tax”
Grossing-up**
- ✗ **Penalty u/s 271 - I of Rs. 1 lac only for not complying sec 195 (6) w.e.f 1.6.2015 on assessee.**
- ✗ **Disallowance of expense u/s Section 40(a)(i)**

S. 195(2)

- ✖ Where the **person responsible for paying** any such sum chargeable under this Act (other than salary) to a non-resident considers that whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the AO to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted u/s 195(1) only on that proportion of the sum which is so chargeable.

S. 195 (3)

- ✖ Any **person entitled to receive** any interest or other sum on which income-tax is deductible u/s 195(1), may make an application to the Assessing Officer for the grant of a certificate authorizing him to receive such interest or other sum without deduction of tax.

S. 197

- ✗ (1). Where, income-tax is required to be deducted, at the time of payment at the rates in force under the provisions of sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K , 194LA ,194LBB, 194LBC] and **195**, the AO is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, the Assessing Officer shall, give to him such certificate as may be appropriate.

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

SUM CHARGEABLE TO TAX IN INDIA

- ✖ **Section 5: Scope of Total Income - In case of Non – Resident**
 - + Income received or deemed to be received in India; or
 - + Income accrues or arises or deemed to accrue or arise to him in India
- ✖ **Section 9: Income Deemed to Accrue or Arise in India**
 - + An income is said to be deemed to accrue or arise in India if the same is accruing or arising directly or indirectly, through
 - ✖ a business connection in India or from any property in India or
 - ✖ from any asset or source of income in India or
 - ✖ the transfer of a capital asset in India any other which derives its value from assets in India
 - ✖ It also includes any share or interest in a company or entity registered or incorporated outside India which derives its value from assets in India

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

NATURE OF INCOME

Nature of Income (Payee's perspective)	Basis of Tax	Income Chargeable Under	
		IT Act	DTAA
Income from Business / Profession	Taxable if business connection in India or property or asset or source of income in India or transfer of capital asset situate in India	S. 9(1)(i)	Article 5, 7 & 14
Capital Gain	Taxable if situs of shares / property in India	S. 9(1)(i)	Article 6 & 13
Dividend	Taxable if paid by Indian Company	S. 9(1)(iv) (DDT Payable)	Article 10
Interest	Taxable if sourced in India	S. 9(1)(v)	Article 11
Royalties		S. 9(1)(vi)	Article 12
FTS		S. 9(1)(vii)	
Salaries	Taxable if services rendered in India	S. 9(1)(ii)	Article 15

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 the 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 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

APPLICABILITY OF S. 206AA

- ✗ 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
 - + TRC , 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.**

PARTS OF 15CA

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

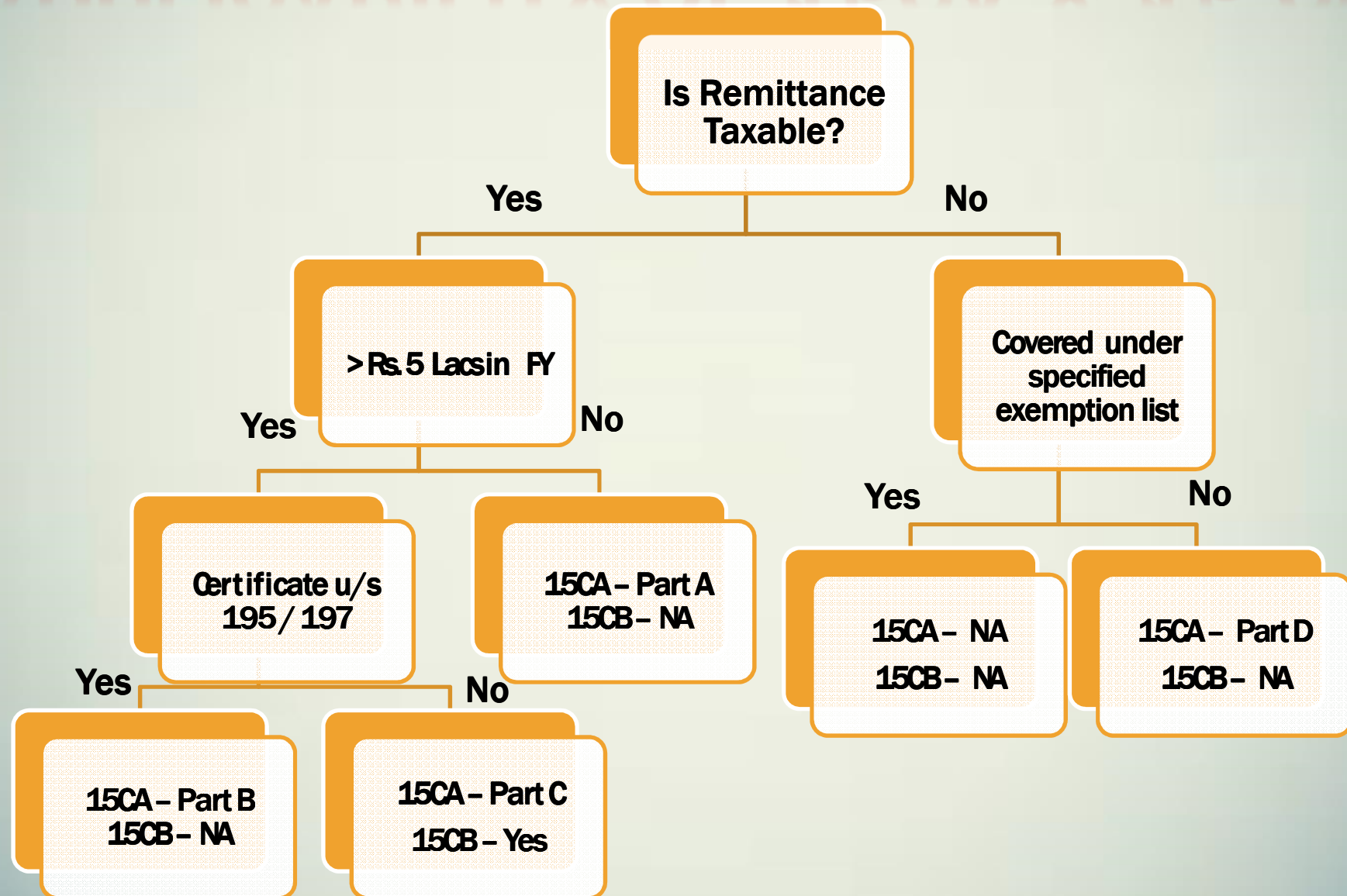
C

- 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), 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

<i>Sl. No</i>	<i>Purpose code as per RBI</i>	<i>Nature of payment</i>
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	Remmitemee	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 - requires “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**

PROOFS REQUIRED

- ✗ **Form 10F for claiming relief through DTAA**
- ✗ **Tax residency certificate**
- ✗ **Certificate that the remittee does not have any permanent establishment in India.**

PROCESS OF FILING 15CB & 15CA

- ✖ **15CB shall be furnished online by CA himself w.e.f. 1.4.2016.**
- ✖ **Person filing Form 15CA shall first add CA under his login details for Form 15CB.**
- ✖ **CA should Download the Java Utility for 15CB, Fill Up and generate xml.**
- ✖ **CA to log in to e-filing portal using user id**
- ✖ **Upload the 15CB xml generated with DSC procedure. There ends the work of a CA**

PROCESS OF FILING 15CB & 15CA

- ✖ **Step 1: Client should log in to its account and in “work list” option under main menu click “For Your Information section” and see the list of returns e-filed.**
- ✖ **Step 2: 15CB e-filed by CA will appear in first. Select the form and download the Ack. No file of 15CB and also 15CB PDF file (password for PDF file is PAN & DOB/DOI)**
- ✖ **Step 3: Then under “e-file” option select “Prepare and Submit online forms other than ITR” Select 15CA in it.**

PROCESS OF FILING 15CB & 15CA

- ✖ **Step 4: Client to validate the DSC file and on choosing the DSC file it will ask for which Part of 15CA to be chosen Part -A/ B/ C/ D.**
- ✖ **Step 5: For options of C &D 15CB of CA is required. So if C / D is selected it will ask for the 15CB e-filed acknowledgement no.**
- ✖ **Step 6: On entering the 15CB e-filed acknowledgement no, 15CA is populated fill the necessary details then submit.**
- ✖ **Step 7: Finally under “My Account” section in “View” option one can see the 15CA e-filed.**

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



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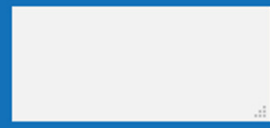
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