

TDS ON FOREIGN REMITTANCES,
ON PAYMENT TO NON-RESIDENT
Surprises continued..

CA. Ashwani Rastogi

ashwani.rastogi.ca@gmail.com

+91 9990999281

+91 9810999281

New Delhi

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Part-A :

LEGAL PROVISIONS - Scope & Methodology

Step :-

- I. Check if payment is covered under 195 i.e. payment is made to a NR
- II. Verify the factual and basic documents
- III. Make classification of transaction into Passive Income or Active Income
- IV. Check taxability under domestic tax
- V. Check benefit as per DTAA if Tax Residency Certificate is available.
- VI. Check the rates of TDS applicable along-with Sec 206AA

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Part-A :

LEGAL PROVISIONS - Scope & Methodology

Sec 195(1): Liability on payer to deduct tax on payments made to NR

Sec 195(2): Application by payer for lower / Nil withholding

Sec 195(3): Application by payee for Nil withholding

Sec 195(4): Validity of certificate of lower/ nil deduction

Sec 195(5): Empowers CBDT to notify rules

Sec 195(6): Empowers CBDT the manner of furnishing information

w.e.f. 1st June 15 Sec 195(6) amended i.e. **furnish 15CB/ CA in respected of all cases;**

Any assessee responsible for paying to a non-resident, any sum, **whether or not chargeable** under the provisions of the Income Tax Act, 1961, shall obtain Form 15CB from a Chartered Accountant and file form 15CA with the Income Tax Department from 1st June, 2015 onwards. Thus, transactions such as import of raw materials, finished goods, capital goods, intermediates and other non-TDS able payments for which assessee may not have obtained the above forms in the past are also to be supported by Forms 15CB and 15CA from 1st June, 2015.

Sec 195(7): CBDT to specify cases where application to AO is compulsory

Sec 195A: Income payable “net of tax”

Part-A :

LEGAL PROVISIONS - Scope & Methodology

- Scope of Section 195(1)
What, Who, When & How?
- Section 206AA
- Tax Residency Certificate
- Interplay of DTAA, PAN and TRC
 - Determination of Rate in different scenario
 - Impact of Section 115A

Scope of Section 195(1)

- Any person responsible for paying
- To a non-resident
- Or a Foreign Company
- Any interest or any other sum
- Chargeable under the provisions of this Act,
- 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

Scope of Section 195(1)

What is covered?

- Any interest or any other sum
 - whether or not Chargeable to tax under the provisions of this Act
- Except for Salaries; Dividends; Interest u/s.s 194LB, 194LC & 194LD, Shipping income u/s. 172; Payments to sportsman, entertainer or sports association u/s. 194E; Payments u/s.s 196B, 196C & 196D.

Who are covered?

- Any person responsible for paying
- To a non-resident or a Foreign Company
 - Payee - Non-residents & Foreign Co. (whether or not NR)

When is it applicable?

- At the time of credit or at the time of payment
- Whichever is earlier

How is it to be applied?

- Deduct income-tax thereon at the rates in force
 - Rate or rates in force - Section 2(37A)(iii)
 - ✓ Part II to the First Schedule of Finance Act
 - ✓ DTAA rates

DTAA Rates: No surcharge & education rate to be added
(F. Co. Surcharge rate AY 16-17 if TI > by Rs. 1 Cr. **2%**, if TI > 10 Cr. **5%**;
NRI Surcharge rate AY 16-17 if TI > 1 Cr. than **12%**
Education Cess 3% for all cases)

Section 206AA – PAN requirement

- Non-obstante provision introduced from 1st April 2010
- Obligation to furnish PAN on NR receiving income
- In absence of PAN, higher of the following rates applicable:
 - Rate specified in the relevant provision of the Act;
 - Rate or rates in force; or
 - Rate of 20%
- Section applicable also when PAN incorrect or invalid
- Certificate u/s. 197 will not be issued without PAN

Section 206AA - Issues

Treaty Override?

Credit in the other country may not be available

Applicable where no tax payable?

No, as provision applicable only on sum or income or amount on which tax is deductible

Surcharge or educational cess not to be added to 20%

Refund of higher tax deducted available

Grossing up of tax under Section 206AA

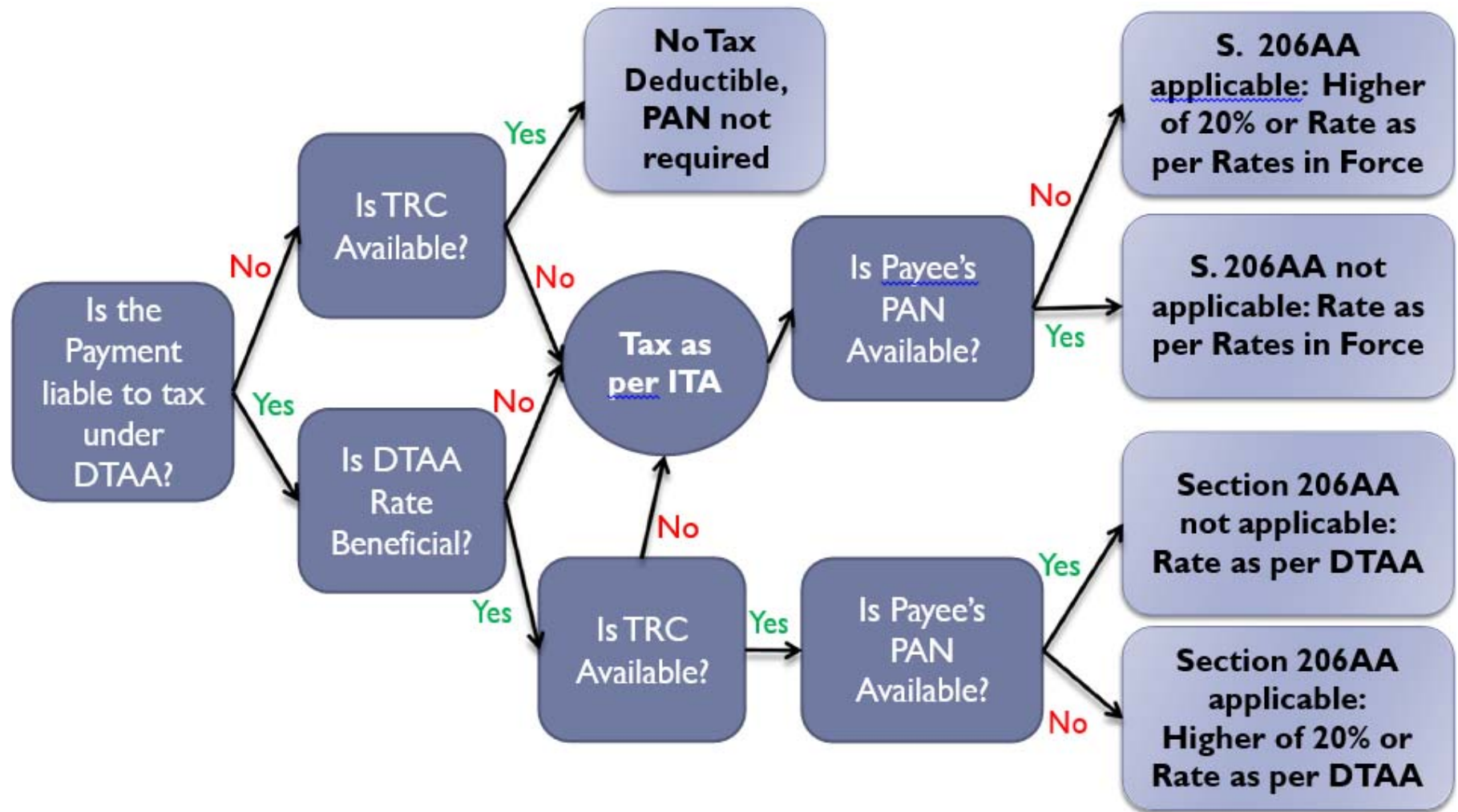
Literal reading of Section 195A refers to 'rates in force'

✓ **Bosch Ltd.**

Tax Residency Certificate

- Section 90(4) & (5) – Introduced w.e.f 1.4.2013
- NR cannot avail benefit under Treaty without Tax Residency Certificate (TRC)
- Applies to all NRs without any threshold limit
- TRC will be necessary but not sufficient – past?
- Rule 21AB specifies prescribed particulars for S. 90(5)
- Documents substantiating particulars to be maintained by whom?
- Details not covered in TRC be mentioned in Form 10F
- Self-attestation
- TRC not required in case no treaty benefit availed
- The other country may not give all the details in their TRC. Will it be alright?
- TRC usually for the past year.
- TRC applied for, but not available on date of deduction

Interplay of DTAA, PAN & TRC



Determination of Rate in different scenario

TDS on foreign payments depends on two conditions.

- First, whether deductee provides a valid TRC or not?
- Secondly, whether deductee holds a valid PAN in India or not?

Below is the matrix showing applicable TDS rates depending on the availability of TRC & PAN.

CASE A - TRC is available & PAN is also Available.

Grossing Up should be done @ DTAA Rate.

TDS should be deducted @ DTAA Rate.

CASE B - TRC is not available & PAN is also not available.

Grossing Up should be done @ applicable IT Act Rate.

TDS should be deducted @ applicable IT Act Rate or 20%, whichever is higher.

CASE C - TRC is not available & PAN is available.

Grossing Up should be done @ applicable IT Act Rate.

TDS should be deducted @ applicable IT Act Rate.

CASE D - TRC is available & PAN is not available.

Grossing Up should be done @ DTAA Rate (Bosch Ltd. ITAT Bangalore).

TDS should be deducted @ applicable IT Act Rate or 20%, whichever is higher.

Requirement of TRC for claiming Relief under DTAA

- 1) TRC became mandatory w.e.f. 01/04/12
- 2) Format of TRC notified w.e.f. 17/09/12
- 3) If TRC is not in specified format then a declaration in Form 10FA is also mandatory along with the required documents w.e.f. 01/08/13.

Impact of Section 115A

- Rate @ 10% u/s 115A for royalty and FTS
- Foreign Co. ABC receives FTS from Indian concern
- Rates applicable:
 - As per DTA – 10%
 - As per 115A – 10%
 - As per 206AA – 20%
- What rate should tax be deducted at?
- Higher of 20% rate or
- At the “rate specified in the relevant provision of the Act”; or
- At the “rate or rates in force”

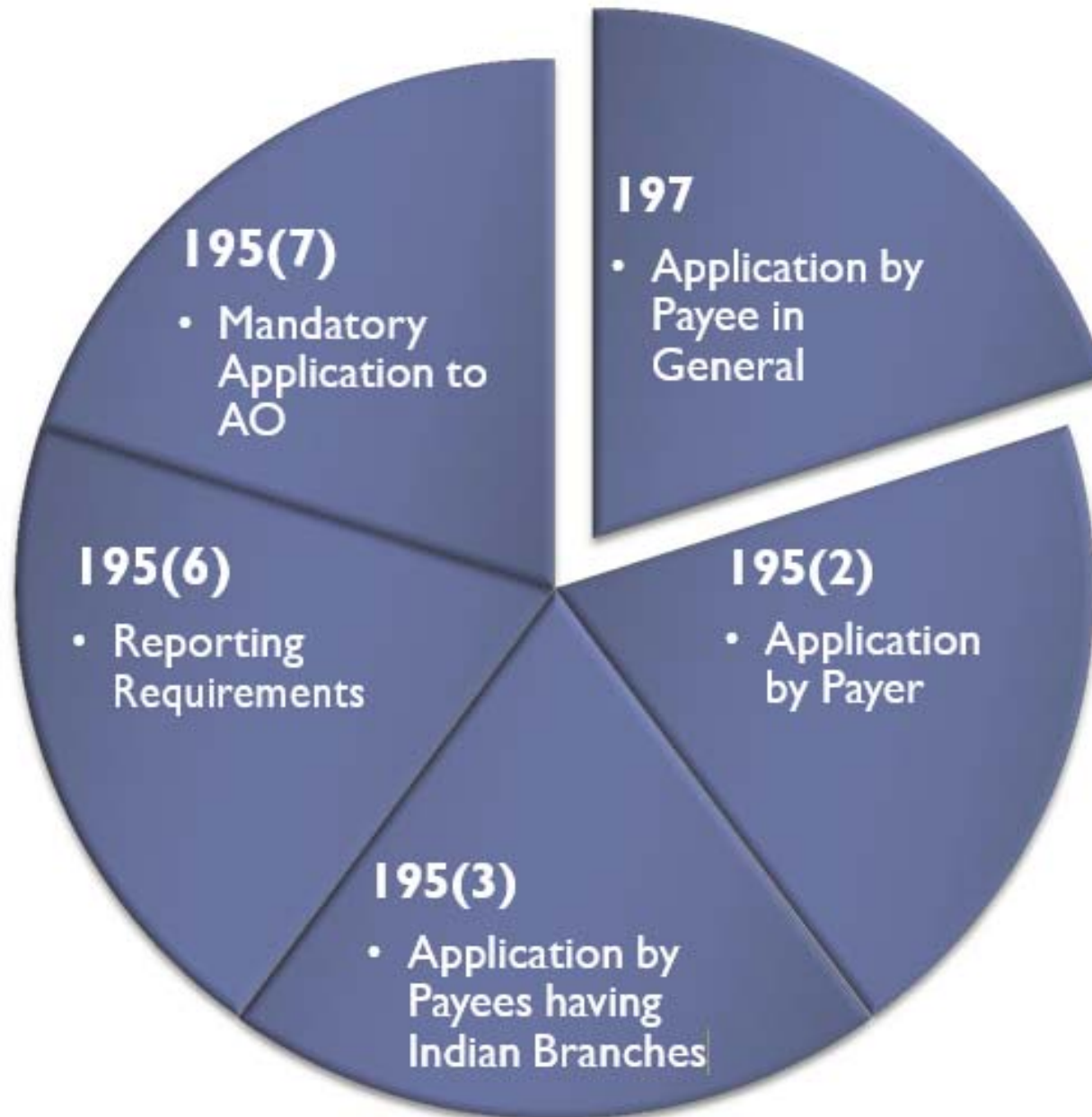
Impact of Section 115A

- “Rate specified in the relevant provision of the Act”
 - Sec. 115A is not applicable here as it is not a deduction provision, it is a provision for income earners.
 - No rate specified in Sec. 195
 - Applicable for other provisions – 194J, 194C, 194I, etc.
- “Rate or rates in force”
 - Applicable to Section 195 as it refers to “rates in force”
 - Section 2(37A)(iii) "rates in force" means -
 - for the purposes of deduction of tax under section 195, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year or the rate or rates of income-tax specified in an agreement entered into by the Central Government under section 90, whichever is applicable by virtue of the provisions of section 90
 - Tax to be deducted at lower of DTA rate or rate specified in Part II of First Schedule to Finance Act –
 - ✓ For NRIs refer clause 1(b)(i)(F), (G) or (H)
 - ✓ For other NRs refer clause 1(b)(ii)(B), (C) or (D)

Part-B: Snapshot of Certification Provisions

- Sec. 195(2) vs. Sec. 197
- Sec. 197 – Rules & Form
- Application by the Payee - Sec. 195(3)
- Reporting u/s. 195(6)
- Revised Remittance Procedures
- Form 15CA
- Form 15CB - Analysis
- Mandatory application – Sec. 195(7)
- Specified Transactions

Section 195(2) vs. Section 197



Section 195(2) vs. Section 197

Section 195(2)	Section 197
Application by Payer - mandatory?	Application by assessee (Payee)
Application for appropriate proportion of the sum chargeable to tax – generally rate is prescribed.	Application for lower rate or nil rate for deduction of tax at source
Application to be made for each payment. Binding only for particular transaction.	Application can be for a particular period. Applicable to period for which issued.
Appealable u/s. 248	Not appealable—only writ petition
Doubts on grant of total exemption	Can provide certificate for deduction at nil rate of tax
Application to be made plain paper	Application in Form 13

Section 197 – Rules and Form

- Rule 28A
 - Form 13
- Rule 28AA – Conditions applicable
 - Determination of existing and estimated tax liability based on
 - Tax payable on estimated income of previous year
 - Tax payable on assessed/returned income of past 3 years
 - Existing tax liability
 - Advance tax payment & Tax deducted at source
 - Certificate valid for such period of the previous year as specified
 - Will be issued direct to the person responsible for deduction of tax at source

Application by Payee -195(3)

- Payee eligible as per Rule 29B can only apply
 - Foreign Bank having Indian Branch
 - For interest or any other sum not being dividends
 - Foreign Company having Indian Branch
- For any sum not being interest or dividends

Conditions:-

- Income receivable on its own account
- Regularly assessed to tax
- Not in default of any tax, interest, penalty or fine
- Available for a non-banking company
 - Carrying on business since last five years
 - Value of fixed assets exceeds Rs. Fifty Lakhs
- Application in Form 15C for Banks & Form 15D for others
- No prescribed format for issue of certificate, valid for that FY
- Certificate not appealable


Remittance Procedures

Person making payment to NR to furnish prescribed information online

- Rule 37BB – recently amended
- Information & Undertaking – Form 15CA
- CA Certificate – Form 15CB
- Separate certificate for each type of income
- Applicable for every remittance

Remittance Procedures

- ✓ **Relaxations for non-taxable payments**
- ✓ Furnishing of information by the payer only if “any other sum chargeable to tax”
- ✓ **No forms to be filed on nil deduction of tax at source?**
- ✓ **Forms not be filed for ‘Specified list’ of transactions**
 - ✓ 28 transactions from Form A2 Notification No. 58/2013
- ✓ **Rules amended on 5th August 2013 superseded**
 - ✓ 11 transactions removed Notification No. 67/2013



CA certificate not a substitute for 195(2) or 195(3)
Certificate even if required where order u/s. s 195(2) or 195(3) available

Specified Transactions

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	S0202	Payment for operating expenses of Indian shipping companies operating abroad.
8	S0208	Operating expenses of Indian Airlines companies operating abroad
9	S0212	Booking of passages abroad - Airlines companies
10	S0301	Remittance towards business travel.
11	S0302	Travel under basic travel quota (BTQ)
12	S0303	Travel for pilgrimage
13	S0304	Travel for medical treatment
14	S0305	Travel for education (including fees, hostel expenses etc.)

Specified Transactions

Sl. No.	Purpose code as per RBI	Nature of payment
15	S0401	Postal services
16	S0501	Construction of projects abroad by Indian companies including import of goods at project site
17	S0602	Freight insurance - relating to import and export of goods
18	S1011	Payments for maintenance of offices abroad
19	S1201	Maintenance of Indian embassies abroad
20	S1202	Remittances by foreign embassies in India
21	S1301	Remittance by non-residents towards family maintenance and savings
22	S1302	Remittance towards personal gifts and donations
23	S1303	Remittance towards donations to religious and charitable institutions abroad
24	S1304	Remittance towards grants and donations to other Governments and charitable institutions established by the Governments
25	S1305	Contributions or donations by the Government to international institutions
26	S1306	Remittance towards payment or refund of taxes
27	S1501	Refunds or rebates or reduction in invoice value on account of exports
28	S1503	Payments by residents for international bidding.]

Part -C :

Payments made for Import of Goods

- Section 195 (6) has been amended in the Finance Act 2015 and states that Form 15CA / CB needs to be necessarily filed for all remittances, whether chargeable to tax in India or not.
- All the assessee requested for submission of Form 15CA/CB for all outward cross border remittances including those against imports with effect from 1st June 2015.

Impact of amended provisions to import payments to non-residents

In 2013 CBDT had notified certain 39 items of payments for which Form 15CA and 15CB was not required though Notification No. 58/2013 however, it was then reduced to 28 items by a later Notification No. 67/2013 which had omitted 11 items of payments from the specified list. It includes (i) [Advance payment against imports](#) and (ii) [Payment towards imports-settlement of invoice](#). It is pertinent to note that at that point of time Form 15CA and 15CB are required to be submitted only for those payments which are chargeable to tax in India and therefore the removal of these two items were not a matter of debate as it exists today due to the amended provisions of Sec. 195(6). Plain reading Section 195 of the Act with Rule 37BB, would certainly give an impression that when the remittance to non-resident is not chargeable to tax, then above provision does not get triggered. However, to conclusively determine whether the income of a non-resident is chargeable to tax or not one has to analyse the provisions of Sec.5(2) and Sec. 9(1) of the Act.

Payments made for Import of Goods

The income in the case of imports would be in the nature of business income and therefore sub-clause (i) to 9(1) would only be relevant and as per which “all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset of source of income in India or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India”.

As per Explanation 1(a) to Section 9(1)(i), in the case of a business of which all the operations are not carried out in India, the income of the business is deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India.

“Business Connection” as per Explanation 2 to Section 9(1)(i) “Business connection would include any business activity carried out through a person who, acting on behalf of the non-resident,—

- (a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or
- (b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or
- (c) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident”

Hence, to tax the business income of a non-resident in India, the transaction should be carried out by such non-resident in India directly by himself or indirectly through any business connection in India failing which such business income would not be liable to tax India. Even when it becomes taxable in India, as per Explanation 1 to Section 9(1)(i) of the Act, only such part of the income which is attributable to the operations carried out by such non-resident in India could be taxed in India.

Payments made for Import of Goods

Further, Section 90(2) of the Income Tax Act provides has an option to a non-resident to opt for the provisions of the Act or Double Tax Avoidance Agreement (DTAA), whichever is more beneficial to him. In most of the DTAA's that India entered into, the business income would be liable to tax in India only if such non-resident has any permanent establishment in India to which the transaction can be attributed. However, Sec.90(4) mandates for tax residency certificate from the respective country to claim DTAA benefit and Sec.90(5) read with Rule 21AB(1) to (12A) requires Form 10F to be given by the non-resident to avail the DTAA benefits.

Judicial precedents on taxability of payments to non-resident for import of goods

Vodafone International Holdings B.V. v. UOI (2012) 204 Taxman 408 (SC)

GE Technology Cen (P) Ltd v. CIT (2010) 193 Taxman 234 (SC)

Thus, one can conclude that the import of goods is not liable to tax in India if

- **The contract between the parties are on principal-to-principal basis and at arm's length basis,**
- **Contracts to sell are made by the non-resident outside India,**
- **Delivery of the goods are taken outside India on FOB basis, and**
- **The non-resident exporter of goods does not have any business connection or permanent establishment in India.**

Thus, one cannot simply conclude that all imports are, as a matter of rule, exempt from tax and there could be imports, which do not comply with the conditions mentioned above and therefore

Payments made for Import of Goods

result in some income being chargeable to tax in India. Therefore in order to conveniently conclude, it would be advisable to adhere with the conditions specified above while entering into contracts of sale/ import transactions and to obtain the following documents from the foreign exporter/vendor:

- **Tax Residency Certificate,**
- **Form 10F signed by the vendor**
- **A declaration from vendor stating he does not have a business connection or PE in India.**
- **The contract of sale is entered on principal to principal at arm's length with the non-resident signing the same outside India.**

However, it may be noted that Rule 37BB is not in line with the amended provision of Section 195(6). As per the present Rule 37BB, Form 15CB would be required only if the remittance is chargeable to tax. Therefore, one can even take a view that CBDT had not prescribed anything for reporting in case payments to non-resident that is not liable to tax in India. However, it would be dependent upon the authorised dealers. If the banker insist for Form15CB in all cases as per the amended Section 195(6), the payer has no choice but to obtain the same for all the remittances.

One can note that even in case if tax authorities take penal action against the payer, it can be defended by quoting the conflict between Rule 37BB and Section 195(6).

Hope CBDT would as soon as possible come out with clear-cut clarification to put rest the uncertainty looming around on the subject matter by considering the practical issues involved in getting the CA certificate for each and every import transaction which would also incidentally increase the compliance cost and causing unnecessary hardship for the assessee in carrying out their imports.

Part-D- Basics for Cross Border Transactions-

Residential Status- Individual

An Individual is said to be a resident Indian for the purpose of Income tax if one of the following Basic conditions are satisfied.

An Individual is in India for a period of 182 days in the financial year in which he is getting his salary income or;

An Individual is in India for a period of 60 days or more during financial year in which he gets his salary and 365 days or more during 4 years immediately preceding to that financial year.

If one of the above conditions are satisfied then he is resident of India as per Income Tax eye but an individual needs to find out whether he is resident and ordinarily resident or resident but not ordinarily resident. If the Individual fulfils one the following conditions then he said to be resident but not ordinarily resident of India:

An Individual is a non-resident in India for 9 years out of 10 years immediately before relevant financial year.

An Individual is in India for a period less than 729 day during 7 years immediately before the relevant financial year.

Else, he is considered as a resident and ordinarily resident in India.

These conditions need to be tested every year for every Individual as taxability of Income is dependent upon whether he is a resident and ordinary resident or Resident but not Ordinary resident or Non Resident.

Residential Status- Foreign Company

The Finance Bill has suggested that a foreign company will be resident in India if its POEM is in India at any time in the relevant financial year. Under the Bill, POEM has been defined to mean “a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made”.

This is a retrograde provision, which has resulted in almost no litigation in last 65 years. Going back to old concepts would lead to enormous and infructuous litigation for Indian corporates globalising themselves, as well as structures set up for legitimate personal wealth and succession planning as well as carried interest purposes.

This would apply in various cases, which are representative of many Indian business groups also. If an offshore company has 100% Indian resident shareholders and majority of Indian directors and one director offshore, the company could now be considered Indian resident, which would then lead to the profits of the offshore company to be taxable in India.

Bare Act

Section- 6(3) A company is said to be resident in India in any previous year, if—

- (i) it is an Indian company ; or
- (ii) during that year, the control and management of its affairs is situated wholly in India.

Following clause (3) shall be substituted for the existing clause (3) of section 6 by the Finance Act, 2015, w.e.f. 1-4-2016 :

(3) A company is said to be resident in India in any previous year, if—

- (i) it is an Indian company; or*
- (ii) its place of effective management, in that year, is in India.*

Explanation.—For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole, are in substance made.

Section 9 -Income deemed to accrue or arise in India.

Section 5(2) total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—

- (a) is received or is deemed to be received in India in such year by or on behalf of such person ; or
- (b) accrues or arises or is deemed to accrue or arise to him in India during such year.

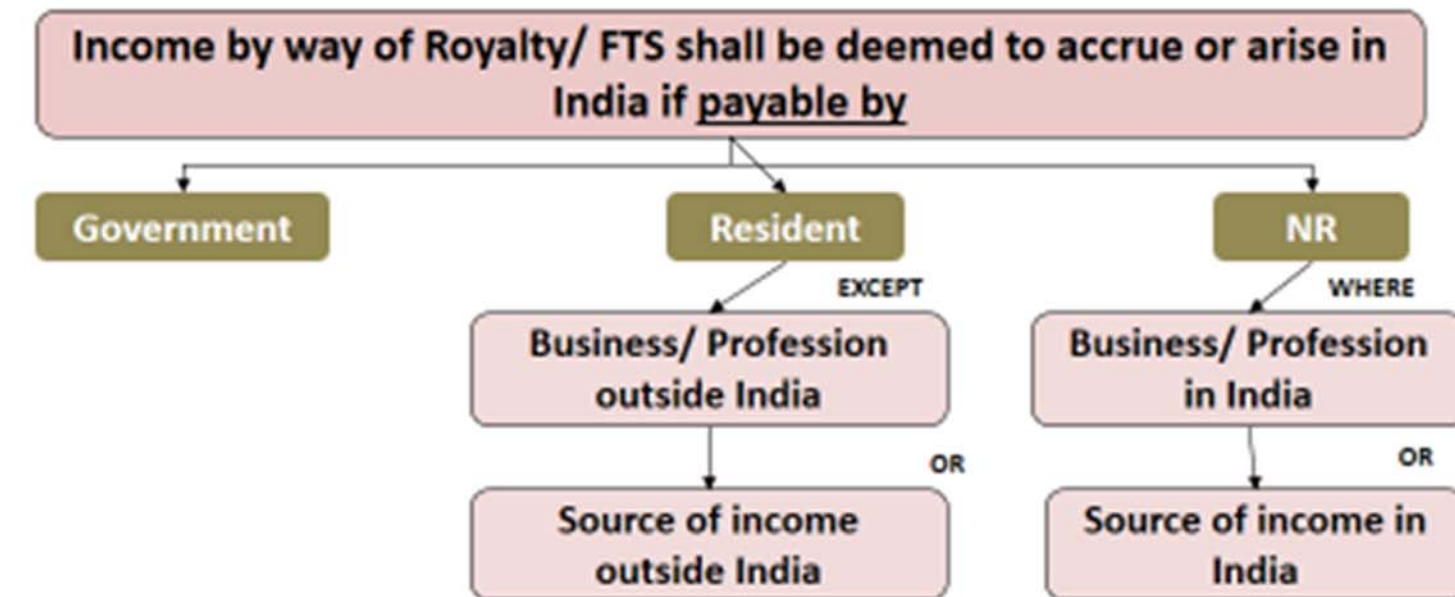
Nature of Income	IT Act	DTAA
Business/Profession	Section 9(1)(i)	Article 7 &14 rw 5
Salary	Section 9(1)(ii)	Article 15
Dividend	Section 9(1)(iv), section 115A	Article 10
Interest	Section 9(1)(v), section 115A	Article 11
Royalties	Section 9(1)(vi), section 115A	Article 12
Fees for technical services/FTS	Section 9(1)(vii), section 115A	Article 12
Capital Gains	Section 9(1)(i), section 45	Article 13

Taxability of Income which is deemed to Accrue arise in India

Nature of Income	Taxability
Business Profession sec. 9(1)(i)	Taxable if Business Connection in India or property or asset or source in India or transfer of a capital asset situated in India
Capital Gains Sec. 9(1)(i)	Taxable if situated of Shares / Property in India
Interest Income Sec. 9(1)(v)	Taxable if sourced from India
Royalties Sec. 9(1)(vi)	Taxable if sourced from India
Fees for Technical Services ('FTS') Sec. 9(1)(vii)	Taxable if sourced from India

Royalty & FTS taxability as per Domestic Law

Royalty/ FTS as per the Act Section 9(1)



Finance Act, 2012 7	Income shall be deemed to accrue or arise irrespective of whether:
	<ul style="list-style-type: none"> ◆ NR has residence/ place of business/ business connection in India ◆ NR has rendered services in India
Income deemed to be accruing or arising to non-residents directly or indirectly through the transfer of a capital asset situated in India is to be taxed in India with retrospective effect from 1 April 1962	

Royalty definition as per Domestic Law

- “Royalty” means consideration (including any lump sum consideration.....) for
- transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, secret formula or process, similar property
 - use of any or for imparting information of :
 - patent
 - invention
 - secret formula or process,
 - similar property
 - transfer of all or any rights (including granting of a licence) in respect of any copyright, literary, artistic or scientific work
 - transfer of all or any rights (including granting of a licence) in respect of films or video tapes for telecast or radio broadcasting
 - use or right to use any industrial, commercial or scientific equipment
 - imparting of any information concerning technical, industrial, commercial or scientific knowledge or skill
- ▶ Does not include:
- ▶ Consideration for sale, distribution or exhibition of cinematographic films
 - ▶ Capital gains income from sale, transfer of Intellectual Property Right (IPR)

Payment for software downloaded in India

The payment for software downloaded in India was in the nature of payment for use of copyright and hence is taxable as royalty income under the Act as well as under the tax treaty.

In the ruling passed in cases of Samsung Electronics Co. Ltd. The Karnataka HC has held that amount paid to non-resident for supply of software would be constructed as income chargeable to tax as 'royalty' in term of provision 9(1)(vi) and the applicable tax treaty and consequently liable to withholding tax in term of the relevant provision of law.

After this judgment provision made in the Finance Bill 2012-2013 now identifies the purchase of software products from non-resident (foreign) companies as royalty and hence the transaction is subjected to a withholding tax, which is currently 10.30%.

NOTIFICATION NO. 21/2012 [F.No.142/10/2012-SO(TPL)] S.O. 1323(E), DATED 13-6-2012

In exercise of the powers conferred by sub-section(1F) of section 197A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that no deduction of tax shall be made on the following specified payment under section 194J of the Act, namely:-

Payment by a person (hereafter referred to as the transferee) for acquisition of software from another person, being a resident, (hereafter referred to as the transferor), where-

- (i) the software is acquired in a subsequent transfer and the transferor has transferred the software without any modification,*
- (ii) tax has been deducted-*
 - (a) under section 194J on payment for any previous transfer of such software; or*
 - (b) under section 195 on payment for any previous transfer of such software from a non-resident, and*
- (iii) the transferee obtains a declaration from the transferor that the tax has been deducted either under sub-clause (a) or (b) of clause (ii) along with the Permanent Account Number of the transferor.*

i.e. no TDS by Indian subsequent purchaser of software u/s 194J if transferor deducted u/s 195

FTS as per Domestic Law

FTS payable by	FTS deemed to accrue or arise in India
a. Govt	Yes
b. Resident	Yes Exception: where it is payable in respect of services utilized in <u>business or profession</u> carried on <u>outside India</u> or for the purpose of earning <u>income from any source outside India</u>
c. Non-Resident	Yes Condition: payable in respect of services utilized in <u>business or profession</u> carried <u>in India</u> or for the purpose of earning <u>income from any source in India</u>

- Definition for FTS covers consideration for:
 - Technical Services
 - Managerial Services
 - Consultancy Services
- Excludes consideration for:
 - Construction, assembly, mining or like project; or
 - Amount chargeable as salaries

Consequences of Non Compliance of TDS:

Applicable	Nature of Default	Consequence
40(a)	Withholding tax not deducted or not deposited within prescribed	Disallowance of expenses in computation of taxable income of payer; deduction in year of
201(1)	Tax not withheld/ deposited appropriately	Recovery of tax not withheld/ deposited or short withheld/ deposited
Interest u/s 201(1A)	Tax not withheld/ deposited appropriately	Interest @ 1% per month or part of the month. Further, interest @ 1.5% per month is payable from the date of deduction till the date when tax is actually paid.
Penalty u/s 221	Tax withheld not paid	Penalty, not exceeding the amount of tax not
Penalty u/s 271C	Tax not withheld or short withheld	Penalty, not exceeding the amount of tax not withheld CAN BE WITHHELD BY Joint Commissioner.
Penalty u/s 272A	Failure to file TDS return	Penalty of INR100 per day of default subject to maximum of tax deductible
Penalty u/s 271-I	Non-furnishing of information under section 195(6)	Penalty of Rupees 1,00,000
Prosecution u/s 276B	Failure to pay tax deducted	Minimum: 3 months Maximum: 7 years



CA. ASHWANI RASTOGI
ashwani.rastogi.ca@gmail.com
9990999281

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