

TDS ON FOREIGN REMITTANCES

**We provide online- e-form 15CB
(CA. Certificate)**

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CA Certificate to be obtained before making foreign remittance in Form 15CB (e-filing)

We provide e-Form 15CB instantly upon submission of document

Document Required:

- PAN Copy of remitter
- Bank account details, name of Bank, branch address & BSR code
- PAN Copy of Beneficiary (if any) (NRI)
- Invoice and agreement (if any)
- No Permanent Establishment (NO PE) declaration
- Tax Residency Certificate (TRC) (if any)

Pls click to download format:-

- [Information for 15CB](#)
- [No Permanent Establishment Declaration](#)
- [FORM-No.-10FA -TRC Declaration](#)

Or document can be mail to us: info@globaltaxation.in

The significant changes under the amended Rules vide notification dated 17/12/2015.are:

- ✓ No Form 15CA and 15CB will be required to be furnished by an individual for remittance which do not requiring RBI approval under its Liberalised Remittance Scheme (LRS)
- ✓ Further the list of payments of specified nature mentioned in Rule 37 BB which do not require submission of Forms 15CA and 15CB has been expanded from 28 to 33 including payments for imports. code non taxable.xlsx
- ✓ A CA certificate in Form No. 15CB will be required to be furnished only in respect of such payments made to non-residents which are chargeable to tax and the amount of payment during the year exceeds Rs. 5 lakh.

Requirement of e-Form 15CB & filling up of e-Form 15CA-Part A/B/C/D w.e.f. 1st April 2016

Part-A	For those small payment cases, if the amount of payment or the aggregate of such payments, made during the FY does < Rs. 5 lakh- NO 15CB required
Part-B	For those having exemption u/s 197; or an order u/s 195(2) 195(3); NO 15CB required
Part-C	For those big payment cases, if the amount of payment or the aggregate of such payments, made during the FY does > Rs. 5 lakh; Exemption given for 33 cases; 15CB required
Part-D	any sum which is not chargeable under the provisions of the Act; NO 15CB required

Few common transactions and applicability of TDS u/s 195:

1. TDS to be deducted on payment by a firm to its non-resident working partner.
2. Commission paid to overseas Agents:
3. Commission earned by NR would not be taxable in India under Domestic law if all services rendered by NR outside India (i.e. NR do not have any business connection in India as per Sec 9(1)(i)) and income is not received in India. If it is taxable under Domestic Law, we need to claim the benefit of DTAA in which it is not taxable.
4. Clearing and Forwarding (C& F) Charges paid Non-resident:

In the case of ACIT v Leap International (P.) Ltd. 15 taxmann.com 251, Honorable Chennai Tribunal held that payment made to foreign companies partly towards freight charges for moving the goods and partly for transportation for clearing/forwarding at the foreign ports and the remittances were for services rendered outside India and the companies to whom payments were made did not have any branches or PE in India; and the payments were made in accordance with the RBI's circular as also the CBDT Circular No. 10/2002 dated 9-10-2002 and, therefore, the payments were not liable for deduction of tax under section 195.

5. Loan Arranger Fees: Arranging of a loan cannot be equated with lending of managerial or consultancy services at all because Arranger did not provide any advisory or counselling services. The Arranger was not involved in providing control, guidance or administration of the credit facility nor it was involved in day-to-day functioning of the assessee in overseeing the utilisation or administration of the credit facility. It was not in charge of entire or part of the transaction of arranging services, hence, it cannot be termed as managerial or consultancy services within the meaning of Fee for Technical Services prescribed u/s 9(1)(vii). Hence, Fee paid to non-resident for arranging loan is neither interest nor 'FTS' and not liable to TDS in India.

6. Reimbursement of expenses: If the main expenditure is not chargeable to tax in India, then reimbursement of expenses will also be not chargeable to tax. Similarly, if the main expenditure is chargeable to tax in India then the reimbursement of expenses shall also be chargeable.

Royalty/FTS for non residents are taxable in India if sourced in India.

Royalty/ FTS income is taxable in India if service is used/ utilized in India. Place of rendering service not relevant

Section 9(i)(vi)/(vii) of the Act deem royalty/FTS to accrue or arise in India where it is:

- ***Payable by the Government***
- **Payable by resident unless** it is payable in respect of any right, property or information used or services **utilized:**
 - for the purpose of or in **the business or profession carried on by such resident outside India** or
 - for the purpose of **making or earning any income** from any **source outside India**
- **Payable by non-resident** only if it is payable in respect of any right, property or information used or services **utilized:**
 - for the purpose of or in **the business or profession carried on by such non-resident in** India or
 - for the purposes of **making or earning any income** from any **source in India.**

Illustrative examples of payments in the nature of “Royalty” (in specified circumstances)

In the nature of “Royalty”	NOT in the nature of “Royalty”
<ul style="list-style-type: none"> ✓ Licence to reproduce software and distribute it to the public; ✓ Access to a portal located outside India in specified circumstances; ✓ Use or right to use customized software; ✓ Use of an internet based software hosted on the server of a foreign company in specified circumstances; ✓ Use or right to use a design, secret formula, patent, trademark, invention, etc.; ✓ Payment for time charter or bareboat charter of a ship. 	<ul style="list-style-type: none"> ✓ Sale of off the shelf software ✓ Use of leased capacity of a transponder ✓ Outright sale of engineering designs, calculations, etc; ✓ Transmission of voice and data through telecom bandwidth; ✓ Access to data in a copyrighted web based database. ✓ Sale of business information reports; ✓ Sale of industry information; ✓ Access to a web-based journal containing views, opinions and news; ✓ Providing grading and certification reports; ✓ Data processing services in cases where it is a standard facility; ✓ Assignment of rights in a contract; ✓ Cost contribution towards basic R&D activities

In the nature of “FTS”	NOT in the nature of “FTS”
<ul style="list-style-type: none"> ✓ Advising on specific problems pertaining to production of pesticides and training technical personnel; ✓ Tests conducted to determine whether coke produced is suitable for the intended purpose; ✓ Preparation of designs, drawings and appraisal reports; ✓ Examining and improving fuel efficiency of engines; ✓ Impact tests on cars to check their quality; ✓ Services pertaining to registration and enforcement of intellectual property rights; ✓ Success fee for raising a loan; ✓ Engineering data and personnel services for establishing a furnace; ✓ Advertising, marketing promotion and other special services; ✓ Data processing services depending on the specific needs of the client. 	<ul style="list-style-type: none"> ✓ Assistance in making stray purchases; ✓ Standard cellular telephone service; ✓ Interconnect charges paid to telecom service providers; ✓ Provision of bandwidth/internet facilities; ✓ VSAT charges, Demat charges, etc. paid by members to the stock exchange for use of facilities; ✓ Construction/assembly of a conveyor belt. ✓ Freight and logistics services, loading and unloading ✓ Sourcing services in relation to goods ✓ Line production services

DTAAs having a restrictive scope (i.e., “make available” criteria)

Some of the DTAAs which India has entered into (US, UK, Canada, Australia, Finland, Singapore, etc.) provide for a restrictive definition of the term “FTS”/“FIS”.

In the nature of “FTS” (under the “make available” criteria)	NOT in the nature of “FTS”
<ul style="list-style-type: none"> ✓ Engineering services (including the sub-categories of bio-engineering and aeronautical, agricultural, ceramics, chemical, civil, electrical, mechanical, metallurgical and industrial engineering); ✓ Architectural services; ✓ Computer software development; ✓ Bio-technical services; ✓ Food processing; ✓ Environmental and ecological services; ✓ Communication through satellite or otherwise; ✓ Energy conservation ; ✓ Exploration or exploitation of mineral oil or natural gas; ✓ Geological surveys; ✓ Scientific services; ✓ Technical training; ✓ Consulting services in relation to review of hydrocarbons, analysis and review of data maps; ✓ Training in the use of simulators; ✓ Technical assistance and training to enable the recipient to manufacture aluminium foils; ✓ Technical plans, designs and information to enable the recipient to execute and install water features 	<ul style="list-style-type: none"> ✓ Services provided by overseas lead managers for managing a GDR issue; ✓ Standard telecom service; ✓ Quality assurance assessment and certification activities; ✓ Reviewing project documentation and providing expert opinion ✓ Providing commercial and industrial information; ✓ Updation of a market study; ✓ Project monitoring services; ✓ Grading and certification reports ✓ Referral services⁸⁸; ✓ Clinical or bio-analytical studies. ✓ Airborne survey and providing high resolution geophysical data ✓ Services of reinsurance broking

Payment for software whether royalty or not?

As held in Infrasoftware's case by Delhi HC: What is transferred is neither the copyright in the software nor the use of the copyright in the software, but what is transferred is the right to use the copyrighted material or article which is clearly distinct from the rights in a copyright. It is accordingly held that what has been transferred is not copyright or the right to use copyright but a limited right to use the copyrighted material and does not give rise to any royalty income. Thus, the same shall come under the purview of royalty when payment is made for copyright or right to use copyright of software. Accordingly off-shelf saleable Software which are sale in CD/DVD/ pen drive NOT A royalty.

Caselaws:Infrasoftware software royalty

TRC Certificate required for claiming relief of DTAA.

However, in India, a person has to be eligible to claim the beneficial provisions of such DTAA. As per section 90(4) of the Act, a person would be eligible to claim the beneficial provisions of the DTAA if he has obtained a Tax Residency Certificate from the government of the country of which he is a resident.

*****Thanks*****