

TDS ON FOREIGN REMITTANCES

Surprises continued..

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TDS ON FOREIGN REMITTANCE

As Per Section 195 TDS shall be deducted on the payment made to Non Resident at the prescribed rate. As per RBI Guidelines, Every payment except some specifically exempted payment shall be attached with Form 15 CA along with a certificate from a Accountant in Form 15 CB.

Category of Foreign Remittance:

(i) If the remittance is chargeable to tax and does not exceed Rs. 50000/- and the aggregate of such remittances in financial year information in does not exceed Rs. 250000/- **Part-A of Form 15CA required and Form 15CB not required.**

(ii) Other cases i.e. where remittance is chargeable to tax and exceeds Rs. 50000/- and the aggregate of such remittances in financial year information in exceeds Rs. 250000/-. **Part-A & Part-B of Form 15CA required, also Form 15CB required.**

For cases falling under clause (ii) above the person is also required to obtain a certificate as under:

- (a) a certificate in form 15CB from a Chartered Accountant; or
- (b) a certificate from Assessing Officer under section 197 ; or
- (c) an order from the Assessing Officer under sub-section (2) of section 195 for determining the appropriate proportion for tax deduction or sub-section (3) of section 195 for no deduction.

Procedure of Foreign Remittance:

1. The person making payment shall obtain a certificate from accountant in Form 15CB providing details in Form.
2. The Person shall file a form 15CA electronically after login into account at income tax portal
<https://incometaxindiaefiling.gov.in/>
3. Write on the acknowledgement number generated by the system for future references.
4. Take print out of Form 15CA and get signed by authorized person.
5. Submit the duly signed form 15CA, 15CB and copy of bills to the RBI or any other authorized dealer.
6. Exchange Rate used for the payment shall be used for deposition of TDS.

Withholding (TDS) shall be deducted as under:-

- Apply Domestic TDS provision as per Part-II of First Schedule of Finance Act/ XVIIB Chapter (Withholding tax rates for Non-resident) of Income Tax Act.
- Apply respective DTAA provision
- Apply Domestic tax rate or DTAA tax rate, whichever is beneficial – Sec 2(37A)(iii), One of the condition for claiming Double Taxation relief is obtaining of Tax Residency Certificate (TRC) which is mentioned in Section 90(4) & also in 90A(4)
- Sec 206AA to apply, If gross remittance amount is exceeding taxable limit than PAN no. is mandatory otherwise 20% deduction U/s 206AA apply.

Section 195 Implications

195.(1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest 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 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

Sec 195 (1) – Scope and chargeability

Who is responsible to deduct tax?	✓ Any person (As defined u/s 2(31))
Who should the payee be?	✓ All non residents whether having presence in India or not
	✓ Does not include RNOR
Status of non-resident ?	✓ Under sec 6
	✓ In case of dual residence if tie breaker clause exists - DTAA is applied
Payments covered?	✓ Any sum chargeable under the IT Act
	✓ Except salaries and dividend u/s 115O
Point of deduction?	✓ At the time of credit or payment whichever is earlier
Rate of TDS?	✓ Relevant rate in force

Sec 195 (2) – Payer’s application for lower/ NIL WHT certificate

Sec 195A – Grossing up of taxes, *Grossing up required in case of net of tax payments*

Tax payable by non resident to be added to income remitted, determined on gross figure

Particulars	Amount
Amount payable to non-resident (net of tax)	INR100
Tax rate applicable	20%
Gross-up income: $100 * 100 / (100 - 20)$	INR 125
Tax payable (INR 125 * 20%)	INR 25
Net amount paid to non-resident (INR 125 – INR 25)	INR 100

Section 206AA Implications

“206AA. Requirement to furnish Permanent Account Number.—(1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—

(i) at the rate specified in the relevant provision of this Act; or

(ii) at the rate or rates in force; or

@ specified in this behalf in the Finance Act of the relevant year

(iii) at the rate of twenty per cent.

- If non-resident don't have PAN no. online apply at <https://tin.tin.nsdl.com/pan/form49AA.html>
- And the benefit of DTAA will prevail over income tax provision subject to section 206AA.

Little bit Concept – for Reverse Charge under Service Tax

- In case of Company payer, there is reverse charge as per Service tax provision than while grossing up first apply service tax rate than deduct tds.

E.g. service tax & tds bear by Indian company than calculation would be:

Service Tax payable: $100000 / (100 - 12.36) * 12.36 = 14468$

TDS payable: $114468 / (100 - 10) * 10 = 12718$

- Where the gross remittance exceeding Rs. 1 crore than apply 10% surcharge rate education cess will be 3% in all cases.

Tax Residency Certificate – Implications

In very simple words, Tax Residency Certificate (TRC) is a certificate which are issued to Tax resident of a foreign country mentioning that the Income of the Assessee is liable to Tax in that foreign country.

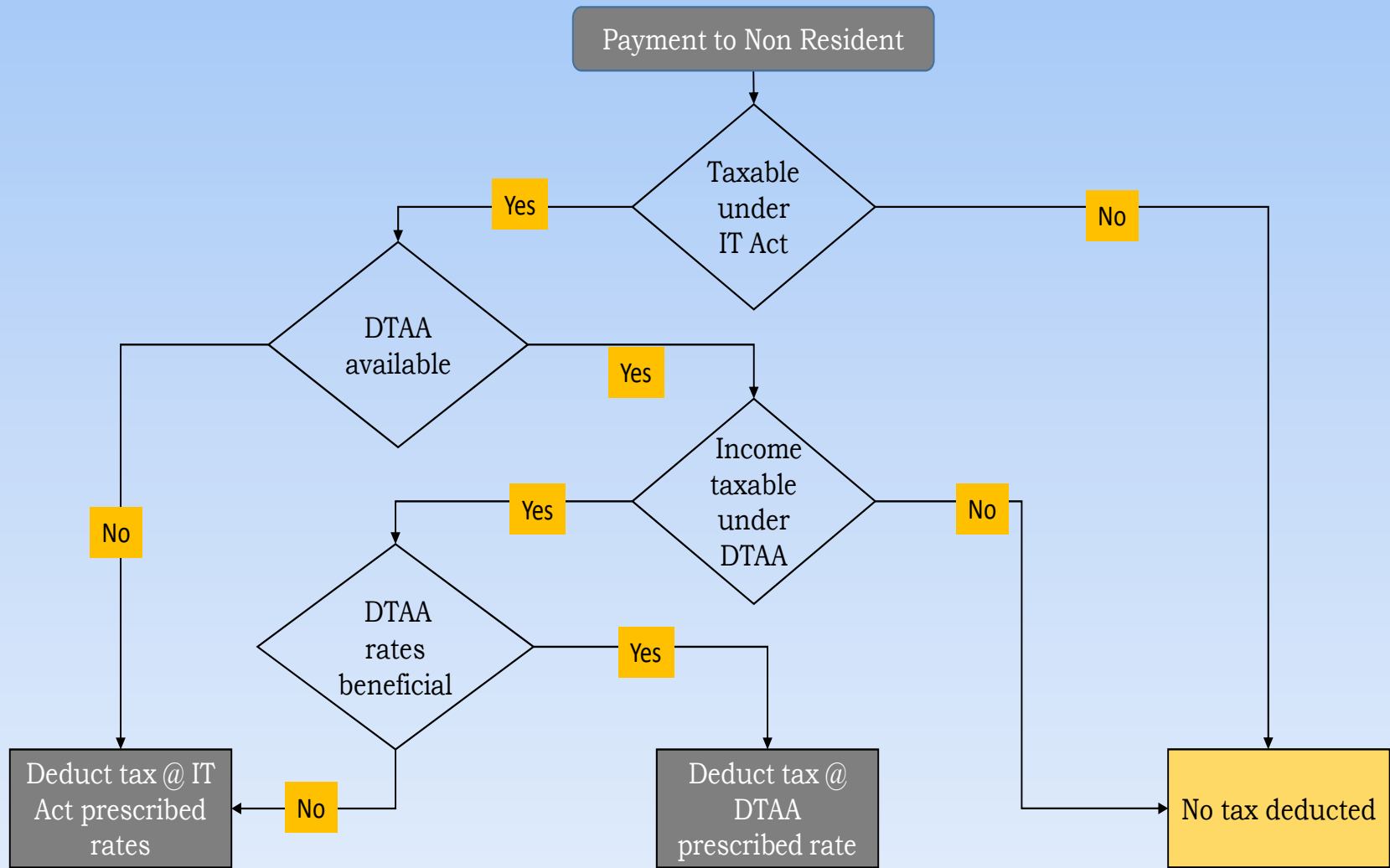
Obtaining TRC is a must for claiming tax benefit provided under respective Double Taxation Avoidance Agreement (DTAA) entered between India and that foreign country. In order to get DTAA benefit the non-resident has to provide Tax Residency Certificate (TRC) from the home country revenue authority when seeking to avail tax treaty benefit. Otherwise 25% taxes would be deducted.

Format of Tax Residency Certificate is specified in Form 10F

The tax authorities have prescribed that the TRC has to contain the following particulars:

<i>(i)</i>	<i>Name of the assessee;</i>
<i>(ii)</i>	<i>Status (individual, company, firm etc.) of the assessee;</i>
<i>(iii)</i>	<i>Nationality (in case of individual);</i>
<i>(iv)</i>	<i>Country or specified territory of incorporation or registration (in case of others);</i>
<i>(v)</i>	<i>Assessee's tax identification number in the country or specified territory of residence or in case no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory;</i>
<i>(vi)</i>	<i>Residential status for the purposes of tax;</i>
<i>(vii)</i>	<i>Period for which the certificate is applicable; and</i>
<i>(viii)</i>	<i>Address of the applicant for the period for which the certificate is applicable;</i>

Applicability at a glance



Important Note:

If the remittance made is not Taxable u/s 195 then the importance of TRC & PAN doesn't come into picture.

- ✓ TRC is required for claiming benefit provided in DTAA entered between respective countries.
- ✓ PAN is required to escape from applicability of Section 206AA (i.e. applicable TDS rate OR 20% whichever is higher)

Example:

Royalty / Fees for Technical Services is taxable @ 25% w.e.f. 01.04.13 under Income Tax Act whereas rate provided in DTAA entered between respective countries is say 10/15% (15% in India vs. US treaty).

Case 1 Both PAN & TRC is available

TDS rate will be 15% (no cess as DTAA rate applies)

Benefit of DTAA is available (because of TRC) & also Section 206AA is escaped (because of PAN)

Case 2 PAN is available but no TRC

TDS rate will be 25.75% (25% plus 3% cess as Act rate applies)

Benefit of DTAA is not available (because of no TRC) & also Section 206AA is escaped (because of PAN)

Case 3 PAN not available but TRC available

TDS rate will be 25.75% (25% plus 3% cess as Act rate applies)

higher of

(1) As per provision (domestic Tax), 25.75%

(2) Rate in force, as per DTAA 15%,

(3) 20%.

Case 4 PAN not available although TRC not available

TDS rate will be 25.75% (25% plus 3% cess as Act rate applies)

higher of

(1) As per provision (domestic Tax), 25.75%

(2) Rate in force, as per DTAA 15%,

(3) 20%.

Please Note :

In the above article, we have tried to explain the importance of TRC and PAN in determining withholding tax rate for payments made to non-resident in simple words. This article is written to provide readers with the basic knowledge on the concept. You are requested to read the relevant sections & consult professional before taking view based on the above article. Hope you enjoyed the article.

Consequences of non compliance

Applicable section	Nature of default	Consequence
40(a)	Withholding tax not deducted or not deposited within prescribed time	Disallowance of expenses in computation of taxable income of payer; deduction in year of payment
201(1)	Tax not withheld/ deposited appropriately	Recovery of tax not withheld/ deposited or short withheld/ deposited
201(1A)	Tax not withheld/ deposited appropriately	Interest @ 1% per month or part of the month
221	Tax withheld not paid	Penalty, not exceeding the amount of tax not paid
271C	Tax not withheld or short withheld	Penalty, not exceeding the amount of tax not withheld

Chargeability under IT Act or DTAA

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