

Foreign Remittances and Procedure for Form 15CB

Issues

- 1) Whether refund of excess TDS deducted and paid u/s 195 is possible?
- 2) Section 195
Whether it is mandatory for a person responsible for paying any sum chargeable under the Act, to a non-resident, to make an application to the Assessing Officer to determine the appropriate proportion of sum chargeable to tax?
- 3) What is withholding tax implication u/s 195 on following transactions:
 - A) Managements expenses paid to Head Office
 - B) Reimbursements of expenses
 - C) Payment by resident to Indian Branch of Foreign Bank (Payment of Interest and Bank charges)
 - D) Payment by Offshore Branch of Indian Company to Offshore Branch of Indian Bank (Bank registered under Banking Regulation Act)
 - E) An American Company has an arrangement with an Indian company to depute its personnel to Indian Company on a hire out basis. The personnel deputed worked under supervision and control of Indian Company. The Indian company reimbursed to American Company, the salary paid to personnel.
 - F) Taxability of interest remitted by Branch of Bank to its Head Office abroad
 - G) Interest paid by Indian Company to Singapore Branch of ABN Amro Bank(RBS)
 - H) US company sharing management experiences and business strategies to Indian Company
- 4) TDS on Royalty and Fees for Technical Services- Whether following transactions are business income/royalty/fees for technical services:
 - + A non-resident UK based company is providing the service of collecting data and analyzing it and making a database for providing information on suitable candidates for recruitment- discuss tax implications
 - + Payment made to UK company for carrying calls and data outside India
 - + Web-hosting charges/domain registration charges
 - + Electronic Ordering and downloading of digital products
 - + Data warehousing/Data Retrieval Services
 - + Limited duration software /Single use software
- (5) A US company providing drug testing services and giving report to Indian Company. Whether Indian company should withhold tax on payment to US Company.
- (6) A US manufacturer has experience in the use of process for manufacturing wall board for interior walls of the houses which is more durable than standard products of its type. A Indian builder wishes to this product for its own use:
 - × it rents a plant in India and US manufacturer sends experts to show Engineers of Indian Company, how to produce the extra strong wall board;
 - × in above example, what will be the situation, if Indian Company provides raw material and US manufacturer uses its technology and gets fee for the same?

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- (7) What is withholding tax implication u/s 195 on following transactions:
- + The payment made for exhibition outside India/ Participation Fees for the conference
 - + Fee for membership of various trade bodies/other organizations outside India
 - + Legal advisory services to Indian company in France by advocate in France
 - + Sales and Marketing Services provided to market products of Indian company in foreign country
- (8) Is “Treaty Shopping” valid mean of tax planning?
- (9) Mr. A , a resident has purchased residential flat at Ahmedabad from Mr. Y, resident of Dubai. Whether Mr. A should deduct tax u/s 195. Also, how a Chartered Accountant should issue Form 15 CB, if asked by Mr. A
- (10) RBI allows general remittance of USD 1 million per year subject to undertaking and CA Certificate. Authorized dealers asks for CA Certificate. Mr. Nice, an NRI is remitting funds from his account in India to his account in UK. How a Chartered Accountant will certify this

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Reference Material:

Article 12 of Indo-US DTAA

“ARTICLE 12 - Royalties and fees for included services - 1. Royalties and fees for included services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if the beneficial owner of the royalties or fees for included services is a resident of the other Contracting State, the tax so charged shall not exceed :

(a) in the case of royalties referred to in sub-paragraph (a) of paragraph 3 and fees for included services as defined in this Article [other than services described in sub-paragraph (b) of this paragraph] :

(i) during the first five taxable years for which this Convention has effect,

(a) 15 per cent of the gross amount of the royalties or fees for included services as defined in this Article, where the payer of the royalties or fees is the Government of that Contracting State, a political sub-division or a public sector company ; and

(b) 20 per cent of the gross amount of the royalties or fees for included services in all other cases ; and

(ii) during the subsequent years, 15 per cent of the gross amount of royalties or fees for included services ; and

(b) in the case of royalties referred to in sub-paragraph (b) of paragraph 3 and fees for included services as defined in this Article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 3(b) of this Article, 10 per cent of the gross amount of the royalties or fees for included services.

3. The term “royalties” as used in this Article means :

(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright or a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof ; and

(b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of Article 8.

4. For purposes of this Article, “fees for included services” means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services :

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received ; or

(b) make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.

5. Notwithstanding paragraph 4, “fees for included services” does not include amounts paid :

(a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 3(a) ;

(b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic ;

(c) for teaching in or by educational institutions ;

(d) for services for the personal use of the individual or individuals making the payments ; or

(e) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 15 (Independent Personal Services).

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for included services, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties or fees for included services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for included services are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be shall apply.....”