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Making payments abroad?

Ensure TDS compliance with Section 195

Paying a Non-Resident ? – Comply with section 195

▶ What is Section 195 ? – Any payments to Non-Residents

Section 195 says that if you are making a payment to a non-resident (like an NRI or a foreign company), and that payment is taxable in India, then you must deduct tax (TDS) before making the payment.

This applies to all transactions like payments for services, interest, rent, or royalty — basically, any income that the non-resident earns from India.

It helps make sure the Indian government collects tax from foreign parties who earn money from India.

▶ Why section 195 and consequent withholding of tax (TDS) ?

Section 195 is like a safety net to make sure India gets its share of tax before money leaves the country for someone who lives or is based abroad.

Purpose of Section 195	Explanation
Prevent tax evasion by non-residents	If no tax is deducted before making the payment, the non-resident might avoid paying tax in India.
Ensure timely tax collection	By making the payer responsible for TDS, the government receives the tax upfront.
Apply Indian tax rules to foreign income	Any income earned or arising in India is taxable in India, even if paid to someone abroad.
Covers a wide range of payments	Includes payments for technical services, interest, royalties, commissions, or property transactions involving NRIs.

OVERVIEW

APPLICABILITY
ALL sums chargeable to tax under the Act paid or payable to a non-resident, including a foreign company

NATURE OF PAYMENTS
All payments other than SALARY taxable under Section 192

PAYER
Any person;
Resident or Non Resident

PAYEE
Non Resident individual, entity or Foreign Company

RATE OF TDS
As per the Finance Act or applicable DTAA, subject to conditions for availing DTAA benefits

TIME OF DEDUCTION
At the time of credit or payment, whichever is earlier

FORM 15 CA
Is an online declaration by the remitter, required before most foreign remittances unless specifically exempt.

FORM 15 CB
Is a certificate issued by a Chartered Accountant for foreign remittances, in applicable cases.

TDS | Applicable Rates

▶ How is TDS on payments to non-residents calculated?

Option	What it Means
Finance Act	Tax rates as per Indian Income Tax Act + 4% health & education cess + applicable surcharge.
DTAA	Lower tax rates agreed between India and the non-resident's home country under a tax treaty. *(Surcharge and cess not generally applicable)*

Standard TDS Rates – Finance Act

Few of the commonly used TDS rate are as below:

Payments nature	TDS Rates
Royalty	10%
Fees for technical Service	10%
Interest/Dividend	20%
Income from long term capital gains including sale of immovable property	12.5%
Other income not specifically covered such as rent, commission etc.	30%/40%
Business income **without PE** in India. In such cases TDS applies only if the sum is chargeable to tax under Indian law.	Nil
‼ Business income with PE in India will be treated as income generated in India and taxed as regular income in India.	

What is DTAA?

DTAA Treaty : Agreement between two countries to avoid double taxation on the same income.

Tax Residency Certificate (TRC): This document proves an individual or entity's tax residency in a specific country, often used to avoid double taxation under Double Taxation Avoidance Agreements (DTAAs).

Form 10 F : Is a self-declaration tax form used by non-resident taxpayers for claiming the benefits under DTAA if their Tax Residency Certificate (TRC) lacks certain crucial details specified in the DTAA.

ILLUSTRATION

You are paying $10,000 as royalty to a US-based company for use of a patent

Rate as per Income Tax Act : 10% + surcharge + cess (i.e 10.4% assuming surcharge not applicable)

Rate as per DTAA with the USA : 10%

If valid TRC is available, apply DTAA rate of 10%.

So, TDS = 10% of $10,000 = $1,000

CONDITIONS - to avail DTAA benefits:

1. **TRC:** The non-resident must obtain and furnish a valid TRC from the government of their country of residence.
2. **Form 10F and PAN:** If TRC doesn't contain all prescribed details then Form 10F to be obtained and PAN (or prescribed alternatives under Rule 37BC) is required.
3. **No PE in India:** The non-resident must be the beneficial owner of the income and must not have a Permanent Establishment (PE) in India if the DTAA benefit depends on this condition.

TDS Payment Process And Consequences For Non – Deduction

PROCESS

TAN AND PAN

Person making payment to a non-resident should obtain a Tax Deduction Account Number (TAN) under Section 203A before making the deduction.

Deductor should also have their PAN and PAN or Tax Identification number of the Non Residents.

DEDUCT AND DEPOSIT

Deduct applicable TDS before making payment and deposit it through challan on or before 7th of the next month in which TDS is deducted.

FILE 27 Q

Electronically file quarterly TDS return using Form 27Q after depositing the TDS.

ISSUE CERTIFICATE 16A

Provide Form 16A to the non-resident within 15 days from the due date of TDS return

CONSEQUENCES

EXPENDITURE DISALLOWANCE

100% of business expense is disallowed until tax is paid under Section 40(a)(i)

INTEREST CHARGES

If TDS is deducted but not paid within the time limit, then interest @ 1.5% per month or part of the month will be levied from the date of the deduction to the date of deposit.

If TDS is not deducted on time, interest is charged at 1% per month or part of the month, calculated from the date the tax was deductible until the actual date of deduction.

PENALTY FOR NON PAYMENT

If TDS is deducted but not paid at all, penalty is equal to the TDS amount

PENALTY FOR SHORT DEDUCTION

Penalty equals difference between required and actual deduction

Concluding remarks:

When you're making any payment to a non-resident — whether it's rent, buying property, professional fees, or even transferring money to an NRO account — it's not just a financial transaction, it may come with a tax responsibility. Under Section 195, you, the payer, are responsible for deducting TDS before making the payment.

It doesn’t matter if the payment is made within India or abroad, or whether the recipient is an individual or a company — if the income is taxable in India, TDS applies. And if you miss deducting it, the tax department can come back to you to recover it — along with interest and penalty.

Also, make sure you collect and keep proper documentation — like the Tax Residency Certificate (TRC), Form 10F, declaration of no Permanent Establishment (PE), or any certificate for lower/nil deduction. These records are important and can protect you in case of any future inquiry or audit.

‼️ ***Before you go ahead with any such payments to non-residents, pause for a moment, check the TDS rules, and take an informed decision. When in doubt, it's always better to consult a tax professional than to deal with a tax notice later.***

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