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“Compliance under Income-tax Act, 1961 for payments made to Non-residents”

In its attempt to tighten the grip on tax revenue lost to non-residents, the Finance Bill, 2015 has introduced certain amendments which will make day-to-day business more tedious. One such amendment that will impact on the everyday business is the requirement of Form 15CA / Form 15CB for all payments made to a non-resident.

Prior to its amendment, section 195 of the Income-tax Act stated that the person responsible for paying to a non-resident, any sum **chargeable under the provisions of Income-tax Act** was required to furnish the information relating to payment in the form and manner as may be prescribed (Form 15CA / 15CB). However, with effect from 1st June, 2015, section 195 (6) has been amended to state that the person responsible for **“paying to a non-resident, any sum, whether or not chargeable under the provisions of the Income-tax Act”**, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed (Form 15CA / 15CB). Consequent to this amendment, any person making payment to a non-resident will have to comply with provisions of section 195 before making payment to a non-resident.

Before the said amendment, certain banks were accepting an undertaking from the remitter stating that the remittance is not chargeable to tax under the Income-tax Act and were allowing remittance without taking Form 15CA or 15CB. On the other hand, some banks were insisting on Form 15CB / 15CA for all remittances to non-residents including imports. **However, with effect from 1st June, 2015, every person, including importers, making payment to a non-resident may have to comply with these forms before they can release the payments to their vendors.**

Any person who does not comply with the amended section 195 shall be liable for penalty under a newly introduced section 271-I. As per the said section any person who is required to comply with the rules for payment to non-residents, fails to do so or furnishes inaccurate information, the Assessing Officer may direct that such person **“shall pay, by way of penalty, a sum of one lakh rupees”**

The next few paragraphs will revisit the applicability and other aspects of both the Forms:

A remitter has to file Form 15CA using Income-tax department's 15CA utility and he has to obtain Form 15CB from a practicing Chartered Accountant.

The Form 15CA has two categories (i.e., Part A and Part B of Form 15CA) in which remittances are required to be reported. Only one of category will be applicable for a remitter viz-a-viz each of its non-resident recipient.

***Part A:** To be filled up if sum remitted to Non-Resident or foreign company doesn't exceed Rs. 50,000 per transaction **and** the aggregate of such payments during the financial year doesn't exceed Rs. 2,50,000*

***Part B:** To be filled up if sum remitted to Non-Resident or foreign company exceeds Rs 50,000 per transaction **or** the aggregate of such payments during the financial year exceeds Rs. 2,50,000*

The Form 15CB is required only in cases where Part-B of Form 15CA is applicable. Also, Form 15CB shall not be required if an Order under section 197 or section 195 of the Income-tax Act has been obtained from the Income tax department.

Form 15CA (consequently, even Form 15CB) is not required to be filled if remittance is covered by specified list given in *Explanation* to amended Rule 37BB, namely:

Sr. 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.)
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	S1 202	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

Java utility for Form 15CA can be downloaded at www.incometaxindiaefiling.com under *Downloads >> Forms (Other than ITR)*. After submitting the form, the remitter can download the e-filed Form 15CA (with acknowledgement) by logging in on the site.

Few practical difficulties which a remitter may face are discussed below:

1. Rule 37BB of Income-tax Rules that prescribes Form 15CA and 15CB have not been amended and still states that Forms need to be submitted only when sum is chargeable to tax.

Section 195 prescribes that Rule 37BB has to be complied with, whether or not the remittance is chargeable to tax, however, the rule itself prescribes that the forms have to be submitted only in cases where the sum is chargeable to tax. This has resulted in a grey area and multiple views amongst professionals. Till the government brings some clarification it may be advisable to comply with the Forms and rules even if the transaction is not chargeable to tax.

2. In case the bank is not insisting on Forms 15CA & 15CB. whether one should comply with the same?

Yes. If it is not complied then there may be penalty of Rs. 1 Lakh per transaction which will have to be paid at the time of assessment or earlier.

3. Whether one has to comply with these provisions while paying via online bank transfer to a non-resident.

Yes. The law requires you to comply and keep the Forms (Form 15CA/CB) in your records even though no bank is involved. It is the Income-tax Law which requires compliance and not the bank procedures.

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