## 15 CA & 15 CB

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In association with: Rajeev Tahalramani

#### What is Form 15CA?

Form 15CA is a Declaration by Remitter and is used as a tool for collecting information in respect of payments which are chargeable to tax in the hands of recipient non-resident.

#### Rough Idea:

- Suppose say A needs to make a payment to a non resident B and the payment made to B is chargeable to tax as per Income Tax Act, 1961 then A has to make a declaration in form 15CA before making the payment to B.
- This declaration has to be filed online and also A has to submit it with the Bank/Authorized Dealer before making the payment.

#### **Basic Purpose:**

The Purpose of this undertaking and certificate is to collect taxes at the stage when the remittance is made as it may not be possible to recover the tax at later stage from the non resident.

#### **Understanding Form 15CA:**

Form 15CA has been divided into four parts. Depending upon the quantum and taxability of remittance, respective part (i.e. Part A, Part B, Part C and Part D) of form 15CA needs to be filled.

#### Part A:

➤ Part A needs to be filled when the remittance is chargeable to tax and the remittance or the aggregate of all such remittances does not exceed five lakh rupees during the financial year.

#### Part B:

➤ Part B needs to be filled when the remittance is chargeable to tax and the remittance or the aggregate of all such remittances exceeds five lakh rupees during the financial year **AND** an order /certificate u/s 195(2), 195(3) and 197 of Income Tax Act has been obtained from the Assessing Officer.

#### Part C:

➤ Part C needs to be filled when remittance is chargeable to tax under the provisions of Income Tax Act and the remittance or the aggregate off such remittances exceeds five lakh rupees during the financial year and a certificate in **Form 15CB** from an Chartered Accountant has been obtained.

#### Form 15CB:

Form 15CB is the Tax Determination Certificate where the Issuer CA examines the remittance having regard to chargeability provisions under Income tax Act along with provisions of Double Taxation Avoidance Agreements with the Recipient's Residence Country.

#### Form 15CB and DTAA:

- CA has to determine the amount of TDS as per the provisions of Income Tax Act,1961 and as per DTAA. TDS will be deducted at the rate which will be lower of above two.
- Tax Residency Certificate must be obtained from the non resident if benefit of DTAA has been availed. **For Example**, as per Income Tax Act rate of TDS is 20% and as per DTAA rate of TDS is 10% then TDS deducted will be deducted as per DTAA (10%) only if TRC is received.
- ➤ Details in Form 15CB regarding DTAA:
  - 1)Relevant DTAA.
  - 2)Relevant article of DTAA.
  - 3) Taxable income and Tax liability as per DTAA.
  - 4) Whether the remittance is for royalty, interest or on account of Business Income, capital gain and accordingly details have to be filled.

#### Part D:

➤ Part D needs to be filled when the remittance is not chargeable to tax under the provisions of Income Tax Act,1961 {other than those payments as specified in rule 37BB(3)}.

#### **Details required for Form 15CB:**

- Details of Remitter.
- Name and address of Remittee.
- Country to which remittance is made.
- Amount Payable (in Foreign currency and in Indian currency).
- Name of the Bank (Branch, BSR).
- Proposed date of Payment and Nature of Payment.
- Relevant section of the Income Tax Act under which the remittance is covered.
- Tax Residency Certificate and other related documents in case DTAA benefit is taken.
- Invoice & other documents of the transaction.

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2				Sr.No	Details Required	Reply							
3				1	Name of the company Remitting the Amount								
4				2	Full Address of Remitter								
5				3	E-Mail ID of remitter								
6				4	Ph. No. of Remitter								
7				5	PAN No. of Remitter								
8				6	TAN No. of Remitter								
9				7	Name of the Remittee/ Beneficiary								
10				8	Full Address of Beneficiary								
11				9	E-Mail ID of beneficiary								
12				10	Ph. No. of Beneficiary								
13				11	PAN No. of Beneficiary								
					Name of the Bank through								
14				12	which remittance to be made								≡
15				13	BSR code of Bank								
16				14	Branch of Bank								
17				15	Proposed Date of Remittance								
18				16	Amount to be Remitted (in foreign currency			4					
19				17	Nature of Remittance								
20				18	Rate at which TDS to be deducted								
21				19	Date of deduction of Tax at source								
					99								
22				20	Whether amount remitted is grossed up for TDS?(Y/N)		1	Г					
					Whether Beneficiary has Permanent Establishment in		1						
23				21	India								
24				22	Whether Beneficiary has Fixed Base in India		1						
25				23	Copy of Bill against which payment is to be made								
26				24	Exchange Rate for conversion into Indian Rupee								
					Beneficiary is company/ professional / Partner Ship							T	
27				25	Firm								
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#### **Details required for filing Form 15CA:**

#### Part A:

- Name of Remitter.
- PAN/TAN of Remitter.
- Address of Remitter.
- Name, Address, PAN of Recipient.
- Amount payable before TDS.
- Aggregate amount of remittances made during financial year including the proposed payment.
- Bank Details.
- Amount & Rate of TDS.
- Date of Deduction.

#### Part B:

- Same as Part A.
- Section under which order/certificate has been obtained.
- Name and Designation of AO who issued the certificate.
- Date of order/certificate.
- Order/certificate Number.

#### Part C:

• Acknowledgement Number of Form 15CB needs to be entered and most of details will get pre-filled.

#### Part D:

Same as Part A except TDS rate & amount and date of deduction.

#### How to e-file Form 15CA & 15CB:

- 1) Client needs to login to e-filing portal and navigate to MY ACCOUNT → ADD CA.
- 2) Once CA has been added, the CA can file form 15CB on behalf of client.
- 3) Client can view the uploaded Form 15CB in his e-filing portal (Go to Worklist → For Your Information).
- 4) And at last client will file form 15CA.

Note: Form 15CB has a validity of one month.

#### Finance Bill, 2017:

- Earlier only Form 15CA had to be filed online but now Form 15CB is also to be filed online.
- The list of payments where there is no requirement for forms 15CA, 15CB has been expanded under rule 37BB (Five new entries have been added).
- New Form 15CC: Quarterly Statements to be furnished by an authorized dealers in respect of foreign remittances made by it.
- Now there is an option for withdrawal of Form 15CA before payment. It can be withdrawn within 7 days of its submission.

#### **Rule 37BB:**

- 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-S0101- Advance payment against imports.
- 8-S0102- Payment towards imports settlement of invoice.
- 9-S0103- Imports by diplomatic missions.
- 10-S0104-Intermediary trade.
- 11-S0190-Imports below Rs.5,00,000 (For use by ECD offices).
- 12-S0202-Payment for operating expenses of Indian shipping companies operating abroad.
- 13-S0208-Operating expenses of Indian Airlines companies operating abroad .

- 14- S0212- Booking of passages abroad Airlines companies.
- 15-S0301-Remittance towards business travel.
- 16- S0302- Travel under basic travel quota (BTQ).
- 17- S0303- Travel for pilgrimage.
- 18-S0304- Travel for medical treatment.
- 19-S0305- Travel for education (including fees, hostel expenses etc.).
- 20-S0401- Postal services.
- 21-S0501- Construction of projects abroad by Indian companies including import of goods at project site.
- 22-S0602- Freight insurance relating to import and export of goods.
- 23-S1011- Payments for maintenance of offices abroad.
- 24-S1201-Maintenance of Indian embassies abroad.
- 25-S1202-Remittances by foreign embassies in India.
- 26-S1301-Remittance by non-residents towards family maintenance and savings.
- 27-S1302-Remittance towards personal gifts and donations.

- 28-S1303- Remittance towards donations to religious and charitable institutions abroad.
- 29-S1304- Remittance towards grants and donations to other Governments and charitable institutions established by the Governments.
- 30-S1305- Contributions or donations by the Government to international institutions.
- 31-S1306- Remittance towards payment or refund of taxes.
- 32-S1501- Refunds or rebates or reduction in invoice value on account of exports.
- 33-S1503- Payments by residents for international bidding.

# TDS on Purchase of Property from Non Resident Indian

Presented by: CA Sheetal Mankani-Partner R. C. Jain & Associates LLP

In association with: Ravina Hardasani

## Charging Section-195

- Any person responsible for paying to a non-resident, not being a company, any sum chargeable to tax under the provisions of this Act shall deduct TDS on the same.
- TDS is to be deducted at the time of credit to the account of payee or at the time of payment whichever is earlier. Hence Even if the advance payment is made TDS is to be deducted.
- Section 195 states that TDS is to be deducted at the rates in force.

## Rates in Force

- Rates in force is the rate at which a particular type of income is taxable under the provisions of the Income Tax Act.
- AS per section 90 of the Income Tax Act'1961, the rates of taxation on taxable income of a non-resident will be as prescribed under the Income Tax Act'1961 or under the DTAA of India with the country of which the non-resident is a resident, whichever is more beneficial to the tax payer.
- However, for availing the benefit of lower rate of deduction of tax under the DTAA, the non-resident transferor will have to furnish a **Tax Residency Certificate** to the payer indicating the tax residency of which he is a resident.

# Amount on which TDS is to be Deducted

As per Sec195(2)

Where the person responsible for paying any such sum chargeable under this Act (other than salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under only on that proportion of the sum which is so chargeable.

• Gist-The tax is to be deducted on income only i.e on the amount of capital gains arising to the nonresident out of the total consideration.

• However, if no such application is made by the payer or the payee to determine the sum chargeable to tax, the tax will be deducted on the entire consideration for sale of immovable property.

#### No Deduction of TDS As per Sec 195(3)

any person entitled to receive any interest or other sum on which income-tax has to be deducted, may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon.

#### NRI's can lower TDS on Sale of Property

- 1)If Capital Gains is zero or Capital Loss NRI can apply for Nil Tax Deduction Certificate.
- 2) NRI seller is willing to re-invest capital gain in India, in this case NRI Seller can apply for Tax Exemption Certificate. Exemption by Reinvestment can be claimed under Sec 54- Old Asset- Residential Property, New Asset- Residential Property, Sec54F- Old Asset- Any Asset, New Asset-Residential House, Sec 54EC-Specified Bonds.
- 3)The seller or buyer can apply for Lower deduction of TDS by making an application under Form 13 to AO.

Documents required for application- Passport, PAN Card, Sale Deed, Income Tax Returns, Bank Statement or any other document deemed relevant.

By CA Sheetal Mankani (Partner – R.C Jain and Associates LLP)

## Compliances

- The buyer should have the TAN Number. TAN is not required in case purchase is from Resident.
- After the deposit TDS Return-27Q is furnished for each quarter in which tds is deducted. All other provisions pertaining to deposit of TDS amount & interest on late payment are same.

## Repatriation of Sale Proceeds

In the event of sale of immovable property by NRI, repatriation of the sale proceeds outside India is allowed if following conditions are satisfied.

- a) The immovable property should have been acquired by the seller in accordance with the provisions of FEMA.
- b) The amount to be repatriated should not exceed the amount paid for acquisition of the immovable property received through normal banking channels or out of funds held in FCNR account or NRE account.
- c) If the immovable property in India has been purchased by an NRI/PIO out of housing loans and the repayments for such loans are made out of remittances received from abroad through banking channels

or by debit to the NRE/FCNR account of the NRI, such repayments will be treated as equivalent to foreign exchange received.

d) In the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

If the asset is acquired in India by way of Inheritance, than ADs may allow NRIs/PIOs, on submission of documentary evidence, to remit upto USD one million, per financial year out of balances in their NRO/NRE accounts.

Note-Also Form 15CA, CB is to be filed if sale proceeds are deposited in NRO and are to be transferred in NRE or if sale proceeds are in NRO and to be repatriated out of India.

## FEMA

Presented by: CA Sheetal Mankani–Partner R. C. Jain & Associates LLP

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#### Person resident in India-

• Person resident in India means a person residing in India for more than 182days during the course of preceding financial year.

However it does not include a person who stays outside India for-

- (a) for employment outside India; or
- (b) for carrying on a business or vocation outside India; or
- (c) for any other purpose if the circumstances show that he has an intention of staying abroad for an uncertain period.

It also does not include a person who has come to or stays in India, in either case, otherwise than-

- (a) Employment
- (b)Business or Vocation
- (c) for any other purpose if the circumstances show that he has an intention of staying in India for an uncertain period.

- Any person or body corporate registered or incorporated in India.
- An office or branch or agency in India owned or controlled by a person resident outside India.
- An office, branch or agency outside India owned or controlled by a person resident in India.

Broadly, 'person resident of India' includes person of India (except those staying abroad for work or business or other purpose) and foreign persons who come to India or stay in India for employment, carrying out business or other purpose. Even office, branch or agency can be 'person'.

#### Person Resident outside India-

It means a person who is not resident in India.

### Current and Capital Account Transaction

- Capital account transaction means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in subsection (3) of section 6;
- Current Account transaction is transaction other than a capital account transaction

Current Account transactions are freely permitted unless prohibited - they are regulated by Central Government.

Capital Account transactions are prohibited unless generally permitted - they are regulated by RBI.

Under LRS, ADs may freely allow remittances by Resident Individuals up to USD 25,0,000 per F.Y for any permitted current or capital account transaction or a combination of both.

## Current Account Transactions

Current account transactions are divided into 3 schedules in Current Account Transactions Rules:-

Schedule I – Prohibited Transactions

Schedule II – Transactions requiring prior approval of Government of India

Schedule III – Transactions permissible to Resident Individuals upto USD2,50,000.

#### **Prohibited Transactions-**

- 1.Remittance out of lottery winnings.
- 2.Remittance of income from racing/riding etc., or any other hobby
- 3.Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools

### Transactions Requiring Prior approval of GOI

- Cultural Tours
- Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its Public Sector Undertakings
- Remittance of prize money/sponsorship of sports activity abroad by a person other than International / National / State Level sports bodies, if the amount involved exceeds USD 100,000
- Remittance of hiring charges of transponders by
  - (a) TV Channels
  - (b) Internet Service providers
- Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping

## Remittances permissible to Resident Individuals Upto limit in LRS.

Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 as specified in LRS. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India.

- (i) Private visits to any country (except Nepal and Bhutan)
- (ii) Gift or donation.
- (iii) Going abroad for employment
- (iv) Emigration
- (v) Maintenance of close relatives abroad
- (vi) Travel for business, or attending a conference or specialised training or for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.

- (vii) Expenses in connection with medical treatment abroad
- (viii) Studies abroad
- (ix) Any other current account transaction.

For the purposes mentioned at item numbers (iv), (vii) and (viii), the individual may avail of exchange facility for an amount in excess of the limit prescribed under the LRS, if it is so required by a country of emigration, medical institute offering treatment or the university, respectively.

### Capital Account Transactions

Foreign exchange can be sold or drawn from authorised person for capital account transactions, subject to regulations as may be prescribed by RBI.

Capital account transactions are deemed to be prohibited unless permitted.

There are two categories of permissible capital account transactions-

- 1.Permissible Capital Account transactions by person resident of India.
- 2.Permissble Capital Account transactions by persons resident outside India.

## Sch I:Permissible Capital Account transactions by person resident of India.

A person resident of India can sell foreign exchange to "authorized person" or draw foreign exchange for following transactions.

- Investment by a person resident in India in foreign securities
- Foreign currency loans raised in India and abroad by a person resident in India
- Transfer of immovable property outside India by a person resident in India
- Guarantees issued by a person resident in India in favour of a person resident outside India
- Export, import and holding of currency/currency notes
- Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India

- Maintenance of foreign currency accounts in India and outside India by a person resident in India
- Taking out of insurance policy by a person resident in India from an insurance company outside India.
- Loans and overdrafts by a person resident in India to a person resident outside India.
- Remittance outside India of capital assets of a person resident in India.
- Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

# Sch II: Permissble Capital Account transactions by persons resident outside India.

A person resident outside India can sell foreign exchange to "authorized person" or draw foreign exchange for following transactions-

- Investment in India by a person resident outside India, that is to say,
  - i. Issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; &
  - ii. Investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.
- Acquisition and transfer of immovable property in India by a person resident outside India.
- Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.

- Import, export of currency/currency notes into/from India by a person resident outside India.
- Deposits between a person resident in India and a person resident outside India.
- Foreign currency accounts in India of a person resident outside India.
- Remittance outside India of capital assets in India of a person resident outside India.

### Capital Account Transactions - Prohibited

Foreign investment in India in any company, firm or proprietary concern engaged or proposes to engage in following business is completely prohibited-

- a) Chit Fund
- b) Nidhi Company
- c) Agricultural or plantation activities
- d) Real Estate business or construction of farm houses (However, development of townships, construction of residential/commercial premises, roads or bridge will be permissible as per regulations)

Rest other Capital Account transactions are prohibited, unless specifically permitted.

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## Thank You