BMR Legal

ADVOCATES

Issues and controversies on Withholding tax on foreign payments in India (Sec. 192, 195, 197, 194C, 194J)

By Adv. Vansh Vermani

Contents

Section 5 - Scope of total income in India of non-resident

Section 5: Scope of total income in case of non-resident

<u>Section 5 (2)</u>

Total income of non-resident shall be taxable in India if it:

- - "Received" in India
- -"Deemed to be received" in India

-"Accrues" or "arises" in India

-"Deemed to accrue or arise" in India

Section 5- “Received” & “Deemed to be received”

- “Received”
  - Income is said to be received when it reaches the assessee. – ***CIT v. Ashokbhai Chimanbhai*** *[1965] 56 ITR 42*
  - The word 'receipt' of income refers to the first occasion when the recipient gets the money under his own control. Once an amount is received as income, any remittance or transmission of the amount to another place does not result in 'receipt' within the meaning of clause (*a*) of section 4(1) of the 1922 Act, at the other place. – ***Keshav Mills Ltd. v. CIT*** *[1953] 23 ITR 230 (SC)*
  - Income can be said to be received when it reaches the assessee, but it can be said to have 'accrued' or 'arisen' only when the right to receive the said income becomes vested in the assessee. ***CIT*** *v.* ***Govind Prasad Prabhu Nath*** *[1988] 35 Taxman 513/171 ITR 417 (All.)*

- “Deemed to be received”
  - Means deemed to have been received as per Section 7 of the IT Act.

“Accrues” or “Arises” in India

- “Accrue or arise”

  - Accrue means to arise or spring as a natural growth or result. – ***Murry’s Oxford Dictionary***

  - Accrue means to come by way of increase –***Webster’s Dictionary***

  - An income is said to accrue or arise at the location where the services or activities for earning the income or the contract which gives rise to such income as has been entered into –***Cushman & Wakefield (S) Pte. Ltd***, *[AAR no. 757 of 2007]*

  - Accrues or arises relates to the place from where the right to receive an income has arisen.

Section 192 - Overview

Section 192- An Overview

- Any person responsible for paying any income which is chargeable under the head 'salaries' shall at the time of making the payment deduct income-tax on the estimated income of the employee under the head 'salaries'
- Responsibility on Employer – Employer can be any person [Section2(31)]
- The important condition for TDS deduction under section 192 is the presence of Employer-Employee relationship

Controversies under Section 192

Controversies under Section 192

- Engaged with two or more employers simultaneously?
- Renumeration paid to foreign Directors ?
- Payment made to doctors by the hospital?
- Seconded Employees ? – pandoras box opened by C.C.E.S.T v. Northern Operating Systems Pvt. Ltd.

Section 194J & 194C Overview

Section 194J & 194C – An Overview

Following type of services are covered under section 194J:

1.Fees for professional service
2.Fees for technical service
3.Remuneration or fee or commission to a director of a company
4.Royalty
5.Payment received (in cash or kind) under an agreement for:
-: Not carrying out any activity in relation to any business, or
-: Not sharing any know-how, patent, copyright, trademark, license, franchise or any other business/ commercial right of similar nature/ information/ technique.

Section 194C – Payment to Contractors

1. TDS is to be made at the prescribed rate where payment is made for carrying out any work (including supply of labour for carrying out any work) by a contractor;
2. Such work must be in pursuance of a contract (including sub contract) between the contractor and a specified person as defined in the Explanation;
3. The recipient of payment must be a resident of India;
4. TDS is to be made at the time of credit to the account of contractor or at the time of payment in cash or by cheque or draft or by any other mode whichever is earlier;

Section 194J & 194C – An Overview

Section 194J – Fee for professional and technical services - Applicability

1. Routine maintenance contracts
2. Recruitment agencies
3. Media House

Section 194C – Payments of Contractors

Circular No 86 dated 29.5.72 wherein it was clarified by the CBDT that section 194C would apply only in relation to 'works contracts" and "labour contracts" and would not cover contracts for sale of goods. In the said circular, it was made clear that the contracts for rendering of professional services by lawyers, physicians, surgeons, engineers, accountants, architects, consultants, etc., could not be regarded as contracts 'for carrying out any work" and, accordingly, no deduction of income-tax need to be made from payments relating to such contracts.

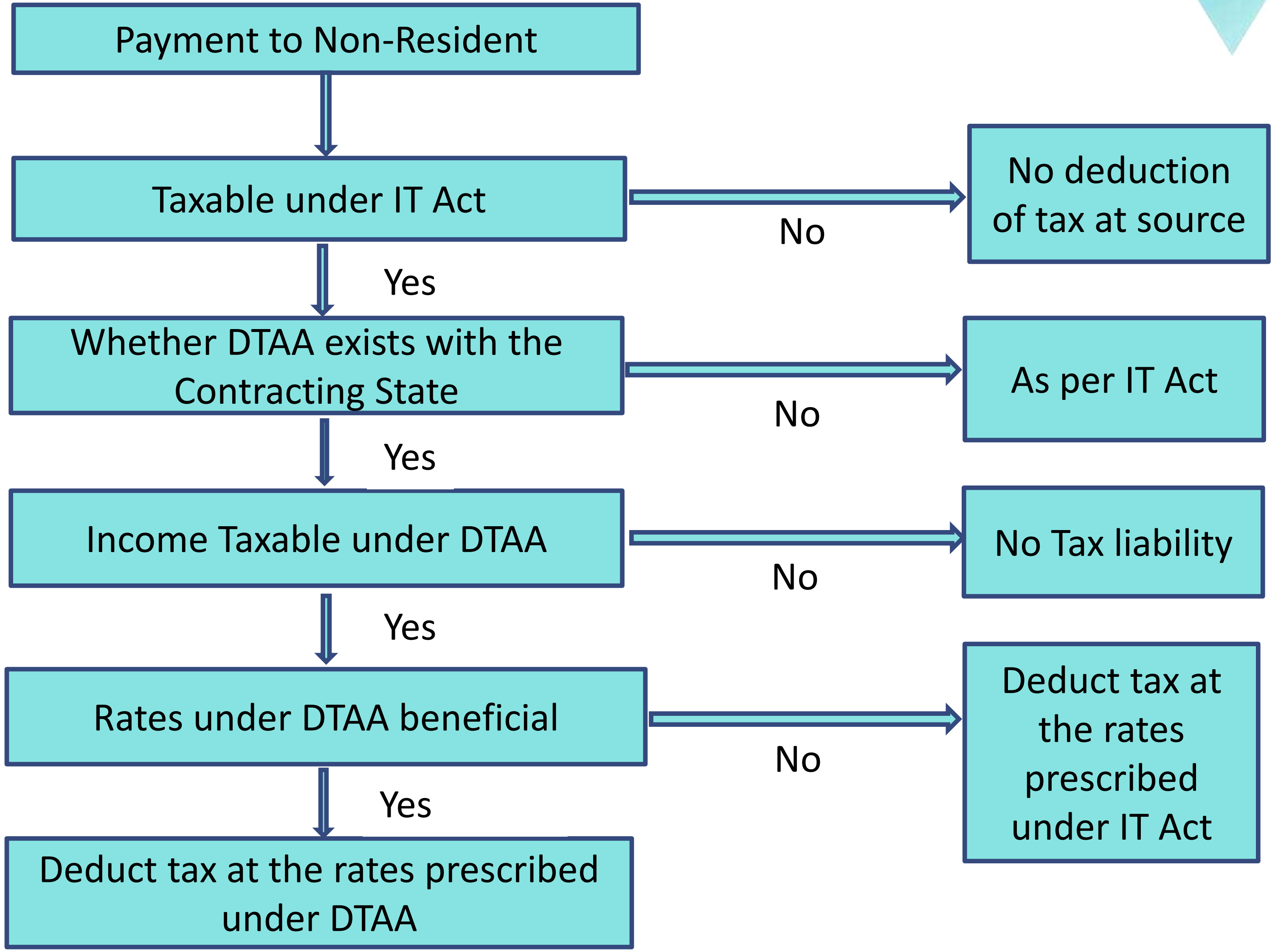
Controversies under Section 194J and 194C

Controversies under Section 194J and 194C

- Payment to Call Centre
- Maintenance of Hospital Equipment
- Maintenance work for AC
- Payment made to a Model

Section 195 - Overview

Section 195 - An Overview



Section 195 - Provisions

TDS on payments to non-residents u/s 195

195(1)
Liability for deduction from payment

195(2)
Application by Payer for lower/ NIL withholding

195(3)
Application by Payee for lower/NIL withholding

195(4)
Validity of the Certificate

195(5)
CBDT empowered to notify rules for 195(3)

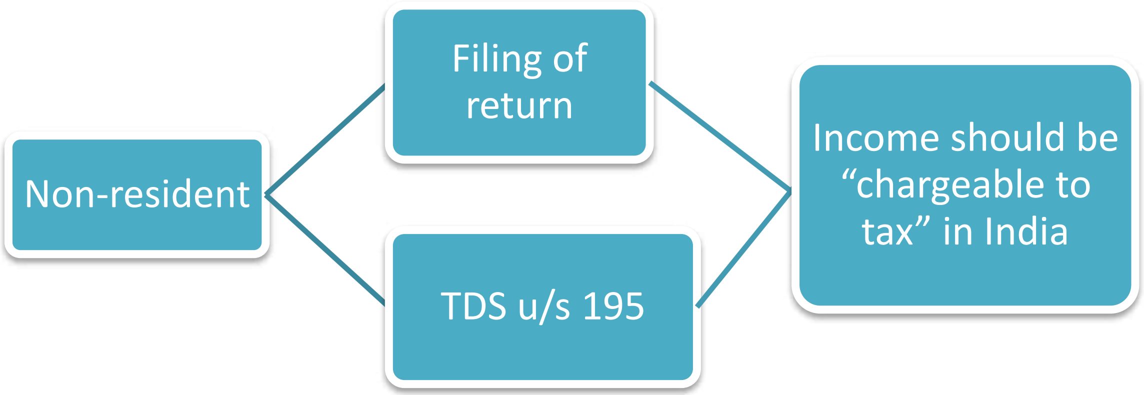
195(6)
Obligation on Payer to furnish information as prescribed

195(7)
CBDT empowered to notify class of persons for application to be made to AO for determination of appropriate sum chargeable

Sum chargeable under the provisions of this Act

Other sums

***"195.**(1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest referred to in section 194LB or section 194LC) or section 194LD 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**"…..*



How is it different from other TDS provisions?

Particulars	Section 195	Other TDS provisions
Nature	Income Chargeable under IT Act	Specific Payments, whether income or not.
Sum	Any Sum	Above prescribed threshold
Applicability	Any persons	Specified persons
Certification for remittance	Mandatory	Not required

Various situations and their consequences u/s 195

S.No.	Situation	Consequence
1.	Entire or part of the payment is income chargeable to tax, but fails to withhold any taxes	-Payer treated as Assessee in default and faces consequences for not withholding taxes such as tax recovery, interest, penalty prosecution, disallowance of expenditure. -Payer is not treated as Assessee-in-Default, where the non-resident payee files its ROI in India showing such income and paying the tax due on such income on its own account.
2.	Belief of the payer that taxes have to be withheld, but recipient is of the view that there should be no withholding of tax	Recipient can make an application before the tax authority for remittance without withholding any taxes or withholding taxes at a lower rate.

Indian Jurisprudence

Transmission Corporation of A.P. Ltd. v. CIT [1999] 239 ITR 587 (SC)

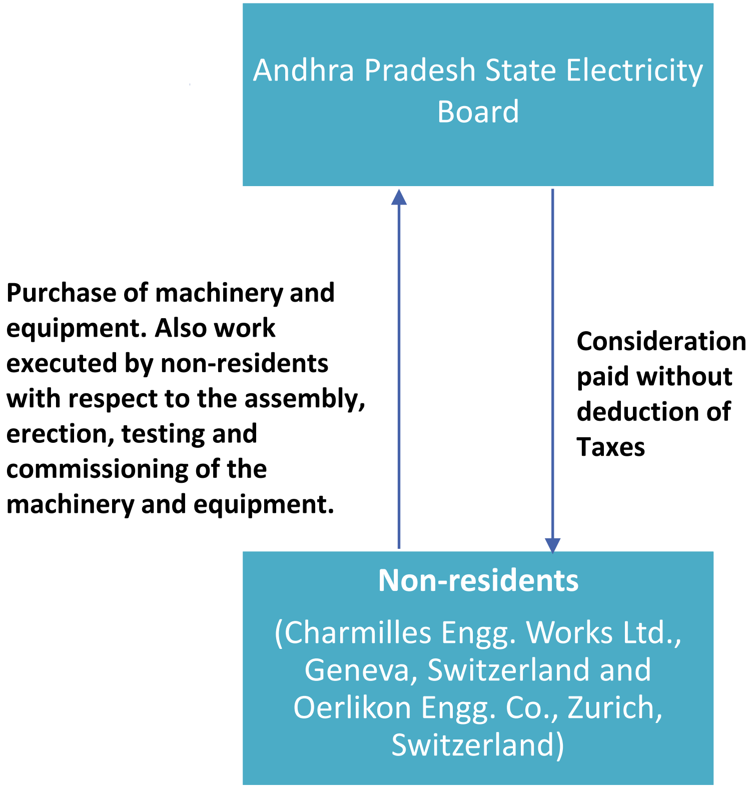
Whether in case of a transaction which is not chargeable to tax (i.e. is in the nature of trading receipt and not pure income) is subject to TDS under Section 195 of the Income-tax Act?

<u>Assessee's Argument</u>

- Section 195 would be applicable where payment to non-resident is 'wholly income' chargeable to tax since the expression used is *"any sum chargeable under the provisions of this Act".*
- In case the payments made to the non-resident were not entirely income, but a trading receipt, there is no question of deduction of income-tax at the source as the section does not provide for it.
- The substance of the contention is what is taxable under the Act is pure income or profit and not the gross sum as it includes cost of materials and other expenses and, hence, Section 195 would not be applicable in such cases.

<u>Supreme Court Decision</u>

- The purpose of Section 195(1) is in case remittance is being made to a non-resident, the remitter of income should deduct TDS as per the rates in force (Section 4 read with Section 2).
- Section 195 is for tentative deduction of income-tax thereon subject to regular assessment and by the deduction of income-tax, rights of the parties are not, in any manner, adversely affected.
- For lower deduction of taxes or 'Nil', an application should be filed for determination by the Assessing Officer. In absence of which the TDS has to be deducted and it is the statutory obligation of the remitter to deduct TDS on the entire consideration as per the rates in force.



GE India Technology Centre Private Limited v. CIT [2010] 327 ITR 456 (SC)

Whether the moment there is remittance the obligation to deduct tax at source arises? Whether the remitter of income cannot determine chargeability of income?

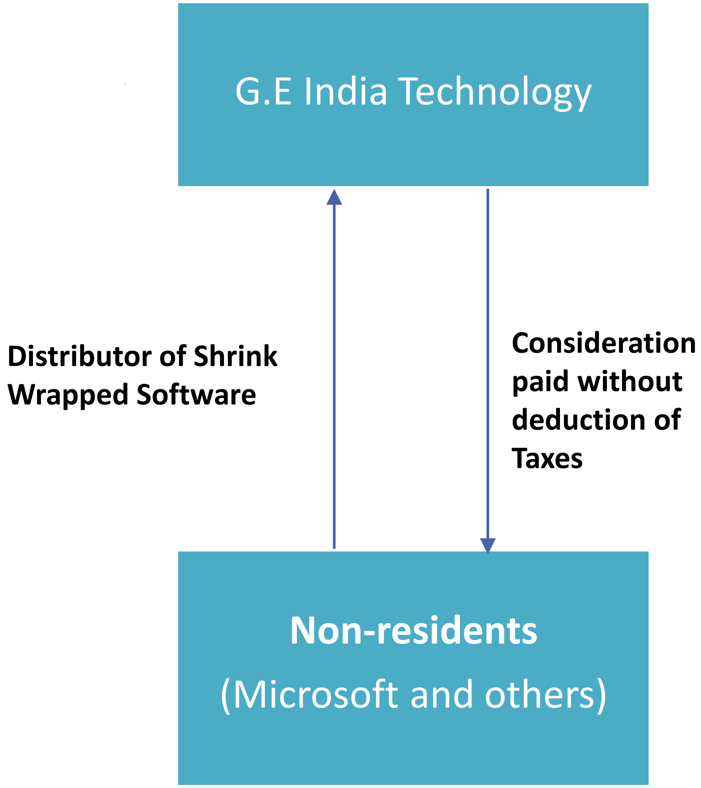
Supreme Court Decision

- For determination under Section 195, apart from section 9(1), sections 4, 5, 9, 90 and 91 as well as the provisions of DTAA are also relevant, while applying TDS provisions.

- The payer is bound to deduct TDS only if the tax is assessable in India. If tax is not so assessable, there is no question of TDS being deducted since the expression used under Section 195 is "*sum chargeable under the provisions of the Act*"

- An application under Section 195(2) is for determination of TDS to deducted in the case of composite payments. Section 195(2) and Section 195(3) are safeguards to avoid any future hassles for both residents and non-residents.

- It does not have to mean that it is not open for the payer to contend that if the amount paid by him to the non-resident is not at all 'chargeable to tax in India', then no TDS is required to be deducted from such payment.

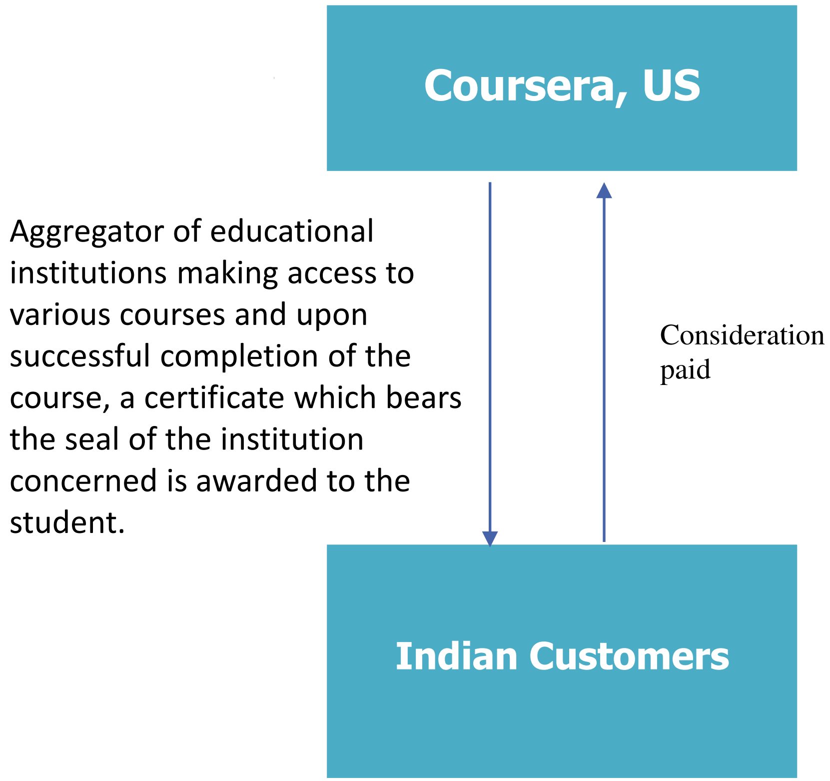


Coursera Inc vs ITO [[2021] 133 taxmann.com 326 (Delhi)]

Facts

- Petitioner's argued
  - income earned from Indian customers was not taxable as Royalty/Fees for Included Services (FIS) under the India-USA tax treaty since it has not transferred any copyright to its customers as there is no right to commercially exploit the content hosted on the e-platform and the services did not satisfy the FTS test as well.
  - Equalisation Levy was paid at 2% on entire Indian income earned since they were in the nature of e-commerce receipts.
  - Exception of applicability of FIS under Article 12(5)(c) of India-USA tax treaty for the field of education applies.

- Based on the exemption under Section 10(50) of the Indian Income-tax Act, Petitioner had filed application under Section 197 for Nil withholding tax certificate for FY 2021-22.



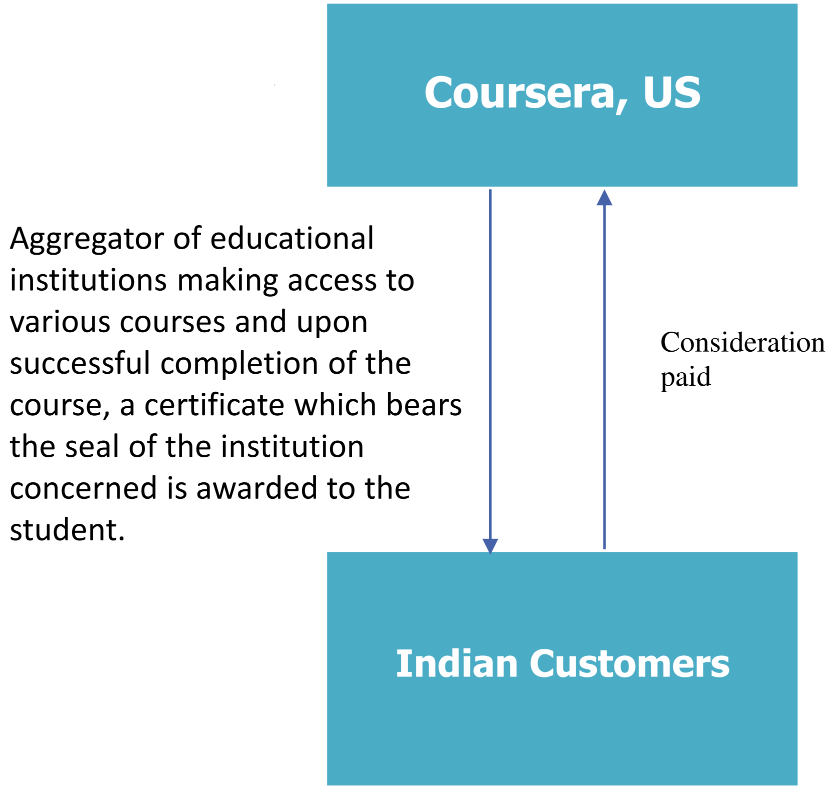
Coursera Inc vs ITO [[2021] 133 taxmann.com 326 (Delhi)]

Facts

- Tax officer rejected the arguments and issued order to deduct TDS at the rate of 10%.
- Petitioner argued that the order is non-speaking order since it does not provide reasons for (a) rejection of Nil withholding tax rate, (b) applicability of 10% tax rate, and (c) rejection of claim under Article 12(5)(c) of India-USA tax treaty.

High Court Decision

- Income tax law and equalization levy are mutually exclusive and therefore there can be no incidence of tax under the income tax law once the amount was subject to equalization levy.
- Ordered the Indian tax officer to pass fresh reasoned order after taking Section 10(50) of the Act in consideration.



Engineering Analysis Centre of Excellence Private Limited v. CIT [2021] 281 Taxman 19 (SC)

The Court grouped the appeals before it under four categories, these being:

(i) First Category- computer software purchased by an end user who is a resident in India from a foreign, non-resident supplier or manufacturer.

(ii) Second Category- resident Indian companies acting as distributors or resellers by purchasing computer software from foreign, non-resident suppliers or manufacturers and then reselling the same to resident Indian end-users.

(iii) Third Category- foreign, non-resident distributor or reseller purchasing software from foreign, non-resident seller, resells the same to resident Indian distributors or end-users.

(iv) Fourth Category- computer software is affixed onto hardware and is sold as an integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users.

The Court analysed the definition of royalties contained in Article 12 of the DTAAs based on the OECD Model Tax Convention on Income and on Capital. The DTAAs in the appeal are substantially similar, if not identical, in respect of the provisions concerning “business profits” and “royalties”.

Engineering Analysis Centre of Excellence Private Limited v. CIT [2021] 281 Taxman 19 (SC)

The definition of "royalties" as used in the case means *"the payments of any kind received as a consideration for the use of, or the right to use:*

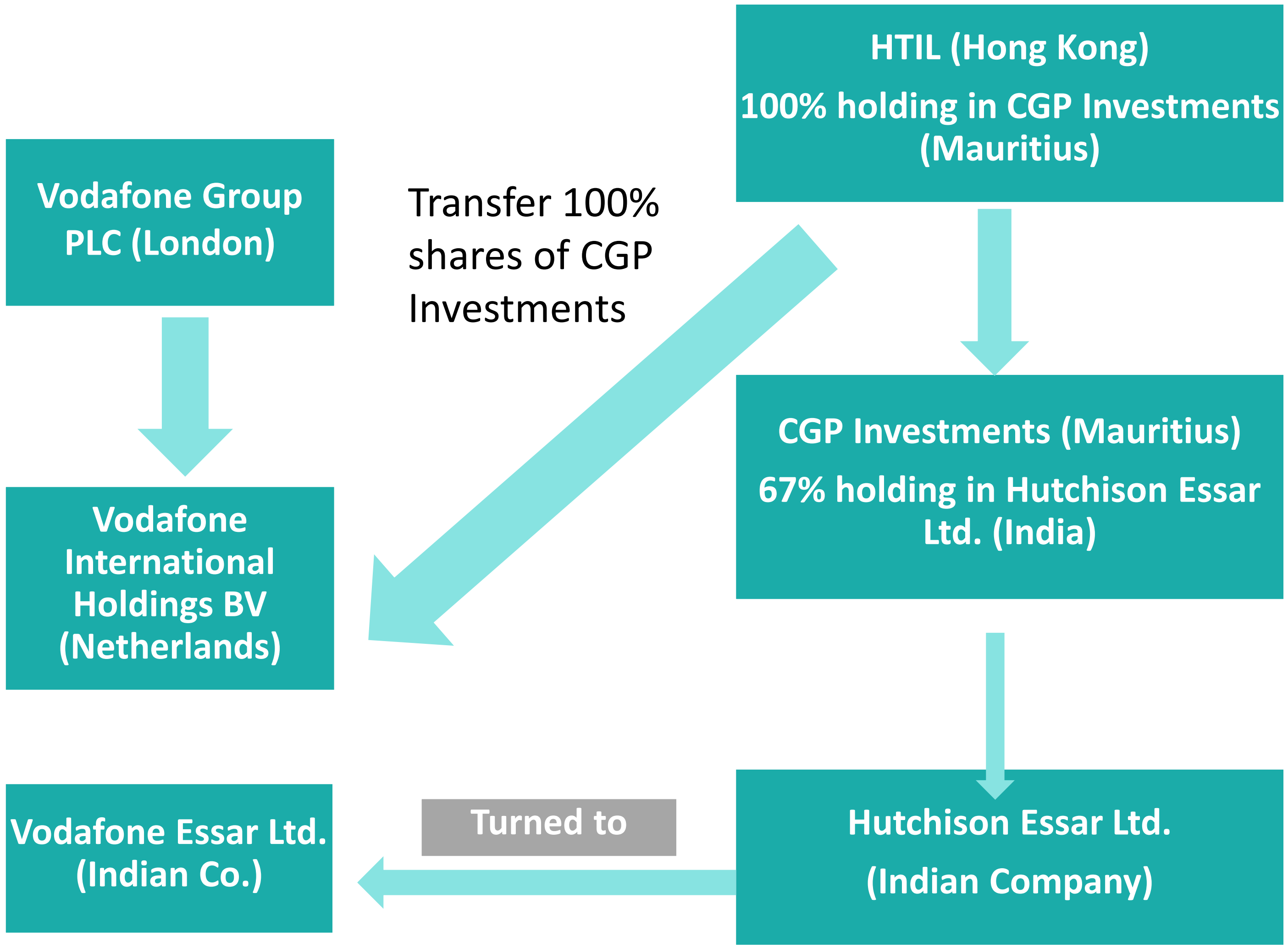
a) any copyright of a literary, artistic or scientific work, including cinematograph films or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right, property or information;

b) any industrial, commercial or scientific equipment, other than payments derived by an enterprise from activities described in paragraph 4(b) or 4(c) of Article 8"

The Court affirmed Supreme Court decision in the case of G.E Technology.

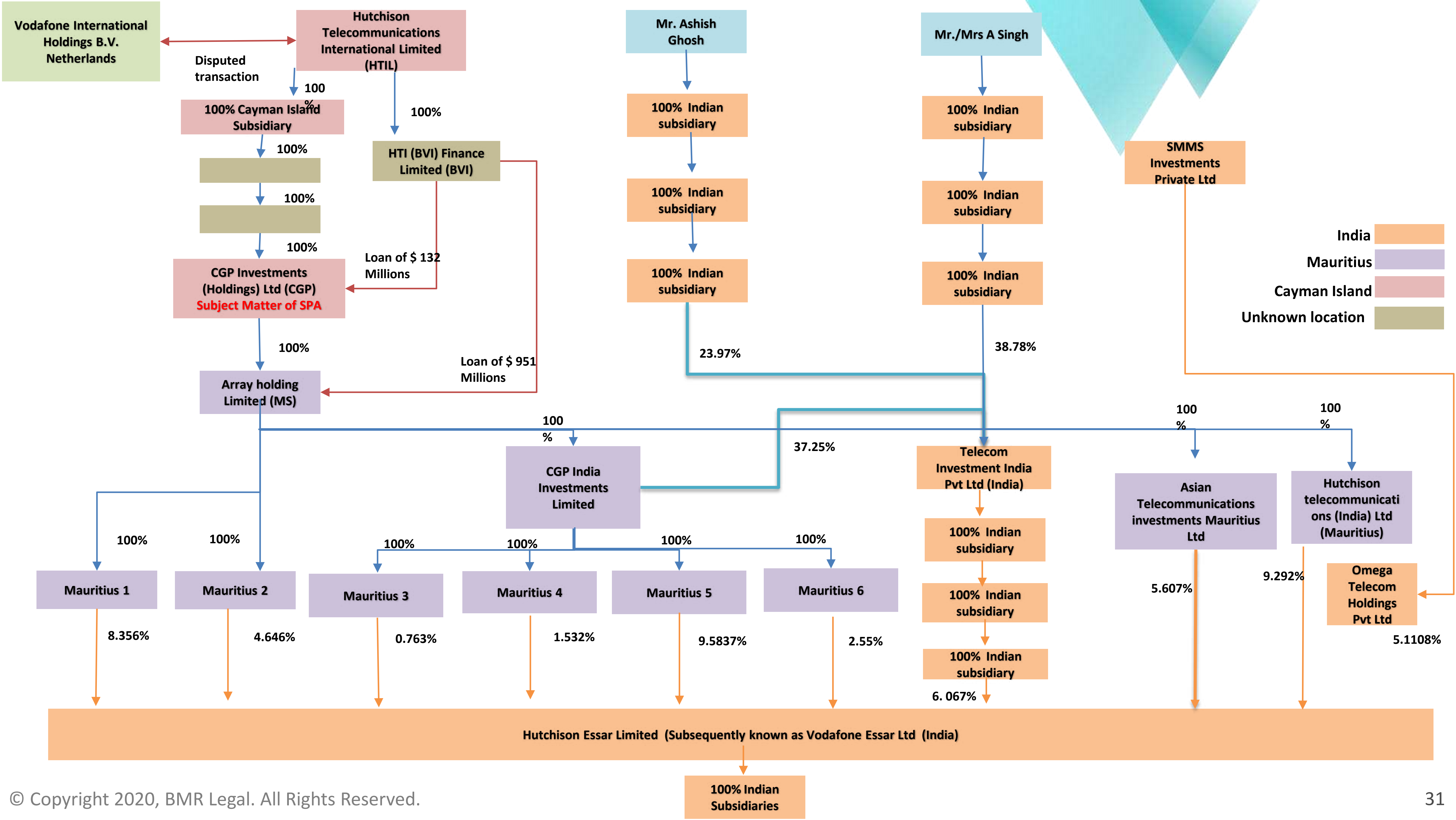
The Court observed the following for all the four categories of transactions mentioned above:
"our answer to the question posed before us, is that the amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which the persons referred to in section 195 of the Income Tax Act were not liable to deduct any TDS under section 195 of the Income Tax Act."

Vodafone International Holdings B.V. v. Union of India [2012] 341 ITR 1 (SC)



<u>Facts</u>

- Vodafone International Holdings BV, Netherlands ("VIH") entered into a Share Purchase Agreement with Hutchison Telecom, Cayman Islands for purchasing equity shares of its subsidiaries CGP, Cayman Islands
- CGP in turn, directly and indirectly, owned ~52% share capital of Indian Company namely Hutchison Essar Limited ("HEL"). The acquisition meant VIH acquired control over CGP and subsidiaries, including HEL.
- The Revenue Authorities held that the gains arising from sale of shares were taxable in India as there was transfer of controlling stake / business situated in India and accordingly alleged failure on part of VIH to withhold tax on gains arising to HTIL on the transfer of shares of CGP.


Vodafone International Holdings B.V. Netherlands
Disputed transaction
Hutchison Telecommunications International Limited (HTIL)
100 %
100% Cayman Island Subsidiary
100%
HTI (BVI) Finance Limited (BVI)
100%
100%
100%
CGP Investments (Holdings) Ltd (CGP)
Subject Matter of SPA
Loan of $ 132 Millions
Loan of $ 951 Millions
100%
Array holding Limited (MS)
Mr. Ashish Ghosh
100% Indian subsidiary
100% Indian subsidiary
100% Indian subsidiary
23.97%
Mr./Mrs A Singh
100% Indian subsidiary
100% Indian subsidiary
100% Indian subsidiary
38.78%
SMMS Investments Private Ltd
India
Mauritius
Cayman Island
Unknown location
100 %
CGP India Investments Limited
37.25%
Telecom Investment India Pvt Ltd (India)
100% Indian subsidiary
100% Indian subsidiary
100% Indian subsidiary
6. 067%
100 %
Asian Telecommunications investments Mauritius Ltd
100 %
Hutchison telecommunications (India) Ltd (Mauritius)
5.607%
9.292%
Omega Telecom Holdings Pvt Ltd
5.1108%
100%
100%
100%
100%
100%
100%
Mauritius 1
Mauritius 2
Mauritius 3
Mauritius 4
Mauritius 5
Mauritius 6
8.356%
4.646%
0.763%
1.532%
9.5837%
2.55%
Hutchison Essar Limited (Subsequently known as Vodafone Essar Ltd (India)
100% Indian Subsidiaries

Vodafone Judgement : Important Principles

'Look at' versus 'Look through'

a.Purposive interpretation cannot be given to a charging section in absence of a specific law

a.Situs of sale of shares is where company is incorporated and share transfer effected

a.Basis of valuation is not basis of taxation but based on business realities, duration of business

a.Withholding tax applicability is a consequence of tax liability

Retrospective Amendments by Finance Act, 2012*

Section 9(1)(*i*) was amended with retrospective effect from 1-4-1962 as follows:

i. **Explanation 4** was inserted to clarify that the expression 'through' in section 9(1)(i) shall mean and include and shall be deemed to have always meant and included 'by means of', 'in consequence of' or 'by reason of'.

ii. **Explanation 5** was inserted to clarify that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

w.r.e.f. 01-04-1962

Retrospective Amendments by Finance Act, 2012*

Section 2(14)	Section 2(47)	Section 195(1)
Explanation inserted to clarify that 'property' includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.	Explanation 2 inserted to clarify that 'transfer' includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.	Explanation 2 inserted to clarify that obligation to comply with sub-section (1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident has: i) a residence or place of business or business connection in India; or (ii) any other presence in any manner whatsoever in India.

w.r.e.f. 01-04-1962

Select Circulars

Circular No. 11/2016: Payment of interest on refund of excess TDS deposited u/s 195

- The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation. The Hon'ble Supreme Court of India in the case of **Tata Chemical Limited, Civil Appeal No. 6301 of 2011** *vide* order dated 26-2-2014, held that, "*Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest.* "

- In view of the above judgment of the Apex Court it is settled that if a resident deductor is entitled for the refund of tax deposited under section 195 of the Act, then it has to be refunded with interest under section 244A of the Act, from the date of payment of such tax.

Circular No. 723 dated 19-9-1995

Payments to agents of non-resident ship owners

The provisions of section 172 are to apply, notwithstanding anything contained in other provisions of the Act. Therefore, in the case of non-resident shipping business, the provisions of section 195 will not apply. Even where payments are made to shipping agents of non-resident ship-owners or charterers for carriage of passengers, etc., shipped at port in India, the agent steps into the shoes of the principal, and hence section 195 will not apply

Circular No. 728 dated 30-10-1995

Remittances to country with which DTAA is in force - In the case of remittance to a country with which a Double Taxation Avoidance Agreement is in force, the tax should be deducted at the rate provided in the Finance Act of the relevant year or at the rate provided in the DTAA, whichever is more beneficial to the assessee

Circular No. 370 dated 03-10-1983

Deduction on gross amount and not amount net of taxes

Persons responsible for paying to non-resident persons, any sums which are stipulated to be paid net of taxes should carefully note that the calculation of tax to be deducted at source as required by section 195, should be made not with reference to the net of tax amount payable to the non-resident but should be made with reference to the gross amount. The tax so calculated and deducted should be paid to the credit of the Central Government as required by section 200, read with rule 30 of the Income-tax Rules, 1962.

Controversies under Section 195

Controversies under Section 195

- **TDS provisions for the purpose of tracking transactions tracking transactions**
- **TDS and Equalisation levy**
- **Most Favoured Nation and TDS rate**
- **Requirement of PAN**

Generic pointers on TDS

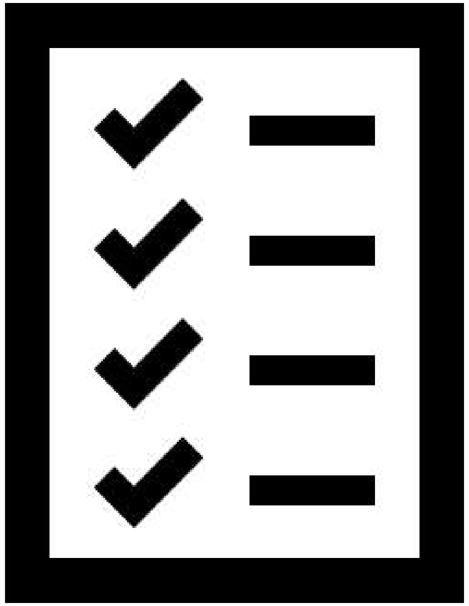
Failure to furnish Payee’s PAN – Section 206AA

Notwithstanding the other provisions, failure to furnish PAN by the NR payee shall entail TDS at higher of the following:

- rate specified in the relevant provision of the Act
- Rate or rates in force (section 2(37A)(iii))
- rate of 20%

Exemption from Obtaining PAN – section 206AA

- Section 206AA(7)(ii) r.w. Rule 37BC effective from 01.06.2016:
  - Relaxation to payments in the nature of interest, royalty, FTS, dividend and payment on transfer of capital asset, if the NR deductee furnishes the following details and documents to the deductor
  - Name, e-mail id, contact number, address in the country of residence
  - TRC of the country of residence
  - Tax identification or unique identification number in the country of residence.
  - Relaxation not available for other payments, eg: payments to artists & sportspersons, payments taxable as other income, etc.

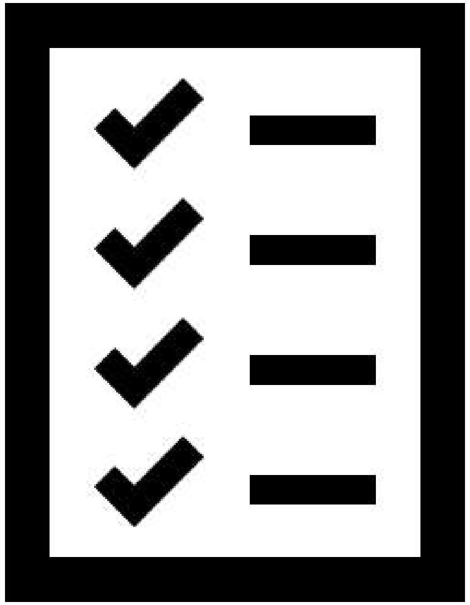


Pre-requisites for availing treaty benefit

- **Payee's TRC - Section 90(4) and Form 10F as prescribed in Section 90(5) r.w. Rule 21AB:**

  To claim DTAA benefit, NR to furnish TRC & Form 10F providing the following information, to the extent not covered in the TRC:

  - Payee's Name & Status, PAN, Nationality or county of incorporation, Tax identification number & Address in the county of residence, Period of residential status as per TRC
  - DTAA benefit denied as TRC did not cover relevant AY - ABB FZ-LLC [2017](83 taxmann.com 86)(Bng ITAT)



Consequence of Not deducting TDS

Consequences of Non-deduction of Tax at Source from Payments to NRI (In the hands of Payer)

Section	Nature of Default	Consequence
40(a)	Failure to deduct the whole or any part of the tax	Disallowance of expenses deduction in computing income chargeable under the head ”Profits and Gains of Business or Profession”
201(1A)	Failure to (i) deduct; (ii) pay; or (iii) pay after deducting	Considered an assessee in default subject to interest of 1% or 1.5% p.m. However, assessee shall not be considered as assessee in default, where the non-resident payee submits return of income in India taking into consideration the income received from the assessee and deposits tax on such income.
221	Default in payment of tax	Penalty not exceeding amount of tax in arrears
271C	Failure to deduct tax or pay the whole or part of tax	Penalty equal to 100% of whole or part of tax, as applicable
271H	Failure to furnish TDS return/furnish incorrect information	Penalty of an amount not exceeding Rs 10,000 but which may extend to Rs 1 lac
271-I	Failure to furnish /furnishing incorrect information u/s 195	Penalty of a sum of Rs 1 lac

Withholding- Lower or Nil

Section 195 vs Section 197

Particulars	Section 197
Applicant	Tax Deductee
Additional conditions need to be satisfied	No

Section 195 vs Section 197

Particulars	Section 195(2)	Section 195(3)	Section 197
Mode of filing	Electronically	Manually	Electronically
Withholding Tax Rate	For determining appropriate WHT rate	For 0% WHT rate	For 0% or lower WHT rate
Form No.	15E	15C – Banking Company or Insurer 15D – Any other person	13E
Issuing Authority	Assessing Officer	Assessing Officer	Assessing Officer *(subject to approval of Commissioner of Income-tax in specified cases)*

Section 195 vs Section 197

Particulars	Section 195(2)	Section 195(3)	Section 197
Remedy	Appealable order under Section 248 but after payment of tax by the payer	Not appealable u/s 248. Revision under Section 264	- Not appealable u/s 248. - Revision under Section 264 if Section 197 order not approved by CIT - Writ Petition in High Court if Section 197 order approved by CIT

Annexures

Applicability of Form 15CA

Particulars	Part A	Part B	Part C	Part D
Applicability (for FY)	Taxable Transaction	Taxable Transaction	Taxable Transaction	Non-taxable transaction
Amount of the transactions	Aggregate or individual amount remitted is upto **INR 5 lakhs**	Aggregate or individual amount remitted is more than **INR 5 lakhs.**	Aggregate or individual amount remitted is more than **INR 5 lakhs.**	NA
Payment made for which certificate u/s 197 or order u/s 195(2)/(3) exists	-	Yes	-	-
Requirement of Form 15CB	No	No	Yes	No

Applicability of Form 15CA

Particulars	Part A	Part B	Part C	Part D
Exception	-	-	-	• Remittance made by an individual and does not require prior approval of RBI • Remittance is of the nature specified (33 types)

Applicability of Form 15CA

Question No. 1

Payments taxable under the Act, but exempt under provisions of the tax treaty.

-Whether Part C or Part D is applicable?

Question No. 2

Remittance made to non-resident for sale of equity shares, resulted in net loss to the tax deductee

- Applicability of Section 195 in such case?

Applicability of Form 15CB

- A certificate issued by a Chartered Accountant specifying the documents verified & providing:
  - Detailed explanation on the taxability of the remittance under the Act, without giving any effect to DTAA;
  - Details of payee's Tax Residency Certificate,
  - Determination of the taxability of the remittance under the tax treaty (including relevant Article & tax liability under DTAA, if applicable)
  - Determining the Rate of TDS including amount of TDS, Certifying the date of tax deduction

- W.e.f. 1 April 2016, Form 15CB to be furnished electronically from April 1, 2016 onwards.

- On submission, status of the Form shall appear as "Submitted". Cannot be amended or modified.

- On successful filing of the corresponding Form 15CA-Part C, status of Form 15CB shall update to "Consumed". If the Form 15CA against which Form 15CB was consumed is withdrawn, status of Form 15CB shall change to "Withdrawn".

Procedure for remittance

Determination by the Tax deductor for Taxability of the transaction under the Income-tax Act read with the applicable tax treaty

↓

Applying Lower WHT due to order under Section 195(3)/197 or Determining the need to file application under Section 195(2)

↓

E-file Form 15CA, obtain Form-15CB if required

↓

Submit copies of Form 15CA & 15CB to the Authorized dealer

↓

Remittance made by the Authorized dealer (on approval of RBI)

Form 15CC

- Every authorized dealer making a payment to a non-resident, not being a company or to a foreign company, is required to furnish such statement

- Form 15CC has to be submitted electronically

- Quarterly Statement to be furnished to the competent authority of the Income Tax Department

- Filed within 15 days from the end of the quarter of the F.Y. to which the statement relates.

Interplay between IT Act & Articles of DTAA

Interplay between Section 9 and Articles of DTAA

Section 9 - Income deemed to accrue or arise in India

Section 9(1)(i) Business Connection	Section 9(1)(i) Capital Gains	Section 9(1)(i) Income through or from any property in India	Section 9(1)(ii) Salary
Section 9(1)(iv) Dividends	Section 9(1)(v) Interest	Section 9(1)(vi) Royalty	Section 9(1)(vii) Fees for technical services

Taxability under Section 9 & DTAA

Nature of Income	IT Act	DTAA
Business/Profession	S. 9(1)(i)	Article 7, 14 r.w. Article 5
Immovable Property	S. 9(1)(i), S. 22	Article 6
Capital gains	S. 9(1)(i), S. 45	Article 13
Salary	S. 9(1)(ii)	Article 15
Dividend	S. 9(1)(iv), S. 115A	Article 10
Interest	S. 9(1)(v), S. 115A	Article 11
Royalties	S. 9(1)(vi), S. 115A	Article 12
Fees for Technical Services	S. 9(1)(vii), S. 115A	Article 12

Snapshot of Tax Rates

Country	Dividends	Interest	Royalty	Fees for Technical Services
India* (Domestic Law)	20%	5% for interest on long-term loans/bonds 10% for foreign currency bonds 20% for others	10%	10%
Singapore tax treaty	10% - Beneficial owner is a company which owns at least 25% of the shares of the company paying the dividends. 15%- other cases	10% - Interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company) ; 15% - other cases	10%	10%
Netherlands tax treaty**	10%	10%	10%	10%

Increased by applicable surcharge and cess
***Most Favoured Nation (MFN) clause is present*

Snapshot of Tax Rates

Country	Dividends	Interest	Royalty	Fees for Technical Services
United Kingdom tax treaty	15% - dividends paid out of income derived directly or indirectly from immovable property by an investment vehicle subject to conditions 10% - other cases	15%	10% - consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, except specified categories. 15%- other cases	10% -Ancillary and subsidiary to the enjoyment of the property (10% royalty rate is applicable at 10%) 15% - other cases
Mauritius tax treaty	5% - the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends ; 15%- other cases	7.5%	15%	10%

Snapshot of Tax Rates

Country	Dividends	Interest	Royalty	Fees for Technical Services
United States of America tax treaty	15 % - Beneficial owner is a company which owns at least 10% of the voting stock of the company paying the dividends. 25%- other cases	10% - Interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company) ; 15% - other cases	10% - consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, except specified categories. 15%- other cases	10% -Ancillary and subsidiary to the enjoyment of the property (10% royalty rate is applicable at 10%) 15% - other cases
France tax treaty**	10%	10%	10%	10%

*****Most Favoured Nation (MFN) clause is present***

Form 15CA

Part A

	Name of remitter	
RE	PAN of the remitter (if available)	
MI	TAN of the remitter (if available)	
TT	Complete address, email and phone number of the remitter	
ER	Status of remitter[1]	
	Residential status of remitter[2]	
RE	Name of recipient of remittance	
MI	PAN of the recipient of remittance, if available[3]	
TT	Complete address, email[4] and phone number[5] of the recipient of remittance	
EE	Country to which remittance is made	
	Amount payable before TDS (In Indian Currency)	
RE	Aggregate amount of remittances made during the financial year including this proposed remittance	
MI	Name of bank	
TT	Name of the branch of the bank	
AN	Proposed date of remittance	
CE	Nature of remittance	
	Please furnish the relevant purpose code as per RBI	
	Amount of TDS	
	Rate of TDS	
	Date of deduction	

Form 15CA

Part B

REMITTER	Name of remitter			
	PAN of the remitter			
	TAN of the remitter[1]			
	Complete address, email and phone number of the remitter			
	Status of remitter[2]			
	Residential status of remitter[3]			
REMITTEE	Name of recipient of remittance			
	PAN of the recipient of remittance, if available[4]			
	Complete address, email[5] and phone number[6] of the recipient of remittance			
A.O. ORDER	Section under which order/certificate has been obtained			
	Name and designation of the Assessing Officer who issued the order/certificate			
	Date of order/certificate			
	Order/ certificate number			
REMITTANCE	Country to which remittance is made		Country: ________	Currency: ________
	Amount payable		In foreign currency:	In Indian Rs. ________
	Name of the Bank		Branch of the Bank	
	BSR Code of the bank branch (7 digit)			
	Proposed date of remittance			(DD/MM/YYYY)
	Nature of remittance as per agreement/ document			
	Please furnish the relevant purpose code as per RBI			
	Amount of TDS			
	Rate of TDS			
	Date of deduction			

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Form 15CA

Part C

Section A	GENERAL INFORMATION					
REMITTER	Name of the remitter					
	PAN of remitter		Area Code		Range Code	
			AO Type		AO No	
	Principal Place of Business		TAN of remitter[1]			
	Complete address, email and phone number of the remitter					
	Status[2]		Residential status of remitter[3]			
REMITTEE	Name of recipient of remittance					
	PAN of recipient of remittance[4]					
	Status[5]					
	Address		Country to which remittance is made:			
	Principal place of business	Email address	(ISD code)- ( ) Phone Number			
ACCOUNTANT	(a) Name of the Accountant[6] signing the certificate					
	(b) Name of the proprietorship/firm of the accountant					
	(c) Address					
	(d) Registration No. of the accountant					
	(e) Date of certificate (DD/MM/YYYY)					
	Certificate No.[7]					
A.O.	(a) Whether any order/ certificate u/s 195(2)/ 195(3)/ 197 of Income-tax Act has been		(Tick) .... Yes .... No			

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ORDER		obtained from the Assessing Officer.	
	(b)	Section under which order/certificate has been obtained	
	(c)	Name and designation of the Assessing Officer who issued the order/certificate	
	(d)	Date of order/certificate	
	(e)	Order/ certificate number	

Section B	PARTICULARS OF REMITTANCE AND TDS (as per certificate of the accountant)					
REMITTANCE	1.	Country to which remittance is made		Country:		Currency:
	2.	Amount payable		In foreign currency:		In Indian Rs.
	3.	Name of the Bank		Branch of the Bank		
	4.	BSR Code of the bank branch (7 digit)				
	5.	Proposed date of remittance		(DD/MM/YYYY)		
	6.	Nature of remittance as per agreement/ document				
	7.	Relevant purpose code as per RBI				
	8.	In case the remittance is net of taxes, whether tax payable has been grossed up?		(Tick) Yes	No	

Form 15CA

I.T. ACT	9.	Taxability under the provisions of the Income-tax Act (without considering DTAA)		
		(*a*) the relevant section of the Act under which the remittance is covered		
		(*b*) the amount of income chargeable to tax		
		(*c*) the tax liability		
		(*d*) basis of determining taxable income and tax liability		
DTAA	10.	If any relief is claimed under DTAA-(*i*) whether tax residency certificate is obtained from the recipient of remittance	(Tick) ☐ Yes ☐ No	
		(ii) please specify relevant DTAA		
		(iii) please specify relevant article of DTAA	Nature of payment as per DTAA	
		(iv) taxable income as per DTAA	In Indian Rs.	
		(v) tax liability as per DTAA	In Indian Rs.	
		A. If the remittance is for royalties, fee for technical services, interest, dividend, etc., (not connected with permanent establishment) please indicate:-	(Tick) ☐ Yes ☐ No	
		(a)Article of DTAA		

Form 15CA

		(b) Rate of TDS required to be deducted in terms of such article of the applicable DTAA	As per DTAA (%)	
		B. In case the remittance is on account of business income, please indicate:-	(Tick) ☐ Yes ☐ No	
		(a) The amount of income liable to tax in India		
		(b) The basis of arriving at the rate of deduction of tax.		
		C. In case the remittance is on account of capital gains, please indicate:-	(Tick) ☐ Yes ☐ No	
		(a) amount of long term capital gains		
		(b) amount of short-term capital gains		
		(c) basis of arriving at taxable income		
		D. In case of other remittance not covered by sub-items A, B and C	☐ Yes ☐ No	
		(a) Please specify nature of remittance (b) Whether taxable in India as per DTAA		
		(c) If yes, rate of TDS required to be deducted in terms of such article of the applicable DTAA		
		(d) if not, please furnish brief reasons thereof specifying relevant article of DTAA		
TDS	11.	Amount of tax deducted at source	In foreign currency	
			In Indian Rs.	
	12.	Rate of TDS	As per Income-tax Act (%) or As per DTAA (%)	
	13. 14.	Actual amount of remittance after TDS Date of deduction of tax at source, if any	In foreign currency (DD/MM/YYYY)	

Form 15CA

Part D

	Name of the remitter			
RE	PAN of the remitter, if available			
MI	TAN of the remitter, if available			
TT	Complete address, email and phone number of the remitter			
ER	Status of remitter[1]			
	Residential status of the remitter[2]			
RE	Name of recipient of remittance			
MI	PAN of the recipient of remittance, if available			
TT	Complete address, email[3] and phone number[4] of the recipient of remittance			
EE	Country to which remittance is made Country:			Currency:
	Country of which the recipient of remittance is resident, if available			
RE	Amount payable		In foreign currency:	In Indian Rs.
MI	Name of the bank		Name of the branch of the bank	
TT	BSR code of the bank branch (7 digit)			
AN	Proposed date of remittance			(DD/MM/YYYY)
CE	Nature of remittance			
	Please furnish the relevant purpose code as per RBI			

Form 15CA – Exception to Part D, Specified List

Sl. 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	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)

Form 15CA – Exception to Part D, Specified List

Sl. No.	Purpose code as per RBI	Nature of payment
12	SO202	Payment for operating expenses of Indian shipping companies operating abroad
13	SO208	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

Form 15CA – Exception to Part D, Specified List

Sl. No.	Purpose code as per RBI	Nature of payment
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.