

Tax Wire



Compliances for Foreign Remittances Rationalized

25th March 2016

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Introduction

Section 195 of the Income Tax Act, 1961 mandates withholding of taxes from payments being made to a non-resident if such incomes is taxable in India.

Earlier the RBI required a no objection certificate to be obtained from the Income Tax Department for making such foreign, which was later done away with and forms under the Income tax law were prescribed, which was to be furnished to the banker making such remittance which was required both under the Income Tax law as well as Foreign control regulations in India.

Form 15CA and Form 15CB

The Finance Act 2008 mandated a person responsible for making a foreign remittance to obtain a certificate in **Form 15CB** certified by a Chartered Accountant and furnish the details of the same by the remitter in **Form 15CA** electronically filed before the tax authorities. These were also to be provided to the banker to enable the remittance.

Further the rules for the above procedures were amended in 2013, though the Forms remained the same. The amendment made the furnishing of information applicable only to payments chargeable to tax. The amendment also excluded a specified list of payments for which the furnishing of information in the prescribed form was not required.

Despite this change in rules, the banks continued to insist on the forms to be furnished before making the remittances.

Further, there was a practice before the 2013 amendments not to call for these forms when the remittances were for import of goods, though there was no such exclusion in the law. Post the 2013 amendment, since the list of exclusions were spelt out, bankers started insisting on Form 15CA and Form 15CB for payments towards imports also.

The intention of this section and the forms were to obtain information in respect of remittances to ensure deduction of tax at appropriate rate from taxable remittances as well as identifying the remittances on which the tax was deductible but the payer had failed to deduct the tax. However, the 2013 amendment did not empower the Government to obtain information about foreign remittances on which tax was deductible but was not deducted by the payer.

To cover this gap Rule 37BB governing furnishing of information in cases of foreign remittances have been amended on 16th December, 2015, **which will be effective from 01st April 2016.**

The Amended Rules

Rule 37BB has been amended making it mandatory for every person responsible for paying to a non-resident any sum, whether or not chargeable under the provisions of the Income Tax Law to furnish the specified forms.

The new Form 15CA shall contain four parts with different applications. Further, 15CB also is required only in certain circumstances. Both these have been tabulated as under:

Sl. No.	Type of Payment	Form 15CA	Form 15CB
I	Taxable Payments		
i)	Total payment in the year < Rs.5 lakhs	Part A	x
ii)	Total payment in the year > Rs.5 lakhs		
	a) Lower deduction certificate or order obtained	Part B	x
	b) All other cases	Part C	√
II	Not Taxable Payments	Part D	x

Irrespective of the above, there are certain specific exclusions granted against furnishing both Form 15CA and Form 15CB. These are:

1. Any payment by individual which does not require prior approval of Reserve Bank of India as per the provisions of section 5 of the Foreign Exchange Management Act, 1999 (42 of 1999) read with Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000

2. A list of exclusions have been given, which includes:
 - a. Advance payment for imports
 - b. Payments against import invoice
 - c. Remittance towards personal gifts and donations
 - d. Travel for education etc..

The Amendment has also made electronic filing of Form 15CB mandatory whereas earlier only Form 15CA was to be filed electronically. Printout of Form 15CA/15CB needs to be submitted to the authorized dealer making the remittance.

Conclusion

With the new amendment, the tax board has tried to avoid the confusion that existed and has made it mandatory for all foreign remittances to be reported in Form 15CA. Moreover Form 15CB is mandatory only for large remittance, thereby relaxing such requirement for small foreign remittances

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Reach us at:

Advith Consulting LLP

No. 72/1, 2nd Floor, Jnanodaya School Road
Shankarpark, Shankarpuram, Bangalore 560 004

Contact: 080 22426484;

email: info@advithconsulting.in

Visit us at: www.advithconsulting.in