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ASSOCIATION OF MULTIMODAL TRANSPORT OPERATORS OF INDIA

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Interactive Session on Taxation on International Financial Transactions

by

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1. Back Ground Note

As per Income Tax Act (ITA), a non Resident (NR) is entitled to claim benefits of tax exemption or tax reduction pursuant to Double Tax Avoidance Agreement (DTAA) between India and the foreign jurisdiction of which NR is tax resident. There was no prescribed format to certify the tax residence status of the NR. Generally, in the tax assessment, Tax Authorities may call for evidence from the NR to prove the residential status, in which case, certificate from the foreign jurisdiction would have been produced by him. In the wake of particulars prescribed in the ITA or Rules, it was open, for the tax authorities to demand, or the Taxpayers to furnish, the certificate in any convenient format. By the Finance Act of 2012, section 90 of the ITA was amended w.e.f. Assessment Year 2013-14 (corresponding Financial Year 2012-13) authorizing Central Board of Direct Taxes (CBDT) to prescribe particulars of the Tax Residency Certificate (TRC) and clarified that the benefits pursuant to DTAA shall not be available to the Non Resident unless TRC is obtained by him from Government of the foreign jurisdiction. It was further clarified that the TRC is necessary but not the sufficient condition for availing the DTAA benefits.

CBDT has by notification of 17 September 2012 inserted Rule 21AB which prescribe the contents of the TRC which is discussed hereafter. Further, vide above Rule, a format has been prescribed, for Indian Residents, for application to the Tax Authorities for grant of certificate of residence of India (Form 10FA) and a format of certificate to be issued by the Tax Authorities to the applicant (Form 10FB) which can be produced by the resident of India to any foreign jurisdiction for claiming similar benefit of DTAA in those jurisdictions.

Content of TRC of Non Resident

TRC required to be issued by foreign jurisdiction shall contain the following particulars:

- Name of the tax payer
- Status (Individual, Company, firm etc.)
- Nationality (in case of individual)
- Country of incorporation or registration (in case of non individuals)
- Tax identification number or any other unique number by which the tax payer is identified by the Government of the foreign jurisdiction
- Tax residence status
- Period of which Certificate is applicable and address of the tax payer for the said period

Authentication of TRC

The TRC should be duly verified by the Government of the foreign jurisdiction of which the tax payer claims to be tax resident.

TRC application by Resident

- A resident Taxpayer who intends to obtain certificate of being tax resident of India (in connection with claiming benefit of DTTA between India and other jurisdiction which is a source of income), shall apply to the Tax Authorities in the prescribed Form 10FA.

1. Back Ground Note

- **Contents of Form 10FA**

  ✓ Name and address of the Taxpayer
  ✓ Status (Individual, Company, firm, etc)
  ✓ Nationality (in case of individual)
  ✓ Country of incorporation or registration (in case of non individuals)
  ✓ Address of the Taxpayer for the period for which the TRC is desired
  ✓ Email ID
  ✓ PAN/TAN no (if applicable)
  ✓ Basis on which status of being resident in India is being claimed
  ✓ Period for which the residence certificate is applicable
  ✓ Purpose of obtaining TRC (must be specified)
  ✓ Any other detail

- The application should be accompanied by appropriate evidences in support of the information stated above.

Section 195 Withholding Tax on Payments made to Non Residents
Freddy R Daruwala

"To Cut or Not to Cut, that is the question?
And suffer the slings and arrows of outrageous disallowances
Or Take Arms against a sea of penalties
And by litigating for long years, end them
Only until the law is amended with retrospective effect"

(with due apologies to William Shakespeare)

1. Introduction

The Bard of Avon, William Shakespeare might well have rephrased his famous lines in Hamlet as above had he been subject to the complexities of Withholding Tax ("WHT") or Tax Deducted at Source ("TDS") especially in relation to cross border payments. In this write up, the terms are used interchangeably though a significant difference is that WHT is a machinery provision for recovery of tax while TDS collection may also amount to an assessment in special cases relating to NRIs and FIIs.

In this sense the mnemonic equivalent of the abbreviation TDS, (tedious) would best describe this onerous section of the Income Tax Act 1961 relating to Tax deduction at source on payments to Non Residents.

.As with all sections relating to WHT, the government expects the payers of the specified sums to do its work (i.e. revenue collection) gratis, and if they delay or default in any way, impose onerous liabilities, including but not limited to disallowance of the deduction of the amount paid.

There is a now a phenomenal increase in cross border transactions both for trade as well as investment and due to the "flattening" of the world as eminent author Thomas Friedman calls it., Due to this section 195 of the Act is ever increasing in importance since it impacts nearly every commercial venture dealing in any cross border transactions, however miniscule, dealing with payments to Non Residents.

This section's applicability has been further enhanced by two recent developments in this branch of law which virtually offer no alternative to a payer rather than to deduct tax or approach the assessing officer for a certificate under section 195(2)

These are:

- the Samsung case decision by the Karnataka High Court prima facie making it incumbent on every importer to withhold tax on import payments.
- the withdrawal of Circular No 23 of 1969 which unsettles established legal precedents and muddies the waters further.

Let us discuss the impact of this section with special emphasis on these two factors in the paragraphs that follow.

2. Objective and coverage of Section 195

The objective of section 195 is justifiable as it seeks to avoid a revenue loss as a result of tax liability in the hands of a foreign resident, by deducting the same from payments made to them at source. This will obviate the difficulty in chasing such foreign nationals for recovery of their tax dues subsequently, due to jurisdictional and other operational difficulties. Further most such foreign nationals are likely to have nil or at best very meager assets in India which may be totally inadequate to recover the tax dues.

Section 195 of the Income Tax Act 1961 is an answer to the above difficulty as it not only provides the mechanism for deduction of tax at source but also contains in a large measure the procedures to be followed in the mitigation of the same in genuine cases.

It is very pertinent to note that this section is wider in scope than all the other TDS sections insofar as all payers are covered and there is also no threshold exemption.

Section 195 as regards the payer of any sum chargeable to tax applies to any person unlike certain other sections relating to TDS and covers

- Individuals
- Hindu Undivided Families
- Firms and AOPs
- Non Residents
- Foreign Companies
- Persons having exempt income in India eg trusts and Non profit Organisations claiming exemption under sections 10 and 11 of the Income Tax Act
- Any other juristic person irrespective of whether such person has an income chargeable to tax in India or not

As regards the recipient of amounts, the section covers all Non residents in its ambit. Residents and Resident but not ordinarily resident tax status persons are not covered by the section

Some pertinent doubts that may arise in this context are as follows:

a)payment by an Indian Branch of a Foreign Company to its overseas Head Office

In this context CBDT Circulars 649/31.3.1993 and 740 /17.4.1996 give some clarification. Further the landmark Kolkota Tribunal judgment of ABN Amro Bank reported in 280 ITR 117 (Kol) also lays down the law that if a deduction for interest payment by a branch to overseas head office is sought , then it is obligatory to deduct tax , since it presupposes a distinct Payer and Payee with separate identities and makes section 195 applicable.

b) payment by a Resident to an Indian Branch of a Foreign bank

This payment is squarely covered by CBDT Circular 20/3.8.1961 and there is no doubt that TDS has to be effected. the Payee may however apply to the Assessing Officer for Nil/ lower deduction under section 195(3). A precaution which would be advised here is that the payers of such sums like interest,bank charges etc.; (which are more often than not recovered by direct debits to their bank accounts) insist on a copy of the exemption certificate under section 195(3) from the Indian Branch of the Foreign Bank since there are a few foreign Banks which do not have a valid certificate at the time of effecting such debits

c)Payment by a resident to an agent of a non resident

This settled branch of law appears to have been overruled by the withdrawal of CBDT Circular No 23 of 1959. However one may take the help of the decisions in the Morgan Stanley case as well as the Ishikawajima Harima case 2007 158 Taxman 259 SC and come to a conclusion that the settled law in this regard remains the same. However the withdrawal of the above circular 23 of 1969 (which was binding on the department) will certainly foment disputes due to the I T Department taking a stand that all the payments would be subject to withholding unless an application under section section 195(2) is made.

d) Payment by the branch of an Indian Company located offshore to the Offshore branch of an Indian Bank

In this situation even if the amounts are not covered by the exception to section 9(1) when interest is paid on funds for use outside India, the transaction is strictly between two residents (Indian Company and Indian Bank) and merely because it is being carried out on foreign soil will not change its character. Therefore section 195 will have no application and section 194A which specifically exempts such payments from the purview of WHT to Indian Banks will apply.

e)Payment of interest on listed Indian Corporate Bonds held by a Foreign Institutional Investor in dematerialized mode

This is another area where one may fall prey to the misconception that securities held in demat mode do not suffer WHT on their interest payments. This is a fallacy since the exemption on WHT on such interest is covered under section 193 which is applicable only to Indian residents. Thus the FII will have to suffer WHT since the interest paid on demat corporate listed securitiers will be out of the purview of section 193 and will be covered by section 195

This section will have an increased applicability after the Finance Act 2007 due to the proposed modification of the definition of India to cover the airspace above it with retrospective effect from 1976 as well as the non requirement of territorial nexus to constitute a business connection in India for any enterprise being proposed. The two developments listed above will also further enhance its applicability.

f) Non resident in India paying interest to the Indian Branch of a foreign Bank

This payment will be squarely hit by the provisions of 195 and WHT will need to be affected (despite the procedural requirements of PAN,TDS returns etc.;) unless the foreign bank branch in India has obtained an exemption certificate under section 195 (3)

g) Payment to a resident agent of a Non resident Shipping company

It should be noted here that in case of a payment to Agents of a non resident Shipowner it is section 172 that will apply and not section 195 as a special provision will always override a general one . (Generalia specialibus non derogant)

3. Sums Covered under the scope of Section 195(1)

The general rules to be followed in this area may be outlined as follows:

- All sums bearing the character of Income chargeable to tax under the provisions of the Income Tax Act 1961 are covered
- All sums in which income can reasonably be expected to be embedded are covered.This rule follows the judgement in Transmissions corporation's case 239ITR 587SC where the apex court has categorically ruled that a payer cannot sit in judgement as to what proportion of the amount paid to the payee constitutes the income of the payee.
- A Corollary to the above rule is that if it cannot be determined with any certainity as to what part of the payment constitutes the income of the payee, then the payer is obliged to deduct tax on such gross amount. There are mitigation provisions by application to the respective assessing officer by both the payer as well as the payee in certain circumstances within the section itself
- Even payments made in kind are subject to TDS under Section 195 as ruled in Kanchenjunga Sea Foods reported in 265ITR 644 (AP)

- There is no obligation to deduct TDS on a payment made under the Decree of a court by a judgement debtor to a decree holder as decided in L P Gupta v Biratnagar Jute Mills reported in 48ITR 653

- There is no clear ruling on TDS in respect of Capital gains and one must take it up on a case to case basis.If no mitigation is available even after application by either the payer or the payee , after disclosing the quantum of Capital gains likely to be embedded in the payment , then TDS on the gross amount is advisable on the principle of ex abundant Cautela ie by way of abundant caution to mitigate the consequences of non deduction to the payer.

- TDS has to be effected even on net payments (TDS applicable on the gross amount) as decided in Raymond Ltd (86 ITD 791 Mum ITAT) or even on adjustment of dues (J B Boda & Co 223 ITR 271 SC)

- There is no liability to deduct TDS on a payment made under a void agreement (absence of a contract) as held in Ericcson Communications case 81 ITD 77 (Del ITAT)

4. Whether TDS needs to be affected on mere reimbursement of expenses

This is a question on which no clear direction is available and keeping in line with the general trend of tax judgments there are conflicting views held by the various courts and Tribunals in the country.

In the case of mere reimbursement of expenses, TDS need not be effected as ruled in the case of reimbursement of out of pocket expenses to a noted Law firm .Clifford Chance 82 ITD 106(Mum). The most important recent Judgement in Mahindra & Mahindra's case reported in 10 SOT 896 Mumbai ITAT has also held that reimbursement of expenses not having the character of income chargeable to tax under the provisions of the IT Act cannot be subject to WHT

However where the cost of services is charged and recovered by way of reimbursement, even without any profit element TDS will be applicable as ruled in the case of Arthur Andersen & Co by the Mumbai tribunal reported in 94 TTJ 736 (Mum)

There are also judgements which reflect that TDS under Section 195 will be applicable even on mere reimbursement of expenses. This view finds support in the decisions given by Cochin Refineries 222 ITR 354 (Kar) and HNS VSAT Inc 95 ITD 157 (Del ITAT) and also in Hindalco 278ITR 125 (AT)

5. TDS on Royalty and Fees for Technical Services("FTS")

At the outset it should be noted that TDS on royalty and FTS will not only be dependent on the particular payment but will also be affected by the provisions of the relevant Double Tax Avoidance Agreement ("**DTAA**") which India has with the country to which the payment is being made and the judicial decisions and the Advance rulings on the subject must be interpreted after considering this factor also.

Further the Apex court in the case of Tata Consultancy Services has also distinguished between the assignment of Copyright and the sale of a copyrighted article (ie a book or a CD containing software licenced to the purchaser). While in the former case,the payment will be in the nature of royalty and attract TDS in the latter case it will not being in the nature of the sale of goods.In the following decisions it was held that the transaction in question amounted to a mere sale of a copyrighted article and hence not liable to TDS

- Lucent Technologies Ltd 270 ITR 62 (Bangalore ITAT)

- Ericsson- Motorola –Nokia case 95 ITD 269 (Del ITAT)

Further it was also held that the mere payment of connectivity charges was not royalty or FTS and hence not liable to TDS as held in Skycell Communications Ltd 251 ITR 53 (MP)

Even payment made for an access to a database on an overseas server will not attract TDS as held in Dun & Bradstreet Advance ruling reported in 272 ITR 99 (AAR)

FTS which covers only Fees for Included Services ("FIS") in the relevant DTAA (eg USA) will attract TDS if the fees paid only fall under the definition of included services and not otherwise as held in the case of Calcutta Electric Supply Corporation Ltd 80 TTJ 806 (Kol). Such treaties usually have a "make available " clause in the definition of FTS and the relevant treaty will have to be scrutinized in detail along with the nature of payment to determine whether TDS is applicable or not. The old adage that one man's food is another mans poison may well apply here so that one man's FTS is not taxable while the other ones may well be.

Payment for any subsidiary/ ancilliary services to sale of Capital equipment will also not attract TDS especially if the services payment is non severable and forms part of the main contract for the supply of Capital Goods (Hindalco Ltd 94 TTJ 944 (Mum). No discussion on this issue will be complete without some discussion on the Samsung case as decided by the Karnataka High Court

6. Samsung Case

In this landmark case, the Karnataka High Court has ruled that TDS u/s 195 is applicable on all payments of "shrink wrapped software" and further gone on to state that all payments to Non residents would need to suffer WHT and the only measure available to the payer of such sums to get out of this obligation would be to apply to the assessing Officer for a certificate of lower WHT under section 195(2).The position seems to have been further exacerbated with the withdrawal of the circular 23 of 1969 which had fettered the IT department from agitating on the issue of WHT on the payments which were covered within it. Transmissions corporation's case 239ITR 587SC also seems to have been misconstrued by the Hon'ble High Court. This case also overturns the principle of the TCS case (supra) that sale of a shrink wrapped software amounts to the sale of a Copyrighted product and not to license of the copyright

Though the Apex Court has granted a stay of demand on this case, prima facie the payers of amounts to Non residents are a worried lot due to this decision as it has had the McDowell effect in the realm of TDS u/s 195.

Despite this aura of gloom, there are certain defenses which may be available to assesses and these are briefly discussed below

- Section 195(1) covers WHT on interest and other sums ***chargeable to tax under the provisions of this (the IT Act)***.With due respect to the bench, this fact emphasized above seems to have been totally ignored

- The Karnataka High Court in the earlier case of Jindal Power dealing with EPC contracts has categorically ruled that amounts not having the character of income are not subject to WHT u/s 195. This case was not cited during the hearing of the Samsung case and therefore the latter may be easily to have been decided per incuriam. Further there is a well settled principle of tax law that in case where there are two interpretations , the one favourable to the taxpayer will prevail

- Last but not least sec 195(6) gives the power to the CBDT to ask for information from persons effecting remittances offshore and in exercise of this power has prescribed Forms 15CA and 15CB (a CA's certificate) as an alternative to section 195(2). This fact is not considered in the Samsung case

Though the above arguments will be far harder to sustain in areas subject to the jurisdiction of the Karnataka High Court, they do have some substance in cases where the I T department adopts a Procrustean approach (literally) to WHT post Samsung, which they are very likely to do.

Post Samsung, one would have expected the CBDT to issue a clarification (one way or the other) and removed the Damocles sword of TDS from over the assessee's head.

This they have not done and their wait and watch approach appears to exemplify Mark Antony's classic line in Shakespeare's Julius Caesar

"Mischief thou art afoot, Take what course thou wilt"

(upon inciting the plebians of Rome to revolt against Brutus and the other conspirators who assassinated Caesar)

7. Section 195, DTAA and Business Connection

One of the most complex situations may arise if one considers the warp and weft of the interplay of section 195 along with the provisions of a Double Tax Avoidance Agreement with the embroidery of Section 9 , dealing with Business Connection thrown in for good measure.

Initially one must consider the distinction between a legal liability to tax as opposed to a fiscal Liability. Even in this sphere there is no clarity. In Abdul Razzaq's case 146 Taxman115 (AAR), it was held that a person was not entitled to claim the benefits of the earlier Indo UAE Tax treaty since there was no liability to tax in the UAE , and hence the income would be subject to tax in India. However in another case of Green Emirates Shipping, the exact opposite was decided. Currently there is a new India UAE DTAA in place which addresses this anomaly.

Another issue to be considered in this context is that taxability in the case of an airline and shipping Company is based on the theory of effective control also known as the "head & Brain" theory. The question of residence versus control and management is to be considered, Again a distinction needs to be made for effective management against mere operational management to determine the question of the situs of taxation .

Further the question of a Permanent Establishment ("PE") as per the relevant DTAA and the attribution of income to it (different under various treaties) also needs to be considered

Taxability , if no DTAA is subsisting, will depend on whether there is a business connection under section 9 of the act, as a business connection is wider in scope than a PE (Western Union's case). Further the Apex court has held that there needs to be a territorial nexus in order to constitute a PE as held in Ishiwajimakarma Harima industries case 2007 158 Taxman 259 SC. The territorial nexus clause as a necessity for a business connection has been removed from Finance Act 2007 and the definition of India is also sought to be widened with the inclusion of the airspace.

8. Rate of Tax and point of deduction

The wording of section 195 specifies the "rates in force". This term has been interpreted judicially to mean the lower of the rate between the Finance Act and the relevant DTAA . Further if the DTAA rate is applied and the term "income tax" is employed in the DTAA, it does not need to be augmented with any surcharge or Education cess as held in Srinivasan's case reported in 83 ITR 346 SC.

In the case of a conflict in the intervening period between an old finance Act and a new Finance Bill , the rate more beneficial to the payee must be applied.

The next question which arises is the point at which the TDS has to be effected. The law states that TDS has to be effected at the earlier of actual payment or credit. This would be tempered by the decision in IDBI's case which makes the ascertainment of a definite payee a precondition for effecting TDS. Thus mere credit to a general suspense account would not attract TDS. Certain decisions have held that TDS needs to be deducted only in the year of RBI approval Pfizer Ltd 259 ITR 391 (Mum)

9. Application for Exemption/ Mitigation of WHT

Section 195 is a self contained section and there are two different provisions for mitigation viz by the payer u/s 195 (2) and the payee u/s 195 (3)/section 197

The payer can make an application to his respective Assessing Officer seeking permission to effect nil or lower deduction on a certain payment with cogent reasoning for the same in the application.

Under Section 195 (3) there is also a provision for the payee making an application to its Assessing Officer for lesser rate of TDS or nil TDS . However this is limited by the conditions set out in rule 29B.

TDS wrongly deducted may be refunded in certain limited cases and after certain setoffs and CBDT Circular No 769/16.8.1998 deals with the conditions and procedure

An alternative mechanism has been provided by the CBDT in exercise of its powers conferred by section 195(6) which calls for uploading Form 15CA electronically and then submitting the electronic uploading acknowledgement along with Form 15CB duly certified by a Chartered Accountant for all offshore remittances. In case the C A certifying Form 15CB feels that no WHT is to be affected on the payment, provision for the same is also inbuilt (notwithstanding the Samsung ruling).The CBDT has further clarified that Form 15CB need not be certified by a CA in case of diplomatic/consular channel payments

10. Consequences for Non Deduction

As with other TDS defaults the consequences for Non deduction may be broadly classified as follows

a) Disallowances of the amounts paid under Section 40 (a) (i). It should be noted that the scope of the section dealing with payments to non residents is wider than that of 40 (a) (ia) which deals with residents. However there is no disallowance of any salary due to non deduction if the employee concerned pays the tax., but interest on the delayed period may be chargeable

b) Simple Interest at 12 % p a u/s 201A (which is on a month to month basis after the Finance Act 2007)

c) Penalties for non deduction (u/s 271C) and failure to pay the deducted tax to the government (u/s 221)

d) Prosecution u/s 276B

Section 195 A provides for the grossing up of payments in case of Net Of Tax Payments. This is not applicable in case of Non monetary perquisites which are subject to TDS under section 192(1A). Further there is no gross up on Presumptive tax as held in ONGC's case in 264 ITR 340 (Uttaranchal)

11. Conclusion

Thus it is imperative for a payer to ensure that the provisions of section 195 are strictly followed in all payments to Non residents and the following rules would be helpful

If the amount of income embedded in a payment cannot be ascertained it is better to deduct based on the gross amount

In case of doubt, an application for mitigation of TDS under Section 195 (2) to the Payers assessing Officer must be made. The alternative route of the C A Certificate in form 15CB must be used in the same way as one gets into bed with a 900 pound gorilla i.e. with great care and caution. Only where there is strong justification and judicial support in the respective jurisdiction should this alternative be used. In Karnataka even if the payer is certain that no income element is embedded in the proposed payment it is advisable to use the 195(2) route until the Apex Court takes a view on the Samsung case.

The exact rate as determined by the application of a DTAA or the Act needs to be carefully determined

A point in note in this very important branch of law is that articles on the subject are ever increasing and interpretations multiplying with each passing decision.

The impending Direct Taxes Code will redraw the landscape in this important branch of law and in its present form is expected to foment litigation even more.

The following immortal words of LJ Denning in Seaford Court Estates v Asher may be referred to with profit while interpreting the scope of section 195(1)

"The English language is not an instrument of mathematical precision. …….. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature…… **A judge must not alter the material of which it** *(Section 195)***is woven**, *but he can and should iron out the creases."(***emphasis supplied** *)*

3. Exchange Earner's Foreign Currency (EEFC) Account - FAQ

(Updated as on 09.10.2012)

Q 1. What is an EEFC Account and what are its benefits?

Ans. Exchange Earners' Foreign Currency Account (EEFC) is an account maintained in foreign currency with an Authorised Dealer i.e. a bank dealing in foreign exchange. It is a facility provided to the foreign exchange earners, including exporters, to credit 100 per cent of their foreign exchange earnings to the account, so that the account holders do not have to convert foreign exchange into Rupees and vice versa, thereby minimizing the transaction costs.

Q 2. Who can open an EEFC account?

Ans. All categories of foreign exchange earners, such as individuals, companies, etc. who are resident in India, may open EEFC accounts.

Q 3. What are the different types of EEFC accounts? Can interest be paid on these accounts?

Ans. An EEFC account can be held only in the form of a current account. No interest is payable on EEFC accounts.

Q 4. How much of one's foreign exchange earnings can be credited into an EEFC account?

Ans. 100% foreign exchange earnings can be credited to the EEFC account subject to the condition that the sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments. (A. P. (DIR. Series) Circular No. 12, dated July 31, 2012).

Q 5. Whether EEFC Account can be opened by Special Economic Zone (SEZ) Units?

Ans. No, SEZ Units cannot open EEFC Accounts.

However, a unit located in a Special Economic Zone can open a Foreign Currency Account with an authorised dealer in India subject to certain conditions. SEZ Developers can open EEFC Accounts.

Q 6. Is there any Cheque facility available?

Ans. Yes; Cheque facility is available for operation of the EEFC account.

Q 7. What are the permissible credits into this account?

Ans.

i) Inward remittance through normal banking channels, other than remittances received on account of foreign currency loan or investment received from abroad or received for meeting specific obligations by the account holder;

ii) Payments received in foreign exchange by a 100 per cent Export Oriented Unit or a unit in (a) Export Processing Zone or (b) Software Technology Park or (c) Electronic Hardware Technology Park for supply of goods to similar such units or to a unit in Domestic Tariff Area;

iii) Payments received in foreign exchange by a unit in the Domestic Tariff Area for supply of goods to a unit in the Special Economic Zone (SEZ);

iv) Payment received by an exporter from an account maintained with an authorised dealer for the

purpose of counter trade. (Counter trade is an arrangement involving adjustment of value of goods imported into India against value of goods exported from India in terms of the Reserve Bank guidelines);

v) Advance remittance received by an exporter towards export of goods or services;

vi) Payment received for export of goods and services from India, out of funds representing repayment of State Credit in U.S. Dollar held in the account of Bank for Foreign Economic Affairs, Moscow, with an authorised dealer in India;

vii) Professional earnings including directors fees, consultancy fees, lecture fees, honorarium and similar other earnings received by a professional by rendering services in his individual capacity;

viii) Re-credit of unutilised foreign currency earlier withdrawn from the account;

ix) Amount representing repayment by the account holder's importer customer, of loan/advances granted, to the exporter holding such account; and

x) The disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/GDRs under the Sponsored ADR/GDR Scheme approved by the Foreign Investment Promotion Board of the Government of India.

Q 8. Can foreign exchange earnings received through an international credit card be credited to the EEFC account?

Ans. Yes, foreign exchange earnings received through an international credit card for which reimbursement has been made in foreign exchange may be regarded as a remittance through normal banking channel and the same can be credited to the EEFC account.

Q 9. What are the permissible debits into this account?

Ans. i) Payment outside India towards a permissible current account transaction [in accordance to the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000] and permissible capital account transaction [in accordance to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000].

ii) Payment in foreign exchange towards cost of goods purchased from a 100 percent Export Oriented Unit or a Unit in (a) Export Processing Zone or (b) Software Technology Park or (c) Electronic Hardware Technology Park

iii) payment of customs duty in accordance with the provisions of the Foreign Trade Policy of the Central Government for the time being in force.

iv) Trade related loans/advances, extended by an exporter holding such account to his importer customer outside India, subject to compliance with the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000.

v) Payment in foreign exchange to a person resident in India for supply of goods/services including payments for airfare and hotel expenditure.

Q 10. Is there any restriction on withdrawal in rupees of funds held in an EEFC account ?

Ans. No, there is no restriction on withdrawal in Rupees of funds held in an EEFC account. However, the amount withdrawn in Rupees shall not be eligible for conversion into foreign currency and for re-credit to the account.

Q 11. Are there any restrictions on accessing the forex market by the EEFC account holder ?

Ans. EEFC account holders are permitted to access the forex market for purchasing foreign exchange only after utilizing fully the available balances in the EEFC accounts . Accordingly ADs are required to obtain a declaration, while selling foreign exchange to their constituents.

Q. 12. Whether the EEFC balances can be covered against exchange risk?

Ans. Yes, the EEFC account balances can be hedged. The balances in the account sold forward by the account holders has to remain earmarked for delivery. However, the contracts can be rolled over.

Q. 13. Whether EEFC Account is permitted to be held jointly with a resident close relative?

Ans. Resident individuals have been permitted to include resident close relative (s) as defined in the Companies Act, 1956 as a joint holder (s) in this EEFC bank Account. However, they shall not be eligible to operate the account during the life time of the resident account holder (A. P. (DIR. Series) Circular No. 15, dated September 15, 2011).

[Source RBI website]

4. Income Tax, 12th Amendment Rules, 2012

[TO BE PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (ii)]

GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE
[CENTRAL BOARD OF DIRECT TAXES] Notification
New Delhi, the 17th day of September, 2012

INCOME-TAX

S.O. 2188(E).- In exercise of the powers conferred by section 90 and 90A read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1). These rules may be called the Income-tax (12th Amendment) Rules, 2012.

   (2). They shall come into force on the 1st day of April, 2013.

2. In the Income-tax Rules, 1962 (hereafter referred to as the principal rules), -

   (a) after rule 21AA, the following rule shall be inserted, namely.-

   "Certificate for claiming relief under an agreement referred to in section 90 and 90A.

   21AB (1) The certificate referred to in sub-section (4) of section 90 and subsection (4) of section 90A to be obtained by an assessee, not being a resident in India, from the Government of the country or the specified territory shall contain the following particulars, namely:-

   (i) Name of the assessee;

   (ii) Status (individual, company, firm etc.) of the assessee;

   (iii) Nationality (in case of individual);

   (iv) Country or specified territory of incorporation or registration (in case of others);

   (v) Assessee's tax identification number in the country or specified territory of residence or in case no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory;

   (vi) Residential status for the purposes of tax;

   (vii) Period for which the certificate is applicable; and

   (viii) Address of the applicant for the period for which the certificate is applicable;

   (2) The certificate referred to in sub-rule (1) shall be duly verified by the Government of the country or the specified territory of which the assessee, referred to in sub-rule (1), claims to be a resident for the purposes of tax.

   (3) An assessee, being a resident in India, shall, for obtaining a certificate of residence for the purposes of an agreement referred to in section 90 and section 90A, make an application in Form No. 10FA to the Assessing Officer.

   (4) The Assessing Officer on receipt of an application referred to in sub-rule (3) and being satisfied in this behalf, shall issue a certificate of residence in respect of the assessee in Form No. 10FB.";

   (b) in Appendix-II, after the Form No. 10F, the following Forms shall be inserted, namely: -

"FORM No. 10FA
[See rule 21AB (3)]

Application for Certificate of residence for the purposes of an agreement under section 90 and 90A of the Income Tax Act, 1961.

To

The Assessing Officer,

_____,

_____,

_____.

Sir,

I request that a certificate of residence in Form No.10FB be granted in

my case/in the case of _____ [for person other than individual].

2. The relevant details in this regard are as under: -

(i)	Full Name and address of the applicant	_____
(ii)	Status (State whether individual, Hindu undivided family, firm, body of individuals, company etc.)	_____
(iii)	Nationality (in case of individual).	_____
(iv)	Country of incorporation/ registration (in case of others).	_____
(v)	Address of the applicant during the period for which TRC is desired.	_____
(vi)	Email ID	_____
(vii)	PAN/ TAN No. (if applicable)	_____
(viii)	Basis on which the status of being resident in India is claimed.	_____
(ix)	Period for which the residence certificate is applicable.	_____
(x)	Purpose of obtaining Tax Residency Certificate (must be specified)	_____
(xi)	Any other detail	_____

3. The following document in support are enclosed: -

(1) _____.

(2) _____.

(3) _____.

VERIFICATION

I, _____ [full name in block letters] ___ son/daughter of _____, in the capacity of _____ [designation for person other than individual], verify that to the best of my knowledge and belief, the information given in this form is correct and complete and that the other particulars shown therein are truly stated.

Verified today the _____day of _____.

Place

Signature of the Applicant

Name_____

5. Section 9(1) in Income Tax Act, 1995

(1) The following incomes shall be deemed to accrue or arise in India-

(i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India [4] or through the transfer of a capital asset situate in India. Explanation. For the purposes of this clause-

(a) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India;

(b) in the case of a non- resident, no income shall be deemed to accrue or arise in India to him through or from operation,., which are confined to the purchase of goods in India for the purpose of export;[5]]

(c) [6] in the case of a non- resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India;]

(d) [7] in the case of a non- resident, being-

(1) an individual who is not a citizen of India; or

(2) a firm which does not have any partner who is a citizen of India or who is resident in India; or

(3) a company which does not have any shareholder who is a citizen of India or who is resident in India,

1. Inserted by the Finance Act, 1965, w. e. f. 1- 4- 196
4. The words" or through or from any money lent at interest and brought into India in cash or in kind" omitted by the Finance Act, 1976, w. e. f. 1- 6- 1976.
5. Proviso omitted by the Finance Act, 1964, w. e. f. 1- 4- 1964.
6. Inserted by the Finance Act, 1983, w. r. e. f. 1- 4- 1962.
7. Inserted by the Taxation Laws (Amendment) Act, 1984, w. r. e. f. 1- 4- 1982.

no income shall be deemed to accrue or arise in India to such individual, firm or company through or from operations which are confined to the shooting of any cinematography film in India;]

(ii) income which falls under the head" Salaries" if it is earned in India. [1] Explanation.- For the removal of doubts, it is hereby declared that income of the nature referred to in this clause payable for service rendered in India shall be regarded as income earned in India;]

(iii) income chargeable under the head" Salaries" payable by the Government to a citizen of India for service outside India;

(iv) a dividend paid by an Indian company outside India;

(v) [2] income by way of interest payable by-

(a) the Government; or

(b) a person who is a resident, except where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or

(c) a person who is a non- resident, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India;

(vi) income by way of royalty payable by-

(a) the Government; or

(b) a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or

(c) a person who is a non- resident, where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India: Provided that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, de sign, secret formula or process or trade mark or similar property, if such income is payable in pursuance of an agreement made before the 1st day of April, 1976 , and the agreement is approved by the Central Government:

1. Inserted by the Finance Act, 1983, w. r. e. f. 1- 4- 1979.
2. Clauses (v), (vi) and (vii) inserted by the Finance Act, 1976, w. e. f. 1- 6- 1976.

[1] Provided further that nothing contained in this clause shall apply in relation to so much of the income by way of royalty as consists of lump sum payment made by a person, who is a resident, for the transfer of all or any rights (including the granting of a licence) in respect of computer software supplied by a nonresident manufacturer along with a computer or computer- based equipment under any scheme approved under the Policy on Computer Software Export, Software Development and Training, 1986 of the Government of India.] Explanation 1-For the purposes of the [2] first] proviso, an agreement made on or after the 1st day of April, 1976 , shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date; so, however, that, where the recipient of the income by way of royalty is a foreign company, the agreement shall not be deemed to have been made before that date unless, before the expiry of the time allowed under sub-section (1) or sub- section (2) of section 139 (whether fixed originally or on extension) for furnishing the return of income for the assessment year commencing on the 1st day of April, 1977 , or the assessment year in respect of which such income first becomes chargeable to tax under this Act, whichever assessment year is later, the company exercises an option by furnishing a declaration in writing to the [3] Assessing] Officer (such option being final for that assessment year and for every subsequent assessment year) that the agreement may be regarded as an agreement made before the 1st day of April, 1976 . Explanation 2.- For the purposes of this clause," royalty" means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head" Capital gains") for-

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;

(iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;

5. Section 9(1) in Income Tax Act, 1995

(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in

1. Inserted by the Finance (No. 2) Act, 1991, w. e. f. 1- 4- 1991
2. Substituted for" foregoing", ibid.
3. Substituted for" Income- tax" by the Direct Tax Laws (Amendment) Act, 1987, w. e. f. 1- 4- 1988.

connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films; or

(vi) the rendering of any services in connection with the activities referred to in sub- clauses (i) to (v); [1] Explanation 3.- For the purposes of this clause, the expression" computer software" shall have the meaning assigned to it in clause (b) of the Explanation to section 80HHE;]

(vii) income by way of fees for technical services payable by-

(a) the Government; or

(b) a person who is a resident, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or

(c) a person who is a non- resident, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India: [2] Provided that nothing contained in this clause shall apply in relation to any income by way of fees for technical services payable in pursuance of an agreement made before the 1st day of April, 1976 , and approved by the Central Government.] [3] Explanation 1-For the purposes of the foregoing proviso, an agreement made on or after the 1st day of April, 1976 , shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date.] Explanation [4] 2].- For the purposes of this clause," fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head" Salaries".]

6. Circular No. 009 of 2001

Jul 09, 2001

Treatment of tax paid under section 172(3)/(4) by a non-resident engaged in shipping business-clarification-regarding.

NON-RESIDENT

SECTION 172(3)

SECTION 172(4)

The Board had earlier issued Circular No. 730 regarding treatment of tax paid under section 172(3) by a non-resident engaged in the shipping business. Under the provisions of section 172, every time a ship belonging to or chartered by a non-resident makes a voyage from a port in India, carrying passengers, live stock, mail or goods shipped at a port in India, 7.5 per cent. of the amount paid or payable on account of the carriage of the passengers, etc., is deemed as the income and tax is levied on such income at a rate applicable to a foreign company. The assessment and the payment is to be made before the ship is granted the port clearance. The exception is that, in suitable cases the ship may be allowed to leave provided satisfactory arrangements are made to ensure that the return of income is filed and payment of tax is made within 30 days of the departure of the ship.

2. Under the provisions of section 172(7), the non-resident owner or charterer is allowed an option to be assessed on his total income of the previous year in accordance with other provisions of the Act. When such option is exercised and an assessment is made accurately, the tax already paid under the provisions of section 172(4) by the non-resident owner or charterer would be treated as tax paid in advance for that assessment year before determining the amount of tax finally due.

3. The question that arose for consideration of the Board at the time of issue of Circular No. 730 was that when a regular assessment is made under section 143(3), read with the provisions of section 172(7), whether such an assessee would liable to levy of interest under section 234B and 234C or not. On the other hand, in case of a refund, the question of entitlement of interest under section 244A would also arise. The Board, vide Circular No. 730, dated December 14, 1995 clarified that the assessee, who exercises his option under section 172(7) to get his total income assessed in accordance with the other provisions of the Act, is neither liable to pay interest under sections 234B and 234C, nor entitled to receive interest under section 244A of the Income-tax Act, 1961.

4. This issue has subsequently been discussed and decided by the Supreme Court in the case of A. S. Glittre D/5 I/S Garonne v. CIT [1997] 225 ITR 739. It has been held that the payment of tax under section 172(3)/4 is at par with advance tax instalments. Hence, in case of a regular assessment under section 172(7) the assessee is entitled to refund, as well as interest on such refund.

5. The Circular No. 730 issued by the Central Board of Direct Taxes on this issue is, under the circumstances, no longer legally tenable and is, therefore, withdrawn. It is clarified that in case of a regular assessment under section 172(7), the non-resident assessee is liable to pay interest under sections 234B and 234C and also entitled to receive interest under section 244A of the income-tax Act, 1961 as the case may be.

[F. No. 225/50/2001-ITA-II-From Central Board of Direct Taxes]

(2001) 168 CTR (St) 73

7. Circular No. 723
Sep 19, 1995

Tax deduction at source from payment made to foreign shipping companies.

TDS

NON-RESIDENT

S 194C

195

172

Representations have been received regarding the scope of sections 172, 194C and 195 of the Income-tax Act, 1961, in connection with tax deduction at source from payments made to foreign shipping companies or their agents.

2. Section 172 deals with shipping business of non-residents. Section 172(1) provides the mode of levy and recovery of tax in the case of any ship, belonging to or chartered by a non-resident, which carries passengers, live-stock, mail or goods shipped at a port in India. An analysis of the provisions of section 172 would show that these provisions have to be applied to every journey a ship, belonging to or chartered by a non-resident, undertakes from any port in India. Section 172 is a self-contained code for the levy and recovery of the tax, ship-wise and journey-wise, and requires the filing of the return within a maximum time of thirty days from the date of departure of the ship.

3. The provisions of section 172 are to apply, notwithstanding anything contained in the other provisions of the Act. Therefore, in such cases, the provisions of sections 194C and 195 relating to tax deduction at source are not applicable. The recovery of tax is to be regulated, for a voyage undertaken from any port in India by a ship, under the provisions of section 172.

4. Section 194C deals with works contracts including carriage of goods and passengers by any mode of transport other than the Railways. This section applies to payments made by a person referred to in clauses (a) to (j) of sub-section (1) to any "resident" (termed as contractor). It is clear from the section that the area of operation of TDS is confined to payments made to any "resident". On the other hand, section 172 operates in the area of computation of profits from shipping business of non-residents. Thus, there is no overlapping in the areas of operation of these sections.

5. There would, however, be cases where payments are made to shipping agents of non-resident ship-owners or charterers for carriage of passengers, etc., shipped at a port in India. Since the agent acts on behalf of the non-resident ship-owner or charterer, he steps into the shoes of the principal. Accordingly, the provisions of section 172 shall apply and those of sections 194C and 195 will not apply.

Source : [Reported in (1995) 128 CTR (St) 6]

8. Circular No. 732

Dec 20, 1995

Issue of annual no-objection certificate-Section 172 of the Income-tax Act of, 1961.

NON-RESIDENT

S 172

Under the provisions of the section 172 of the Income-tax Act of, 1961, seven and half per cent. of the amount paid or payable to the owner or charterer of a ship on account of carriage of passengers, live stock, mail or goods shipped at a port in India, is deemed to be income accruing in India to the owner or the charterer. The port clearance is granted only after the return of the full amount to be paid is filed, evidence of payment of tax on such income is produced before the Customs authorities, or satisfactory arrangements are made to file the return and pay the tax within thirty days of departure of the ship.

2. In cases where such ships are owned by an enterprise belonging to a country with which India has entered into an Agreement on Avoidance of Double Taxation, which provides for taxation of shipping profits only in the country of which the enterprise is a resident, no tax is payable by such ships at the Indian ports. Under such circumstances, a "No objection certificate" is to be obtained by the master of the ship from the concerned income-tax authority.

3. It has been represented to the Board that in cases where no tax is payable in India, the procedure of obtaining a "No objection certificate" from the income-tax authorities before each voyage, should be done away with.

4. The Board have considered the matter. It has been decided that in such cases, the Assessing Officer shall be competent to issue an annual NOC, valid for a year, in respect of taxation of shipping profits under section 172 of the Income-tax Act, 1961, after carefully verifying the applicability of the relevant provisions concerning taxation of shipping profits in the DTAA with the country of which the owner or the charterer is a resident.

5. While examining the relevant articles of the DTAA, the Assessing Officer should ensure that the non-resident shipping company is engaged in "international traffic", a term which is invariably defined in the DTAA itself. An undertaking from the non-resident company that during the period of the currency of the NOC, no ship belonging to it will be in any traffic other than "international traffic" shall be obtained before the issue of the NOC.

Source : [Reported in (1996) 130 CTR (St) 2 : (1996) 217 ITR (St) 6]

9. Form No. 10F

[See sub-rule (1) of rule 21AB]

Information to be provided under sub-section (5) of section 90 or sub-section (5) of section 90A of the Income-tax Act, 1961

I_____ *son/daughter of Shri. _____in the capacity of _____ (designation) do provide the following information, relevant to the previous year_____ *in my case/in the case of_____ for the purposes of sub-section (5) of * section 90/section 90A:-

SI. No.	Nature of information	Details#
(i)	Status (individual; company, firm etc.) of the assessee	
(ii)	Permanent Account Number (PAN) of the assessee if allotted	
(iii)	Nationality (in the case of an individual) or Country or specified territory of incorporation or registration (in the case of others)	
(iv)	Assessee's tax identification number in the country or specified territory of residence and if there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident	
(v)	Period for which the residential status as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A is applicable	
(vi)	Address of the assessee in the country or territory outside India during the period for which the certificate, mentioned in (v) above, is applicable	

2. I have obtained a certificate referred to in sub-section (4) of section 90 of sub-section (4) of section 90A from the Government of_____(name of country or specified territory outside India).

Signature: _____

Name: _____

Address: _____

Permanent Account Number: _____

Verification

I_____ do hereby declare that to the best of my knowledge and belief what is stated above is correct complete and is truly stated.

Verified today the _____ day of_____

_____

Signature of the person providing the information

Place: _____

Notes:

1. *Delete whichever is not applicable.

2. #Write N.A. if the relevant information forms part of the certificate referred to in subsection (4) of section 90 or sub-section (4) of section 90A.

10. FORM NO. 15CA

(See rule 37BB)

Income-Tax Department	**FORM NO. 15CA** (See rule 37BB) **Income-Tax Department Information to be furnished for payments, chargeable to tax, to a non-resident not being a company, or to a foreign company**	**Ack. No.**

Part A

(To be filled up if the remittance is chargeable to tax and does not exceed fifty thousand rupees and the aggregate of such remittances made during the financial year does not exceed two lakh fifty thousand rupees)

REMITTER	Name of remitter	
	PAN of the remitter (if available)	
	TAN of the remitter (if available)	
	Complete address, email and phone number of the remitter	
	Status of remitter[1]	
REMITTEE	Name of recipient of remittance	
	PAN of the recipient of remittance, if available[2]	
	Complete address, email[3] and phone number[4] of the recipient of remittance	
	Country to which remittance is made	
REMITTANCE	Amount payable before TDS (In Indian Currency)	
	Aggregate amount of remittance made during the financial year including this proposes remittance	
	Name of bank	
	Name of the branch of the bank	
	Proposed date of remittance	
	Nature of remittance	
	Tax deducted—	
	(a) Amount of tax deducted	
	(b) Date of deduction	

VERIFICATION

I/We*, _____ (full name in block letters), son/daughter of _____ in the capacity of _____ (designation) solemnly declare that the information given above is true to the best of my knowledge and belief and no relevant information has been concealed. I/We* further undertake to submit the requisite documents for enabling the income-tax authorities to determine the nature and amount of income of the recipient of the above remittance as well as documents required for determining my liability under the Income-tax Act as a person responsible for deduction of tax at source.

Place: _____ Signature: _____

Date: _____ Designation: _____

* Delete whichever is not applicable.

1. Write 1 if company, write 2 if firm, write 3 if individual and write 4 if others.
2. If the remittance is chargeable to tax, non-furnishing of PAN shall attract the provisions of section 206AA.
3. If available.
4. If available.

10. FORM NO. 15CA

(See rule 37BB)

Part B

(To be filled up if the remittance is chargeable to tax and exceeds fifty thousand rupees and the aggregate of such remittances made during the financial year exceeds two lakh fifty thousand rupees)

Section A	**GENERAL INFORMATION**					
	Name of the remitter					
REMITTER	PAN of remitter	Area Code	AO Type	Range Code	AO No	
	Area Code					
	Principal Place of Business	TAN of remitter [i]				
	Complete address, email and phone number of the remitter					
	Status [ii]	In case of company - If domestic, write 'I' and if other than domestic, --write '2'				
REMITTEE	Name of recipient of remittance		PAN of recipient of remittance [iii]			
	Status [iv]					
	Address		Country to wish remittance is made:			
	Principal place of business	Email address	(ISD code) -Phone Number ( )			
ACCOUNTANT	(a)	Name of the Accountant [v] 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.[vi]			
A.O. ORDER	(a)	Whether any order/ certificate u/s 195(2)/ 195(3)/ 197 of Income-tax Act has been obtained from the Assessing Officer.	(Tick) ☐ Yes ☐ No			
	(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				

10. FORM NO. 15CA

(See rule 37BB)

Section B		GENERAL INFORMATION		
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.	In case the remittance is net of taxes, whether tax payable has been grossed up?	(Tick) ☐ Yes ☐ No	
I.T. ACT	8.	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	9.	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		
		(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		

10. FORM NO. 15CA

(See rule 37BB)

		D. In case of other remittance not covered by sub-items A, B and C	(Tick) ☐ 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	10	Amount of tax deducted at source	In foreign currency In Indian Rs.	
	11	Rate of TDS	As per Income-tax Act (%) or As per DTAA (%)	
	12	Actual amount of remittance after TDS	In foreign currency	
	13	Date of deduction of tax at source, if any	☐☐☐☐☐☐☐☐ (DD/MM/YYYY)	

VERIFICATION

1. I/We*_____ (full name in block letters), son/daughter of _____ in the capacity of _____ (designation) solemnly declare that the information given above is true to the best of my/our* knowledge and belief and no relevant Information has been concealed.
2. I/We* certify that a certificate has been obtained from an accountant, particulars of which are given in this Form, certifying the amount, nature and correctness of deduction of tax at source. I/We* certify that certificate/order under section 195(2)/195(3)/197 of the Income-tax Act, 1961, particulars of which are given in this Form*.
3. In case where it is found that the tax actually deductible on the amount of remittance has not been deducted or after deduction has not been paid or not paid in full, I/We* undertake to pay the amount of tax not deducted or not paid, as the case may be along with interest due. I/We* shall also be subject to the provisions of penalty for the said default as per the provisions of the Income-tax Act, 1961.
4. 1/We* further undertake to submit the requisite documents for enabling the Income-tax Authorities to determine the nature and amount of income of the recipient of the above remittance as well as documents required for determining my/our liability under the Income-tax Act, 1961 as a .person responsible for deduction of tax at source.
5. I/We* further declare that I/we* am/are* furnishing this information in my/our* capacity as and I/we* am/are* also competent to sign the return of income as per provisions of section 140 of the Income-tax Act, 1961 and verify it.

Place: _____ Signature: _____

Date: _____ Designation: _____

* Delete whichever is not applicable.

For Office Use only

For Office Use Only
Receipt No. _____
Date _____
Seal and Signature of receiving official _____

[i] In case TAN is applied for, please furnish acknowledgement number of the application.

[ii] Write 1 if company. Write 2 if firm. Write 3 if individual and Write 4 if others.

[iii] In case of non-availability of PAN, provisions of section 206AA shall be applicable.

[iv] Write 1 if company, Write 2 if firm, Write 3 if individual and Write 4 if others.

[v] Accountant (other than an employee) shall have the same meaning as defined in the Explanation to Section 288 of Income-tax Act, 1961.

[vi] Please fill the serial number as mentioned in the certificate of the accountant

11. Form No. 15CB

(See rule 37BB)

Certificate of an accountant*

I/We have examined the agreement (wherever applicable) between Mr./Ms./M/s and Mr./Ms./M/s requiring the (remitters) (beneficiary) above remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source as per provisions of sub-section (6) of section 195. We hereby certify the following:

A	**Name and address of the beneficiary of the remittance**			
B	1.	Country to which remittance is made	Country:	Currency:
	2.	Amount of remittance	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.	Amount of TDS	In foreign currency	In Indian Rs.
	7.	Rate of TDS	As per Income-tax Act (%) ☐	As per DTAA (%) ☐
	8.	Actual amount of remittance after TDS	In foreign currency	In Indian Rs.
	9.	Date of deduction of tax at source (DD/MM/YYYY)		
	10.	Nature of remittance as per agreement/ document		
	11.	In case the remittance is net of taxes, whether tax payable has been grossed up? If so computation thereof may be indicated.	(Tick) ☐ Yes ☐ No	
	12.	If the remittance is for royalties, fee for technical services, interest, dividend, etc, please indicate:-	(Tick) ☐ Yes ☐ No	
		(a) The clause of the relevant DTAA under which the remittance is covered along with reasons	Clause of DTAA	
		(b) Rate of TDS required to be deducted in terms of such clause of the applicable DTAA	As per DTAA (%)☐	
		(c) In case TDS is made at a lower rate than the rate prescribed under DTAA, reasons thereof		
	13.	In case remittance is for supply of articles or things (e.g. plant, machinery, equipment etc.), please indicate,	(Tick) ☐ Yes ☐ No	
		(a) Whether the recipient of remittance has any permanent establishment (PE) in India through which the beneficiary of the remittance is directly or indirectly carrying on such activity of supply of articles or things?	(Tick) ☐ Yes ☐ No	
		(b) Whether such remittance is attributable to or connected with such permanent establishment	(Tick) ☐ Yes ☐ No	
		(c) If the reply to Item no. (b) above is yes, the amount of income comprised in such remittance which is liable to tax.		
		(d) If not, the reasons in brief thereof.		

11. Form No. 15CB

(See rule 37BB)

	14.	In case the remittance is on account of business income, please indicate:-	(Tick) ☐ Yes ☐ No	
		(a) Whether such income is liable to tax in India	(Tick) ☐ Yes ☐ No	
		(b) If so, the basis of arriving at the rate of deduction of tax.		
		(c) If not, the reasons thereof.		
	15.	In case any order u/s 195(2)/ 195(3)/ 197 of Income-tax Act has been obtained from the Assessing Officer, details thereof:	(Tick) ☐ Yes ☐ No	
		(a) Name and Designation of the Assessing officer who issued the order/ certificate		
		(b) Date of the order/ certificate (DD/MM/YYYY)		
		(c) Specify whether u/s 195(2)/ 195(3)/ 197 of I T Act	☐	
	16.	In case of any other remittance, if tax is not deducted at source for any reason, details thereof.		

(Attach separate sheet duly authenticated wherever necessary) **

Certificate No.: ☐☐☐☐☐

Signature:

Date :

Name:

Place:

Name of the proprietorship/firm

Address:

Registration number:

* *(To be signed and verified by an accountant (other than an employee) as defined in the Explanation to section 288 of the Income-tax Act, 1961).*

** *Certificate number is an internal reference number to be given by the Accountant*

مركز دبي المالي العالمي
DIFC | Dubai International Financial Centre

09 March 2014

To whom it may concern,

As of the date hereof, the undersigned hereby certifies that the attached is an official translation of Law No. 9 of 2004 in respect of the Dubai International Financial Centre (the 'Law') which was published in the official Gazette at the date of enactment of the Law, on 13th September 2004. Article 14 of the Law states that companies established in the Dubai International Financial Centre (the 'DIFC') are subject to zero rate of tax for fifty years from the date of enactment of the Law. Zurich Insurance Company Ltd (the 'Company') was registered as a Recognised Company under the Companies Law, DIFC Law No. 2 of 2009, (the ('Company Law') on 02nd June 2009, with registered number 0840. Accordingly, Zurich insurance company Ltd is subject to benefits and burdens of the Article 14 of the Law.

Yours sincerely,

DIFC Registrar of Companies

Khalid Al Zarouni
Registrar of Companies
Dubai International Financial Centre

12. Tax Residence Certificate

UAE illustration

UNITED ARAB EMIRATES
MINISTRY OF FINANCE

الإمارات العربية المتحدة
وزارة المـــــــالية

TAX/9114/2013 **12/Aug/2013**

TAX RESIDENCE CERTIFICATE

The Ministry of Finance of the United Arab Emirates hereby certifies that, pursuant to the Agreement between The Government of the United Arab Emirates and the Government of the Republic of India for Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital signed on 1992-04-29, Oman Insurance Company PSC License No.: 203970 is qualified to enjoy the benefit of the mentioned Agreement as a resident in the United Arab Emirates.

This certificate issued in Dubai and is valid for one year only starting from 12/08/2013.

For **Khalid Ali Al-Bustani**

Assistant Under secretary for International financial Relations

MINISTRY OF FINANCE * United Arab Emirates *

Receipt Number:130029323279

Kindly verify the certificate by using the following Number and URL. Certificate ID:efb23a9ced
http://www.mof.gov.ae/En/services/Pages/VATVerification.aspx

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