

# TECHNICAL DISCUSSION ON INTERNATIONAL TRANSACTIONS

CA SACHIN SINHA

# TRANSACTIONS IDENTIFIED

Receipts	Payments
Salary received from foreign employer when the service is rendered in India.	Salary paid to foreign employee for working on project in India.
Sale proceeds of goods sold, or services rendered outside India.	Interest paid to Indian bank towards loan taken for project outside India.
Rent received for the property situated outside India	Commission paid to non-resident for marketing outside India.
Alimony awarded by decree of court outside India	Rent paid to non-resident for property situated in India.
Sale of services outside India through e-commerce platform.	Salary paid to Indian employee in India who is working in a project outside India.

# EQUALISATION LEVY

<i>Particulars</i>	<i>Online Advertisement Services [Section 165]</i>	<i>E-commerce supply or services [Section 165A]</i>
Nature of service	<ul style="list-style-type: none"> <li>• Online Advertisement;</li> <li>• Provision for digital advertising space;</li> <li>• Any other facility or service for the purpose of online advertisement.</li> </ul>	E-commerce supply of goods or services
Service provider	Non-resident	Non-resident e-commerce operator
Recipient of service	<ul style="list-style-type: none"> <li>• Indian resident carrying on business or profession; or</li> <li>• Non-resident having a Permanent Establishment (PE) in India</li> </ul>	<ul style="list-style-type: none"> <li>• A person who is resident in India;</li> <li>• A person who buys such goods or services or both using internet protocol address located in India;</li> <li>• A non-resident person in the specified circumstances</li> </ul>

# EQUALISATION LEVY

<i>Particulars</i>	<i>Online Advertisement Services [Section 165]</i>	<i>E-commerce supply or services [Section 165A]</i>
Exception	<p>No equalization levy shall be charged, if:</p> <ul style="list-style-type: none"> <li>• Service provider has a PE in India;</li> <li>• Consideration is less than threshold limit;</li> <li>• Service is not received for business or profession.</li> </ul>	<p>No equalization levy shall be charged, if:</p> <ul style="list-style-type: none"> <li>• Equalization levy is charged under Section 165;</li> <li>• Consideration is less than threshold limit;</li> <li>• E-Commerce operator has a PE in India;</li> <li>• Consideration received or receivable is attributable to sale of goods or provision of services by resident or non-resident if it is effectively connected with PE in India.</li> </ul>
Rate	6%	2%
Threshold limit	Aggregate amount of consideration paid or payable in respect of specified services in a previous year exceed Rs. 1 lakh	Sale, turnover or gross receipts of the e-commerce operator is Rs. 2 crores or more during the previous year

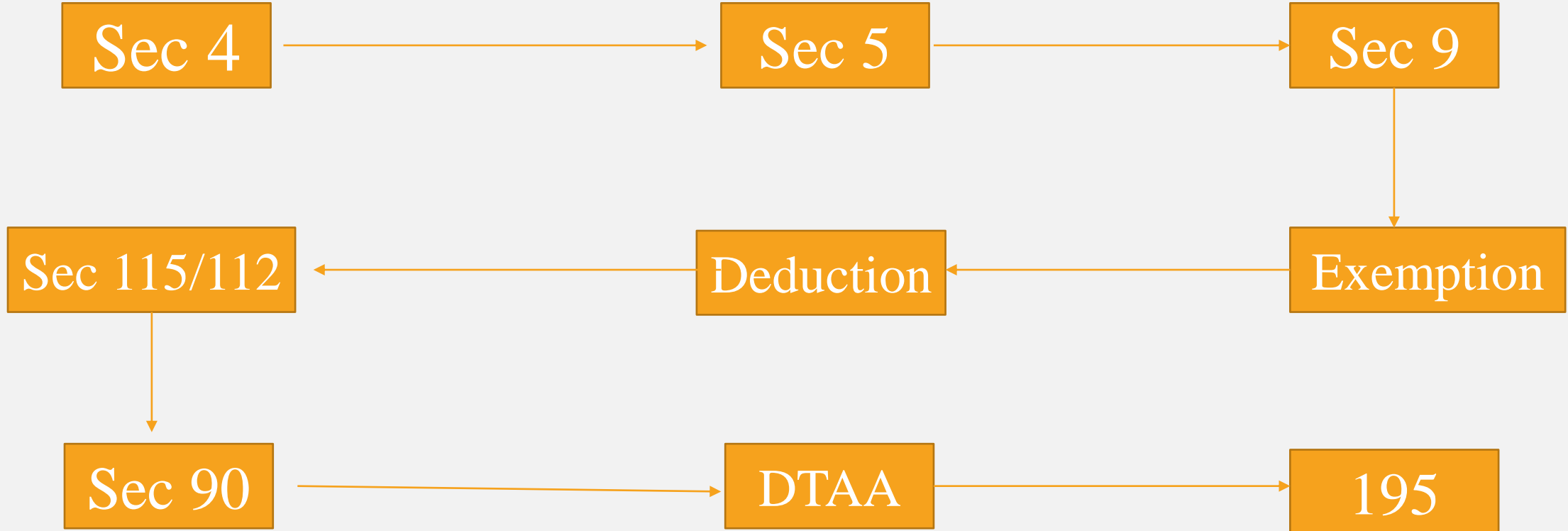
# EQUALISATION LEVY

<i>Particulars</i>	<i>Online Advertisement Services [Section 165]</i>	<i>E-commerce supply or services [Section 165A]</i>
Due date to deposit levy	On or before the 7th day of the month immediately following the month in which such levy was deducted	<ul style="list-style-type: none"> <li>• 1st Quarter: 7th July</li> <li>• 2nd Quarter: 7th October</li> <li>• 3rd Quarter: 7th January</li> <li>• 4th Quarter: 31st March</li> </ul>
Interest for default in payment	Simple interest at the rate of 1% per month during which such failure continues	Simple interest at the rate of 1% per month during which such failure continues
Penalty for default in payment	<ul style="list-style-type: none"> <li>• Failure to deduct: Amount of levy which he failed to deduct</li> <li>• Failure to deposit: Rs. 1,000 per day subject to maximum of amount which he failed to pay</li> </ul>	Amount of levy which he failed to pay

## IMPORTANT QUESTIONS

1. Whether for all transactions I am required to issue Form 15CA & CB?
2. Whether 15CA/CB is required to be issued at the time of booking the transaction or at the time of making the payment?
3. Whether tax is required to be deducted on the whole amount or part of the amount.
4. Whether 15CA/CB is required for salary payment also?
5. Whether 15CA/CB can be revised if there is wrong information furnished?
6. While making payment to Netflix for subscription is also liable to tax.?
7. Whether 15CA/CB is required if while making payment on which Equilisation levy is applicable.?
8. How can I file Form 15CA/CB while making payment through credit card?
9. Whether 15CA/CB is applicable while transferring money from NRO A/c to NRE A/c?

# BASIC FLOW OF SECTIONS:



## SEC 4 OF IT ACT.

- (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and in respect of the total income of the previous year of every person :
- **Provided** that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.
- *(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.*



## AMOUNTS NOT DEDUCTIBLE (SEC 40)

- Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession"
- in the case of any assessee—
- any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,—
- outside India; or
- in India to a non-resident, not being a company or to a foreign company,
- on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid [on or before the due date specified in sub-section (1) of section 139]

## SECTION 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.

## EXPLANATION 2

- 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 person has—
- *a residence or place of business or business connection in India; or*
- *any other presence in any manner whatsoever in India.*

## SECTION 195(2)

- Where the person responsible for paying any such sum chargeable under this Act (other than salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application in such form and manner to the Assessing Officer, to determine in such manner, as may be prescribed, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under s/s (1) only on that proportion of the sum which is so chargeable.
- *Form 15E is to be filed, Rule 29BA*

## SECTION 195(3)

- Any person entitled to receive any income on which income-tax has to be deducted under s/s (1) may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorising him to receive such income without deduction of tax under that sub-section.
- Where any such certificate is granted, every person responsible for paying such income to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).
- *Form 13 is to be filed, rules 28 and 37G*

## BASIC CONDITIONS

- The payee should be either a NR (not being a company) according to the definition of residence u/s 6 or a foreign company.
- The amount payable should be interest (excluding interest referred to in sec 194LB, 194LC or 194LD) or any other sum (not being salaries) chargeable under the provisions of this Act.

## RATE OR RATES IN FORCE

- The deduction should be at the rate in force, i.e. at the rates for deduction prescribed by the relevant Finance Act u/s 2(37A)(ii) subject to the following exemptions:
- Where the payer has obtained from the AO a determination u/s 195(2).
- Where the certificate of lower deduction has been obtained by the payee from the AO u/s 197.
- In a case where it is notified by the Board u/s 195(5)

# RULE 37BB

- Where tax has been deducted by a person under s/s (1), such person has to furnish information relating to payment in the prescribed Form 15CA and 15CB under s/s(6) r/w Rule 37BB



## TDS WHEN SUM CHARGEABLE TO TAX

- After 01.07.2012, by insertion of s/s (7), a person responsible for paying to a NR in relation to specified class or person or cases which are notified by the Board shall make an application to the AO to determine whether tax is to be deducted or not.
- This provision was inserted to partially overcome the SC judgement in the case of G E India Technology centre private limited (327 ITR 456) (SC) wherein it was held that the obligation to deduct tax at source only when there is sum chargeable to tax under the IT Act.

## PAYMENT OF EXEMPTED INCOME

- s/s (6) requires all person responsible for paying to a NR shall furnish details of the payment in Form 15CA , 15CB irrespective of the fact whether such payment are chargeable to tax or not.
- But it has no application where the amount payable is exempt from tax like sec 10(6A). *Hyderabad industries Ltd. 188 ITR 749 (kar.)*

## INTEREST ON REFUND OF EXCESS TDS.

- Where order passed by AO under s/s (2) is challenged in an appeal and the rate of tax determined in the order is reduced, the assessee would be entitled to refund of tax paid along with interest u/s 244A. Tata Chemicals Ltd (363 ITR 658) (SC). Further in 2016 Govt. issued circular No. 11/2016 in this regard to give the effect of Tata Chemicals.
- Similarly excess tax deducted can be claimed as refund by the payee.

## TIME OF DEDUCTION OF TAX

- The liability to deduct tax under this section arises when credit entry favouring a NR is made in the books of accounts.
- Any subsequent change in the in the status of the recipient does not effect this liability. United Breweries 211 ITR 256 (KHC).

## PAYMENT OF PENALTY

- The provision of this section shall not apply to penalty paid to Government outside India for violation of law in that country. Satyam Computer Services Ltd. 380 ITR 189 (AAR). Any way this payment will be disallowed.

## MAKING PAYMENT IN INDIA

- A person who is responsible for making payment to a NR, and who on the instruction of the NR, makes payment to his agent in India is nevertheless liable to deduct tax in India under this section.

## INTEREST PAID TO NR

- Where interest was paid by a bank to the NR depositor abroad, such interest is chargeable to tax in India and bank is liable to deduct TDS on such interest.
- Interest to the account of NR for an ECB is not exempt from withholding tax. The benefit of DTAA will be available while ascertain the applicability of sec 195 on remittance of interest to NR.

## ANY OTHER SUM CHARGEABLE UNDER THE ACT.

- In the case of Anglo India Jute Mills (33 ITR 866), Calcutta HC held that the word any other sum....chargeable....under the Act also apply to payments which are in reality not pure income profit but are gross receipts in the hands of recipient.
- In the case of Transmission Corporation 239 ITR 587 (SC) has observed that the payer of a sum can file an application for determination by the AO that such sum is not chargeable.



ANY OTHER SUM CHARGEABLE UNDER THE ACT.

- The court further held that if no such application is filed, tax on such sum is to be deducted and it is the statutory obligation of the person responsible for paying such sum to deduct tax thereon before making payment.

## PAYMENT NOT CHARGEABLE TO TAX AT ALL

- What happens if the payment is not chargeable to tax at all? Karnataka HC took a view in the case of Samsung Electronics Co Ltd. (320 ITR 209) and held that deduction u/s 195 is mandatory in case of every payment made to NR unless the Nil deduction certificate has been obtained from AO u/s 195(2),(3) or 197.
- The SC in the case of GE India Technology Centre P. Ltd, strongly disapprove the view of KHC if the payment does not contain element of income, the payer cannot be liable for 195.

## BUSINESS CONNECTION IN INDIA

- Sec 9(1)(i) says, Income shall be deemed to accrue or arise in India when accruing or arising directly or indirectly through or from any business connection in India.
- The business profits of the NR are taxable only if there is either a PE in India or the NR is acting through an agent in India.

## PAYMENT OF REIMBURSEMENT

- When payment is made in the nature of reimbursement, there is no element of income.
- The only condition is that no profit element should be embedded in such reimbursement.

## AT THE TIME OF CREDIT OR PAYMENT

- Deduction of tax is to be made at the time of crediting the income to the account of the payee or at the time of payment, whichever is earlier.
- In a case where amounts were credited to the suspense account, the liability to deduct tax does not arise. After insertion of Expl:1 from FA 2012 w.r.e.f 01.04.1962., credit to suspense account shall be deemed to credit the account of the payee.
- For the purpose of this section, actual payment is not prerequisite, to trigger the incidence of tax, mere credit in the books of accounts of the payee/suspense account is sufficient.

## SET OFF OF PAYMENT

- If the payer has received services from NR and selling goods to NR. At the time of making payment to NR, the payer wants to setoff his receivable. The question arises, whether the TDS is applicable on such set off amount.

## NR NOT HAVING PAN (RULE 37BC)

- In the case of NR, not being a company or a foreign company, not having PAN, the provision of sec 206AA not apply in respect of payment in the nature of interest, Royalty, FTS and payment on transfer of any capital assets, if the deductee furnishes the details and documents as below:
- Name, e-mail ID, contact number.
- Address of the country of residence.
- Certificate of residency.
- Tax identification number in such country.



THANK YOU