

F. No. 370142/24/2019-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

Date: December 31st, 2019
147B-II, North Block, Delhi

Office Memorandum

Subject: Public consultation on the proposal for amendment of Income-tax Rules 1962, to inset new rule 29BA and Form 15E, to give effect to the amendment in section 195 of the Income-tax Act, 1961 (the Act) vide Finance (No.2) Act 2019- reg.

Section 195 of the Act relates to levy of tax deduction at source (TDS) on any sum chargeable to tax and which is paid to a non-resident, not being a company, or to a foreign company. Prior to the amendment, sub-section (2) of the said section provided that where the person responsible for paying such sum chargeable under the Act to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Assessing Officer to determine, by general or special order, the appropriate of such sum so chargeable and upon such determination, tax shall be deducted only on that proportion of the sum which is so chargeable.

2. However, no format was prescribed for making the application under sub-section (2) of section 195. Therefore, the deductor has to write an application on plain paper and physically submit it to the Assessing Officer. The AO then issues a certificate determining by general or special order, the appropriate proportion of such sum so chargeable to tax at source under section (1) of section 195 of the Act, and there are also no standard operating procedures in respect of processing and disposal of the application under the said sub-section. This increases uncertainty and causes inconvenience to deductors.

3 Further, sub-section (7) of section 195 also provided that the Government may specify a class of persons or cases, where the deductor who is responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable. However, no format was prescribed for making such application and neither is any standard operating procedures specified in respect of processing and disposal of the application. There was a demand from various stakeholders to streamline the process of passing of such orders under section 195(2) of the Act.

4. In order to streamline the process for making an application by the deductor and to reduce the human interface, section 195 of the Act was amended through Finance (No.2), Act 2019. The new amended section 195 now empowers the Board to prescribe the form and manner of filing of application under sub-section (2) to determine the appropriate proportion of such sum so chargeable and upon determination tax to be deducted as per sub-section (1) of section 195 on that proportion only. Further sub-section (7) of section 195 was amended to provide that the Government may specify a class of persons or cases, where the deductor who is responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer in such form and manner and Assessing officer to determine in such manner as may be prescribed the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1).

5. As a result of the amendments carried out in sub-section (2) and sub-section (7) of section 195 of the Act, vide Finance (No.2) Act, 2019, consequential amendments have to be carried out in Income-tax Rules, 1962 (the Rules) and Forms to give effect to the amendments.

6. In view of the above discussion, a new Form 15E is proposed to be introduced in the Rules to operationalize the provisions of the section 195(2) of the Act.

7. It has been decided to seek the stakeholder's comments in relation to proposed Form 15E to be introduced in the Rules. In this regard, comments and suggestions are invited from the general public on the proposed form. The comments/suggestions may be sent electronically (in word format) through email at ustpl3@nic.in within 15 days of publication of this document on the Income Tax website (www.incometaxindia.gov.in).


31.12.2019
(Ankit Jain)

Dy. Commissioner of Income Tax (OSD)
TPL Division
Central Board of Direct Taxes

FORM No. 15E

[See Rule 29BA]

Application by a person for a certificate under section 195(2) of the Income-tax Act, 1961, for determination of appropriate proportion of sum (other than salary) payable to non-resident, chargeable in case of the recipient.

To,

The Assessing Officer,

.....

I _____ being the person responsible for making payment to a non-resident or to a foreign company any sum (not being income chargeable under the head "Salaries") do, hereby, request that a certificate may be issued to me after determining the appropriate proportion of such sum chargeable to tax in the case of the recipient (if any) and authorize me to deduct income tax on such appropriate proportion (if any). The relevant particulars are as below:

1. Details of the payer:

i.	PAN or Aadhaar	
ii.	Name*	
iii.	TAN	
iv.	Status* (Individual/Firm/Company/AOP /BOI, as the case may be)	
v.	Residential status	
vi.	Address*	
vii.	E-mail ID	
viii.	Mobile Number	

2. Details of the payee:

i.	PAN (if available)			
ii.	Name*	First name	Middle name	Last name
iii.	Status* (Individual/Firm/Company/AOP /BOI, as the case may be)			
iv.	Father's name (in case of an individual)*	First name	Middle name	Last name
v.	Date of birth (in case of individuals)/date of incorporation*			
vi.	Address*			
vii.	Address of payee in country of Residence outside India#			
viii.	Tax Identification Number of			

	Payee in the country of Residence#		
ix.	Jurisdictional AO, if any*		
x.	E-mail ID#		
xi.	Mobile Number#		
xii	Passport No. (in case of individual)		
3. Details of transaction			
i.	Country to which payment is to be made		
ii.	Amount payable	In Foreign Currency	In Indian Rs:
iii.	Proposed date of payment	in dd/mm/yyyy format	
iv.	Relevant previous year for which Certificate is requested		
v.	Nature of payment/ remittance as per agreement/document:	Royalty Fees for technical services Dividend Interest Business income Capital gains Any other (please mention)	
vi.	In case the payment is net of taxes, whether tax payable has been grossed up?	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>	
vii.	Details of previous certificates obtained under section 195(2) for the same transaction	Certificate Number	Date of issue of certificate
4. Taxability under the provisions of the Income-tax Act (without considering DTAA)			
i.	Is payment chargeable to tax in India as per the provisions of Income-tax Act	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>	
ii.	If not taxable, reasons thereof		
iii.	if taxable, (a) the relevant section of the Act under which the payment is covered.		
	(b) The amount of income chargeable to tax		
	(c) The tax liability		
	(d) Rate at which tax is required to be deducted at source*		
	(e) Detail of Advance Tax payment, TDS, TCS for the previous year of payee, if available	Advance Tax	
		TDS	
		TCS	
iv.	Please upload relevant documents such as contract for sale of goods and/or provisions for services (if any), and/or for payment of royalty and/or payment of fee for technical services, share purchase agreement, bank payment,		

	details of cost of acquisition, contract note (if any), share certificate (if any), etc.				
5. If income is chargeable to tax in India and any relief is claimed under DTAA-		(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>			
i.	Please specify relevant DTAA (upload copy of Tax Residency Certificate)				
ii.	Nature of payment and relevant Article of DTAA	Royalty Fees for technical services Dividend and interest Business income Capital gains Any other (please mention)			
iii.	Details of existing liabilities of payee under the Income-tax Act or Wealth Tax Act, if available				
iv.	Detail of Advance Tax payment, TDS, TCS for the previous year of payee, if available	Advance Tax			
		TDS			
		TCS			
v.	Rate at which tax is required to be deducted at source*				
vi.	A. If the payment is on account of business income, please indicate:				
	(a) Whether such business income is liable to tax in India	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>			
	(b) If no, the reasons for the same				
	(c) If yes, the nature of permanent establishment in India				
	(d) The amount of income chargeable to tax				
	(e) Tax payable on estimated income of the previous year of payee, if available				
	(f) Details of assessed/returned/estimated income of payee of last four previous years, if available (upload copy)				
	B. In case the payment is on account of capital gains, please indicate:				
	(a) Amount of long-term capital gains	Date of sale of asset	Total sale consideration	Date of acquisition	Total cost of acquisition
	(b) Amount of short-term capital gains				
	(c) Computation of capital gains				

and tax liability, thereon [please upload relevant documents such as share purchase agreement, bank payment, details of cost of acquisition, contract note (if any), share certificate (if any), etc.]	
C. In case the payment is on account of Royalty, please indicate	
(a) Nature of Royalty payment	
(b) Tax liability on the amount of royalty paid	
(c) Justification of above tax liability	
D. In case the payment is on account of Fee for technical services (FTS), please indicate	
(a) Nature of FTS payment	
(b) Tax liability on the amount of FTS paid	
(c) Justification of above tax liability	
(d) whether there is 'Make Available' clause in the treaty	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
(e) whether 'Make Available' clause in FTS article is included in the DTAA through Most Favoured Nation Clause?	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
(f) If answer to question (e) is yes, whether notification regarding 'Make Available' clause issued by Government of India	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
(g) if answer to question (d) is yes, please explain how 'Make Available' requirement is not satisfied.	
E. In case of Interest income	
(a) Nature of interest income	
(b) Please indicate	
(I) Whether conditions of section 194LB are satisfied?	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
(II) Whether conditions of section 194LC are satisfied?	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
(III) Whether conditions of section 194LD are satisfied?	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
(IV) If yes, submit relevant documents in support of above	
(V) Loan Registration Number (LRN) as given by Reserve Bank of India	
(c) Tax liability on the amount	

	of interest paid	
	(d) Justification of above tax liability	
	F. In case of other payment not covered by sub-items A to E	
	(a) Please specify the nature of payment	
	(b) Whether taxable in India as per DTAA	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
	(c) If yes, specify relevant Article of DTAA and the rate of TDS in terms of relevant Article of the applicable DTAA	
	(d) If not taxable, please furnish brief reasons thereof, specifying relevant article of DTAA	
	(e) Any documents you wish to furnish in support of your claim (please upload)	
<p>I..... son/daughter of do hereby declare that to the best of my knowledge and belief what is stated above is correct, complete and truly stated. I also declare that I am making application in my capacity as of and I am also competent to make this application and verify it.</p>		
Date:	Signature:	
Place:	Address:	

* To be filled automatically

to be filled mandatorily