

# MVDCO ADVISORY SERVICES

## News Letter

JUNE – 2015

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## Payment to a non resident against Import of material – Forms 15CA and 15CB:

The Finance Act 2015 made following amendment in Section 195 with regards to furnishing of information relating to payment to Non Resident **with effect from 1<sup>st</sup> June 2015**. The change was made by substituting sub-section 6 of Section 195 which now reads as follows:

Section 195(6) – *“The person 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 furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.”*

The earlier position was that Form 15CA (Form to be submitted by the assessee) and Form 15CB (Certificate from a Chartered Accountant as regards applicability of withholding tax) was required to be submitted with respect to any payment to a non resident in the nature of interest or any other sum chargeable under the provisions of this Act.

With the above amendment, Forms 15CA and 15CB will have to be submitted to the bank with respect to all the payments made to a non resident whether the sum is chargeable to tax under the provisions of this Act or not.

Rule 37BB of The Income Tax Rules has specified list of transactions **where Forms 15CA and 15CB are not required (negative list)** to be submitted. The specified transactions are as below:

### SPECIFIED LIST

Sr. No.	Purpose code as per RBI	Nature of payment
(1)	(2)	(3)
1	S0001	Indian investment abroad – in equity capital (shares)
2	S0002	Indian investment abroad – in debt securities
3	S0003	Indian investment abroad – in branches and wholly owned subsidiaries
4	S0004	Indian investment abroad – in subsidiaries and associates
5	S0005	Indian investment abroad – in real estate
6	S0011	Loans extended to Non-Residents
7	S0202	Payment for operating expenses of Indian shipping companies operating abroad
8	S0208	Operating expenses of Indian Airlines companies operating abroad
9	S0212	Booking of passages abroad –Airlines companies
10	S0301	Remittance towards business travel
11	S0302	Travel under basic travel quota (BTQ)
12	S0303	Travel for pilgrimage
13	S0304	Travel for medical treatment
14	S0305	Travel to education (including fees, hostel expenses etc.)
15	S0401	Postal services

16	S0501	Construction of projects abroad by India companies including import of goods at project site
17	S0602	Freight insurance – relating to import and export of goods
18	S1011	Payments for maintenance of offices abroad
19	S1201	Maintenance of Indian embassies abroad
20	S1202	Remittances by foreign embassies in India
21	S1301	Remittance by non-residents towards family maintenance and savings
22	S1302	Remittance towards personal gifts and donations
23	S1303	Remittance towards donations to religious and charitable institutions abroad
24	S1304	Remittance towards grants and donations to other Governments and charitable institutions established by the Governments
25	S1305	Contributions or donations by the Government to international institutions
26	S1306	Remittance towards payment or refund of taxes
27	S1501	Refunds or rebates or reduction in invoice value on account of exports
28	S1503	Payments by residents for international bidding

Payment against import of material is not covered under the above negative list and therefore this would mean that any payment against import of material will also have to be supported by Forms 15CA and 15CB.

**Compiled by: CA Malay Damania, Partner**

## Increase in limit of remittance by Resident Individual under Liberalised Remittance Scheme (LRS):

The Reserve Bank of India (RBI) has with effect from 1<sup>st</sup> June 2015, increased the limit of foreign by Resident individuals from US \$ 125,000 to US \$ 250,000 under the Liberalised Remittance Scheme (LRS). Accordingly, an individual will be able to remit out of India up to US \$ 250,000 from April – March for any permitted capital and/or current account transactions.

All the individual limits for different nature of capital account and current account remittances are subsumed under this LRS scheme.

Accordingly, the revised limits of current account transactions are depicted as per chart below:

Purpose of the remittance	Previous limit (in USD)*	Revised limit (in USD)*
Private visits to any country	10,000	250,000
Gift or donation	5,000	
Going abroad for employment	100,000	
Emigration	100,000	
Maintenance of close relatives abroad	100,000 or upto net salary	
Travel for business, or attending a conference or specialized training or for meeting expenses for medical, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment / check-up	25,000	
Expenses in connection with medical treatment abroad	-	
Studies abroad	100,000	
Any other current account transaction	-	

For any additional remittance, RBI permission will be necessary.

For the purpose of emigration, expenses in connection with medical treatment and studies abroad, resident may avail of exchange facility above US \$ 250,000 if it is so required by the country of emigration, medical institute offering the treatment or university respectively.

A person other than individual may also avail of the foreign exchange facility, within the limit prescribed under the LRS for the purposes as provided under Part 2 of Schedule III ie for Donation to education institutions, commission to agents abroad for sale of an immovable property in India; Remittance for consultancy services in a project in India and reimbursement of pre-incorporation expenses.

A resident individual can draw foreign exchange up to US \$ 250,000 per financial year for any capital account transactions including investment in foreign securities abroad, acquisition of immovable property abroad, setting up Wholly Owned subsidiary or Joint Venture abroad, extending loans to non-resident Indian who are close relatives, opening of bank account abroad etc.

**Obligation of Authorised Dealers (Banks):**

Authorised Dealers shall not extend any kind of funded or non-funded facility to the resident individual to facilitate capital account remittances under LRS.

Banks shall ensure all the Know Your Customer (KYC) guidelines and Anti Money Laundering Rules have been duly complied with.

The remitter should have maintained bank account with the bank for more than a year prior to the remittance of any capital account transaction. If the remitter is a new customer, the banks shall carry out due diligence of operation and maintenance of the bank account.

No part of the remittance shall be allowed to make to countries notified as non cooperative countries and jurisdictions by the Financial Action Task Force (FATF).

Banks shall submit a monthly report to the RBI as giving detailed information of the remittances made during the month.

**Compiled by: CA Malay Damania, Partner**

**Rates of service tax for various services w.e.f. 1<sup>st</sup> June 2015**

<b>Sr. No.</b>	<b>Description</b>	<b>Rates</b>
1.	Normal	14%
2.	GTA (Goods Transport agencies) Transports	4.2%
3.	Construction – Residential – (Including Land)	
	i. Upto 2000 sq. Feet and consideration upto 1 crore	3.5%
	ii. Other cases	4.2%
4.	Construction – Commercial (Including Land)	4.2%
5.	Civil Contract with Material (Without Land)	5.6%
6.	Erection of plant & machinery	5.6%
7.	Repair/ Maintenance Renovation of Building or goods	9.8%
8.	Lodging	8.4%
9.	Restaurant	5.6%
10.	Caterers	8.4%
11.	Hall with catering	9.8%
12.	Vehicle Rent	5.6%

**Compiled by: CA Jayesh Shah, Partner**

**TDS Chart****Financial Year: 2015-2016 (Ass. Year : 2016-17)**

Particulars			Individual / HUF	Domestic Company / Firm	Criteria for Deduction
Nature of Payments	Section	Code	Rate %	Rate %	Threshold limit
1 : Salary (Resident as well as Non Resident)	192	92B	As per the prescribed rate applicable to Individual / Senior Citizens / Very Senior Citizens..... (See Note 1)		No deduction till Net salary is Rs. 2,50,000/-
2 : Interest other than Interest on Securities	194 A	94A	10	10 See Note 10, 11 & 12	Rs. 5,000/- p.a.
3 : Payment to Contractors	194 C	94C	1	2 See Note 6 (b) & 7	Rs. 30,000/- per contract or Rs. 75,000/- p.a.
4 : Commission & Brokerage	194 H	94H	10	10	Rs. 5,000/- p.a.
5 : Rent - Land & Building, Furniture, etc	194 I	94I	10	10	Rs. 1,80,000/- p.a
5 : Rent - Machinery or plant or equipment	194 I	94I	2	2	
6 : Professional Fees & fees for Technical Services / Royalty / Any amount paid to director of the company other than salary (Effective 1 July 2012, any payment made for acquiring computer software or its License will be considered as royalty) Note : i Threshold limit of Rs. 30,000/- is applicable only to professional fees, fees for technical services & royalty ii T.D.S. on software will apply only on first transfer, subject to conditions as per Govt. Notification	194 J	94J	10	10	Rs. 30,000/- p.a.
7 : Transfer of immovable property i.e. Land (other than agricultural land) or Building or part of building ( <b>Applicable to Resident transferees</b> )	194 IA	94IA	1	1	Rs. 50,00,000/-
8: TDS on royalty and fees for technical services of non resident and foreign companies (Subject to DTAA) (W.e.f.01/04/2015)	115A	195	10	10	No threshold limit

**TCS Chart for the Financial Year 2015-16 is tabulated below:**

<b>Sr.No.</b>	<b>Nature of Goods</b>	<b>Rate</b>
1	Alcoholic liquor for human Consumption	1%
2	Tendu leaves	5%
3	Timber obtained under forest lease	2.5%
4	Timber obtained by any mode other than a forest lease	2.5%
5	Any other forest produce not being timber or tendu leaves	2.5%
6	Scrap	1%
7	Parking lot	2%
8	Toll plaza	2%
9	Mining & Quarrying excluding mining & quarrying of minerals oil	2%
10	Minerals, being coal or lignite or iron ore	1%
11	Bullion (excluding any coin or any other article weighing ten grams or less) if the sale consideration is received in cash exceeding of Rs. 2 lakhs	1%
12	Jewellery if the sale consideration is received in cash exceeding Rs. 2 lakhs	1%

**Note : Provisions of T.C.S. apply without any threshold limit.**



## Due Date Chart for Payment of TDS / TCS and filing etds returns

Monthly TDS / TCS payment		Quarterly TDS / TCS return		
In case of expenses/ income in respect of which TDS/TCS is applicable, then such TDS/TCS shall be deducted at the time of booking of relevant expenses/receipt or payment whichever is earlier and shall be deposited in Govt. treasury as under :		To file TDS/TCS returns electronically, on quarterly basis, as under :		TDS Certificate in Form No. 16A to be issued on or before due dates as under :
Month of tax deduction @ source	Due Date of Payment	Quarter	Due Date	Due Date
April	7th May	April To June	15th July	15th July
May	7th June			
June	7th July			
July	7th August	July To September	15th October	15th October
August	7th September			
September	7th October			
October	7th November	October To December	15th January	15th January
November	7th December			
December	7th January			
January	7th February	January To March	15th May	15th May
February	7th March			
March	30th April			

Note : i Form 16 (Salary Certificate) is to be issued annually before 31st May of immediate succeeding year.  
ii Form 15-G/15-H received from payee, to be filed within 7 days from the end of the month in which it is received.

## Penalty / Interest / Fees for Non-compliance of TDS / TCS

Sr. No.	Particular	Interest / Penalty / Fees	Rate / Amount	U/s
1	Failure to deduct TDS In Part or Full	Interest	1% for every month / Part of the Month	201 (1A) (i)
2	Delay to pay tax after deduction	Interest	1.5% for every month / Part of the Month	201 (1A) (ii)
3	Failure to Collect TCS In Part or Full	Interest	1% for every month / Part of the Month	206 C (6A)
4	Late payment of o/s demand beyond 30 days	Interest	1.5% for every month / Part of the Month on demand	220 (2)
5	Assessee in Default in respect of non payment of TDS/TCS	Penalty	Penalty Not exceeding tax amount involved	221 (1)
6	Failure to furnish e TDS / eTCS Statements (w.e.f. 01/07/2012)	Fees	Rs. 200 per day but not to exceed amount of tax deducted / Collected for the quarter	234 E
7	Failure to deduct TDS	Penalty	Amount equal to tax to be deducted / short deducted	271 C
8	Failure to collect TCS	Penalty	Amount equal to tax to be collected/short collected	271 H
9	For furnishing incorrect information or failure to furnish eTDS / eTCS Statements for more then one year (w.e.f. 01/07/2012)	Penalty	Rs. 10,000/- to Rs. 1,00,000/-	271CA
10	Failure to furnish eTDS / eTCS Statements	Penalty	Rs. 100 per day (Not exceeding the amt. of TDS / TCS )	272A(2)(C)
11	Failure to furnish eTDS / eTCS Certificates	Penalty	Rs. 100 per day (Not exceeding the amt. of TDS / TCS )	272A(2)(g)
12	Failure to apply for TAN	Penalty	Rs. 10,000/-	272BB(1)
13	Quoting false Tax deduction account number (TAN) in Challan / Statements etc.	Penalty	Rs. 10,000/-	272BB(1A)
13	Failure to deliver declaration Form 15G / 15H on time as per section 197A.	Penalty	Rs. 100 per day (Not exceeding the amt. of TDS )	272A (2) (f)

## IMPORTANT NOTES ON PROVISIONS APPLICABLE TO TAX DEDUCTION AT SOURCE FROM CERTAIN PAYMENTS

### Notes :

- 1) Incometax Rate for Individuals & HUF for the Financial Year 2014-2015 (Asst. Year 2015-2016)

Senior Citizens i.e. age of 60 years but less than 80 years	Very senior Citizens i.e. age of 80 years or more	Other Individuals & HUF	Tax Rate
Rs. 0 - Rs. 3,00,000	Rs. 0 - Rs. 5,00,000/-	Rs. 0 - Rs. 2,50,000	0%
Rs. 3,00,001 to Rs 5,00,000	-----	Rs.2,50,001 to Rs 5,00,000	10% **
Rs. 5,00,001 to Rs 10,00,000	Rs. 5,00,001 to Rs 10,00,000	Rs. 5,00,001 to Rs 10,00,000	20%
Above Rs. 10,00,000	Above Rs. 10,00,000	Above Rs. 10,00,000	30%

Education Cess @ 3% (including Higher Education Cess @ 1%) is to be calculated on Incometax payable. & Surcharge @ 10% on Income exceeding Rs. 1 Cr.

\*\* An Assessee, being an individual resident in India, 10% amount by which the total income exceeds Rs. 2.5 Lac less : Tax credit 10% of taxable income upto a maximum of Rs. 2,000/- (U/s 87A)

- 2) Education cess or Surcharge on Incometax do not apply in case of payment to resident individual / HUF / Firm / AOP / BOI / Domestic company except payment of salary.  
Education cess @ 2% plus Secondary & Higher education cess @ 1% apply in case of payment to non-resident & foreign company
- 3) Effective 01.04.2010, Finance Act 2009 has prescribed a higher rate of 20% of TDS if payee does not furnish valid PAN.  
However, if the prescribed rate is higher than 20%, then such higher rate will be applicable (Sec. 206AA).
- 4) No tax to be deducted on service tax (if any) chargeable. (CBDT Circular 01/2014 dated 13.01.2014)  
Note : Two conditions to be eligible for this circular :  
1) Applicable to resident deductee only; 2) Service Tax shown separately in the invoice.
- 5) W.e.f. 01-04-2015 - Assessment Year 2015-2016 :  
I) In case of resident deductee :  
In case of failure to deduct tax or failure to pay the tax so deducted on or before due date of filing of the return, the disallowance u/s 40(a) (ia) of concerned expenditure shall be restricted to 30% of such expenditure claim. However such disallowance will not apply if the resident payee complies as under :  
i. has disclosed such receipt in return of income  
ii. has furnished return of income  
iii. has paid tax due and  
iv. produces certificate of Chartered Accountant as
- II) In case of non-resident deductee : The disallowance will be 100%
- 6(a) Form no 15G (15H for Senior Citizens) is to be issued by Individuals and HUF, for non deduction of TDS from Interest. Such forms can be issued only when the aggregate income is below taxable limit. Quoting of PAN is mandatory.

6(b) w.e.f. 01-06-2015 no deduction u/s194C is required on payments to a contractor (who owns not more than 10 goods carriage) during the course of business of plying, hiring or leasing goods carriages and who furnishes a declaration alongwith his PAN u/s194C.

Detail of above 6(a) and 6(b) are to be furnished in the TDS return of last quarter of the year

7) Clarification on outsourcing of contracts :

Outsourcing contracts have been clarified to include only those contracts involving manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from such customer. It is further clarified that TDS is not required to be deducted on material amount if it is separately mentioned in the invoice. (Sec.194C (3))

8) Effective November 2012, All Categories of deductors (i.e. Company, Partnership firm, Individual, H.U.F etc) are mandatorily required to issue T.D.S. certificates in form 16A and Part A of Form 16 , generated through TDSCPC system ([www.tdscpc.gov.in](http://www.tdscpc.gov.in)).

9) No Deduction of tax to be made by Individual & HUF who were not liable for audit u/s 44AB in the preceding year except in case of payment of salary, income paid to NRI & amount paid for purchase of land (other than agricultural land) or building or any part of building .

10) w.e.f. 1st June 2015 : In case of interest payment by co-operative banks to its members, the TDS Provision is applicable.

11) Definition of 'time deposits' u/s 194A has been amended to include recurring deposits. (w.e.f. 01/06/2015)

12) If an assessee is holding FDs with different branches of same bank having core banking solutions, then threshold limit of Rs. 10,000/- u/s 194A of the Act, will be applicable to total Interest earned from all the branches. (w.e.f. 01/06/2015)

13) w.e.f. 1st June 2015. On Maturity of Taxable Life insurance policy of Rs. 1,00,000/- or More , recipient who have below taxable income can submit self declaration in the prescribed form No. 15G / 15H to the life insurance company for non deduction of tax.

**Compiled by: CA Rajeev Varaiya, Partner**

## THE COMPANIES (AMENDMENT) ACT, 2015

The Rajya Sabha and Lok Sabha passed the Companies (Amendment) Bill, 2014 in the month of December, 2014. The Companies (Amendment) Bill received the assent of the President on 25<sup>th</sup> May, 2015 and which was published in Official Gazette on 26<sup>th</sup> May, 2015 which. There were some practical difficulties in implementing some of the provisions of the Companies Act, 2013 (Act) particularly relating to loans between holding and subsidiary companies and many others. The Companies (Amendment) Act, 2015 seeks to cater to some of these issues and it also goes a step further in paving the way for ease of doing business in India. The Companies (Amendment) Act, 2015 states that different dates may be appointed for different provisions of this Act.

Some of the key highlights of the Companies (Amendment) Act, 2015 are as follows:

1. There is no requirement of minimum paid up capital for formation of either a private limited company or a public limited company. Earlier in order to incorporate a private limited company a minimum paid up capital of ` 1 lac and for a public limited company a minimum paid up capital of ` 5 lacs was required. This is done away with now.
2. The use of common seal is now optional. Earlier there were certain documents like physical share certificates; bills of exchange etc. where common seal had to be affixed. Now the requirement of affixation of a common seal is optional and not mandatory.

It further says that in case a company does not have a common seal, the authorization of bills of exchange or any other document which were required to be issued under the common seal of the company earlier shall now be authorized by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

3. There is no requirement for obtaining a commencement of business certificate by a company.

4. A penal provision has been introduced in case of default in repayment of deposits which is as follows:

- i. the company shall, be punishable with fine which shall be anywhere between ` 1 crore rupees but which may extend to ` 10 crores rupees in addition to the payment of the amount of deposit or part thereof and the interest due, and

every officer of the company who is in default shall be punishable with imprisonment which may extend to 7 years or with fine which shall be anywhere between ` 25 lakh rupees to ` 2 crore rupees, or with both.

- ii. It further provides that if any officer has knowingly or wilfully contravened the provisions of deposits with the intention to deceive the company or shareholders or depositors or creditors or tax

authorities then he shall be liable for action u/s 447 of the Companies Act, 2013 which provides for imprisonment anywhere between 6 months to 10 years and shall also be penalized for an amount anywhere between the amount involved in the fraud extending to 3 times the amount involved.

5. The copies of special resolution filed with the ROC u/s 117(3)(g), i.e. resolutions u/s 179(3) shall not be available for public inspection u/s 399 of the Companies Act, 2013.

Section 179(3) covers such matters like making calls on unpaid money or borrowing money by a company etc.

6. No company shall declare dividend unless brought forward losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.

This provision was not there in the Companies Act, 2013.

7. Section 124(6) provides that if dividend has not been paid or claimed for 7 consecutive years or more then the shares in respect of such unpaid or unclaimed dividend shall be transferred to Investor Education and Protection Fund.

However if in case any dividend is paid or claimed for any year during the said period of 7 consecutive years then the share shall not be transferred to Investor Education and Protection Fund.

8. The Director's Responsibility Statement u/s 134(3) shall also include details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government.

9. Reporting of frauds by auditor:

Section 143(12) of the Act has been amended to state that if an auditor of a company has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is committed in the company by its officers or employees, the auditor shall report the matter to the Central Government.

However in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases.

The companies, whose auditors have reported fraud to the audit committee or the Board but not reported to the Central Government then the Board's report, shall disclose the details about such frauds.

The Act has not specified any amount for this purpose. The Ministry of Corporate Affairs might come up with a notification or Rules prescribing the limit of the amount for reporting purpose.

10. Audit committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.

11. Section 185 of the Act (Loan to Directors) shall not apply to the following:

- i. any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or

ii. any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company:

However the loans made as above are utilised by the subsidiary company for its principal business activities.

Earlier the above provisions included in Rule 10 of the Companies (Meetings of Board and its Powers) Rules, 2014.

12. Requirement of passing a special resolution for related party transactions u/s 188 (1) in case of company meeting certain conditions has been done away with. Henceforth any related party transactions can be entered into by passing an ordinary resolution.

Further the requirement of passing of an ordinary resolution between holding company and its wholly owned subsidiary company is not required if the accounts of such wholly owned subsidiary company are consolidated with the holding company and placed before the shareholders at general meeting for their approval.

13. There has been some changes in section 212(6) of the Act which has now provides that any offence which attracts punishment u/s 447 shall be cognizable and no person accused of any offence shall be released on bail or on his own bond except under certain circumstances.

Prior to the amendment, section 212(6) provided a reference of various sections wherein the offence u/s 447 was prescribed. This has been removed now.

14. Earlier Section 248(1)(b) provided for the power of Registrar to remove name of a company from the register of companies if the subscribers to memorandum did not pay the subscription money within 180 days from the date of incorporation of a company. This is now done away with. Hence forth the Registrar will have no power to remove the name of a company for non-repayment of subscription money within 180 days from the date of incorporation.

**Compiled by: CA Chandra Shekhar Sah**

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