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How to get a Certificate for Lower Deduction Tax for Income accruing/ arising in India

INCOME TAX DEPARTMENT

Income Tax Department

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Q1. In case of non-residents, taxes are withheld, i.e. deducted at source from the payment in relation to income accruing and arising in India. Is there any provision in the Income Tax Act, 1961 for obtaining certificate for lower deduction of tax (LDC) at source?

Ans. Yes, in appropriate cases, tax may be deducted at a lower rate if authorised by the Income Tax Department, on application made by the payer or payee as per procedure.

Q2. In what circumstances, a certificate for lower rate may be applied for?

Ans. If the non-resident payee considers thatTDS/withholding of tax at fixed rate (at the rate fixed by the Finance Act for the year or as per the Double Taxation Avoidance Agreement, DTAA) is far greater than his actual tax liability for the year, a lower rate deduction certificate may be applied for.

- Normally, for certain payments like payment of interest, royalty or fee for technical service the rates are fixed in the Finance Act as well as in the treaty (DTAA) and the payer may remit the money to the non-resident after obtaining a Chartered Accountant's Certificate in form 15CB.
- In other cases, there may be a question of determining the income component of the sum to be remitted. A few illustrations are given below :
  - If a non-resident sells a house property and earns capital gain as a result, how the payer will determine the income component of the sale value? He has to deduct tax at the highest marginal rate or @ 20% (rate for long term capital gain) on the whole transaction amount.
  - A non -resident may earn house property income India. No specific rate for TDS has been fixed in the Finance Act or the treaty for deduction of tax at source from such income of a non-resident. The tenant has to determine the tax liability of the owner as per the provisions of Income Tax Act, 1961 without calculating various deductions which may be available to the NRI. The Assessing Officer while issuing a lower deduction certificate (LDC) u/s 195(2)/197 may take in to account all those deductions and give LDC accordingly.
  - Similarly, an Indian Company or any other entity may intend to remit some sum a portion of which is taxable and another portion in his opinion, not taxable, say, in the nature of reimbursement

    In all such cases, it is advisable to obtain a lower tax withholding certificate.

Q3. Who can apply for obtaining a LDC?

Ans. Either the payer or the payee may approach the department for obtaining a LDC from the department.

- If the payer intends to obtain an authority for withholding tax at a lower rate

  The payer should make an application, under section 195(2) of the Income Tax Act, for determination of a lower withholding tax to the Officer looking after TDS/Withholding Tax matters (ITO/ACIT/DCIT)* in the jurisdictional Commissionerate of International Taxation .

- If the payee intends to obtain an authority for lower nil tax withholding :

  The non-resident payee may also approach the jurisdictional Assessing Officer (not the TDS officer) in the Commissionerate of International Taxation by applying in Form No 13 under section section197 (1) of the Income Tax Act.

- If the payee intends to obtain an authority for nil tax withholding:

  This facility is available only for certain types of assesses.

  A non-resident banking company may approach for nil deduction of tax in appropriate cases by filing application under section 195(3) of the Income Tax Act in Form 15C before its jurisdictional Assessing Officer in the International Taxation Commissionerate.

  Any other non-resident entity doing business in India through a fixed place of business, may also approach for nil deduction in appropriate cases by making application, under the same section, in Form15D before its jurisdictional Assessing Officer in the International Taxation Commissionerate.

Q4. Sometimes the non-resident payees impose a condition that the payer should take care of all tax obligations. How to deal with such situation?

Ans. The payment to be made is to be grossed up under section 195A of the Income Tax Act, 1961 and payer has to deduct tax on the said grossed up amount.

Q5. What is the first step required to be taken by the deductor before filing applications u/s 195(2) for (LDC)?

Ans. The deductor first has to obtain a Tax Deduction and Collection Account Number (TAN).

Q6. What step should the payee take, if he wants to move an application under section 197(1) or 195(3) for LDC?

Ans. (i) He should ensure that the deductor has obtained TAN.

(ii) He should see that his PAN is with the jurisdictional Commissionerate of International Taxation. Only the International Commissionerate has officers dedicated to attend to such certificates online.

(iii) If the PAN is elsewhere, he should move an application for migration of the PAN to appropriate jurisdictional officer.

Q7. What are the documents/details that should accompany an application for LDC?

Ans. It is not possible to give an exhaustive list of the documents and details. In addition to the forms / documents mentioned in question no 3 above, the following documents have to be filed in all cases:

- Power of attorney of the non-resident, if any, where payee is the applicant.
- Copy of passport (for ascertaining residential status, if the applicant is individual and not a regular income tax assessee)

Illustrations of certain other documents/ information that are generally required are

In case of sale of an immovable property

- Deed of purchase/ valuation in case of construction / fair market value as on 1.4.2001 (in case the property is constructed / purchased by the seller prior to that date or the property has been acquired by gift/ inheritance from the previous owner who acquired the title before 1.4.2001)
- Copy of sale agreement and the stamp duty value of the property
- A calculation sheet from the assessee indicating the required percentage (%) of tax sought to be deducted

In case of rental income

- Copy of rent/lease and license agreement/lease agreement

In respect of any other income,

- Copy of agreement with the non-resident and copy of invoices, if any. If any benefit of DTAA is requested for, Tax Residency Certificate to be given.

Q8. How the applications are dealt in the department?

The application has to be filed online. However, Non-Resident Indians, who are not able to register themselves on TRACES, have been allowed to file manual application in Form No 13 till 31.03.2019. Once an application is received, the LDCs are also issued online.

Q 9. Within how many days the applications are disposed off?

Ans. Normally such applications are disposed within thirty (30) days. If an application by the payer under section 195(2) is rejected by Assessing Officer then it has to be in the form of a speaking order. Similarly, determination u/s 197(1) for lower tax deduction or allowance of nil deduction also may be refused, if the situation so warrants.

Q10. How long a certificate for lower tax withholding u/s 197 remains valid?

Ans. A Low Deduction Certificate remains valid for the specific transaction and/or till the end of the financial year, if not withdrawn for a specific reason after intimating through a written communication.

Q11. If the application for lower tax withholding is rejected, is there any remedy available?

Ans. Determination under section 197(1) or 195(3) is not an order and therefore, it is not appealable before the Commissioner (Appeals). They are also not subject to revision by the Commissioner (International Taxation).

· However, when an application under section 195(2) is rejected by the Assessing Officer (TDS), International Taxation, the payer, if he denies any such tax deduction liability, may appeal before the Commissioner (Appeals) under section 248 of the Income Tax Act, 1961. However, tax has to be deducted at source and paid to the Government Account before filing such appeal.

Q12. What is to be done by the payer, once tax has been deducted?

Ans. The tax deducted at source has to be deposited in the Government Account. It can be done online or by visiting a bank branch. The relevant challan no is ITNS 281.

- He has also to file a statement in Form No 27Q, reporting such tax deduction.
- The deductor is to deposit the tax through challan no ITNS 281 and furnish a statement in form no 27Q online in the TRACES portal of the Income Tax Department.

Q13. What are the consequences if the deductor does not deposit the tax to the government account or does not file the 27Q statement?

Ans. Mandatory late filing fee u/s 234E of Rs.200/- per day as long as the default continues, along with interest under section 220(2) of the Income Tax Act, 1961

There is no appellate remedy against the charging of late filing fee.

Prosecution may also be launched by the department for non-deposit of TDS withholding tax after deducting the same.

Q14. How the sale proceeds can be repatriated by the buyer of property or NRI abroad?

Ans. The person responsible for sending money abroad has to fill up Form No 15CA online in Part A/B/C of the form.

Part D may be filled up by an individual at the time of remittance in case the amount being repatriated is not taxable in India. However, no reporting is required for certain remittances as laid down in Rule 37BB(3) of Income Tax Rules.

Q15. Is the non-resident required to file return of income if tax has already been deducted at a lower rate?

Ans. Determination of lower tax rate is done on a tentative basis. The person in whose case tax has been deducted and seeks to claim refund then he may file a return of income giving the particulars of his income and taxes deposited, deducted at source etc. under section 139 of the Income Tax Act, 1961.

Otherwise, the tax withheld becomes the final charge.

DIRECTORATE OF INCOME TAX
(Public Relations, Publications & Publicity)
6th Floor, Mayur Bhawan, New Delhi

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