



# TAX FLASH NEWS

## CBDT amends rules relating to furnishing of information in respect of payments made to the non-resident

### Background

Rule 37BB of the Income-tax Rules, 1962 (the Rules) prescribes the information required to be furnished by a person while making payment to a non-resident. In August 2013, the Central Board of Direct Taxes (CBDT) amended<sup>1</sup> Rule 37BB of the Rules to broaden the requirement of collecting information and reporting requirements for remittances to be made outside India. It also prescribes to provide information in cases where amounts are claimed as not chargeable to tax under the Income-tax Act, 1961 (the Act).

On 2 September 2013<sup>2</sup>, the CBDT substituted the earlier notification to revise the scope and format of reporting of information under Rule 37BB of the Rules. It states that the person responsible for making any payment, including any interest or salary or any other sum chargeable to tax under the Act, shall be required to furnish details in the prescribed forms. However, the information with respect to the payment which is not chargeable to tax has been done away with. The amended rule came into effect from 10 October 2013.

Section 195 of the Act has been amended by the Finance Act, 2015 to provide that 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<sup>3</sup>.

<sup>1</sup> Notification No. 58 of 2013, dated 5 August 2013

<sup>2</sup> Notification No. 67 of 2013, dated 2 September 2013

<sup>3</sup> Came into effect from 1 June 2015

### The CBDT Notification

Recently, the CBDT has issued a Press Release and a Notification<sup>4</sup> to amend Rule 37BB of the Rules for the furnishing of information in respect of payments made to the non-resident. The amendments to the Rules are summarised as follows:

- The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum **chargeable** under the provisions of the Act, shall furnish the following, namely:
  - The information in Part A of Form No. 15CA shall be furnished if the amount of payment or the aggregate of such payment made during the financial year does not exceed INR 5,00,000.
  - For payments other than the payments referred above, the information shall be furnished:
    - in Part B of Form No.15CA after obtaining:
      - i) a certificate from the Assessing Officer (AO) under Section 197; or
      - ii) order from the AO under sub-section (2) or sub-section (3) of Section 195;
    - in Part C of Form No.15CA after obtaining a CA certificate in Form No. 15CB<sup>5</sup>.

<sup>4</sup> No. G.S.R. 978(E), dated 16 September 2015

<sup>5</sup> Certificate from an accountant as defined in the Explanation below sub-section (2) of Section 288

CA certificate in Form No. 15CB will be required to be furnished only in respect of such payments made to non-residents which are chargeable to tax and the amount of payment during the year exceeds INR 5,00,000.

- The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum which is **not chargeable** under the Act, shall furnish information in Part D of Form 15CA.
- Notwithstanding anything contained in the above point, no information is required to be furnished for any sum which is not chargeable under the provisions of the Act, if:
  - the remittance is made by an individual and it does not require prior approval of Reserve Bank of India (RBI) as per the provisions of Section 5 of the Foreign Exchange Management Act, 1999 (42 of 1999) read with Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000<sup>6</sup>; or
  - the remittance is of the nature prescribed in the specified list.
- The list of payments of specified nature mentioned in Rule 37BB of the Rules, which do not require submission of Forms 15CA and 15CB, has been expanded from 28 to 33 to include advance payment against imports, payment towards imports-settlement of invoice, intermediary trade, imports below INR 5,00,000 (for use by ECD offices) and imports by diplomatic missions.
- Currently, the information in Form 15CA has to be submitted electronically to the website designated by the tax department. The amended Rule 37BB of the Rules prescribes to continue submission of Form 15CA electronically and introduces the optional usage of the digital signature in accordance with procedure, formats and standards to be provided by the Principal Director General of Income-tax (Systems) [PDGI (Systems)].
- The certificate in Form 15CB shall be furnished and verified electronically in accordance with the procedures, formats and standards to be provided by the PDGI (Systems).

<sup>6</sup> No Form No. 15CA and 15CB will be required to be furnished by an individual for a remittance which does not require RBI approval under its Liberalised Remittance Scheme (LRS)

- The authorised dealer shall furnish a quarterly statement for each quarter of the financial year in Form 15CC to the PDGI (Systems) or the person authorised by the PDGI (Systems) electronically under digital signature within fifteen days from the end of the quarter of the financial year to which such statement relates in accordance with the procedures, formats and standards to be prescribed by the PDGI (Systems).
- The amended Rules will come into effect from 1 April 2016.

## Our comments

The CBDT Press Release/Notification attempt to strike a balance between reducing the compliance burden and collection of information in relation to the payments made to non-residents. Several representations were made to include payments like import settlement, etc. in the specified list for which submission of Forms 15CA and 15CB is not required. The CBDT Press Release/Notification expand the specified list to include five more categories of such payments.

The CA certificate in Form No. 15CB will be required to be furnished only in respect of such payments made to non-residents, which are chargeable to tax, and the amount of payment during the year exceeds INR 5,00,000. Further, Form 15CA and 15CB will not be required to be furnished by an individual for remittance which does not require RBI approval under LRS.



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