



15CB Certificates - Practical Issues

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October 2019





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OVERVIEW



OVERVIEW

- Requirement for Form 15CA / 15CB arises from section 195(6) of the Act which reads as under -

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.”

- INCOME TAX RULES:

Rule 37BB defines the manner to furnish information in form 15CB and making declaration in form 15CA .

- Why Form 15CA:

It is a tool for collecting data about foreign remittances. It contains all information in respect of payments made to Non-Residents.

- Why Form 15CB:

- It is a Channel of obtaining tax clearance apart from certificate from AO.
- There is no condition to obtain such certificate when the remittance is not chargeable to tax. Form 15CB is a kind of Tax Determination Certificate where the Issuer CA examines the remittance having regard to chargeability provisions of Income Tax Act along with provisions of Double Tax Avoidance Agreements(DTAA) with the Recipient’s Residence Country.

OVERVIEW

Rule 37BB of Income tax Rules

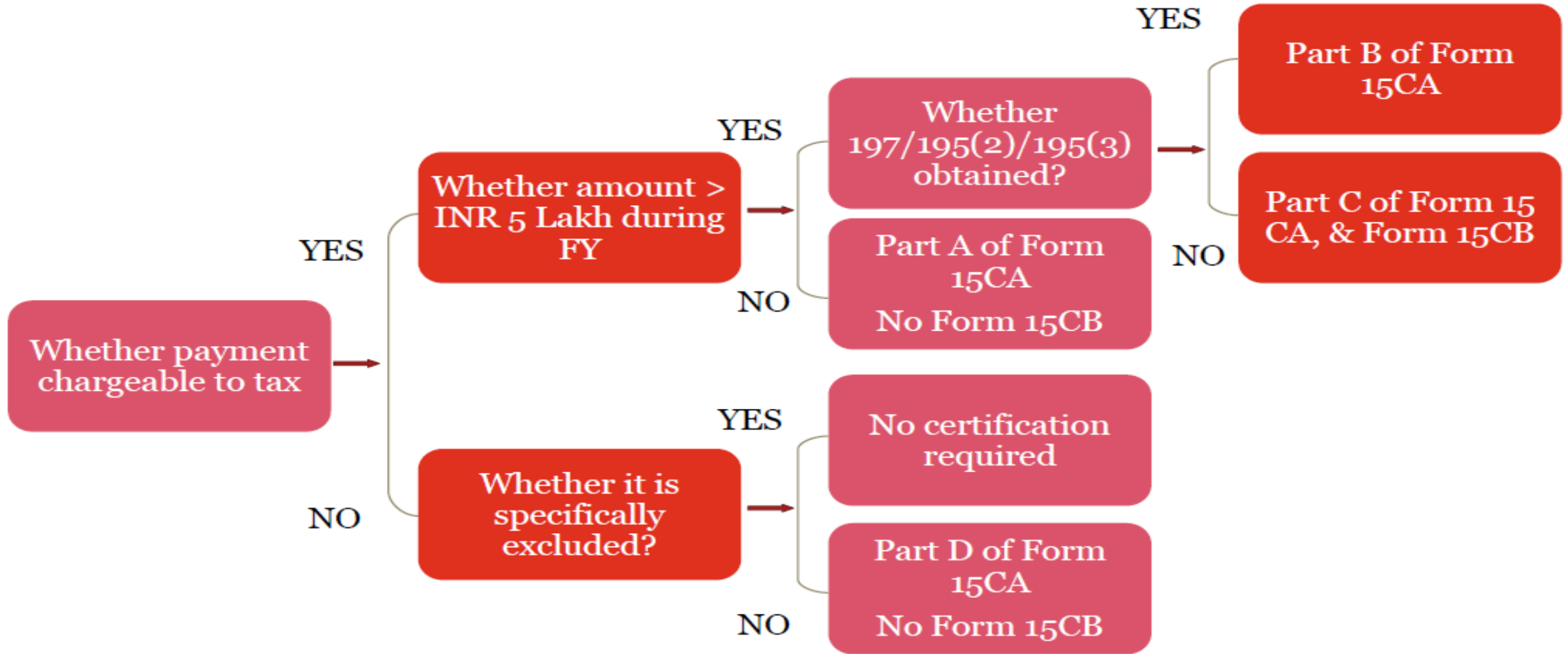
- Form 15CA - Information to be furnished by the Remitter electronically.
- New Form No. 15CA split into 4 parts
 - Part A - Payments chargeable to tax and \leq INR 5 Lakh or
 - Part B - Payments chargeable to tax, $>$ INR 5 Lakh and order/certificate u/s 195(2)/(3)/ 197 obtained or
 - Part C - Payments chargeable to tax, $>$ INR 5 Lakh and Form No 15CB is obtained or
 - Part D - Applicable where the payments are not chargeable to tax
- Form 15CB - Prescribes format of Certificate to be obtained from a CA by Remitter
 - Applicability- Only in respect of transactions reported in Part C of Form 15CA.
 - Form 15CB to be furnished electronically
- Form 15CC - Furnish information of remittances made by AD (Bankers) quarterly.

Note: A list of 33 specified transactions and remittance by individual under Liberalised Remittance Scheme, excluded from compliance under Rule 37BB(3)

Procedure for foreign remittances

- Make classification of transaction (Business income, Royalty, fees for technical services, etc.)
- Verify the factual and Basic documents. For e.g. invoice, contracts, legal status, PAN in India.
- Check if the payment is covered under the Domestic Law
- Check taxability as per DTAA (No PE, beneficial Owner, obtain TRC, Form 10F, Protocol to the tax treaty and commentaries etc)
- Check if order or certificate for “NIL” or “Lower” rate is available under section 195(2)/195(3)/197
- Check if falling within list of 33 excluded transactions e.g. imports of goods, loans given, investments made abroad, business travel, etc.
- Remitter to obtain certificate of a CA in Form 15CB electronically, if required
- Remitter to electronically upload the remittance details in Form 15CA (Part A/B/C/D)

Summary



List of 33 specified transactions exempt from such compliance burden

Sl. 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	S0101	Advance payment against imports
8	S0102	Payment towards imports - settlement of invoice
9	S0103	Imports by diplomatic missions
10	S0104	Intermediary trade
11	S0190	Imports below Rs.5,00,000 - (For use by ECD offices)
12	S0202	Payment for operating expenses of Indian shipping companies operating abroad
13	S0208	Operating expenses of Indian Airlines companies operating abroad
14	S0212	Booking of passages abroad - Airlines companies
15	S0301	Remittance towards business travel
16	S0302	Travel under basic travel quota (BTQ)

List of 33 specified transactions exempt from such compliance burden

Sl. No.	Purpose code as per RBI	Nature of payment
17	S0303	Travel for pilgrimage
18	S0304	Travel for medical treatment
19	S0305	Travel for education (including fees, hostel expenses etc.)
20	S0401	Postal services
21	S0501	Construction of projects abroad by Indian companies including import of goods at project site
22	S0602	Freight insurance - relating to import and export of goods
23	S1011	Payments for maintenance of offices abroad
24	S1201	Maintenance of Indian embassies abroad
25	S1202	Remittances by foreign embassies in India
26	S1301	Remittance by non-residents towards family maintenance and savings
27	S1302	Remittance towards personal gifts and donations
28	S1303	Remittance towards donations to religious and charitable institutions abroad
29	S1304	Remittance towards grants and donations to other Governments and charitable institutions established by the Governments
30	S1305	Contributions or donations by the Government to international institutions
31	S1306	Remittance towards payment or refund of taxes
32	S1501	Refunds or rebates or reduction in invoice value on account of exports
33	S1503	Payments by residents for international bidding.



**15CB CERTIFICATE -
PRACTICAL CASE STUDIES**



CASE STUDY 1 - TRANSFER OF SHARES

- A Singapore company had acquired shares between March 2019 to June 2019 in an Indian company.
- Now on Nov 1, 2019, it would sell part of such shares to another non-resident (Cayman entity) for the same price shares were acquired. In other words, the same shall be classified as “short term” and taxable as per domestic law
- are taking an assumption that treaty benefit is unavailable. Accordingly, the same is taxable as per Domestic Tax law. As per the capital gain computation, the resultant figure will not result in any tax payable situation in India.

Query -

- Whether it is advisable to file 15CA/Form 15CB in view of provisions of section 195 read with Rule 37BB, even if the transaction is NOT taxable ?
- If yes, compliance to be done under Part C of 15CA, or alternatively under Part D of 15CA ?

CASE STUDY 1 - TRANSFER OF SHARES

- Section 195(6) read with Rule 37BB requires reporting of any payment made to a NR irrespective of its chargeability to tax in India.
- While Part C of the form 15CA is a full-fledged format which requires elaborate details like provisions of the Act/DTAA under which payment is taxable, Part D applies where payments are not chargeable under the Act. Further Part D is a simple self-declaration format which requires bare minimum details like country to which remittance is made, amount and nature of remittance etc. There is no CA certification required.
- Technically compliance is required even if payments are not chargeable to tax in India.
- While in the current case, it is arguable that since there is no income taxable in India, as there is no capital gains tax liability in India, hence Part D should be applicable. However, considering the magnitude of transactions, it is advisable to comply with the reporting obligation under Part C of Form 15CA to avoid any litigation in future. Detailed reporting in Part C will thus be a better compliance for the taxpayer.
- Furnishing of inaccurate information or non-furnishing of Form 15CA can trigger penalty of sum of INR 1 lakh rupees under section 271-I.

CASE STUDY 2 - PAYMENT TO FOREIGN BANK BRANCH OF AN INDIAN BANK

- I CO imported goods from an entity in Hongkong
- I CO obtained funding (i.e. trade/buyer's credit against imports) from "ABC Bank India, Hong Kong Branch ('ABC HK')
- In order to repay this credit, I Co has availed another buyers credit from a Singapore Bank
- The proceeds of buyer's credit availed from Singapore Bank, credited to I Co's Indian Bank will be utilised to repay the buyer's credit (includes Principal, Interest and Bank charges) availed from ABC HK

Query -

- Whether 15CA/CB compliance is required for the payment made by I Co to ABC HK ?

CASE STUDY 2 - PAYMENT TO FOREIGN BANK BRANCH OF AN INDIAN BANK

- Where ABC HK is regarded to be a branch of ABC India, payment made to ABC HK will be treated at par with payments being made to an Indian Bank (resident in India)
- This is for the reason that a foreign branch of an Indian Bank is regarded to be an extension of the Indian Bank itself and not a separate foreign entity
- Once payment is made to a resident, no compliance under section 195(6) is required.

CASE STUDY 3 - CONSIDERATION IN KIND

- M Ltd., Mauritius holds 100% shareholding in XYZ Pvt. Ltd. (India) and PQR Pvt. Ltd. (India)
- Step 1 - ABC Pte Ltd. (Singapore) will acquire XYZ Pvt. Ltd. (India) and PQR Pvt. Ltd. (India) from its group company (M Ltd., Mauritius) on a fair value basis in cash.
- Step 2 - ABC Pte. Ltd. (Singapore) will then transfer its shareholding in XYZ Pvt. Ltd. (India) and PQR Pvt. Ltd. (India) to its subsidiary in India (I Co Pvt. Ltd.) in consideration of the shares of I Co Pvt. Ltd. i.e a swap of shares

Query -

- 1. Whether the transfer of shares from Non-resident (M Ltd., Mauritius) to another Non-resident (ABC Pte. Ltd.) which is not taxable as per the provisions of India-Mauritius treaty would require compliances in Form 15CA and Form 15CB ?
- 2. Whether the transfer of shares, wherein consideration is discharged by issue of shares requires furnishing of information under Section 195(6) read with Rule 37BB (note that the transaction is also not taxable in India as per the provisions of India-Singapore treaty) ?

CASE STUDY 3 - CONSIDERATION IN KIND

- On the basis of Section 195 and 37BB the following can be inferred
 - The provisions of Section 195 are wide enough to cover the transaction where consideration is discharged by way of issuance of shares (section uses the words - *payment thereof in cash or by the issue of a cheque or draft or by any other mode*)
 - Where the transaction is not taxable in India, the self-declaration is required to be furnished in Part D of form 15CA, electronically
 - Resident payer may need to comply with requirements of Rule 37BB r.w. Form 15CA/CB even though there is no actual remittance but the payment is in kind (in this case share swap).
 - This is irrespective of its chargeability to tax.

CASE STUDY 3 - CONSIDERATION IN KIND

- Supreme Court ruling in the case **Kanchanjanga Sea Foods** (265 ITR 644) held that WHT obligation under section 195 is triggered even in a case where payment is made in kind.
- It may be advisable to comply with under part D of the New Rule 37BB even in case of barter transaction like share swap with a NR
- It is possible that ICo Pvt. Ltd may face practical difficulties if the e-filing system does not recognise payment in kind and/or payment not involving foreign remittance from India.
- In such circumstances, a taxpayer cannot be expected to do what is not possible as per the system in place.
- However, to demonstrate taxpayer's sincerity and bonafides, it is suggested that the payer should retain the evidence of having attempted to upload Form No. 15CA and send the physical copy of Form No. 15CA (as also Form 15CB, if payer decides to report in Part C with CA certificate) to the Tax Authority as physical record with proper explanation. This would be necessary considering that default in section 195(6) compliance attracts a penalty under section 271-I of INR 1 lakh.

CASE STUDY 4 - DEFERRED CONSIDERATION

- I Co. is in the process of acquiring the shares of Target Co.
- I Co. is under an obligation to pay the purchase consideration to a NR Promoter to whom the consideration is paid in 2 parts i.e. Rs. 100 as upfront fee (remitted now) and Rs. 20 as deferred consideration (to be remitted after 12 months).
- The cost of acquisition is 'NIL' and the entire INR 120 is capital gains subject to tax @ 10%.
- I Co has deducted entire tax of 12 and is planning to remit 88 now and remaining 20 at later date.

Query -

- Best possible way of disclosure in Form No. 15CB to fairly certify the remittance under consideration i.e. 88 ?

CASE STUDY 4 - DEFERRED CONSIDERATION

- From an accounting standpoint, I Co has taken a position to accrue the entire consideration including deferred consideration in its books of accounts at closing (ie INR 120 would be accrued in its books at closing). As a result of this position, I Co is required to withhold taxes on the deferred consideration as well at time of accrual.
- I Co and the sellers have agreed that taxes payable on the entire consideration (including deferred consideration) would be withheld upfront at the time of payment of initial consideration and the remaining consideration would only be remitted to the sellers.
- Reporting requirement under section 195(6) arises at the time of payment, even if accrual of entire payment is done on an earlier date.

CASE STUDY 4 - DEFERRED CONSIDERATION

➤ One may consider the following disclosure in clauses of Form 15CB:

Column No.	Particulars (as per Form 15CB)	On remittance of Upfront Fee of Rs. 100	On remittance of deferred consideration of Rs. 20
B2.	Amount Payable	Rs.100	Rs.20
B8 (b)	Amount of income chargeable to tax	Rs.120	120
B8 (c)	Tax Liability	Rs.12	12
B8 (d)	Basis of determining taxable income and tax liability (To give the required remarks)	<ul style="list-style-type: none"> Amount payable as given in Col. B2. denotes the amount payable by I Co. as on the *date of remittance of upfront fee* While the total income chargeable / accrued as on the date (as per Col B8 (b)) is Rs. 120, an amount of Rs. 20 shall be remitted only in future and therefore, the company has deducted tax on the entire Rs. 120 and remitted the same (i.e. $120 * 10\% = \text{Rs. } 12$ (Col B8 (c)) 	<ul style="list-style-type: none"> Amount payable as given in Col. B2. denotes the amount payable by I Co. as on the *date of remittance of deferred consideration* While the total income chargeable accrued as on the date (as per Col B8 (b)) is Rs. 120, an amount of Rs. 100 (less TDS) was already remitted which was certified vide Form No. 15CB date _____ and the tax on the entire Rs. 120/- was appropriately deducted at that time. Therefore, the company has shown amount of TDS as Nil in Col. B10.
B10.	Amount of TDS	12	Nil
B12.	Actual amount of remittance after TDS	88	20

CASE STUDY 5 - TRANSFER OF FUNDS BY AN NR FROM INDIAN BANK A/C TO HIS SINGAPORE BANK A/C

- Mr. A is employed with ABC India Pvt. Ltd. (ABC). Mr. A is being sent on secondment to Singapore for 3 years by ABC to work with ABC Singapore.
- While Mr. A is on assignment to Singapore, he receives part salary in India and part in Singapore.
- Mr. A has received annual bonus along with salary in India.
 - Case A: The salary and bonus is received in India and hence, taxable in India. Tax on this bonus and salary is duly deducted and deposited with the Indian Revenue Authorities.
 - Case B: The salary and bonus is received in India and hence, as per the domestic tax laws, taxable in India, However, the said income is eligible for exemption under the tax treaty (it has already been evaluated that Mr. A is eligible for treaty relief analysis). Tax on this bonus and salary is deducted from the assignee as hypothetical tax but not deposited with the Indian Revenue Authorities as ABC is claiming tax treaty relief at withholding stage itself for Mr. A
- In the year he received the payment, he qualified as a Non Resident of India as per the Income-tax Act, 1961
- He wants to remit the said amount to Singapore from his Indian bank account to his Singapore bank account for his family maintenance (approx. INR 16 lakh)

CASE STUDY 5 - TRANSFER OF FUNDS BY AN NR FROM INDIAN BANK A/C TO HIS SINGAPORE BANK A/C

Query -

- Whether any certification in the form of Form 15CA / Form 15CB is required to be furnished for such remittance from Mr. A's Indian bank account to Mr. A's Singapore bank account ?
- In case yes, which Form is required to be furnished (whether both Form 15CB and Form 15CA or only Form 15CA)? Further, which part of the Form 15CB is applicable (Part A/ Part B/ Part C / Part D) ?

CASE STUDY 5 - TRANSFER OF FUNDS BY AN NR FROM INDIAN BANK A/C TO HIS SINGAPORE BANK A/C

- Mr. A (NR) wants to remit funds to Singapore from his Indian bank account to his Singapore bank account for family maintenance purposes.
- Remittance from one account to another of the same person is a ‘payment to self’ which is outside the scope of withholding under the Act.
- On similar lines, compliance under section 195(6) (read with Rule 37BB) is required in respect of payments made by any person to a non-resident (NR) i.e. when two persons are involved.
- Language of section 195(6) r.w Rule 37BB which reads as follows: “*The person responsible for paying to a non-resident, not being a company, or to a foreign company.....*” supports that the compliance is arguably attracted when payment is made by one person to another. Consequently, it is not attracted when there is remittance from one account of individual to another account outside India of the same individual.
- Therefore, considering specific language of the provision, the payments under both the cases are not covered with the ambit of reporting in Form 15CA/B under Rule 37BB.
- However, there may arise some practical challenges since banks may nevertheless insist on compliance.

CASE STUDY 6 - CAPITAL REDUCTION

- Z Co is an Indian private company.
- A Co and B Co, both non-residents, holds shares of Z Co in the ratio of 99.99% and 0.01% respectively.
- Z Co is in the process of undertaking capital reduction for repatriating surplus cash to its shareholders wherein shares of A Co and B Co will be cancelled on proportionate basis.
- In the absence of accumulated profits in Z Co, there is no DDT liability. Further, due to higher cost base (as compared to current fair value of Z Co), A Co and B Co shall suffer significant capital losses.
- Since there is no capital gains in the hands of A Co and B Co, Z Co will not be liable to withhold any tax in India (under section 195) on repatriation of surplus cash.

Query -

- Given that A Co and B Co suffer capital loss in India pursuant to reduction of its shares held in Z Co, whether Z Co is required to file Part C (and obtain certificate 15CB as well) or Part D (and no requirement to obtain certificate 15CB) ?

CASE STUDY 6 - CAPITAL REDUCTION

- Assumed that on the capital reduction transaction there shall be no implications under section 2(22)(d), since there are no accumulated profits and the capital gains computation as per the Act, results in a capital loss.
- The issue to be considered is whether Z Co is required to File Part C/ Part D of Form 15CA.
- Section 195(6) r.w. Rule 37BB requires reporting of any payment made to a NR irrespective of its chargeability to tax in India. Thus reporting in Form 15CA is triggered even if there is no tax liability arising for the NR on the impugned transaction.
- While Part C of Form 15CA is a full-fledged format which requires elaborate details like provisions of the Act/DTAA under which payment is taxable as also CA certificate in Form 15CB, Part D applies where payments are not chargeable under the Act. Further Part D is a simple self-declaration format which requires bare minimum details like country to which remittance is made, amount and nature of remittance etc. There is no CA certification required.
- Thus, technically compliance is required even if payments are not chargeable to tax in India. While in the current case, it could be argued that since the capital gains computation results in a loss, there is no tax liability in India, hence Part D should be applicable.

CASE STUDY 7 - MISCELLANEOUS

Whether Form 15CA/CB will be required on sale of foreign currency, issuance of travel currency card or traveller's cheque ?

- Said question is relevant when such instruments are issued by the Bank to customers who are NR for tax purposes but resident for FEMA purposes. If these instruments are issued to customers who are Resident for both tax and FEMA purposes, section 195(6) does not apply and there is no requirement of reporting in Form 15CA/CB.
- If the issue of above referred instruments are covered by Liberalised Remittance Scheme for Residents, there is no reporting requirement in Form 15CA/CB as per Rule 37BB(3)(i).
- Similarly, if the issue of above referred instruments are covered by Sr. No. 15 to 19 (covering remittances for business travel, basic travel quota, pilgrimage, medical treatment, education) of List specified in Rule 37BB(3)(ii), there is no reporting requirement in Form 15CA/CB.

CASE STUDY 7 - MISCELLANEOUS

While filling Form no. 15CA Part A, Part B and Part C, limit of Rs. 5,00,000 needs to be computed. Whether the 33 exempted payments and the remittances made by individual where prior approval of RBI is not required as per Section 5 of FEMA, 1999 need to be considered while computing the limit of Rs. 5,00,000 ?

- Rule 37BB(1) deals with payments chargeable to tax. Rule 37BB(2)/(3) deal with payments which are not chargeable to tax.
- The limit of Rs. 5 lakhs is provided in Rule 37BB(1) which deal with payments chargeable to tax. Rule 37BB(i) provides that where such payments do not exceed Rs. 5 lakhs in a financial year, reporting may be made in Part A of Form 15CA. Else, the payments are required to be reported either in Part B (supported by AO's NIL/lower TDS certificate) or Part C (supported by CA certificate in Form 15CB).
- Thus, the limit of Rs. 5 lakhs applies only to payments chargeable to tax to be reported in Part A/B/C of Form 15CA.
- Headings of Part A/B/C clarify that the same is in relation with remittance which is taxable under the Act and limit of INR 5,00,000 is in relation with “the remittance” or aggregate of “such remittances”. Refer extract of Part A below (similar wording in part B/C also) -

CASE STUDY 7 - MISCELLANEOUS

- *“Part A (To be filled up if the remittance is chargeable to tax under the provisions of the Income-tax Act, 1961 and the remittance or the aggregate of such remittances, as the case may be, does not exceed five lakh rupees during the financial year)”*
- The reference to payments under Section 5 of FEMA 1999 not requiring RBI approval (i.e Liberalised Remittance Scheme for residents) and 33 exempted payments appear in Rule 37BB(3) which deal with payments which are not chargeable to tax. The threshold limit of Rs. 5 lakhs is not applicable to such payments.
- Hence, these payments are not required to be considered for computing threshold limit of Rs. 5 lakhs.

CASE STUDY 7 - MISCELLANEOUS

Applicability of Rule 37BB on payment made by the customer through Debit/Credit card in Foreign currency?

- If the payments made by customer through Debit/Credit card in foreign currency is covered by Liberalised Remittance Scheme, there is no reporting requirement as per Rule 37BB(3)(i).
- Reporting requirement will apply only if (a) the payments are chargeable to tax in India or (b) the payments are not covered by Liberalised Remittance Scheme and Specified list of 33 exempted payments. In such case, mode of payment whether by way of bank remittance or through International Credit/Debit card may not be relevant.

CASE STUDY 7 - MISCELLANEOUS

Whether the Bank needs to furnish the statement in "Form 15CC' for all outward remittances whether chargeable to tax or not including 33 exempt payments and exempt current account transactions as per FEMA ?

- Sub-rule (7) to new Rule 37BB requires an authorised dealer to furnish a quarterly statement electronically in the prescribed format. While Rule 37BB(7) is silent on subject matter of particulars to be furnished in this form, Form 15CC makes it clear that the reporting is in respect of 'remittances' made during relevant quarter. The following information is required to be furnished.

Sl no.	Name of the remitter	PAN of the remitter	Name of the remittee	PAN of the remittee, if available	Amount of remittance	Date of remittance	Country to which remittance is made	Purpose code as per RBI

CASE STUDY 7 - MISCELLANEOUS

- From a bare reading of Rule 37BB and above referred format, following points indicate that exempt payments may need to be reported by the Bank -
 - Sub-rule (7) as well as Form 15CC do neither indicate the scope of the remittances to be reported, nor do they specifically exclude exempt payments.
 - The exclusion for exempt payments occurring in Rule 37BB(3) is only for reporting by payers. There is no such exclusion provided for Authorised Dealers for quarterly reporting of remittances.
 - The prescribed Form 15CC requires general information regarding remitter/ remitee (name, PAN) and the remittance (amount date, country, RBI code etc.). If the format is based on what authorised dealers are, in any case, required to report to RBI, the case for inclusion of exempt payments is stronger. The rationale from Tax Authority's perspective may be to obtain information of exempt payments going out of India on real time basis since such information will not be forthcoming from the payers by virtue of exclusion provided in Rule 37BB(3).

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