

TAX FLASH NEWS

18 March 2021

CBDT issues notification on application for grant of certificate to determine appropriate proportion of sum chargeable to tax in case of payment made to non-residents

The Finance (No.2) Act, 2019 amended Section 195 Income-tax Act, 1961 (the Act) in order to have a systematic and standard process for making an application by the deductor and to reduce human interface. The amendment empowered the Central Board of Direct Taxes (CBDT) to prescribe the form and manner of filing of application under Section 195 to the Assessing Officer (AO) to determine the appropriate proportion of sum chargeable.

CBDT had issued an Office Memorandum¹ proposing an amendment in the Income-tax Rules 1962, to inset a new Rule 29BA and Form 15E, to give effect to the amendments in Section 195. The Memorandum invited suggestions from the stakeholders.

Recently, CBDT issued a Notification² to introduce Rule 29BA for making an application for grant of certificate determining appropriate proportion of sum (other than salary) chargeable to tax in case of payment made to non-residents under Section 195. Further Form No. 15E has also been introduced for such application.

Details of the notification

- An application shall be made in Form 15E electronically, under digital signature; or through electronic verification code.
- AO shall examine whether the sum being paid or credited is chargeable to tax under the provisions of the Act read with the relevant tax treaty, if any, and if the sum is chargeable to tax he shall proceed to determine the appropriate proportion of such sum chargeable to tax.
- AO shall examine the application and on being satisfied that the whole of such sum would not be the income chargeable in case of the recipient, may issue a certificate determining appropriate proportion of such sum chargeable under the provision of this Act.
- While examining the application, AO shall also take into consideration, the following information in relation to the recipient:
 - tax payable on estimated income of the previous year relevant to the assessment year;
 - tax payable on the assessed or returned or estimated income, as the case may be, of preceding four previous years;
 - existing liability under the Act and Wealth-tax Act, 1957;
 - advance tax payment, tax deducted at source and tax collected at source for the assessment year relevant to the previous year till the date of making application.
- The certificate shall be valid only for the payment to non-resident named therein and for such period of the previous year as may be specified in the certificate, unless it is cancelled by the AO at any time before the expiry of the specified period.
- An application for a fresh certificate may be made, if the taxpayer so desires, after the expiry of the period of validity of the earlier certificate or within three months before the expiry thereof.
- The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall lay down procedures, formats and standards for ensuring secure capture and transmission of data and uploading of documents and the Systems shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the furnishing of Form No 15E and issuance of certificate.

¹ Office Memorandum (F. No. 370142/24/2019-TPL), dated 31 December 2019

² Notification No. 18/2021 F. No. 370142/24/2019-TPL, dated 16 March 2021

Our comments

Prior to this notification, no format was prescribed for making such applications under Section 195. Therefore, the deductor had to give general application and physically submit it to the AO. The AO then used to issue a certificate determining by general or special order, the appropriate proportion of sum chargeable to tax. Further no standard operating procedure was prescribed in respect of processing and disposal of such application. This increased uncertainty and caused inconvenience to the deductors. Various stakeholders made representations to streamline the process of passing of such orders under Section 195. In line with that CBDT now prescribed the standard procedure and a relevant form.

Introduction of procedure for application and new form will help taxpayers to file the applications in a standardise manner. This will also help taxpayers to easily provide the prescribed details in the new format. Further under the new procedure, the taxpayer will file application electronically. This will help taxpayers to obtain such certificate quickly and it will increase the ease of doing business in India.



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