

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 16th March, 2021

(INCOME-TAX)

G.S.R. 194(E).—In exercise of the powers conferred by section 195 read with section 295 of the Income- tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes, hereby, makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. **Short title and commencement.**- (1) These rules may be called the Income-tax (5th Amendment) Rules, 2021.
(2) They shall come into force with effect from the 1st day of April, 2021.
2. In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), after rule 29B, the following rule shall be inserted, namely, —

“29BA. Application for grant of certificate for determination of appropriate proportion of sum (other than Salary), payable to non-resident, chargeable in case of the recipients.

(1) *An application by a person for determination of appropriate proportion of sum chargeable in the case of non-resident recipient under sub-section (2) or sub-section (7) of section 195 shall be made in Form 15E electronically,-*

(i) *under digital signature; or*

(ii) *through electronic verification code.*

(2) *The Assessing Officer, in order to satisfy himself, shall examine whether the sum being paid or credited is chargeable to tax under the provisions of the Act read with the relevant Double Taxation Avoidance Agreement, if any, and if the sum is chargeable to tax he shall proceed to determine the appropriate proportion of such sum chargeable to tax.*

(3) *The Assessing Officer 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, for the purposes of tax deduction under sub-section (1) of section 195.*

(4) *While examining the application, the Assessing Officer shall also take into consideration, following information in relation to the recipient:-*

(i) *tax payable on estimated income of the previous year relevant to the assessment year;*

(ii) *tax payable on the assessed or returned or estimated income, as the case may be, of preceding four previous years;*

(iii) *existing liability under the Income-tax Act, 1961(43 of 1961) and Wealth-tax Act, 1957(27 of 1957);*

(iv) *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 under sub-rule (1).*

(5) *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 Assessing Officer at any time before the expiry of the specified period.*

(6) *An application for a fresh certificate may be made, if the assessee so desires, after the expiry of the period of validity of the earlier certificate or within three months before the expiry thereof.*

(7) *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 Principal Director General of Income-tax (Systems) or the Director General of Income-tax (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 under sub-rule (3)."*

3. In the principal rules, after form 15D, the following form shall be inserted, namely: —

“FORM No. 15E

[See rule 29BA]

Application by a person for a certificate under section 195(2) and 195(7) of the Income-tax Act, 1961, for determination of appropriate proportion of sum (other than salary) payable to non-resident, chargeable to tax in case of the recipient.

To,

The Assessing Officer,

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I _____ being the person responsible for making payment to a non-resident or to a foreign company any sum (not being income chargeable under the head “Salaries”) do, hereby, request that a certificate may be issued to me after determining the appropriate proportion of such sum chargeable to tax in the case of the recipient (if any) and authorise me to deduct income-tax on such appropriate proportion (if any). The relevant particulars are as below:

1. Details of the payer:				
(i)	PAN or Aadhaar			
(ii)	Name			
(iii)	TAN (TAN is compulsory for application u/s 195)			
(iv)	Status (Individual/Firm/Company/AOP/BOI, as the case may be)			
(v)	Residential status			
(vi)	Address			
(vii)	E-mail ID			
(viii)	Mobile Number			
2. Details of the recipient:				
(i)	PAN (if available)			
(ii)	Name	First name	Middle name	Last name
(iii)	Status (Individual/Firm/Company/AOP/BOI, as the case may be)			
(iv)	Father's name (in case of an individual)	First name	Middle name	Last name
(v)	Date of birth (in case of individuals) or date of incorporation, if available			
(vi)	Address in India (if applicable)			
(vii)	Address of recipient in country of Residence outside India			
(viii)	Tax Identification Number of recipient in the country of Residence			
(ix)	Jurisdictional AO, if any			
(x)	E-mail ID			
(xi)	Mobile Number			
(xii)	Passport No. (in case of individual)			
3. Details of transaction				
(i)	Country to which payment is to be made			
(ii)	Amount payable	In Foreign Currency	In Indian Rs. (on estimated basis)	
(iii)	Proposed date of payment	in dd/mm/yyyy format		
(iv)	Relevant previous year for which Certificate is requested			
(v)	Nature of payment/ remittance as per agreement/document:	Royalty Fees for technical services Dividend Interest		

		Business income Capital gains Any other (please mention)		
(vi)	In case the payment is net of taxes, whether tax payable, if any would be grossed up?	(Tick) Yes ☐ No ☐		
(vii)	Details of previous certificates obtained under section 195(2) for the same transaction	Certificate Number	Date of issue of certificate	DIN (if available)
(viii)	Tax payable on estimated income of the previous year of the recipient (if available)			
(ix)	Details of advance tax, TDS, TCS for the previous year of the recipient, if available	Advance tax		
		TDS		
		TCS		
(x)	Details of existing liabilities of recipient under the Income-tax Act or Wealth Tax Act, if available			
(xi)	Whether the appropriate proportion of sum to be charged as income of the recipient is to be determined by applying a DTAA between India and the other country or without applying the DTAA? (Note: in case of applicability of DTAA fill up section no 5. In case of non-applicability of DTAA fill up section no 4.)	With DTAA ☐ Without DTAA ☐		
4. Taxability under the provisions of the Income-tax Act (without considering DTAA)				
(i)	Is payment chargeable to tax in India as per the provisions of Income-tax Act	(Tick) Yes ☐ No ☐		
(ii)	If not taxable, reasons thereof			
(iii)	if taxable, the relevant section of the Act under which the payment is covered.			
(iv)	A. If the payment is on account of business income, please indicate:			
	(a) Description of the business connection.			
	(b) The amount of income chargeable to tax under this head.			
	(c) Tax liability on the chargeable sum under this head			
	(d) Justification of above tax liability.			
	(e) Based on above at what rate tax is required to be deducted			

	B. In case the payment is on account of capital gains, please indicate:				
	(a) Provide:				
	(I) Nature of asset and its location if any				
	(II) Amount of long-term capital gains	Date of sale of asset	Total sale consideration	Date of acquisition	Total cost of acquisition
	(III) Amount of short-term capital gains	Date of sale of asset	Total sale consideration	Date of acquisition	Total cost of acquisition
	(b) The amount of income chargeable to tax under this head.				
	(c) Tax liability on the chargeable sum under this head.				
	(d) Justification of above tax liability.				
	(e) Based on above at what rate tax is required to be deducted				
	C. In case the payment is on account of Royalty, please indicate				
	(a) Nature of Royalty payment				
	(b) The amount of income chargeable to tax under this head.				
	(c) Tax liability on the chargeable sum under this head.				
	(d) Justification of above tax liability.				
	(e) Based on above at what rate tax is required to be deducted				
	D. In case the payment is on account of Fee for technical services (FTS), please indicate				
	(a) Nature of Payment				
	(b) The amount of income chargeable to tax under this head.				
	(c) Tax liability on the chargeable sum under this head.				
	(d) Justification of above tax liability				
	(e) Based on above at what rate tax is required to be deducted				
	E. In case of Interest income				
	(a) Nature of interest income				

	(b) Please indicate	
	(i) Whether conditions of section 194LB are satisfied?	(Tick) Yes ☐ No ☐
	(ii) Whether conditions of section 194LBA are satisfied?	(Tick) Yes ☐ No ☐
	(iii) Whether conditions of section 194LC are satisfied?	(Tick) Yes ☐ No ☐
	(iv) Whether conditions of section 194LD are satisfied?	(Tick) Yes ☐ No ☐
	(v) Loan Registration Number (LRN) as given by Reserve Bank of India	
	(c) The amount of income chargeable to tax under this head.	
	(d) Tax liability on the chargeable sum under this head.	
	(e) Justification of above tax liability.	
	(f) Based on above at what rate tax is required to be deducted	
	F. In case of other payment not covered by items A to E, above	
	(a) Please specify the nature of payment	
	(b) The amount of income chargeable to tax under this head.	
	(c) Tax liability on the chargeable sum under this head.	
	(d) Justification of above tax liability.	
	(e) Based on above at what rate tax is required to be deducted	
5. Taxability under the Double Taxation Avoidance Agreement (DTAA)		
(i)	Please specify relevant applicable DTAA	
(ii)	Whether copy of Tax Residency Certificate and Form 10F enclosed	(Tick) Yes ☐ No ☐
(iii)	A. If the payment is on account of business income, please indicate:	
	(a) Whether such business income is liable to tax in India under the DTAA	(Tick) Yes ☐ No ☐
	(b) If no, the reasons for the same	
	(c) If yes, the nature of permanent establishment in India	
	(d) The amount of income chargeable to tax under this head	
	(e) Tax liability on the chargeable sum under this head	
	(f) justification of above tax liability	
	(g) Based on above at what rate tax is required to be deducted	

	B. In case the payment is on account of capital gains, please indicate:				
	(a) Whether such capital gains are liable to tax in India under the DTAA	(Tick) Yes ☐ No ☐			
	(b) If no, the reasons for the same				
	(c) if yes, then provide				
	(I) Nature of asset and its location if any				
	(II) Amount of long-term capital gains	Date of sale of asset	Total sale consideration	Date of acquisition	Total cost of acquisition
	(III) Amount of short-term capital gains	Date of sale of asset	Total sale consideration	Date of acquisition	Total cost of acquisition
	(d) The amount of income chargeable to tax under this head.				
	(e) Tax liability on the chargeable sum under this head.				
	(f) Justification of above tax liability.				
	(g) Based on above at what rate tax is required to be deducted				
	C. In case the payment is on account of Royalty, please indicate				
	(a) Whether such royalty is liable to tax in India under the DTAA	(Tick) Yes ☐ No ☐			
	(b) if no, provide reasons for the same along with the nature of payment				
	(c) if yes, then state				
	(i) Nature of Royalty paid or to be paid				
	(ii) The amount of income chargeable to tax under this head.				
	(iii) Tax liability on the chargeable sum under this head				
	(iv) Justification of above tax liability				
	(v) Based on above at what rate tax is required to be deducted				
	D. In case the payment is on account of Fee for technical services (FTS), please indicate				
	(a) Whether such fee for technical service is liable to tax in India under the DTAA	(Tick) Yes ☐ No ☐			

	(b) if FTS is not taxable in India under the DTAA, then state	
	(i) nature of payment	
	(ii) whether there is 'Make Available' clause in the treaty	(Tick) Yes ☐ No ☐
	(iii) if there is a claim for 'Make Available' clause, whether such clause in FTS article is sought to be included in the DTAA through Most Favoured Nation Clause?	(Tick) Yes ☐ No ☐
	(iv) if answer to (iii) above is yes, whether notification regarding 'Make Available' clause issued by Government of India	(Tick) Yes ☐ No ☐
	(v) If there is make available clause explain how that requirement is not satisfied	
	(vi) If there is no make available clause explain how the payment is not FTS	
	(c) if FTS is taxable in India under the DTAA , then state	
	(i) Nature of FTS paid or to be paid	
	(ii) The amount of income chargeable to tax under this head.	
	(iii) Tax liability on the chargeable sum under this head	
	(iv) Justification of above tax liability	
	(v) Based on above at what rate tax is required to be deducted	
	E. In case of Interest income	
	(a) Whether such interest is liable to tax in India	(Tick) Yes ☐ No ☐
	(b) if no, give reasons along with nature of interest payment	
	(c) if yes, then state,	
	(I) Nature of interest income paid or to be paid	
	(II) The amount of income chargeable to tax under this head.	
	(III) Tax liability on the chargeable sum under this head	
	(IV) Justification of above tax liability	
	(V) Based on above at what rate tax is required to be deducted	

	F. In case of other payment not covered by items A to E	
	(a) Please specify the nature of payment	
	(b) Whether taxable in India as per DTAA	(Tick) Yes ☐ No ☐
	(c) If yes, specify relevant Article of DTAA and the rate of TDS in terms of relevant Article of the applicable DTAA	
	(d) the amount of income chargeable to tax under this head.	
	(e) Tax liability on the chargeable sum under this head	
	(f) Justification of above tax liability	
	(g) Based on above at what rate tax is required to be deducted	
	(h) If not taxable, please furnish brief reasons thereof, specifying relevant article of DTAA	
6.	List of Documents to be uploaded:	
(i)	Relevant documents such as contract for sale of goods and/or provisions for services (if any), computation of capital gains, share purchase agreement, bank payment, details of cost of acquisition, contract note (if any), share certificate (if any), etc.	
(ii)	Details of assessed/returned/estimated income of payee of preceding four previous years, if available	
(iii)	Computation of estimated income chargeable to tax and Tax Liability of the previous year.	
(iv)	Copy of Tax Residency Certificate and Form 10F	
(v)	Documents in support of claim of applicability of sections 194LB/194LBA/194LC/194LD	
(vi)	Any other documents you wish to furnish in support of your claim.	

VERIFICATION

I..... son/daughter of having PAN/Aadhaar number..... do hereby declare that to the best of my knowledge and belief what is stated above is correct, complete and truly stated. I also declare that I am making application in my capacity as of and I am also competent to make this application and verify it.

Date:	Signature:
Place:	Address:

[Notification No. 18/2021 F. No. 370142/24/2019-TPL]

ANKIT JAIN, Under Secy. (Tax Policy and Legislation)

Note : The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) *vide* number S.O. 969 (E), dated the 26th March, 1962 and last amended *vide* notification number G.S.R. 175(E), dated the 12th March, 2021.