He applies under Section 197 of Income-tax Act and the Assessing Officer (AO) issues a certificate for TDS @1%. Now, the payer deducts only ₹10,000 instead of ₹1 lakh.

Q5. How long is the certificate valid?

Ans. Expiry of the period mentioned, or until the AO cancels it. Certificates under Section 197 of the Act remain valid up to the end of the financial year, i.e., 31 March. To continue for the next year, a fresh application must be filed/ submitted.

Important Compliance Requirements

- **Form 13 –** Application for lower/nil TDS (filed online on TRACES).
- **Form 26Q / 27Q –** Used by payer to report TDS as per certificate.
- When the payer files the TDS return (Form 26Q/27Q), the certificate number issued under Section 197 should be quoted to validate the lower or nil deduction claim.

Relevant Rules

- **Rule 28** – Application procedure.
- **Rule 28AA / 28AB –** Conditions for granting lower/nil TDS certificate.

Key Takeaways for Taxpayers

- Always check if foreign payment is taxable in India.
- File **Form 15CA/15CB** before remitting.
- If only part of payment is taxable → Apply under Section 195(2) of the Income-tax Act.
- If expect lower tax liability → Apply for a certificate under section 197 of the Income-tax Act.
- AO's certificate is binding on the taxpayer.
- Timely compliance avoids penalties and interest.

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INCOME TAX DEPARTMENT

Income Tax Department

Central Board of Direct Taxes

TDS on Payments to Non-Residents & Lower/Nil Deduction Certificate (Sections 195 & 197)

Part I – Section 195: TDS (Tax deducted at source) on Payments to Non-Residents

Q1. What is Section 195 of Income-tax Act?

Ans. Section 195 requires that if any person is making a payment to a non-resident or a foreign company which is taxable in India, the tax payer/any person must deduct income-tax (TDS) at the rate in force at the time of payment thereof in cash or by the issue of a cheque or draft or any other mode.

Q2. Who has to deduct TDS?

Ans. Any person (individual, company, partnership etc.) who makes a payment to a non-resident, if such payment is taxable in India.

Q3. What types of payments are covered?

Ans. (i) Interest (except under sections 194LB, 194LC, 194LD)

(ii) Royalty

(iii) Fees for technical services

(iv) Capital Gains Proceeds

(v) Rent

(vi) Dividends

(vii) Any other taxable payment (other than salary)

(Income from salary is covered under section 192 of Income-tax Act.)

Q4. When should be Tax Deducted at Source (TDS)?

Ans. At the time of **credit** to the account (including suspense accounts) of the payee or at the time of **actual payment**, whichever happens first.

(**Note:** There is no threshold exemption i.e. if the payment is taxable, TDS must be deducted irrespective of the amount.)

Q5. Is TDS applicable even if, the non-resident has no office in India?

Ans. Yes. TDS must be deducted if the income is taxable in India, irrespective of the presence of non-resident.

Q6. Can any person deduct TDS only on the taxable portion?

Ans. Yes. If part of the payment is not taxable, applicant/tax-payer can apply to the **Assessing Officer (AO)** to determine the taxable portion. TDS will then be deducted only taxable part of income.

Q7. Whether the non-resident should apply for nil or lower TDS?

Ans. Yes. The non-resident should apply to the AO for a certificate permitting **nil/lower deduction u/s 197 of Income-tax Act.**

Important Compliance Requirements

Relevant Rules

- **Rule 37BB –** Furnishing of information (Forms 15CA & 15CB).
- **Rule 29B / 29BA –** Applications for determining taxable portion or for certificate of nil deduction.

Relevant Forms

- **Form 15CA** – Declaration by payer (filed online). As per section 195 of Income-tax Act, in case of any payment to non-residents (not being a company), or to a foreign company, the payer shall deduct TDS if such sum is chargeable to Income-tax and details are required to be furnished in Form 15CA before the payment.
- **Form 15CB** – Certificate from a Chartered Accountant (required if remittance is taxable & exceeds ₹5 lakh).
- **Form 15CA and Form 15CB** must be filed even for transactions not taxable in India, since authorized dealers require these before any remittance; penalties of ₹1 lakh under Section 271-I may apply for failure.
- **Form 15CC** – Quarterly disclosure by authorized dealer (bank) to report remittances sent outside India to non-residents or foreign companies, within 15 days from the end of each quarter.
- **Form 27Q** – Quarterly TDS return for payments to non-residents (other than salary).
- **Form 26Q** – TDS return (domestic cases, but also used when AO issues certificate under section 195/197 of Income-tax Act).
- The payer must apply the beneficial rate as per the Double Taxation Avoidance Agreement (DTAA), provided the payee furnishes a valid Tax Residency Certificate (TRC) of the country to which the DTAA is related to.

Part II – Section 197: Certificate for Lower/Nil TDS

Q1. What is Section 197 of Income-tax Act, 1961?

Ans. It allows payee to apply for a certificate so that TDS is deducted at a lower rate or nil, if justified.

Q2. Why is this helpful?

Ans. Sometimes TDS at full rates leads to excess tax **deduction**, especially if actual income is lower or there are deductions or losses. Section 197 of the Act prevents unnecessary blockage of funds of taxpayer.

Q3. How does it work?

Ans. (i) Taxpayer applies in Form 13 (online via TRACES PORTAL).

(ii) The Assessing Officer (AO) reviews income, compliance history, and issue related to taxation.

(iii) If satisfied, the AO issues a certificate specifying lower/nil TDS.

(iv) The payer must strictly follow the instructions in the certificate.

[The application must be submitted online through TRACES PORTAL under 'Request for Form 13', using Digital Signature Certificate (DSC) or Electronic Verification Code (EVC)].

Q4. Example:

Ans. Mr. A earns ₹10 lakh from freelancing. TDS @10% = ₹1 lakh. But after deductions, his taxable income is only ₹3 lakh.