



## Azadi Ka Amrit Mahotsav Activity

### “Sky High- Symposium -26 Webinar” conducted by Women Members Empowerment Committee of ICAI on 19<sup>th</sup> October 2022

The Institute of Chartered Accountants of India  
(Set up by an Act of Parliament)

Women Members Empowerment Committee Organises

**Sky High - Symposium-26**  
Live Webinar  
for Women by Women Every Wednesday

19<sup>th</sup> Oct, 2022  
5.00 PM to 7.00 PM

FEES NIL

2 CPE Hours Unstructured

Registration and participation link:  
<http://live.icai.org/wmec/19102022/>

Questions related to the topic may be sent in advance at [wmec@icai.in](mailto:wmec@icai.in) or LIVE at the time of Program itself at the same link

**TDS Obligation for NRI under Section 195 & 15CA-CB**

**Importance of CA in Startup**

**CA. Perna Peshori**  
Welcome Address

**CA. Richa K Lunia**  
Introductory Remarks

**CA. Sripriya Kumar**  
Chairperson, WMEC & CL&CGC  
Vice-Chairperson, IBC Committee

**CA. Priti Paras Savla**  
Vice-Chairperson, WMEC, CL&CGC,  
Sustainability Reporting Standards Board

**Co-ordinators**

**CA. Prachi Kulkarni** **CA. Deepa Goswami** **CA. Smita Patil** **CA. Aakriti Kohli**

As part of country wide Azadi ka Amrit Mahotsav initiatives, envisaged by Government of India, to commemorate and celebrate 75 years of India's Independence, the Women Members Empowerment Committee (WMEC) of ICAI organized “Sky High- Symposium -26 Webinar” on 19<sup>th</sup> October 2022.

CA. Perna Peshori and CA. Richa K Lunia were speakers of the said webinar. Coordinators for the day were CA. Prachi Kulkarni, CA. Deepa Goswami, CA. Smita Patil and CA. Aakriti Kohli.

Special address was given by CA. Dayaniwas Sharma and CA. Vishal Doshi to all the participants.


The webinar was conducted by CA. Priti Savla- Vice-Chairperson, WMEC.



The webinar covered discussion on “TDS Obligation for NRI under Section 195 & 15CA-CB”. Deliberations were made on Coverage of Section 195, Submission of PAN- Section 206AA, E-furnishing of Form 10F, Tax Residency Certificate, Common TDS Issues, Foreign Exchange Rate, Comparative analysis of 195(2), 195(3) & 197, Remittance Certificate-Section 195(6), Declaration & CA Certificate, Penalties & Other Consequences, etc.


### Section 206AA - Submission Of PAN

- Absence of PAN, tax shall be deducted at the higher of the following rates:
  - At the rate specified in the relevant provision of the Act; or
  - At the rate or rates in force; or
  - At the rate of 20%
- Section applicable also when PAN incorrect or invalid
- Now form 10F and Application u/s 197 cannot be made without PAN
- Relaxation for NR under Rule 37BC
- Rule 37BC - PAN not required for payment of "Specified incomes" if NR provides TRC and TIN:
  - Interest,
  - Royalty,
  - FFS, and
  - Capital Gains
  - Interest on Long Term Infrastructure bonds referred to in S.194LC
- Documents require for relaxation to be claimed from Section 206AA
  - TRC - If the foreign country's law provide for TRC - TRC however still required for claiming DTAA relief
  - TIN or UIN
  - Name, email, contact
  - Address in resident country



### E-furnishing of Form 10F

- Notification No 03 2022 w.e.f July 16 2022 has mandated furnishing Form 10F online
- Form 10 F is appearing in the registered accounts on the income tax e-portal
- Steps to be followed
  - Go to e File Tab
  - Select 'Income Tax Forms' Then select 'File Income Tax Forms'
  - Next, select 'Persons not dependent on any Source of Income (Source of Income not relevant)'
  - From the list of forms available, find Form 10 F
  - Select the relevant Assessment Year (As on date, online Form 10 F can be filed only for AY 2022-23. Option to furnish the same for AY 2023-24 is not available)
  - Fill the requisite details in Form 10F
  - Please note that copy of TRC has to be attached alongwith Form 10 F
  - Submit with DSC or EVC
- Issue: **Obtaining PAN is not mandatory for NR but e-filing Form 10F requires PAN as one can create account with PAN**
- Consequences if Form 10F is not furnished electronically
- Remittances made between 1<sup>st</sup> April 2022 to 15<sup>th</sup> July 2022
- Remittances for FY 2022-23



## Tax Residency Certificate

- Circular 789/TIC for claiming treaty benefit
- Section 90(f) mandates TIC for claiming treaty benefit
- Section 90(5) provides for Form 10F for providing other details not covered in TIC
  - Form 10F not required if all the specified information mentioned in TIC
- Contents of Form 10F
  - Status
  - BBN
  - Nationality
  - TIN
  - Period of residential status
  - Address
- Circular 789/TIC will be sufficient evidence for residence and beneficial ownership in case of FII earning dividends and capital gains on shares
- Supreme Court in UOI vs. Anshu Bhatia & Anshu (2003) 263 ITR 706 (SC) upheld the validity of Circular
- French Supreme Court, TIC - a prerequisite for availing treaty benefits, not for determining residential status
- Saja Industries India Pvt. Ltd. v. ITO [TS-158-FSC-30(A)(A)] treaty benefit was granted even without TIC - non-obstante clause of Section 90(4) cannot be read as a limitation to the treaty superiority
  - NR can claim treaty benefit if residential status substantiated by sufficient and reasonable documentary evidence
  - Followed in the *Sureshwar Ruddy Chemsakam v. ITO [TS-158-FSC-203(A)(D)]*
- However, in TIC alone sufficient to grant treaty access
  - **Beneficial ownership**
  - UOB

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## Foreign Exchange Rate

- Conversion rate has to be considered as on the date the tax is required to be deducted at source
  - Not when it is deducted at source [Rule 26]
- If the rate fluctuates between the date of deduction of tax, and payment to non-resident, the difference has to be ignored
- Confirmed by Honda Motorcycles S6 taxmann.com 238 Delhi ITAT

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## Comparative Analysis Of 195(2), 195(3) & 197

Particulars	195(2)	195(3)	197
Applicability	Payee - whether mandatory?	Payee	Payee
Purpose	To determine the appropriate proportion of sum chargeable to tax	To remove the sum without deduction of tax i.e. Nil withholding tax certificate	No deduction/ deduction at lower rate
Whether applicable?	Appeal u/s 280 denying liability to deduct tax after payment of tax	No appeal	No appeal/W/o Precedent can be filed
Process	<ul style="list-style-type: none"> <li>Application on other paper</li> <li>Order by AO determining portion of income chargeable to tax</li> <li>Order specified period</li> </ul>	<ul style="list-style-type: none"> <li>Application in Form 15C (Banking) and Form 15D (Others)</li> <li>Non resident has prior track record of assessment in India</li> <li>Non resident has been carrying on business or profession in India continuously for a period of 3 years</li> <li>Value of fixed assets in India exceeds Rs. 50 lakhs</li> <li>Should not have been deemed to be an assessee in default</li> <li>Not been subjected to penalty u/s 27(1)(b)</li> </ul>	<ul style="list-style-type: none"> <li>Application in Form 13</li> <li>Application to be made before payment/credit whichever is earlier</li> <li>Determination of existing and estimated tax liability based on                             <ul style="list-style-type: none"> <li>Tax payable on estimated income of previous year</li> <li>Tax payable on assessed/estimated income of past 3 years</li> </ul> </li> <li>Existing tax liability                             <ul style="list-style-type: none"> <li>Advance tax payments &amp; Tax deducted at source</li> <li>Certificate valid for each period of the previous year as specified</li> </ul> </li> </ul>
Revision u/s 244 available	Yes	Yes	Yes
Applicability for nil withholding	Double <sup>o</sup>	Yes	Nil or lower

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## Remittance Certificates - Section 195(6)

- Any person responsible for payment of any sum to non-resident whether or not chargeable to tax shall furnish information in prescribed manner
- Amendment in conflict of Rule 37BB which states that information needs to be furnished on sum chargeable to tax - Act to prevail!!!

**PART A** Where the remittance or the aggregate of such remittance does not exceed ₹5 lakh during the FY.

**PART B** Where remittances exceed Rs. 5 Lakh and order/certificate u/s 195(2) / 195(3) / 197 of the Act has been obtained from the AO.

**PART C** Where remittances exceed Rs. 5 Lakhs and a certificate in Form No 15CB has been obtained.

**PART D** Where the remittance is not chargeable to tax under Act other than payments referred to in Rule 37BB(2).

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## Declaration And CA Certificate

- Form to be submitted prior to remittance.
- No facility of correction and withdrawal
- Remittance can be made to a country different from residence of payee.
- Form ISCA not required
  - by individual under Schedule III of Current Account Regulations under FEMA.
  - Payment for 33 listed items

Sl. No.	Description of item	HSN Code	Sl. No.	Description of item
1	Gold	7101	1	Diamond/Jewellery
2	Silver	7102	2	Platinum/Jewellery
3	Gold ornaments	7103	3	Gold/Jewellery
4	Silver ornaments	7104	4	Silver/Jewellery
5	Gold ornaments	7105	5	Platinum/Jewellery
6	Silver ornaments	7106	6	Platinum/Jewellery
7	Gold ornaments	7107	7	Gold/Jewellery
8	Silver ornaments	7108	8	Silver/Jewellery
9	Gold ornaments	7109	9	Platinum/Jewellery
10	Silver ornaments	7110	10	Platinum/Jewellery
11	Gold ornaments	7111	11	Gold/Jewellery
12	Silver ornaments	7112	12	Silver/Jewellery
13	Gold ornaments	7113	13	Platinum/Jewellery
14	Silver ornaments	7114	14	Platinum/Jewellery
15	Gold ornaments	7115	15	Gold/Jewellery
16	Silver ornaments	7116	16	Silver/Jewellery
17	Gold ornaments	7117	17	Platinum/Jewellery
18	Silver ornaments	7118	18	Platinum/Jewellery
19	Gold ornaments	7119	19	Gold/Jewellery
20	Silver ornaments	7120	20	Silver/Jewellery
21	Gold ornaments	7121	21	Platinum/Jewellery
22	Silver ornaments	7122	22	Platinum/Jewellery
23	Gold ornaments	7123	23	Gold/Jewellery
24	Silver ornaments	7124	24	Silver/Jewellery
25	Gold ornaments	7125	25	Platinum/Jewellery
26	Silver ornaments	7126	26	Platinum/Jewellery
27	Gold ornaments	7127	27	Gold/Jewellery
28	Silver ornaments	7128	28	Silver/Jewellery
29	Gold ornaments	7129	29	Platinum/Jewellery
30	Silver ornaments	7130	30	Platinum/Jewellery
31	Gold ornaments	7131	31	Gold/Jewellery
32	Silver ornaments	7132	32	Silver/Jewellery
33	Gold ornaments	7133	33	Platinum/Jewellery

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## Penalties & Other Consequences

- Disallowance of expenditure u/s 40(a)(i)/(ia)/(iii)/58
- Payer as representative assessee
- Assessee in default u/s 201(1)
  - Relief available if NR has filed ITR and paid taxes
- Interest @ 1% / 1.5% p.m for tax not withheld or not paid
- For failure to pay tax deducted - S.221
- For failure to deduct tax - S.271C
- For failure to file TDS return - S.272A
- For failure to furnish information or for furnishing inaccurate information under S. 195 - S. 271-I - Rs. 1,00,000
- On CA for furnishing incorrect information in certificate - S. 271-J - Rs. 10,000 for each such certificate
- Prosecution for failure to pay tax deducted - S. 276B

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The webinar also covered Session on "Importance of CA in Startup". Topics discussed were The Startup Ecosystem, Role, Importance & Opportunities for Chartered Accountants, Criteria to be Startup, Compliance Role, Startup India for New India, Income Tax Reliefs for Startups, etc.

# ROLE, IMPORTANCE & OPPORTUNITIES FOR CHARTERED ACCOUNTANTS

One Profession  
Versatile Roles

A Total Business Solution Provider



## Is Your Company A Startup?

Your company must meet the following criteria to be considered eligible for DPIIT startup recognition.

Company Age	Company Type	Annual Turnover	Original Entity	Innovative & Scalable
Period of existence and operations should not be exceeding 10 years from the Date of Incorporation	Incorporated as a Private Limited Company, a Registered Partnership Firm or a Limited Liability Partnership	Should have an annual turnover not exceeding Rs. 100 crore for any of the financial years since its incorporation	Entity should not have been formed by splitting up or reconstructing an already existing business	Should work towards development or improvement of a product, process or service and/or have scalable business model with high potential for creation of wealth & employment



## COMPLIANCE ROLE

- Registrations with DPIIT, Income tax, GST, MCA, ESIC, PF etc.
- Filing of returns – GST, ESIC, PF, Income Tax etc
- Statutory and Tax audits
- Tax exemption certificates
- IPR



## STARTUP INDIA FOR NEW INDIA

Recognized Startups are eligible for following benefits:

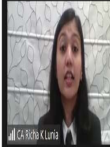
- Self Certification under 6 Labour Laws & 3 Environmental Laws
- Faster exit under the Bankruptcy Code
- Exemption from Income Tax on investments received above fair market value
- Relaxations in Public Procurement Norms
- Rebates on Patent & Trademark Filing fees and support from Incubators
- Income Tax exemption



## LET'S BURST MYTHS & KNOW THE REALITY

**INCOME TAX RELIEF FOR STARTUPS**

- Tax Holiday for Startups
- Capital Gains Exemption for Entrepreneurs
- ESOP Tax Deferral Scheme
- Carve out for carry forward of losses
- Angel Tax Exemption



## LEGAL ADVISORY ROLE

- Documentation
- Co founders agreement
- Splitting equity amongst cofounders
- Drafting shareholders agreement
- Privacy policy and IPR issues
- Getting angel investments termsheets right
- Checking for legal compliances for investors and company



## CONSULTANCY

### 8 Startup India Seed Fund Scheme (SISFS)

Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry is launching Startup India Seed Fund Scheme (SISFS) with an outlay of INR 442 Crores. The scheme was announced by Prime Minister Narendra Modi during Startup India International Summit "Pravasi" on 16th January 2021.

Startup India Seed Fund Scheme (SISFS) aims to provide financial assistance to startups for prototyping, product development, product trial, market entry and commercialization. This would enable these startups to graduate to a level where they will be able to raise investments from angel investors or venture capitalists or seek loans from commercial banks or financial institutions. The target of the scheme is to disburse the Seed Fund to 3000 startups through 300 incubators across India.

**INR 338.75 Cr**  
Sanctioned to 12 incubators

- Loan Syndications
- Various Government Schemes
- Funding
- Preparing the pitch deck



## VIRTUAL CFO

- Financial analysis
- Financial advisory
- Dashboard management
- Determining KPI
- Help management in financial, accounting, managerial and business roles as a Chief Financial Officer



The webinar concluded by giving Vote of Thanks to the Speakers and the participants.

Glimpses of the Webinar held on 19<sup>th</sup> October 2022



