



Azadi Ka Amrit Mahotsav Activity

“Sky High- Symposium -9 Virtual CPE Meeting (VCM)” conducted by Women Members Empowerment Committee of ICAI on 1st June 2022

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

Women Members Empowerment Committee
Organises

**Sky High
- Symposium-9**
Virtual CPE Meeting (VCM)
for Women by Women Every Wednesday

1st June 2022
5.00 PM to 7.00 PM

FEES NIL 2 CPE Hours (Structured)

Registration and participation link:
<https://live.icai.org/wmec/vcm/01062022/>

Voluntary Liquidation & Opportunities in IBC

TDS on NRI Payment & Form 15 CA/CB Certifications

CA. Sudha Navandar

CA. Prerna Peshori
Special Address

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

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

CA. Sushil Kumar Goyal
Chairman, SSEB (BOS - Operations)
Convener, M&SS Directorate

Co-ordinators

CA. Vrushali Shah

CA. Manisha Mange

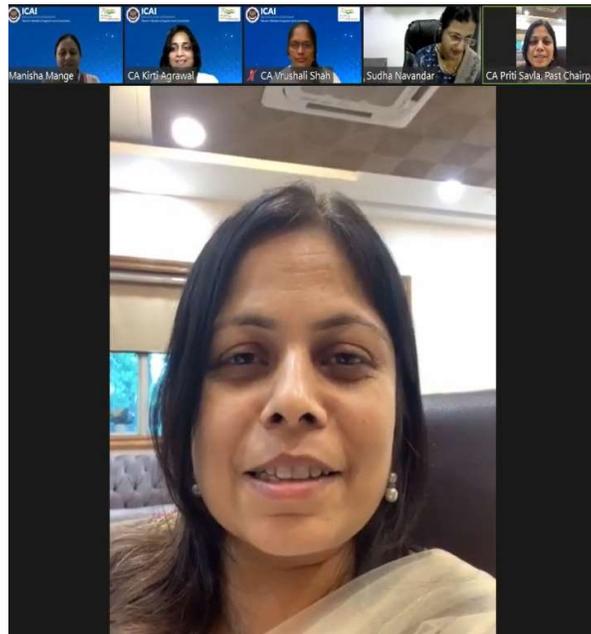
CA. Kirti Agrawal

Questions related to the topic may be sent in advance at wmec@icai.in or LIVE at the time of VCM itself at the same link

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 -9 Virtual CPE Meeting (VCM)" on 1st June 2022.

CA. Sudha Navandar and CA. Prerna Peshori were speakers of the said VCM. Coordinators for the day were CA. Vrushali Shah, CA. Manisha Mange and CA. Kirti Agrawal.

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



The VCM covered discussion on “Voluntary Liquidation & Opportunities in IBC”. Deliberations were made on the Process of voluntary liquidation of companies under IBC, Legal Framework, Opportunities as Insolvency Professional, etc.



The VCM also covered Session on “TDS on NRI Payment & Form 15 CA/CB Certifications”. Topics discussed were Section 195- Scope, rate of TDS, Sum chargeable to tax, Section 206AA, Tax residency certificates, Common TDS issues, etc.

Coverage Of Section 195

Who is covered!

- Any person responsible for paying to non-resident or foreign company
- Includes a non-resident whether or not NR has any presence in India
- Payee excludes a foreign company having POB in India [Notification to Section 195F]

What is covered!

- Any interest or any other sum chargeable to tax other than
- 194B - Income by way of interest from Infrastructure debt fund
- 194C - Income by way of interest from Indian company
- 194D - Income by way of interest on certain bonds and Government securities
- 194LB - Income of unit holder of investment fund
- 194BCD - Income from GDR/offshore funds
- 194E - Payments to sportsman, entertainer or sports association
- 192 - Income Chargeable under the head salaries

When is it applicable!

- At the time of payment or credit whichever is earlier

Rates and threshold

- No threshold prescribed
- At rates in force



Section 195 - Scope

- Income exempt from TDS not covered
 - Shipping income u/s. 172
 - Interest paid by Offshore Banking unit to an NR or RNR [S. 197A(1)(D)]
 - Capital Gain earned by FI [S. 196D(2)]
 - Incomes covered under EQL
- Void Agreement - Ericsson Communications Ltd. - [2002] 81 ITD 77 (DELHI)
- Agreement not concluded - Income does not accrue as right to receive income not crystallised - no tax deductible - Motor Industries Co. [2001] 115 TAXMAN 222 (KAR.)
- TDS should not be deducted on service tax/GST



Sum Chargeable To Tax

- **Sum chargeable to tax - Gross vs Net**
- Transmission Corporation of A.P.Ltd. v. CIT (239 ITR 587) (SC)
- The Hon'ble Supreme Court has held that ".....Hence, there was no substance in the contention of the appellant that the expression 'any other sum chargeable under the provisions of the Act' would not include cases where any sum payable to the non-resident is a trading receipt which may or may not include 'pure income'. The language of section 195(1) for deduction of income-tax by the payee is clear and unambiguous and casts an obligation to deduct appropriate tax at the rates in force."
- CIT v. Samsung Electronics Co. Ltd. (185 Taxman 313)(Kar)
- Payments to non-residents are subject to withholding tax on the whole of the sum, unless taxpayer obtains an order from tax authorities for determination of appropriate WH



Section 195 - Rate of TDS

- Rates in force
 - Part II to the First Schedule of Finance Act
 - DTAA rates
- Surcharge to be added to DTAA Rate!
 - No - Sunil V. Motiani - [2013] 33 taxmann.com 252 (Mumbai - Trib.)
- Education Cess to be added to DTAA Rate!
 - No - DIC Asia Pacific Pte. Ltd. - [2012] 22 taxmann.com 310 (Kol)



Section 206AA - Issues

- **If DTAA rate (cap) is lower than rate as per Sec. 206AA!**
- Literal reading of provisions of section 206AA suggests that it shall have an overriding effect over provisions of the Act including Tax Treaty
- Treaty provisions override both charging and machinery provisions of Section 206AA irrespective of the non-obstante clause contained in Section 206AA
 - Delhi HC in Danisco India (P) Ltd. v. UOI 404 ITR 539; Special Bench of Hyderabad Tribunal in Nagarjuna Fertilizers and Chemicals Limited [2017] 78 taxmann.com 264
- Alternate view: DTA rate does not apply to TDS provisions which are provisional in nature. DTA rate is to determine final tax liability. TDS is only provisional. Domestic law can prescribe a higher TDS rate.
 - NR would have to file a return in India and claim refund
 - The non-resident may not get credit in his home country as TDS may be higher than the DTA rate
- **Section 206AA - Surcharge and Education Cess**
 - Not to be included
 - Delhi Tribunal in Computer Sciences Corporation India (P) Ltd. [2017] 77 taxmann.com 306 (Delhi - Trib.)
 - If tax is as per rates in force under the Finance Act, Surcharge and Education Cess will apply.



Grossing Up

- Section 195A requires grossing up of the rate in case of net of tax contract
- Applicable rate for grossing up to be "rates in force"
- In cases where rates in force is 10% as per DTAA - Whether grossing up should be on 10% being rates in force or on 20%
- Bangalore Tribunal in case of Bosch Ltd. Vs. ITO 28 Taxmann.com 228 has taken a view that for grossing up principle 10% rate should be considered and not 20%

Scenario 1 [PAN/TRC available]	Scenario 2 [No PAN/TRC]
Amount Payable Rs. 100	Amount Payable Rs. 100
Rates in force - 10%	Rates in force - 10%
Grossing up - Rs. 111.11 [100/100*90]	Grossing up - Rs. 111.11 [100/100*90]
TDS u/s 195 - 11.11 [10% of 111.11]	TDS u/s 195 - 22.22 [20% of 111.11]



Tax Residency Certificate

- Section 90(4) mandates TRC for claiming treaty benefit
- Section 90(5) provides for Form 10F for providing other details not covered in TRC
- Circular 789 TRC will be sufficient evidence for residence and beneficial ownership in case of FII's earning dividends and capital gains on shares
- Supreme Court in UOI vs. Azadi Bachao Andolan (2003) 263 ITR 706 (SC) upheld the validity of Circular.
- French Supreme Court: TRC - a prerequisite for availing treaty benefits, not for determining residential status
- Skaps Industries India Pvt. Ltd. v. ITO [TS-330-ITAT-2018(Ahd)], treaty benefit was granted even without TRC
 - Followed in also Sreenivasa Reddy Cheemalamarri v. ITO [TS-158-ITAT-2020(HYD)]
- However, is TRC alone sufficient to grant treaty access?
 - Beneficial ownership
 - LOB
 - PPT

Tax Residency Certificate - Issues

- If TRC is not available at the time of deduction!
 - Benefit of treaty provisions is not available
 - ITAT: Finds delay in furnishing TRC justifiable; Allows benefit of India-USA DTAA on interest income [TS-749-ITAT-2021(Mum)]
- Tax year is calendar year
- Year of remittance is different from tax year
- TRC available of earlier year, TRC applied but not received
- TRC in other language
- Countries with no TRC

Some Common TDS Issues

- TDS on purchase of goods
 - Purchase for export - no TDS
 - Purchase - for sale in India - taxable
 - Purchase operations in India - for purchase of goods from outside India - taxable
 - Purchase of services?
- Export Commission
 - Withdrawal of Circulars 23 (1969), 143 (1975), 786 (2000) have any implications?
- Royalties
 - Software royalties
 - Digitalised transactions
 - Database subscriptions
- FTS
 - Technical services
 - Managerial services
 - Make available
 - Professional and Legal services

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 56 taxmann.com 238 Delhi ITAT

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

Glimpses of the Virtual CPE Meeting held on 1st June 2022



