



F.No. 500/33/2013-FTD-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Foreign Tax and Tax Research Division-1

Room No.908, 'C' Wing, Hudco Vishala Building
Bhikaji Cama Place, New Delhi
Dated 26.02.2014

Instruction No. 02/2014

To

All Chief Commissioners of Income-tax/Directors General of Income-tax

Sir/Madam,

Sub: Deduction of tax at source under Section 195 read with Sections 201 of the Income-tax Act, 1961 relating to payment made to a non-resident-reg.

Section 195 of the Income-tax Act (hereafter referred to as 'the Act') provides that any person, responsible for paying to a non-resident not being a company or to a foreign company, any sum chargeable under the provisions of this Act, shall at the time of credit of such income to the account of the payee or at the time of payment thereof, whichever is earlier, deduct income-tax thereon at the rates in force. Section-201 of the Act inter alia provides that any person who is required to deduct tax in accordance with the provisions of the Act, does not do so, shall be deemed to be an assessee in default and shall also be liable to pay simple interest at the specified rate.

2. References were received from field officers on the issue of deduction of tax at source under section 195 of the Income-tax Act, 1961 in the light of the decisions of the Supreme Court of India in the case of *GE India Technology Private Limited Vs. CIT 327 (ITR) 456 and Transmission Corporation of AP Limited and another Vs. CIT (1999) 299 (ITR) 587*, and the decision of the Madras High Court in *CIT Vs. Chennai Metropolitan Water Tax Cases Appeals Nos.500-501 of 2005*, with a request for clarification as to whether the tax is to be deducted under subsection (1) of section 195 on the whole sum being remitted to a non-resident or only the portion representing the sum chargeable to tax, particularly if no application has been made under subsection (2) of section 195 of the Act to determine the sum.

This document has been compiled as service to our clients. We recommend that you seek professional advice prior to initiating action on specific issues.

Lunawat & Co.

Chartered Accountants

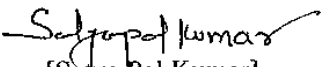
E-mail: ca@lunawat.com, lunawat@vsnl.com.

Website: www.lunawat.com.

3. The matter has been examined in the Board and accordingly, in exercise of powers vested under Section 119 of the Act, the Board hereby directs that in a case where the assessee fails to deduct tax under section 195 of the Act, the Assessing Officer shall determine the appropriate proportion of the sum chargeable to tax as mentioned in subsection (1) of section 195 to ascertain the tax liability on which the deductor shall be deemed to be an assessee in default under section 201 of the Act, and the appropriate proportion of the sum will depend on the facts and circumstances of each case taking into account nature of remittances, income component therein or any other fact relevant to determine such appropriate proportion.

4. The undersigned is directed to state that the above position may be brought to the notice of all officers concerned.

Yours faithfully,


[Satya Pal Kumar]

Under Secretary-1(2) [FT&TR-1]