

ASA

Going The Extra Mile

TAX TRANSFORMATION: NON-RESIDENT ROYALTY/FTS PAYMENTS

Commencing April 1, 2023, a substantial shift has been observed in the taxation landscape concerning Royalty/ Fee for Technical Services (FTS) income of non-resident (NR) taxpayers from India. The revised tax regime has witnessed an increase in the tax rate, elevating it from the erstwhile 10% to the revised rate of 20% plus applicable surcharge and cess. This 2X taxation from the existing rate will be a dent on cashflows in hands of NRs.

This article endeavours to provide the analysis of the ramifications stemming from this alteration, shedding light on pivotal considerations for NR taxpayers to ensure meticulous adherence to the revised tax regulations.

Key Impact:

a) **Continued Benefits through Double Taxation Avoidance Agreements (DTAA):** Notwithstanding the augmented tax rate, NR taxpayers can still harness the advantages rendered under the Double Taxation Avoidance Agreements (DTAA) inked between India and their respective countries. These agreements commonly proffer concessional tax rates or exemptions

for specific income categories, encompassing royalty and FTS. For instance, if an NR taxpayer's domicile nation boasts a DTAA with India that permits a more favourable tax rate of 15%, they retain the prerogative to avail themselves of that rate in lieu of the domestically imposed 20% rate.

- b) **Intensified Scrutiny and Potential Revenue Audit:** The escalated tax rate on royalty/FTS income augments the likelihood of heightened scrutiny by Indian revenue authorities, primarily in cases where the tax withheld in India falls short of the revised rate. NR taxpayers ought to anticipate an amplified risk of audits and prudently maintain meticulous documentation and income records to substantiate compliance with the revised tax regulations. In instances where an NR taxpayer receives royalty income from an Indian enterprise, should the tax withheld fall below the revised rate of 20%, they must brace themselves for potential enquiries.
- c) **Significance of India Income-tax Registration (PAN):** In fulfilment of their tax compliance obligations in India, non-resident taxpayers mandatorily procure an India Income-tax

Registration, commonly referred to as a Permanent Account Number (PAN). PAN assumes the role of a unique identification number issued by the Indian tax authorities, bearing paramount importance in a plethora of financial transactions, including tax return filing, tax refund claims, and business activities. For example, an NR taxpayer receiving royalty payments from an Indian entity necessitates a PAN to report income and fulfil tax obligations with unwavering adherence.

d) Compulsory Filing of India Tax Return by NRs: Under specific circumstances, non-resident taxpayers bears the onus of filing their India Tax Return. Such circumstances encompass instances wherein the tax withheld rate falls below the revised rate of 20% or when the taxpayer is eligible to assert a lower tax rate in accordance with DTAA. Additionally, NR taxpayers should

file tax return to assert eligible tax refunds as per Indian tax laws. For instance, if a NR taxpayer's royalty income is subject to a reduced tax rate of 15% in accordance with the DTAA, filing a tax return assumes utmost significance to reclaim excess tax withheld at 20% rate.

e) Explore the route of Nil/Lower withholding tax certificate u/s 195/197: This twofold increase in taxation imposes a detrimental effect on the cashflows of NR taxpayers. Consequently, NR taxpayers may consider availing themselves of the option provided by Section 195/197 of the Income Tax Act to procure a Nil/Lower withholding tax certificate. By pursuing this course, NR taxpayers can assess the taxability of their underlying income and potentially alleviate the impact of increased taxation, while concurrently mitigating potential tax litigation.

Conclusion

The revision in the tax rate for Royalty/FTS income presents profound legal and professional implications for non-resident taxpayers in India. While the revised base tax rate stands at 20%, NR taxpayers can still harness reduced rates or exemptions extended under the purview of DTAA provisions. Ensuring proactive compliance with the revised tax regulations, meticulous record-keeping, acquisition of a PAN, and prompt filing of India Tax Returns constitute pivotal obligations for NR taxpayers. In navigating the intricate nuances of the Indian tax system and adhering to all tax obligations in a compliant and efficient manner, it is strongly advised to solicit.

Pankaj Aneja

Executive Partner, Taxation
pankaj.aneja@asa.in

Ameet Baid

Associate Director, Taxation
ameet.baid@asa.in