

INCOME TAX UPDATE

2021

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EXECUTIVE SUMMARY

The Central Board of Direct Taxes has amended the Income Tax Rules, 1962 which shall be called the Income tax (3rd Amendment) Rule, 2021, Income-tax (4th Amendment) Rules, 2021 and Income-tax (5th Amendment) Rules, 2021 by notifying the following:

Notification No: 15/2021- Income Tax act (3rd Amendment) Rule, 2021 - Amendment made in Rule 114E by adding new sub rule as follows:

CBDT revises Form No. 12BA (Statement showing particulars of perquisites, other fringe benefits or amenities and profits in lieu of salary with value thereof) (Annexure I), Part B to Form 16 (Details of Salary Paid and any other income and tax deducted) and Annexure II to Form No. 24Q vide Notification No. 15/2021-Income Tax dated 11th March, 2021. The Rule shall be applicable from 01-04-2021.

Additional Details in Part B to Form 16 is Opting for taxation Under section 115BAC.

Notification No: 16/2021- Income Tax act (4th Amendment) Rule, 2021 - Amendment made in Rule 114E by adding new sub rule as follows:

CBDT notifies that for the purposes of pre-filling the return of income, a statement of financial transaction containing information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income shall be furnished by specified persons mentioned in the following table at such frequency, and in such manner, as may be specified by the Principal Director General of Income Tax (Systems) or the Director General of Income Tax (Systems).

Sl. No.	Nature of transaction	Class of person (reporting person)
1.	Capital gains on transfer of listed securities or units of Mutual Funds	(i) Recognised Stock Exchange; (ii) depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996); (iii) Recognised Clearing Corporation; (iv) Registrar to an issue and share transfer agent registered under sub- section (1) section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).
2.	Dividend income	A company
3.	Interest income	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898). (iii) Non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), to hold or accept deposit from public.

Notification No: 18/2021- Income Tax act (5th Amendment) Rule, 2021

Rule 29BA - Application for grant of certificate for determination of appropriate proportion of sum (other than Salary), payable to non-resident, chargeable in case of the recipients

Section 195 of the Act relates to deduction of tax at source for payments made to non-residents, not being a company, or to a foreign company.

Section 195(2) states that where the person paying any sum to a non-resident considers that the whole of such sum would not be the income chargeable to tax, then he shall make an application to the Assessing Officer for determination of such sum on which tax is deductible.

However, no format was provided for making such an application. To overcome this hardship, the CBDT has now inserted a new Rule 29BA for making an application in the form that is newly notified Form 15E (Annexure II).

Rule 29BA

- An application by a person for determination of proportionate sum chargeable to tax in case of non resident recipient under subsection (2) or (7) shall make an application in Form 15E electronically under Digital Signature or through EVC.
- The Assessing Officer on satisfying himself on the taxability of the sum being paid shall proceed to determine the appropriate proportion of such sum chargeable to tax.
- He shall issue a certificate determining the appropriate proportion of such sum chargeable to tax.
- The certificate shall be valid only for payment to non-resident persons named in it and for such period as mentioned in the certificate unless cancelled by the AO.
- An application for a fresh certificate shall be made, if required, after the expiry of the validity period of the earlier certificate or within 3 months before the expiry thereof.
- While examining the application, the AO shall consider the following:
 - a. tax payable on estimated income of the previous year relevant to the assessment year.
 - b. tax payable on the assessed or returned or estimated income of preceding four previous years.
 - c. existing liability under the Income-tax Act, 1961 and Wealth-tax Act, 1957.
 - d. advance tax payment, tax deducted at source and tax collected at source for the assessment year relevant to the previous year till the date of making application under sub-rule (1).

Form 15E - Application by a person for a certificate under section 195(2) and 195(7) of the Income-tax Act, 1961, for determination of appropriate proportion of sum (other than salary) payable to non-resident, chargeable to tax in case of the recipient.

The application contains the following particulars in brief:

1. Details of the Payer
2. Details of the Recipient
3. Details of the Transaction
4. Taxability under the provisions of the Income-tax Act (without considering DTAA).

5. Taxability under the Double Taxation Avoidance Agreement (DTAA)

6. Details of Documents to be uploaded.

7. Verification

The following documents are required to be uploaded along with Form 15E:-

1. Documents such as Relevant documents such as contract for sale of goods and/or provisions for services (if any), computation of capital gains, share purchase agreement, bank payment, details of cost of acquisition, contract note (if any), share certificate (if any), etc.
2. Details of assessed/returned/estimated income of payee of preceding four previous years, if available
3. Computation of estimated income chargeable to tax and Tax Liability of the previous year.
4. Copy of Tax Residency Certificate and Form 10F
5. Documents in support of claim of applicability of sections 194LB/ 194LBA/194LC/194LD
6. Any other documents you wish to furnish in support of your claim.

ANNEXURE I

1[FORM NO. 12BA

[See rule 26A(2)(b)]

Statement showing particulars of perquisites, other fringe benefits or amenities and profits in lieu of salary with value thereof

1. Name and address of employer :

2. TAN :

3. TDS Assessment Range of the employer :

4. Name, designation and Permanent Account Number or Aadhaar Number of employee :

5. Is the employee a director or a person with substantial interest in the company : (where the employer is a company)

6. Income under the head "Salaries" of the employee (other than from perquisites) :

7. Financial year :

8. Valuation of Perquisites :

1. Substituted by the Income-tax (Third Amendment) Rules, 2021, w.e.f. **1-4-2021**.

S.No.	Nature of perquisites (see rule 3)	Value of perquisite as per rules (Rs.)	Amount, if any, recovered from the employee (Rs.)	Amount of perquisite chargeable to tax Col. (3) - Col. (4) (Rs.)
(1)	(2)	(3)	(4)	(5)
1.	Accommodation			
2.	Cars/Other automotive			
3.	Sweeper, gardener, watchman or personal attendant			
4.	Gas, electricity, water			
5.	Interest free or concessional loans			
6.	Holiday expenses			
7.	Free or concessional travel			
8.	Free meals			
9.	Free education			
10.	Gifts, vouchers, etc.			
11.	Credit card expenses			
12.	Club expenses			
13.	Use of movable assets by employees			
14.	Transfer of assets to employees			
15.	Value of any other benefit/amenity/service/privilege			
16.	Stock options allotted or transferred by employer being an eligible start-up referred to in section 80-IAC.			
17.	Stock options (non-qualified options) other than ESOP in col 16 above.			
18.	Contribution by employer to fund and scheme taxable under section 17(2)(vii).			
19.	Annual accretion by way of interest, dividend etc. to the balance at the credit of fund and scheme referred to in section 17(2)(vii) and taxable under section 17(2)(viii).			
20.	Other benefits or amenities			
21.	Total value of perquisites			
22.	Total value of profits in lieu of salary as per section 17(3)			

(9) Details of tax,—

- (a) Tax deducted from salary of the employee under section 192(1)
- (b) Tax paid by employer on behalf of the employee under section 192(1A)
- (c) Total tax paid
- (d) Date of payment into Government treasury

DECLARATION BY EMPLOYER

I, _____, s/o _____ working as _____ (designation) do hereby declare on behalf of _____ (name of the employer) that the information given above is based on the books of account, documents and other relevant records or information available with us and the details of value of each such perquisite are in accordance with section 17 and rules framed thereunder and that such information is true and correct.

Place

Full Name

Date

Designation

Signature of the person responsible for deduction of tax.

ANNEXURE II

1[FORM No. 15E

[See rule 29BA]

Application by a person for a certificate under section 195(2) and 195(7) of the Income-tax Act, 1961, for determination of appropriate proportion of sum (other than salary) payable to non-resident, chargeable to tax in case of the recipient.

To,
The Assessing Officer,

.....

I _____ being the person responsible for making payment to a non-resident or to a foreign company any sum (not being income chargeable under the head "Salaries") do, hereby, request that a certificate may be issued to me after determining the appropriate proportion of such sum chargeable to tax in the case of the recipient (if any) and authorise me to deduct income-tax on such appropriate proportion (if any). The relevant particulars are as below:

1. Details of the payer:

(i)	PAN or Aadhaar	
(ii)	Name	
(iii)	TAN (TAN is compulsory for application u/s 195)	
(iv)	Status (Individual/Firm/Company/ AOP/BOI, as the case may be)	
(v)	Residential status	
(vi)	Address	
(vii)	E-mail ID	
(viii)	Mobile Number	

2. Details of the recipient:

(i)	PAN (if available)			
(ii)	Name	First name	Middle name	Last name
(iii)	Status (Individual/Firm/Company/ AOP/BOI, as the case may be)			
(iv)	Father's name (in case of an individual)	First name	Middle name	Last name
(v)	Date of birth (in case of individuals) or date of incorporation, if available			
(vi)	Address in India (if applicable)			
(vii)	Address of recipient in country of Residence outside India			
(viii)	Tax Identification Number of recipient in the country of Residence			
(ix)	Jurisdictional AO, if any			
(x)	E-mail ID			
(xi)	Mobile Number			
(xii)	Passport No. (in case of individual)			

3. Details of transaction:

(i)	Country to which payment is to be made		
(ii)	Amount payable	In Foreign Currency	In Indian Rs. (on estimated basis)
(iii)	Proposed date of payment	in dd/mm/yyyy format	

(iv)	Relevant previous year for which Certificate is requested			
(v)	Nature of payment/ remittance as per agreement/document:	Royalty Fees for technical services Dividend Interest Business income Capital gains Any other (please mention)		
(vi)	In case the payment is net of taxes, whether tax payable, if any would be grossed up?	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>		
(vii)	Details of previous certificates obtained under section 195(2) for the same transaction	Certificate Number	Date of issue of certificate	DIN (if available)
(viii)	Tax payable on estimated income of the previous year of the recipient (if available)			
(ix)	Details of advance tax, TDS, TCS for the previous year of the recipient, if available	Advance tax		
		TDS		
		TCS		
(x)	Details of existing liabilities of recipient under the Income-tax Act or Wealth Tax Act, if available			
(xi)	Whether the appropriate proportion of sum to be charged as income of the recipient is to be determined by applying a DTAA between India and the other country or without applying the DTAA? (Note: in case of applicability of DTAA fill up section no 5. In case of non-applicability of DTAA fill up section no 4.)	With DTAA <input type="checkbox"/> Without DTAA <input type="checkbox"/>		
4. Taxability under the provisions of the Income-tax Act (without considering DTAA)				
(i)	Is payment chargeable to tax in India as per the provisions of Income-tax Act	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>		
(ii)	If not taxable, reasons thereof			
(iii)	if taxable, the relevant section of the Act under which the payment is covered.			
(iv)	A. If the payment is on account of business income, please indicate:			
	(a) Description of the business connection.			
	(b) The amount of income chargeable to tax under this head.			

	(c) Tax liability on the chargeable sum under this head				
	(d) Justification of above tax liability.				
	(e) Based on above at what rate tax is required to be deducted				
	B. In case the payment is on account of capital gains, please indicate:				
	(a) Provide:				
	(I) Nature of asset and its location if any				
	(II) Amount of long-term capital gains	Date of sale of asset	Total sale consideration	Date of acquisition	Total cost of acquisition
	(III) Amount of short-term capital gains	Date of sale of asset	Total sale consideration	Date of acquisition	Total cost of acquisition
	(b) The amount of income chargeable to tax under this head.				
	(c) Tax liability on the chargeable sum under this head.				
	(d) Justification of above tax liability.				
	(e) Based on above at what rate tax is required to be deducted				
	C. In case the payment is on account of Royalty, please indicate				
	(a) Nature of Royalty payment				
	(b) The amount of income chargeable to tax under this head.				
	(c) Tax liability on the chargeable sum under this head.				
	(d) Justification of above tax liability.				
	(e) Based on above at what rate tax is required to be deducted				
	D. In case the payment is on account of Fee for technical services (FTS), please indicate				
	(a) Nature of Payment				
	(b) The amount of income chargeable to tax under this head.				
	(c) Tax liability on the chargeable sum under this head.				

	(d) Justification of above tax liability	
	(e) Based on above at what rate tax is required to be deducted	
	E. In case of Interest income	
	(a) Nature of interest income	
	(b) Please indicate	
	(i) Whether conditions of section 194LB are satisfied?	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
	(ii) Whether conditions of section 194LBA are satisfied?	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
	(iii) Whether conditions of section 194LC are satisfied?	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
	(iv) Whether conditions of section 194LD are satisfied?	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
	(v) Loan Registration Number (LRN) as given by Reserve Bank of India	
	(c) The amount of income chargeable to tax under this head.	
	(d) Tax liability on the chargeable sum under this head.	
	(e) Justification of above tax liability.	
	(f) Based on above at what rate tax is required to be deducted	
	F. In case of other payment not covered by items A to E, above	
	(a) Please specify the nature of payment	
	(b) The amount of income chargeable to tax under this head.	
	(c) Tax liability on the chargeable sum under this head.	
	(d) Justification of above tax liability.	
	(e) Based on above at what rate tax is required to be deducted	
5. Taxability under the Double Taxation Avoidance Agreement (DTAA)		
(i)	Please specify relevant applicable DTAA	
(ii)	Whether copy of Tax Residency Certificate and Form 10F enclosed	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
(iii)	A. If the payment is on account of business income, please indicate:	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>

	(a) Whether such business income is liable to tax in India under the DTAA	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>			
	(b) If no, the reasons for the same				
	(c) If yes, the nature of permanent establishment in India				
	(d) The amount of income chargeable to tax under this head				
	(e) Tax liability on the chargeable sum under this head				
	(f) justification of above tax liability				
	(g) Based on above at what rate tax is required to be deducted				
	B. In case the payment is on account of capital gains, please indicate:				
	(a) Whether such capital gains are liable to tax in India under the DTAA	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>			
	(b) If no, the reasons for the same				
	(c) if yes, then provide				
	(I) Nature of asset and its location if any				
	(II) Amount of long-term capital gains	Date of sale of asset	Total sale consideration	Date of acquisition	Total cost of acquisition
	(III) Amount of short-term capital gains	Date of sale of asset	Total sale consideration	Date of acquisition	Total cost of acquisition
	(d) The amount of income chargeable to tax under this head.				
	(e) Tax liability on the chargeable sum under this head.				
	(f) Justification of above tax liability.				
	(g) Based on above at what rate tax is required to be deducted				
	C. In case the payment is on account of Royalty, please indicate				
	(a) Whether such royalty is liable to tax in India under the DTAA	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>			
	(b) if no, provide reasons for the same along with the nature of payment				

	(c) if yes, then state	
	(i) Nature of Royalty paid or to be paid	
	(ii) The amount of income chargeable to tax under this head.	
	(iii) Tax liability on the chargeable sum under this head	
	(iv) Justification of above tax liability	
	(v) Based on above at what rate tax is required to be deducted	
	D. In case the payment is on account of Fee for technical services (FTS), please indicate	
	(a) Whether such fee for technical service is liable to tax in India under the DTAA	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
	(b) if FTS is not taxable in India under the DTAA, then state	
	(i) nature of payment	
	(ii) whether there is 'Make Available' clause in the treaty	
	(iii) if there is a claim for 'Make Available' clause, whether such clause in FTS article is sought to be included in the	
	(iv) if answer to (iii) above is yes, whether notification regarding 'Make Available' clause issued by Government of India	
	(v) If there is make available clause explain how that requirement is not satisfied	
	(vi) If there is no make available clause explain how the payment is not FTS	
	(c) if FTS is taxable in India under the DTAA , then state	
	(i) Nature of FTS paid or to be paid	
	(ii) The amount of income chargeable to tax under this head.	
	(iii) Tax liability on the chargeable sum under this head	
	(iv) Justification of above tax liability	
	(v) Based on above at what rate tax is required to be deducted	

	E. In case of Interest income	
	(a) Whether such interest is liable to tax in India	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
	(b) if no, give reasons along with nature of interest payment	
	(c) if yes, then state,	
	(I) Nature of interest income paid or to be paid	
	(II) The amount of income chargeable to tax under this head.	
	(III) Tax liability on the chargeable sum under this head	
	(IV) Justification of above tax liability	
	(V) Based on above at what rate tax is required to be deducted	
	F. In case of other payment not covered by items A to E	
	(a) Please specify the nature of payment	
	(b) Whether taxable in India as per DTAA	(Tick) Yes <input type="checkbox"/> No <input type="checkbox"/>
	(c) If yes, specify relevant Article of DTAA and the rate of TDS in terms of relevant Article of the applicable DTAA	
	(d) the amount of income chargeable to tax under this head.	
	(e) Tax liability on the chargeable sum under this head	
	(f) Justification of above tax liability	
	(g) Based on above at what rate tax is required to be deducted	
	(h) If not taxable, please furnish brief reasons thereof, specifying relevant article of DTAA	
6.	List of Documents to be uploaded:	
(i)	Relevant documents such as contract for sale of goods and/or provisions for services (if any), computation of capital gains, share purchase agreement, bank payment, details of	
(ii)	Details of assessed/returned/estimated income of payee of preceding four previous years, if available	
(iii)	Computation of estimated income chargeable to tax and Tax Liability of the previous year.	

(iv)	Copy of Tax Residency Certificate and Form 10F	
(v)	Documents in support of claim of applicability of sections 194LB/194LBA/194LC/194LD	
(vi)	Any other documents you wish to furnish in support of your claim.	

VERIFICATION

I..... son/daughter of having PAN/Aadhaar number..... do hereby declare that to the best of my knowledge and belief what is stated above is correct, complete and truly stated. I also declare that I am making application in my capacity as of and I am also competent to make this application and verify it.

Date:	Signature:
Place:	Address: