

Withholding Tax

The Indian Constitution has empowered only the Central Government to levy and collect taxes. Every person whose total income exceeds the maximum exemption limit shall be chargeable to the income tax at the rate or rates prescribed in Income Tax Act. Such income tax shall be paid on the total income of the previous year in the relevant assessment year. But the total income of the individual is determined on the basis of the residential status in India.

Status of Resident or Non Resident

The income tax to be paid by individual is determined on the basis of his residential status. An individual can be termed as a “resident” if he stays for the prescribed period during the previous year (1st April to 31st March) either for

- 182 days or more in previous year
- 60 days or more and has been in India in aggregate for 365 days or more in four years preceding previous year.

Any person who does not satisfy this requirement is termed as ‘non resident’.

Taxability of Non resident

Non residents are liable to tax in Indian source income, including:

- Interest, royalty and fees for technical services paid by an Indian resident,
- Salary paid for services rendered in India,
- Income arises from business connection or property in India.

Withholding tax - Introduction

Withholding Tax is an obligation on the payer to withhold tax at the time of making payment under specified head such as rent, commission, salary, professional services, contract etc. at the rates specified in tax regime.

The Withholding tax provisions are in the nature of machinery provisions applicable to the payer of the income to enable easy collection and recovery of tax and are independent of the charging provisions which are applicable to the recipient of the company.

Direct Tax provision

Where any payment is to be made to a non resident, the payer is obliged to deduct at source. As per Section 195 of the Income Tax Act, an obligation on the person responsible for payment to deduct tax at source at the time of payment or at the time of the credit of the income to the account of the non resident

If the payment would not be taxable, the person responsible for making such payment may make an application to the assessing officer to determine appropriate proportion which shall be chargeable to tax. The tax is required to be deducted only on the chargeable proportion.

The tax is to be deducted at the rate prescribed in the Act or rate specified in Double Taxation Avoidance Agreement whichever is beneficial to the assessee.

Any person making a payment to any non-resident shall be liable to deduct tax at the rates specified.

Rates of Withholding Tax

Current rates for withholding tax for payment to non-residents are:-

1. Interest: 20 %
2. Dividends paid by domestic companies: Nil
3. Royalties: 10%
4. Technical Services: 10%
5. Any other services:
 - Individuals: 30% of the income
 - Companies: 40% of the net income

The above rates are general and are applicable in respect of countries with which India does not have a Double Taxation Avoidance Agreement (DTAA).

Assessment of the Non Resident Assessee through ‘Agent’

Person treated as ‘agent’

A non resident assessee may be assessed directly or through non resident. Persons who may be treated as ‘agent’ of assessee of non resident are as follows:

- employee or trustee of the non resident;
- any person who has any business connection with the non resident;
- any person from or through whom the non resident is in receipt of any income;
- any person who has acquired a capital asset in India from non resident.

Opportunity of being heard and any representation from him is considered before treated him as an ‘agent’ of non resident.

Double Taxation Avoidance Agreement

In case of countries with which India has double taxation avoidance agreements, the tax rates are determined by such agreements and are indicated for various countries as under

Particular	Dividend (other than referred under Section 115O)	Interest	Royalty	Fees for the Technical Services
Australia	15%	15%	(Note 2)	(Note 2)
Canada	15% if at least 10% of the shares of the company paying the dividends is held by the recipient of dividend; 25% in other cases	15% (Note 1)	10-20%	10-20%

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China	10%	10% (Note 1)	10%	10%
France	10%	10%	10%	10%
Germany	10%	10% (Note 1)	10%	10%
Italy	15% if at least 10% of the shares of the company paying dividend is beneficially owned by the recipient company; 20% in other cases	15% (Note 1)	20%	20%
Japan	15%	10% if the recipient of interest is bank; 15% for others (Note 1)	20%	20%
Mauritius	5% if at least 10% of the capital of the company paying the dividend is held by the recipient; 15% in other cases.	20% (Note 1)	15%	No Separate Provision
Netherlands	10%	10% (Note 1)	10-20%	10-20%
Singapore	10% if at least 25% of the shares of the company paying the dividend is held by the recipient; 15% in other cases	10% if loan is granted by a bank/similar institute including an insurance company; 15% for others	15% for copyrights; 10% for others	15% for copyrights; 10% for others
Spain	15%	15% (Note 1)	(Note 3)	10%
South	10%	10% (Note 1)	10%	

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Africa				
Turkey	15%	10% if recipient is bank, etc.; 15% in other cases (Note 1)	15%	15%
United Kingdom	15%	10% if interest is paid to a bank; 15% for others (Note 1)	(Note 3)	(Note 3)

Note:

1. Dividend / Interest earned by the government and certain institutions like Reserve Bank of India is exempt from taxation in the country of source.
2. Royalties and fees for technical services would be taxable in the country of source at the following rates :
 - a) 10 per cent in case of rental of equipment and services provided along with know-how and technical services ;
 - b) any other case
 - during first five years of the agreement
 - i. 15 per cent if the payer is Government or specified organization;
 - ii. 20 per cent in other cases;
 - Subsequent years, 15% in all cases.

Income of Government and certain institutions will be exempt from taxation in the country of source.

3. Royalty and fess for technical services would be taxable in the country of source at the following rates:
 - a) 10 per cent in case of royalties relating to the payments for the use of, or the right to use, industrial, commercial or scientific equipment;
 - b) 20 per cent in case of fees for technical services and other royalties.



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Consequence of failure to deduct or pay tax

Where **any person**, who is required to deduct any sum in accordance with Income Tax Act but does not deduct, or does not pay or after deducting fails to pay shall deemed to be 'assesse in default' and the assessee shall be liable for interest and penalty.