

TransPrice Times

Special Edition - Part II (15CA/CB)



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A cousin in London wanted to send some Chocolates and see what it led to...!!!

(Part 2: Form 15CA/CB)

Suresh has a thriving business of importing consumer products from various countries. His imported Chocolates are well known amongst a lot of stores in various part of our country.

Then one day, his cousin, Mohan came over from U.K. on a trip to India. He was born and brought up in U.K. He had heard a lot about Indian fruits and was especially fond of Mangoes. On his way back, Suresh ended up gifting him a box of mangoes. He cherished them a lot.

Suddenly one day, Mohan had an idea as to why not sell mango flavoured chocolates in his cousin's country from next year. As such, Suresh is an exporter and importer. All Suresh had to do was to send some containers to Mohan and then import the finished chocolate product using such natural mango flavours. He called up Suresh and Suresh was also excited about the idea.

So everything was planned. Since Mohan was just starting up, Suresh insisted on supplying the mangoes without making any profit for himself. As such he was of a helping nature and was doing well for himself. Mohan objected at first, but later on he also agreed and thought that once he is established, he will make it up for Suresh.

Now we all know transactions between associated enterprises are covered by transfer pricing and keeping minimal margins in India may not help Suresh to achieve his long term business goals. You may find more about what happened to business of Suresh and Mohan from transfer pricing perspective in [Part 1](#) of the story.

Suresh being in the business of import and export was well versed with various compliances from customs, foreign regulatory and tax perspective. Year 2015 seemed like a good year for Suresh, with various foreign policies relaxed and with great monsoon, Suresh was geared up for lesser compliances and ease of doing business.

However, the Union Budget of 2015 had something different in stores for the hard working business man. His Chartered Accountant informed him that with effect from 1st June 2015, Suresh will have to submit a declaration and a CA certificate declaring the withholding tax / TDS implications for every import transactions that he undertakes. Suresh being one of the learned business man was confused as to why the Government is asking for information on tax deduction on things where taxes were never been deducted (like import of goods). This would certainly lead to increase in compliance and burden on every business man, while he was thinking exactly the opposite few days back.

Section 195 of the Income- tax Act, 1961 ('Act') that dealt with TDS provisions for non-residents have replaced the language of Subsection 6 to Section 195 of the Act, to include all payments made by any person responsible for paying to a non- resident, any sum, whether chargeable or not to income-taxes under the Act to furnish information in the form prescribed.

Now every person including an importer or service recipient other than the exempt list provided in Rule 37BB would need to declare the particulars in Form 15CA and a certificate in Form 15CB from a Chartered Accountant certifying the withholding tax/ TDS implications, in our case Suresh.

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The mechanism of obtaining information in respect of remittances fulfils twin objectives:

- (1) ensuring deduction of tax at appropriate rate from taxable remittances, as well as;
- (2) identifying the remittances on which the tax was deductible but the payer has failed to deduct the tax.

Therefore, obtaining of information only in respect of remittances which the remitter declared as taxable defeated one of the main principles of obtaining information for foreign remittances i.e. to identify the taxable remittances on which tax was deductible but was not deducted. Hence, such a change was proposed in the Union Budget.

The following documents are needed to for obtaining a certificate in form 15CB from a Chartered Accountant:

- Copy of Invoice
- No PE declaration from the exporter/ service provider/ recipient of money
- Details about exact nature of transactions (for e.g. import in this case- FOB or CIF)
- Permanent Account Number (PAN) of recipient [not required where amount is not taxable]
- Tax residency certificate from respective country with form 10F [not required where amount is not taxable]

So now Suresh has recruited a person specially for managing tax requirements of his imports from various countries including from his cousin in London.

Few organizations are in the process of making representations with the CBDT for difficulties faced by additional compliance by the importers. We will keep you posted what happened to Suresh's situation post any action or announcement by the CBDT.

If you are in to similar situation as Suresh or have questions in mind with respect to the new legislation, please feel free to write to us at akshaykenkre@transprice.in



Contact Us!

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