

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes

North Block, New Delhi  
Dated the 12<sup>th</sup> of February, 2015

**Subject: - Clarification regarding 'Amounts not deductible' under sub-clause (i) of clause (a) of section 40 of Income-tax Act, 1961 ('Act') -regarding.**

Section 40(a)(i) of the Act stipulates that in computing the income chargeable under the head "Profits or gains of business or profession", any interest, royalty, fees for technical services or other sum chargeable under this Act either payable in India to a non-resident (not being a company)/a foreign company or payable outside India, shall not be allowed as a deduction, if there has been a failure in deduction or in payment of tax deducted in respect of such amounts under Chapter XVII-B of the Act.

2. Disallowance regarding '**other sum chargeable**' under section 40(a)(i) is triggered when the deductor fails to withhold tax as per provisions of section 195 of the Act. Doubts have been raised about the interpretation of the term '**other sum chargeable**' i.e. whether this term refers to the whole sum being remitted or only the portion representing the sum chargeable to income-tax under relevant provisions of the Act.

3. Central Board of Direct Taxes has already issued Instruction No. 02/2014 dated 26.02.2014 (F.No. 500/33/2013-FTD-I) regarding deduction of tax at source under sub-section (1) of section 195 read with section 201 of the Act relating to payments made to non-residents in cases where no application is filed by the deductor for determining the sum so chargeable under sub-section (2) of section 195 of the Act. Vide this Instruction, Board has clarified that in cases where tax is not deducted at source under section 195 of the Act, the Assessing Officer shall determine the appropriate portion of the sum chargeable to tax, as mentioned in sub-section (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. It has been further clarified that such appropriate portion of the said sum will depend on the facts and circumstances of each case taking into account the nature of remittances, income component therein or any other fact relevant to determine such appropriate proportion.

4. As disallowance of amount under section 40(a)(i) of the Act in case of a deductor is interlinked with the sum chargeable under the Act as mentioned in section 195 of the Act for the purposes of tax deduction at source, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Act, hereby clarifies that for the purpose of

Rg

making disallowance of '**other sum chargeable**' under section 40(a)(i) of the Act, the appropriate portion of the sum which is chargeable to tax under the Act shall form the basis of such disallowance and shall be the same as determined by the Assessing Officer having jurisdiction for the purpose of sub-section (1) of section 195 of the Act as per Instruction No. 2/2014 dated 26.02.2014 of CBDT. Further, where determination of '**other sum chargeable**' has been made under sub-sections (2), (3) or (7) of section 195 of the Act, such a determination will form the basis for disallowance, if any, under section 40(a)(i) of the Act.

5. This may be brought to the notice of all concerned.

6. Hindi version to follow.

(Rohit Garg)

Deputy Secretary to the Government of India

(F.No. 225/201/2014-ITA.II)

Copy to:

1. Chairman and all Members of CBDT
2. O/o Pr. Director General of Income-tax (Systems) with request for uploading on official website
3. All Pr. Chief-Commissioners/Pr. Directors-General of Income-tax
4. All Officers and Technical Sections of CBDT
5. Director of Income tax (Inv.)/IT & Audit/Vigilance/Inv./RSP&PR/Recovery
6. Director of Income tax (O&MS), New Delhi
7. ITCC Division of CBDT (3 copies)
8. NIC, M/o-Finance for uploading on Departments website
9. Database Cell for uploading on IRS Officers website
10. Guard File

(Rohit Garg)

Deputy Secretary to the Government of India