

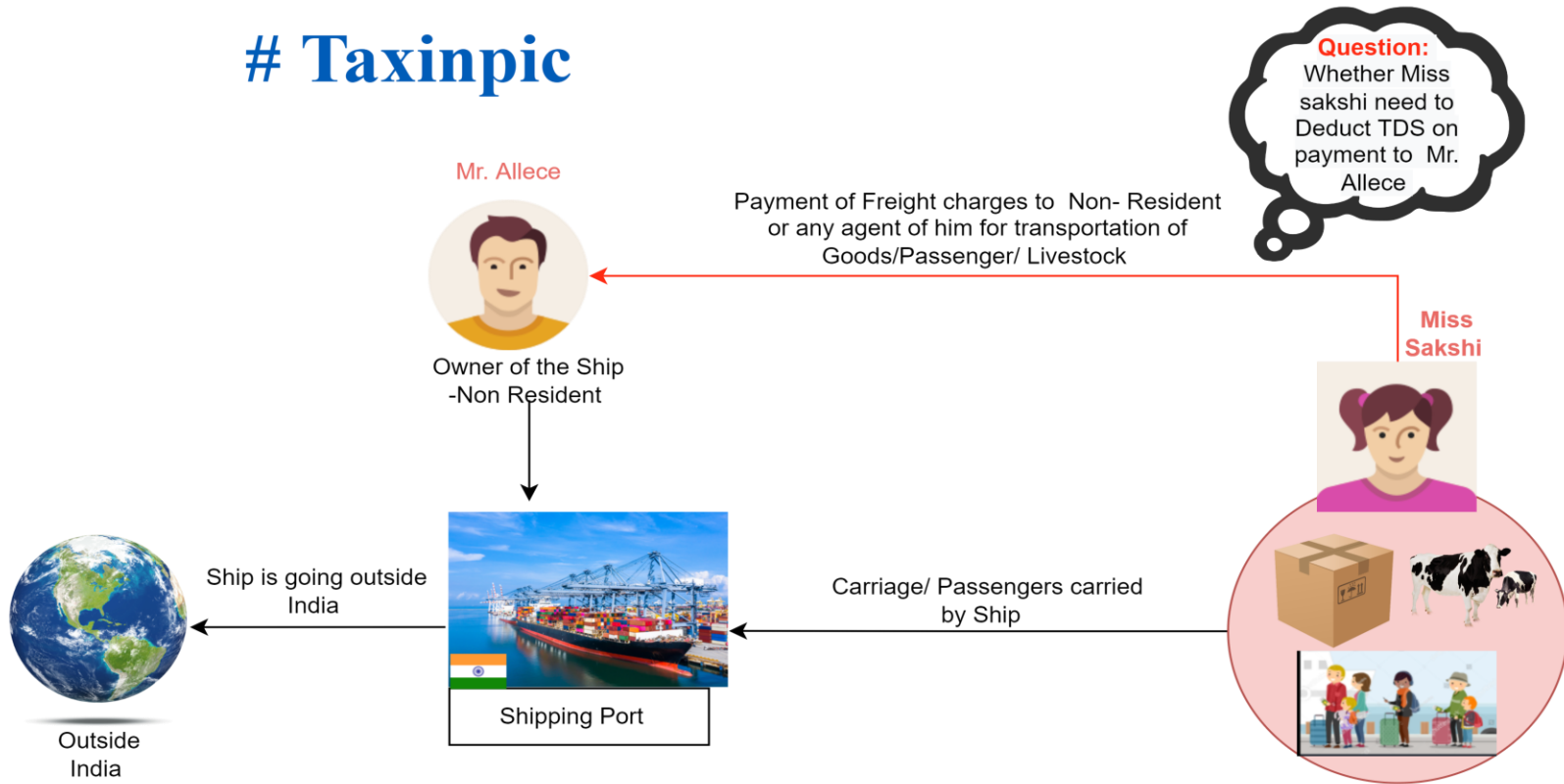
SATURDAY INTERNATIONAL TAX GYAN !!!

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TDS APPLICABILITY ON OCEAN FREIGHT PAID TO NON-RESIDENT

Taxinpic



In case of payment of Ocean Freight to a Non-Resident for cargo going outside India, tax need not be withheld if it fulfills the conditions of Section 172 and provides No Objection Certificate / Tax Exemption Certificate to resident deductor.

Withholding of tax under section 195 in case of payment for ocean freight

- ❑ As per the Income Tax Act, 1961 any payment made by any person to non-resident which is liable to tax in India, TDS is required to be deducted under section 195 or any other specific section of the Act.
- ❑ Transaction of payment of ocean freight to Non- resident can be considered as business income and therefore if the person receiving the ocean freight has a business connection in India as per section 9(1)(i) of the Income Tax or forms a PE in India as per DTAA then tax needs to be deducted in India on such income under section 195 of the Act.
- ❑ Since the ships are parked on port of India it could lead to having a business connection of such shipping company in India.



What does Section 172 prescribes for shipping business of non-residents?

Section 172 of Income Tax Act: How this removes requirement of tax withholding

- ❑ Section 172 applies to freight income in relocation to a ship and tax need to be paid by Non- Resident on 7.5% of the amount paid or payable before the departure of any ship to Assessing Officer.
- ❑ Thus, the provisions of section 172 itself covers all the taxation as well as recovery provisions in relation to tax on Income earned by shipping company and hence the resident deductor were finding it overlapping to again check and deduct tax on payment made to such shipping companies.
- ❑ To remove the above mentioned difficulties various circulars were issued by CBDT.

Circular for relief to Indian tax deductors and foreign shipping companies

Circular No. 723 of 1995

- ❑ In the above Circular, CBDT held that Section 172 deals with shipping business of non-residents. The provisions of section 172 are to apply, notwithstanding anything contained in other provisions of the Act.
- ❑ Therefore, in such cases, the provision of sections 194C and 195 relating to tax deduction at source are not applicable and TDS need not be deducted.

Circular No. 30/2016 and Circular 732 of 1995

- ❑ This circular was issued to further clarification and streamlining the process of obtaining No Objection Certificate (NOC) from Assessing Officer wherein the following benefits were mentioned:
 - ❑ If the voyage belongs to shipping company of a single country which has a DTAA with India then they can apply for single NOC for the entire year rather than voyage based NOC.
 - ❑ If the cargo belongs to different shipping companies of different countries with full DTAA with India then master of ship has to obtain a certificate from CA in the prescribed format.
 - ❑ In any other case master of the ship has to take voyage NOC from AO having jurisdiction over port.



Whether any Documents required for Non Deduction of TDS ?



Yes, Tax exemption certificate/ Non objection certificate (NOC) from AO which prescribes that Tax will be paid by Non – Resident or TDS need not to be deducted by resident.

Point to Consider:- Resident need to take NOC / Tax exemption Certificate from Non Resident for Non – deduction of Tax under section 195 of the Income Tax Act

Whether TDS need to be deducted when payment of Ocean freight is made to Indian Agent of Non - Resident



There would be cases where payments are made to shipping agents of non-resident ship-owners or charterers for carriage of passengers etc., shipped at a port in India.

Since, the agent acts on behalf of the non-resident ship-owner or charterer, **he steps into the shoes of the principal and tax need not to be withhold in case of payment is made to agent also. However the documents mentioned above needs to be taken from the agent as well for non-deduction of TDS.**

Links of the above mentioned circulars are given below :-



[Circular No. 30 of 2016](#)



[Circular no.723 of 1995](#)



[Circular no. 732 of 1995](#)

Our Comments

- ❑ Thus, considering the above points it can be said that if the above mentioned declarations are received from the shipping company or its agents no TDS needs to be deducted.
- ❑ However, if no such declaration is received TDS should be deducted at the prescribed rate u/s 195 i.e. 40% for foreign companies and 30% in any other case.
- ❑ Further, if the person making payment does not deduct the required tax then 100% of the expense of such ocean freight can be disallowed under section 40(a)(i).

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