

TAXATION OF INCOME FROM ROYALTY / FTS IN HANDS OF NON-RESIDENTS

One of the key and major amendment introduced while passing the Finance Bill, 2023 by Lok Sabha on 24th March 2023 and as approved by Parliament on 27th March post assent of the Hon'ble President on 31st March 2023 is Section 115A. Section 115A is amended to tax non-resident on royalty or Fees for Technical Service at 20% (Plus applicable Cess and surcharge) with effect from 01st April 2023.

The comparison of section 115A before and after the amendment is as follows:

Section 115A before amendment in Finance Bill 2023	Section 115A after amendment in Finance Bill 2023
As per the Indian Income Tax Act, rate of withholding tax for Royalty or Fees for Technical Services is 10% plus Education cess and surcharge.	As per the Indian Income Tax Act, the rate of withholding tax for Royalty or Fees for Technical Services (FTS) is 20% plus Education cess and surcharge.
Section 115A exempted non-residents from filing income-tax returns in India provided that (i) such non-resident had only income from dividend/ interest / royalty / FTS from India and (ii) tax has been withheld at source from such income at a rate which is not lower to the rate provided under section 115A.	If the DTAA rates are more beneficial than the 115A tax rates, DTAA rate can be adopted provided foreign company is filing income tax return in India.

For the non-residents, the tax rates applicable for royalty and fees for technical services as per the new amendment is as follows:

Particulars	Rate of tax
Tax Residency Certificate (TRC) and Permanent Account number (PAN) not available	20.8% plus surcharge for the Royalty/ FTS
If TRC & PAN available	DTAA rate (if beneficial) can be adopted provided foreign company is filing income tax return in India.
If TRC available & PAN not available	DTAA rate (if beneficial) can be adopted provided foreign company is filing income tax return in India.
If TRC not available and PAN available	20.8% plus surcharge for the Royalty/ FTS

With this amendment, while repatriating the funds through Form 15CB and Form 15CA, the Indian Companies should undertake due care if beneficial rate as per the DTAA is adopted.