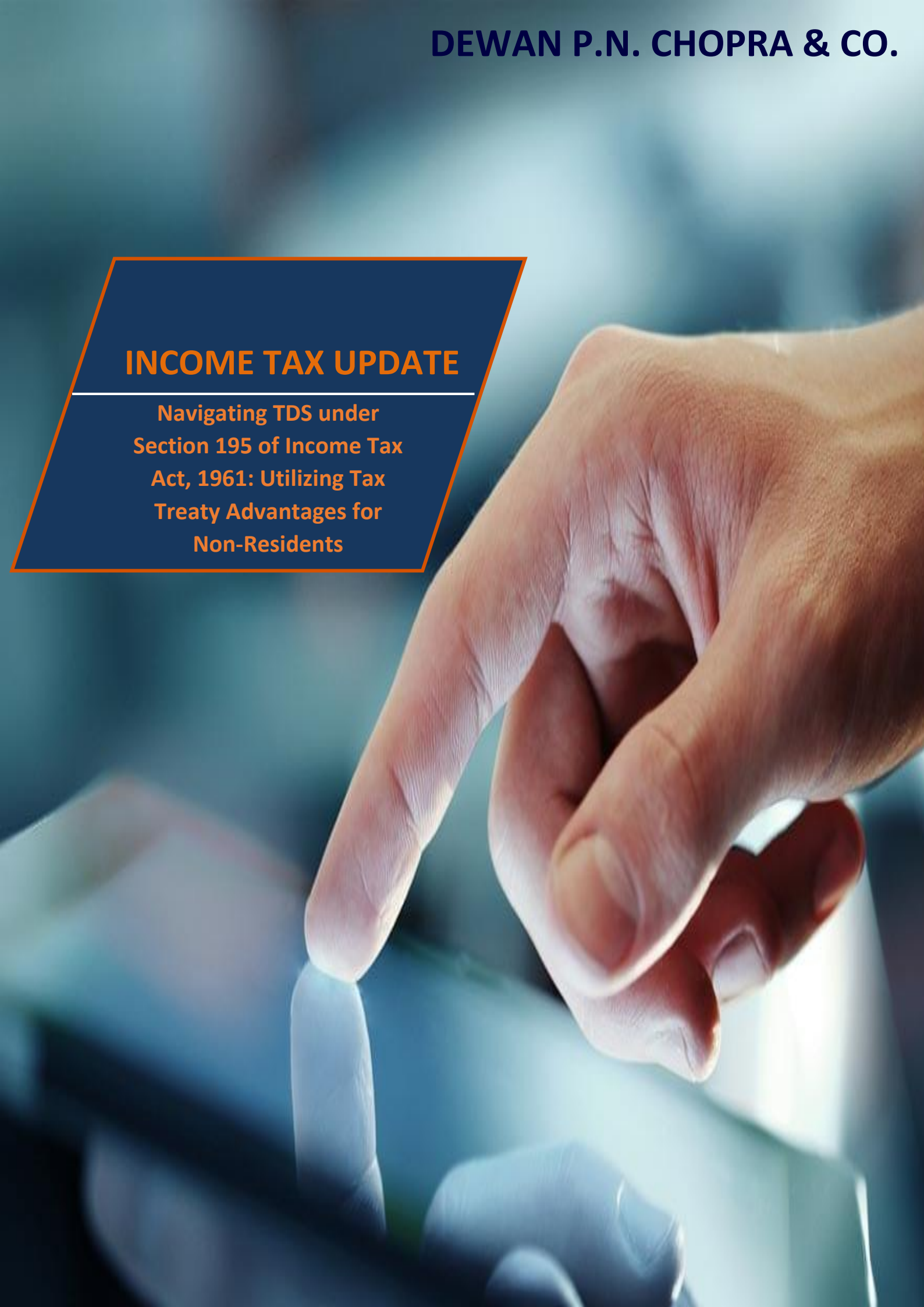


## **INCOME TAX UPDATE**

**Navigating TDS under  
Section 195 of Income Tax  
Act, 1961: Utilizing Tax  
Treaty Advantages for  
Non-Residents**



## Navigating TDS under Section 195 of Income

### Tax Act, 1961: Utilizing Tax Treaty

#### Advantages for Non-Residents

In the rapidly expanding world of global business, transactions across borders have become the norm. As services are sourced from abroad, **payments to non-residents** have become routine. Understanding the tax implications of these payments is crucial, and one key aspect is Tax Deducted at Source (TDS) under Section 195 of the Income Tax Act, 1961.

#### Who is required to deduct TDS u/s 195?

Any person responsible for paying to a non-resident, any interest (excluding certain specified interest payments) or any other sum chargeable under the provisions of Income Tax Act, 1961 (not being income

chargeable under the head "Salaries") is required to deduct tax under this section at the rates in force.

### **TDS rate on payment to non-resident**

The tax deduction under section 195 of the Act is determined by either the rate specified in the Finance act of that year or the rate outlined in the Double Tax Avoidance Agreement (DTAA) between India and the payee's country, for that particular income stream (if any), whichever favors the taxpayer.

For instance, if an Indian company is paying fees for technical services to a Japanese resident, the standard withholding rate is 20%, along with surcharge and cess under the Act. However, the non-resident has the option to choose the more favorable tax rate of 10% as per the India-Japan DTAA, provided they are eligible to avail the DTAA benefit

and submit required documents to the payer such as valid Tax Residency Certificate (TRC), Form 10F, etc.

### **Indicative List of Documents required to avail the benefits of Tax Treaty**

- **Tax Residency Certificate (TRC):** Issued by the tax authorities of the non-resident's home country, confirming their tax residency. Please note TRC is generally issued for a year depending upon Financial or calendar year of that jurisdiction.
- **Form 10F:** Details like the applicant's nationality, tax identification number, address and period of residential status has to be filled and the form has to be signed. Form 10F is required to be electronically filed via the Income Tax portal. (Non-residents have the option to register to the Income tax portal without obtaining PAN i.e. Tax identification number)

- Declaration by the payee that the principal purpose of the transaction is not to obtain a tax benefit.
- Declaration by payee regarding “No Permanent Establishment” in the payer’s country (if applicable).

Therefore, it is imperative to have on record the above documents before processing payments to Non-resident wherein withholding is being done in accordance with the rates specified in a DTAA.

**DISCLAIMER: -**

*The summary information herein is based on the provisions of Income Tax Act, 1961, read with DTAA. While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.*