

Changes in procedure relating to application for withholding tax at a lower - nil rate

Where a taxpayer believes that its total income justifies withholding of tax at a lower rate, it can apply to the assessing officer for a certificate of withholding tax at a lower rate. The application by the taxpayer to the AO for a certificate of withholding tax at a lower rate is governed by Rule 28AA of the Income-tax Rules, 1962 (the Rules).

Recently, the Central Board of Direct Taxes (“CBDT”) has vide **ITAX Notification No. 16 / 2011 dated 29 March, 2011(GIVEN BELOW)(Sending again for Ref.)** substituted Rule 28AA of the Rules, which requires the applicant to furnish additional details at the time of applying for a certificate for a lower / nil rate of withholding tax. **The modifications are effective from 1 April, 2011.**

The modifications made

The modifications made

Current Provisions	Amended Provisions	Impact / Change
Rule 28AA		
<p>The AO can issue a certificate for nil withholding of tax, or for tax at a lower rate. The rate of tax withholding was to be determined as follows:</p> <p>(i) at the average rate of tax, i.e the total tax payable on estimated income, less the sum of advance tax already paid and taxes already withheld, as a percentage of the total payment</p> <p>or</p> <p>(ii) at the average of the average rates of tax paid by the assessee in the last three years; whichever is higher.</p>	<ul style="list-style-type: none"> • If the AO is satisfied that the existing and the estimated tax liability of a person justifies tax withholding at a lower rate, or at nil rate, the AO will issue a certificate. • The AO will determine the existing and the estimated liability after considering the following: – tax payable on estimated income of the previous year relevant to the assessment year; <p>- tax payable on the assessed or the returned income of the three previous years;</p> <p>- existing liability under the Income-tax Act, 1961 and Wealth-tax Act, 1957;</p> <p>- advance tax payment and taxes withheld for the assessment year;</p> <p>- withholding tax up to the date of application relevant to the date of application year; and</p> <p>- tax collected at source relevant to the year until the date of application.</p>	<ul style="list-style-type: none"> • The requirement of a minimum rate of withholding at the average of the rate of taxes paid in the last three years has been done away with. However, the AO is required to consider this in determining the estimated liability for the purpose of lower rate of withholding or for nil withholding. • Form 13, relating to the application, has been modified. In the new form 13, the following additional details are required to be furnished: – Tax Deduction and Collection Account No. (“TAN”) <p>- Details of returns/statements which have become due but are not filed</p> <p>- Details of returned income/ assessed income for the last three assessment years</p> <p>- Details of sales, profit, etc. for the three previous years in the case of an assessee whose income includes income under the heading “Profits</p>

		<p>and gains of business or profession”: (copies of profit and loss account and balance sheet along with the audit report, if audited, for the three previous years must be enclosed).</p> <p>- Details of existing liability under Income-tax Act, 1961 and Wealth-tax Act, 1957.</p> <p>- Assessment year to which the payments relate.</p> <p>This will make the process of application and certificate issuance more comprehensive at the initial stage.</p>
<ul style="list-style-type: none"> • Rule 31A 		
<p>Quarterly statement of tax withholding is required to be furnished by the person responsible for withholding tax.</p>	<ul style="list-style-type: none"> • In addition to the existing requirements, the particulars of amounts paid or credited on which tax was not withheld is also required to be furnished. • The details of the payment made to the contractors of specified business under section 194C(6) of the Act (i.e. plying, hiring or leasing goods carriages) without withholding tax on furnishing of PAN² is now required to be included in the quarterly statement. 	<p>This is an additional compliance requirement for the person responsible for withholding tax. This will also lead to the possibility of scrutinising of the transactions at the filing stage of the process.</p>

Conclusion – The amended requirements further standardises the process by seeking specific details which make the process of application and certificate issuance more comprehensive. The additional information that is called for by the modified Rule 31A was already being provided by the assessee while furnishing the quarterly statement.

Sending again for ref.

**-COPY OF-
ITAX Notification
No. 16/2011
Dated: March 29, 2011**

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the **Income-tax (Second Amendment) Rules, 2011.**

(2) They shall come into force on the **1st day of April, 2011.**

2. In the Income-tax rules, 1962,-

(a) for rule 28AA, the following rule shall be substituted, namely:-

“Certificate for deduction at lower rates or no deduction of tax from income other than dividends.

28AA. (1) Where the Assessing Officer, on an application made by a person under sub-rule (1) of rule 28 is satisfied that existing and estimated tax liability of a person justifies deduction of tax at lower rate or no deduction of tax, as the case may be, the Assessing Officer shall issue a certificate in accordance with the provisions of sub-section (1) of section 197 for deduction of tax at such lower rate or no deduction of tax.

(2) The existing and estimated liability referred to in sub-rule (1) shall be determined by Assessing Officer after taking into consideration the following:-

(i) tax payable on estimated income of the previous year relevant to the assessment year;

(ii) tax payable on the assessed or returned income, as the case may be, of the last three previous years;

(iii) existing liability under the Income-tax Act, 1961 and Wealth-tax Act, 1957;

(iv) advance tax payment for the assessment year relevant to the previous year till the date of making application under sub-rule (1) of rule 28;

(v) tax deducted at source for the assessment year relevant to the previous year till the date of making application under sub-rule (1) of rule 28; and

(vi) tax collected at source for the assessment year relevant to the previous year till the date of making application under sub-rule (1) of rule 28.

(3) The certificate shall be valid for such period of the previous year as may be specified in the certificate, unless it is cancelled by the Assessing Officer at any time before the expiry of the specified period.

(4) The certificate shall be valid only with regard to the person responsible for deducting the tax and named therein.

(5) The certificate shall be issued direct to the person responsible for deducting the tax under advice to the person who made an application for issue of such certificate.”

(b) in rule 3IA, in sub-rule (4), after clause (iv), the following clauses shall be inserted, namely:-

“(v) furnish particulars of amount paid or credited on which tax was not deducted in view of the issue of certificate of no deduction of tax under section 197 by the Assessing Officer of the payee;

(c) in Appendix-II , for Form No.13, the following Form shall be substituted, namely:-

“FORM NO.13
[See rules 28 and 37G]
Application by a person for a certificate under sections 197
and/or 206C(9) of the Income-tax Act, 1961, for no
***deduction/collection of tax or *deduction/**
collection of tax at a lower rate

To
The Assessing Officer,

1. *I, _____ of _____ do, hereby, request that a certificate may be issued to the person responsible for paying to me the incomes/sum by way of salary/interest on securities/ interest other than “interest on securities”/insurance commission/commission (not being insurance commission) or brokerage/commission, etc., on the sale of lottery tickets/fees for professional or technical services/any sum by way of payment to contractors and subcontractors/dividends/rent/income in respect of units/sum by way of payment of compensation on acquisition of immovable property (strike out whichever is not applicable) authorising him not to deduct income-tax/to deduct income-tax at the rate of _____ per cent at the time of payment to me of such income/sum. The particulars of my income and other details are as per para 2.

and/or

*I, _____ of _____ do, hereby, request that a certificate may be issued to the seller, being the person responsible for collecting the tax from me in respect of the amount payable by me as the buyer of _____ [specify the nature of goods referred to in the Table in sub-section (1) of section 206C]/lessee or licensee of _____ [specify the nature of contract or licence or lease referred to in the Table in sub-section (1C) of section 206C] (Strike out whichever is not applicable) authorizing him to collect income-tax at the rate of _____ per cent at the time of debit of such amount to my account or receipt thereof from me, as the case may be. The particulars of my income and other details are as per para 2.

2. The particulars of my income and other details are as under:

(i) Status

(State whether individual, Hindu undivided family, firm, body of individuals, Company, etc.)

(ii) Residential status

(Whether resident/resident but not ordinarily resident/non-resident)

(iii) Permanent Account No. (PAN)

(iv) Tax Deduction and Collection Account No. (TAN)

(v) Details of returns/statements which have become due but have not been filed:

(vi) furnish particulars of amount paid or credited on which tax was not deducted in view of the compliance of provisions of sub-section (6) of section 194C by the payee.”

Section under which return/ statement has become due	Assessment year/quarter	Due date for filing	Reason for not filing
(1)	(2)	(3)	(4)
Section 139			
Section 200			
Section 206C			

(vi) Details of returned income/assessed income for the last three assessment years: (enclose copies of returns of income filed along with their enclosures and copies of assessment orders, if assessed, for the last three assessment years.)

Assessment year	Total income as per return of income	Total income as per latest assessment	Total tax including interest payable on returned income	Total tax including interest payable on assessed income
(1)	(2)	(3)	(4)	(5)

(vii) Details of tax payment for the last three assessment years:

Assessment year	Total payment of tax including interest	Tax paid by way of Advance tax	Credit claimed for tax deduction at source.	Credit claimed for tax collection at source.	Tax paid by way of self assessment tax	Tax paid in response to notice of demand under section 156
(1)	(2)	(3)	(4)	(5)	(6)	(7)

(viii) Details of sales, profit, etc. for the last three previous years in the case of assessee whose income include income under the head “Profits and gains of business or profession”: (enclose copies of profit and loss account and balance sheet along with audit report, if audited, for the last three previous years)

Gross sales, turnover receipt of business or profession	Gross sales, turnover receipt of business or profession	Gross profit		Net profit	
		In rupees	In percentage to amount stated in column (1)	In rupees	In percentage to amount stated in column (1)
(1)	(2)	(3)	(4)	(5)	(6)

(ix) Details of existing liability under Income-tax Act, 1961 and Wealth-tax Act, 1957:

Assessment Year/period	Liability under the Income-tax Act, 1961				Amount payable under the Wealth-tax Act, 1957
	Amount payable in respect of advance tax	Amount payable for self assessment tax	Amount for which notice of demand under section 156 has been served but	Amount payable as deductor or collector which had become	

			not paid.	due but not paid.	
(1)	(2)	(3)	(4)	(5)	(6)

(x) Assessment year to which the payments relate

(xi) Estimated total income of the previous year relevant to the assessment year referred to in (x) above

(give detailed computation and basis thereof)

(xii) Total tax including interest payable on the income at (xi)

(xiii) How the liability mentioned in col. (ix) and col. (xii) is proposed to be discharged?

(xiv) Details of payment of advance-tax and tax already deducted/collected for the assessment year relevant to the current previous year till date.

Nature of prepaid tax	Date of payment/deduction/collection
Advance tax	
TDS	
TCS	

(xv) Details of income claimed to be exempt and not included in the total income in col. (xi) (Please append a note giving reason for claiming such exemption).

(xvi) Please furnish the particulars in Annexure-I in respect of no deduction of tax or deduction of tax at a lower rate under section 197 and/or in Annexure-II for collection of tax at lower rate under section 206C(9) of the Income-tax Act, as the case may be.

*I, _____ the trustee/co-trustee of _____ do hereby declare that the securities/sums/shares, particulars of which are given in the Annexure, are properly held under trust wholly for charitable or religious purposes and that the income therefrom qualifies for exemption under sections 11 and 13 of the Income-tax Act, 1961.

*I declare that the securities/sums/shares, particulars of which are given in the Schedules above, stand in my name and are beneficially owned by me, and the income therefrom is not includible in the total income of any other person under sections 60 to 64 of the Income-tax Act, 1961.

I further declare that what is stated in this application is correct.

Date _____

	Signature
Place _____	Address _____

ANNEXURE I

[For the purpose of tax deduction at source]

Please furnish the particulars with the Schedules below in respect of the payments for which the certificate is sought.

SCHEDULE I

Description of securities	Number of securities	Date of securities	Amount of securities	Estimated amount of interest to be received
(1)	(2)	(3)	(4)	(5)

SCHEDULE II

Sl. No.	Name and address of the person to whom the sums are given on Interest	Amount of such sums	The date on which such sums were given on interest	Period for which such sums were given on Interest	Rate of interest	Estimated amount of interest to be received
(1)	(2)	(3)	(4)	(5)	(6)	(7)

SCHEDULE III

Sl. No.	Name and address of person responsible for paying insurance commission	Estimated amount of insurance commission
(1)	(2)	(3)

SCHEDULE IV

Sl. No.	Name and address of the company	No. of shares	Class of shares and face value of each share	Total face value of shares	Distinctive numbers of shares	Estimated amount of dividend to be received
(1)	(2)	(3)	(4)	(5)	(6)	(7)

SCHEDULE V

Sl. No.	Name and address of the employer	Period of employment	Amount of salary received	Income from house property	Income from sources other than salary and income from house property	Estimated total income
(1)	(2)	(3)	(4)	(5)	(6)	(7)

SCHEDULE VI

Sl. No.	Name and address of person responsible for paying rent	Estimated amount of rent to be received
(1)	(2)	(3)

SCHEDULE VII

Sl. No.	Name and address of the mutual fund	No. of units	Classes of units and face value of each unit	Total face value of units	Distinctive numbers of units	Estimated amount of income to be received
(1)	(2)	(3)	(4)	(5)	(6)	(7)

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SCHEDULE VIII

Sl. No.	Name and address of person responsible for paying commission (not being insurance commission referred to in section 194D) or brokerage.	Estimated amount of commission (not being insurance commission referred to in section 194D) or brokerage to be received
(1)	(2)	(3)

SCHEDULE IX

Sl. No.	Full name and address of the authority/person with whom the contract was made	Date of the contract	Nature of the contract	Date by which work on the contract would be completed	Sums expected to be credited/paid in pursuance of the contract during the current previous year and each of the three immediately succeeding years
(1)	(2)	(3)	(4)	(5)	(6)

SCHEDULE X

Sl. No.	Name and address of person(s) responsible for paying commission, remuneration or prize (by whatever name called) on the sale of lottery tickets	Estimated amount of commission/ remuneration/prize to be received (strike out whichever is not applicable)

(1)	(2)	(3)

SCHEDULE XI

Sl. No.	Name and address of person(s) responsible for paying fees for professional/technical services	Estimated amount of fees for professional/technical services to be received (strike out whichever is not applicable)
(1)	(2)	(3)

SCHEDULE XII

Sl. No.	Name and address of person responsible for paying compensation or enhanced compensation or the consideration or enhanced consideration on account of compulsory acquisition of immovable property	Estimated amount of compensation or the enhanced compensation or consideration or the enhanced consideration
(1)	(2)	(3)

Date _____

(Signature) _____

Place _____

(Address) _____

ANNEXURE II
[For the purpose of tax collection at source]

Please furnish particulars of the amounts payable in respect of which the certificate is sought in the schedules below:-

SCHEDULE I

Sl. No.	Full name and address of the seller	Date of sale with reference number of such sale	Nature and description of the goods sold and details of sale	Amounts expected to be debited/ paid in pursuance of the sale during the current financial year and each of the three immediately succeeding years.
(1)	(2)	(3)	(4)	(5)

SCHEDULE II

Sl. No.	Full name and address of the person granting lease or licence	Date of grant of lease or licence or contract or transfer of right with reference number	Nature of contract or licence or lease and description and details of the contract	Amounts expected to be debited/ paid in pursuance of the contract during the current financial year and each of the three immediately succeeding years.
(1)	(2)	(3)	(4)	(5)

Date _____

 Signature of the buyer
 Full Name _____
 Designation _____”

F.No.133/11/2011-SO(TPL)

(Rajesh Kumar Bhoot)
Director (Tax Policy and Legislation)

Note. The principal rules were published vide, Notification No.S.O.969(E), dated 26th March, 1962 and last amended by the Income-tax (First Amendment) Rules, 2011 vide Notification S.O.495(E) dated 9th March, 2011.