

Latest development Penalty, Prosecution & Compounding of Offences in case of TDS/TCS defaults

– Practical Aspects

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In case of Default in TDS/ TCS

Penalty Provision

Provisions for levying penalty for defaults in deduction of tax at source and its deposit with the Government.....

S. No.	Section	Particulars
1	Section 271C	Failure to deduction TDS under Chapter XVII-B
2	Section 271CC	Failure to collect tax at source under Chapter XVII-BB

Section 271C - Penalty for failure to deduct TDS

- If any person fails to—
 - a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or
 - b) pay the whole or any part of the tax as required by or under—
 - (i) sub-section (2) of section 115-O; or
 - (ii) the second proviso to section 194B,
- **then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.**

Note: Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Section 271CA - Penalty for failure to collect tax at source [Inserted by the Finance Act, 2006, w.e.f. 1-4-2007]

- If any person fails to collect the whole or any part of the tax as required by or under the provisions of Chapter XVII-BB

then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to collect as aforesaid.

Note: Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Contd.....

S.No.	Section	Particulars
3	Section 272A(2)(c)	Failure to comply with requirements of filing statements or returns u/s 206 and/or section 206C
4	Section 272A(2)(g)	Failure to supply TDS certificate u/s 203
5	Section 272A(2)(i)	Failure to furnish a statement u/s 192 (2C)
6	Section 272A(2)(j)	Failure to deliver a copy of declaration u/s 206C(1A)

- **Penalty shall be leviable a sum Rs. 100/- for every day during which the failure continues.**

S. No.	Section	Particulars
7	Section 272A(2)(k)	Failure to deliver quarterly statement u/s 200(3) or the proviso to section 206C(3). <i>[The Finance Act, 2012 has w.e.f. 01-07-2012, dispensed with this penalty and instead has introduced a fine under new section 234E]</i>
8	Section 272A(2)(l)	Failure to deliver quarterly statement u/s 206A(1)

- **Penalty shall be leviable a sum Rs. 100/- for every day during which the failure continues.**

Contd.....

S. No.	Section	Particulars
9	Section 272BB	<p>Failure to comply with the provisions of section 203A regarding allotment of TAN or Tax collection account number in challans, certificates, returns, etc.</p> <p>Penalty of Rs. 10,000/- is leviable (w.e.f. 1.10.2004)</p>
10	Section 272BBB	<p>Failure to comply with the provisions of section 206CA for tax collection account number.</p> <p>Penalty leviable w.e.f. 1-10-2004 is u/s.272BB</p>

S. No.	Section	Particulars
10	Section 201(1)	Treat an assessee in default or deemed to be in default if he fails to deduct tax at source or he fails to pay the tax so deducted. Liable to penalty u/s 221.
11	Section 221	In case of non-deduction and non-payment of interest worked and u/s 201(1A)

S. No.	Section	Particulars
12	Interest u/s 201(1A)	If the assessee is deemed to be in default u/s 201(1) for not paying the tax deductible or deducted. Interest is leviable at 12% of tax in arrear for the period of default.
13	Interest 206C(7) u/s	In case of default in collecting the tax u/s 206C, interest is leviable at 1% p.m. on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid.

Issues

Issue: Issuing TDS certificate belatedly under a bona fide belief

CIT (TDS) v. Excel Industries Ltd. [2014] 51 taxmann.com 247 (Gujarat)

- No penalty u/s 272 of the Act is levied in case issue TDS certificate belatedly under a bona fide belief that a consolidated TDS certificate was to be issued to deductees after closing of relevant financial year.

Issue: If the TDS not deducted under a bona fide belief can assessee held liable u/s 201(1A)...?

CIT v. I.T.C. Ltd. [2013] 38 taxmann.com 11 (Allahabad)

- Where Tribunal found that action of assessee for not deducting tax at source on conveyance allowance paid to its employees was based on bona fide belief, assessee could not be treated as assessee in default liable to interest under section 201(1A)

Issue: If tax had already been paid by deductee, thereafter tax can be recovered again by treating deductor to be assessee-in-default..?

CIT v. D. P.Vekaria [2014] 48 taxmann.com 249 (Gujarat)

- Where deductee, recipient of income, has already paid taxes on amount received from deductor, department once again **cannot recover** tax from deductor on same income by treating deductor to be assessee-in-default for shortfall in its amount of tax deducted at source.
- The liability of deductor for interest is required to be considered/determined considering date of payment of tax by concerned tax deductees.

Issue: if depositors furnished declaration requesting deductor not to deduct TDS, then deductor can be penalized...?

Dy. CIT v. Vijaya Bank [2014] 48 taxmann.com 244 (Visakhapatnam - Trib.)

- Where depositors had furnished declaration in prescribed manner requesting deductor not to deduct tax at source, deductor was under a statutory obligation not to deduct tax and in aforesaid circumstances, deductor could not be penalized for not deducting tax at source

Issue: If the assessee did not dispute show-cause notice issued u/s 201 ...?

ING Vysya Bank Ltd. v. Asstt. CIT [2015] 53 taxmann.com 460 (Bangalore - Trib.)

- As assessee did not dispute show cause notice issued by AO, he treated assessee as assessee in default u/s 201 and determined TDS and interest liability.
- On appeal, assessee contended that it had made various provisions during its banking business for which it was not supposed to deduct TDS and whenever payment was made, it had deducted TDS.
- **Even if assessee did not contest issue before AO, it had a right to appeal and it could apprise higher authorities about unsustainability of demand in law.**

Issue: Is there any time limit to declared as an assessee in default u/s 201 of the Act...?

Director of Income-tax (International Taxation) v. Mahindra & Mahindra Ltd. [2014] 48 taxmann.com 150 (Bombay)

- Even though section 201 does not prescribe any limitation period for assessee being declared as an assessee in default yet revenue will have to exercise power in that regard within a reasonable time. [Also see: Bhura Exports Ltd. v. ITO [2011] 13 taxmann.com 162 (Cal.)]
- An order passed u/s 201 (1) or (1A) can not be held as barred by limitation merely on ground that it has not been passed within four years from end of relevant F.Y.

Issue: Time limit for proceedings u/s 201 / 201(1A) ...?

Cit v. Hutchison Essar Telecom Ltd. [2010] 323 ITR 230 (DELHI)

- Proceedings u/s 201 and 201(1A), initiated after period of four years from end of financial year in question, were barred by limitation.
- It is clear from the decision in the case of CIT v. NHK Japan Broadcasting Corpn. [2008] 305 ITR 137 (Delhi), that the proceedings u/s 201/201(1A), can be initiated only within three years from the end of the A.Y. or within four years from the end of the relevant F.Y.

Issue: Invocation of provisions u/s 201(1) in case of loss to the revenue...?

Allahabad Bank v. ITO [2014] 46 taxmann.com 200 (Agra - Trib.)

- Recovery provisions u/s 201(1) can be invoked only when loss to revenue is established and that can only be established when it is demonstrated that recipient of income has liability to pay tax and has not paid due taxes.

Issue: If the bank credit the tax deposit in other account then assessee can be maid liable...?

DCM Shriram Consolidated Ltd. v. ITO [2014] 50 taxmann.com 423 (Lucknow - Trib.)

- If the bank credited tax deposited by assessee within time to CBEC account instead of CBDT account, for such a mistake committed by bank, assessee could not be held liable and interest imposed by revenue was not justified.

Issue: Order u/s 201(1)/ 201(1A) where an action against payee is not initiated by the department u/s 147...?

Dy. Director of Income-tax (International Taxation) v. Videsh Sanchar Nigam Ltd. [2014] 48 taxmann.com 108 (Mumbai - Trib.)

- No order u/s 201(1)/201(1A) can be passed where revenue has not taken any action against payee and further time limit for taking action against payee u/s 147 has also expired.

Issue: section 201(1) r.w.s. 221

CIT v. American Express Bank Ltd. [2012] 18
taxmann.com 21 (Delhi)

- Proviso to section 201(1) is to be applied only to negate possibility of imposition of penalty u/s 221 and it would not absolve an assessee from being considered as an assessee in default

Issue: Requirement of issuing Notice u/s 156 in case provisions of section 201(1) is applicable.....?

PILCOM v. CIT [2011] 11 taxmann.com 103. (Cal.)

- U/s 201, a person is 'deemed to be an assessee in default' in view of statutory provision contained therein and in such a case, there is no scope of giving further notice of demand under section 156 which is applicable only in cases 'when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act'.
- In a case where section 201(1) is attracted there is no need of giving any notice u/s 156 and if any such notice is given the same should be held to be redundant.

Prosecution Provision applicable
in the case of TDS / TCS

**Chapter XXII – Offences and Prosecutions
of Income Tax Act, 1961**

Prosecution Provision in case of TDS/ TCS

S. No.	Section	Particulars
1	<u>Section 276B</u>	Failure to Pay tax to the credit of Central Government
2	<u>Section 276BB</u>	Failure to pay the tax collected at source
3	Section 276C	Wilful attempt to evade tax, etc.
4	Section 277	False statement in verification, etc.
4	Section 278	Abetment of false return, etc.
5	<u>Section 278A</u>	Punishment for Second and subsequent offences
6	Section 278AA	Punishment not to be imposed in certain cases

**Failure to Pay tax to the credit of
Central Government under Chapter XII-D or XVII-B**

Section 276B: If a person fails to pay to the credit of the Central Government,—

- a) the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or
- b) the tax payable by him, as required by or under—
 - i. sub-section (2) of section 115-O; or
 - ii. the second proviso to section 194B,

he shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years and with fine.

Failure to pay the tax collected at source

- **Section 276BB:** If a person fails to **pay to the credit of the Central Government**, the tax **collected** by him as required under the provisions of section 206C, he shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years and with fine.

Wilful attempt to evade tax, etc. - Section 276C

Section 276C (1)

If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable:

- i. in a case where the amount sought to be evaded exceeds Rs. 25,00,000/-, with rigorous imprisonment for a term which shall not be less than 6 months but which may extend to 7 years and with fine;*
- ii. in any other case, with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 2 years and with fine.*

Wilful attempt to evade tax, etc. - Section 276C

Section 276C (2)

If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 2 years and shall, in the discretion of the court, also be liable to fine.

Wilful attempt to evade tax, etc. - Section 276C

Section 276C

- **Explanation**-For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—
 - i. has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or
 - ii. makes or causes to be made any false entry or statement in such books of account or other documents; or
 - iii. wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or
 - iv. causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

False statement in verification, etc.

- Section 277: If a person makes a statement in any verification under this Act or under any rule made there under, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable:
 - (i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds Rs. 25,00,000/-, with rigorous imprisonment for a term which shall not be less than 6 months but which may extend to 7 years and with fine;
 - (ii) in any other case, with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 2 years and with fine.

Abetment of false return, etc.

- **Section 278:** If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income or any fringe benefits chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence u/s 276C(1), he shall be punishable,—
 - (i) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is willfully attempted to be evaded, exceeds Rs. 25,00,000/-, with rigorous imprisonment for a term which shall not be less than 6 months but which may extend to 7 years and with fine;
 - (ii) in any other case, with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 2 years and with fine.

Punishment for Second and subsequent offences

- **Section 278A:** *If any person convicted of an offence u/s 276B or sub-section (1) of section 276C or section 277 or section 278 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and for every subsequent offence with rigorous imprisonment for a term which shall not be less than 6 months but which may extend to 7 years and with fine.*

Punishment not to be imposed in certain cases

- *Notwithstanding anything contained in the provisions of **Section 276B**, no person shall be punishable for any failure referred to in the said provision if he proves that there was reasonable cause for such failure [Section 278AA].*

Issues

Issue: Proceedings Pending u/s 201(1) and 201(1A) is a bar to institution criminal prosecution..?

Kingfisher Airlines Ltd. v. Income Tax Department
[2014] 43 taxmann.com 201 (Karnataka)

- Failure to pay tax on distributed profits of domestic companies/deducted at source.
- The pendency of proceedings u/s 201(1) and 201(1A) cannot act as a bar to institution and continuance of criminal prosecution for offences punishable u/s 276B.

Issue: Person incharge of affairs of company, prosecuted for offences committed by company...?

Homi Phiroze Ranina v. State of Maharashtra[2003] 131 TAXMAN 100 (BOM.)

- In brief, the Company had deducted tax payable by contractors while making payment to contractors but failed to remit tax deducted to treasury within stipulated time. The Complaint was filed against director as well as company and also against chairman and managing director of company, charging them u/s 276BB r.w. Sec. 278B.
- In the absence of any material in complaint which prima facie showed that director etc. were in fact in charge of affairs of company and responsible for conduct of its day-to-day affairs, applicant could not be prosecuted for offences committed by company.

Compounding Provision
Guidelines for Compounding of Offences under
Direct Tax Laws, 2014 [dated 23/12/2014]

F.No. 285/35/2013 IT (Inv.V) /108

W.e.f. 01.01.2015 and shall be applicable to all applications received on or after 01.01.2015

Note: Applications received before 01.01.2015 shall continue to be dealt as per the guidelines dated 16.05.2008

Classification of Offences.....

For the limited purpose of compounding of the offences, the offences under Chapter-XXII of the Act are classified into two parts :



- **Category A**

- **Category B**

Offences included in Category A

Section	Brief
Section 276B	<ul style="list-style-type: none"> - Failure to pay tax deducted under chapter XVII-B or - Tax payable u/s 115-O or - 2nd proviso to section 194B to the credit of Central Government
Section 276BB	<ul style="list-style-type: none"> - Failure to pay the tax collected at source
Section 277	<ul style="list-style-type: none"> - False statement in verification, etc. in regards to offence under Category A
Section 278	<ul style="list-style-type: none"> - Abetment of false return, etc. in regards to offence under category A

Offences included in Category B

Section	Brief
Section 276C(1)	Wilful attempt to evade tax etc.
Section 276C(2)	Wilful attempt to evade payment of taxes etc.
Section 277	- False statement in verification, etc. in regards to offence under Category B
Section 278	- Abetment of false return, etc. in regards to offence under category B

Compounding is not a matter of right:.....

- Compounding of offences is not a right of the Applicant.
- Offences may be compounded by the competent authority on its satisfaction of the eligibility conditions prescribed in these guidelines after considering of conduct of the person; nature and magnitude of the offence and facts and circumstances of each case.

Applicability of these guidelines to prosecutions under IPC

- Prosecution instituted under Indian Penal Code cannot be compounded as per these guidelines.

Note: Withdrawal of Prosecution proceedings is subject to the provisions of Section 321 of Criminal Procedure Code, 1973.

Eligibility Conditions for compounding:.....

The following conditions should be satisfied for considering compounding of an offence:-

- i. An application made to the CCIT/DGIT having jurisdiction over the case for compounding of the offence(s) in the **prescribed format (Annexure-1)**
- ii. Pay **outstanding** tax, interest, penalty and any other sum due, relating to the offence for which compounding has been sought
- iii. Undertakes to pay the **compounding charges** including the compounding fee, the prosecution establishment expenses and the litigation expenses including counsel's fee, if any, determined and communicated by the CCIT/DGIT concerned.

Contd.....

Eligibility Conditions for compounding:.....

iv. Undertakes to withdraw appeal filed, if any, in case the same has a bearing on the offence sought to be compounded. In case such appeal has mixed grounds, some of which may not be related to the offence under consideration, the undertaking may be taken for appropriate modification in grounds of such appeal.

Offences generally not to be compounded.....

- i. **Category 'A'** – In case of applicant compounding was allowed in the past, in an offence under the same section for which the present compounding has been requested, on 3 occasions or more.
- ii. **Category 'B' offence** other than the first offence as defined herein below:
 - First offence means offence under any of the Direct Tax Laws committed prior to (a) the date of issue of any show-cause notice for prosecution or (b) any intimation relating to prosecution by the Department to the person concerned or (c) launching of any prosecution, whichever is earlier;
OR
 - Offence not detected by the department but voluntarily disclosed by a person prior to the filing of application for compounding of offence in the case under any Direct Tax Acts. For this purpose, offence is relevant if it is committed by the same entity.
 - **The first offence is to be determined separately with reference to each section of the Act under which it is committed.**

Offences generally not to be compounded.....

- iii. Offences committed by a person **who**, as a result of investigation conducted by any Central or State agency and as per information available with the CCIT/DGIT concerned, has been found involved, in any manner, in anti-national/terrorist activity
- iv. Offences committed by a person **who**, was convicted by a court of law for an offence under any law, other than the Direct Taxes laws, for which the prescribed punishment was imprisonment for 2 years or more, with or without fine, and which has a bearing on the offence sought to be compounded
- v. Offences committed by a person **which**, as per information available with the CCIT/DGIT concerned, have a bearing on a case under investigation (at any stage including enquiry, filing of FIR/complaint) by Enforcement Directorate, CBI, Lokpal, Lokayukta or any other Central or State agency

Offences generally not to be compounded.....

- vi. Offences committed by a person for which he was convicted by a court of law under Direct Taxes laws
- vii. Offences committed by a person for which complaint was filed with the competent court 12 months prior to receipt of the application for compounding.
- viii. Offences committed by a person whose application for 'plea-bargaining' under Chapter XXI-A of 'Code of Criminal Procedure' is pending in a Court or a Court has recorded that a 'mutually satisfactory disposition of such an application is not worked out'.
- ix. Any other offence, which the CCIT/DGIT concerned considers not fit for compounding in view of its nature and magnitude

Fees for Compounding – for offences referred u/s 276B & 276BB [Failure to pay the TDS or failure to pay the TCS]

- **3% per month or part of a month of the amount of tax in default disclosed in the compounding application**
- **After compounding of the said offence, if the same person comes forward for compounding of such offence through any subsequent application, the applicable rate for compounding of such an offence will be 5% per month or part of a month of the amount of tax in default**
- **The period of default for calculating compounding fee shall be calculated from the date of deduction to the date of deposit of TDS as is done in respect of calculating interest u/s 201(1A)**

Fees for Compounding – for offences referred u/s 277 & 278 [False statement in verification etc., or Abatement of false return etc]

- **In case, same set of facts & circumstances attracts prosecution under these sections, fees shall be charged by treating them as one offence.**
- In case, same set of facts & circumstances attracts prosecution under these sections, in addition to the offence in connection with which prosecution u/s 277 got attracted in case of the same person - No separate compounding fee shall be charged for offence u/s 227, fees shall be charged by treating them as one offence.
- In case, where no offence under any other sections of I.T. Act is involved except u/s 277 or 278, the compounding fee shall be decided by the authority competent to compound having regard to the amount of tax which would have been evaded as a result of such offence u/s 277 or 278.

Note: In respect other offences where fees had not been prescribed, competent authority may determine the fee having regard to the nature and magnitude of offence, subject to minimum compounding fee of Rs. 25,000/- for each of such offence.

Compounding Charges.....

The compounding charges shall include:

- **Compounding Fee,**
- **Prosecution Establishment Expenses** – These expenses will be charged at the rate 10% of the compounding fees subject to a minimum charge of Rs.25,000/-
- **Litigation expenses** – It will include Counsel's fee paid or payable by the department in connection with offence(s) compounded by a single order.

Relaxation provided by the Minister of Finance....

- Notwithstanding anything contained in these Guidelines, the Finance Minister may relax restrictions for compounding of an offence in a deserving case, on consideration of a report from the Board on the petition of an applicant.

Application for compounding in the cases of co-accused

- The application for compounding in the cases of co-accused shall be considered along with the main case or immediately after a decision has been taken in the main case.

Standard operating procedure (SOP) for prosecution in cases of TDS/TCS default

As per the Income Tax Act, all cases where TDS/TCS is deducted but not deposited within the due date, as prescribed, are punishable u/s 276B/276BB or 278A.

The selection of cases & their processing is further governed by Instruction F. No. 285/90/2008-IT(Inv-I)/05 dated 24.04.2008 which has been modified by the CBDT [vide F.No.285/90/2013-IT(Inv.)] dated 07.02.2013.

Monetary limit specified for cases to be considered for prosecution.....

- The present Instructions envisage two categories of cases for prosecution in TDS related offences

I. Cases which are mandatorily to be processed

- TDS of more than Rs. 1,00,000 deducted but not deposited before due date

II. Cases depending upon facts & circumstances

- Defaults between Rs. 25,000/- to 1,00,000/-
(e.g. where there are instances of repeated defaults and/or tax has not been deposited till detection)

Standard Operating Procedures issued by CPC-TDS, Ghaziabad

The assesses who are paying less or no tax with respect to previous F.Y. are to be closely monitored by the TDS Authorities adapting the following procedures which is as under:

1. Generating a list of top deductors on the system through TRACES, for the last 3 F.Y.
2. Ascertaining reasons for lower tax deduction or collection, based on the type of industry/business.

Contd....

Standard Operating Procedures issued by CPC-TDS, Ghaziabad.....

3. Issuing letters to the deductor to ascertain the reason for negative growth and thereafter taking corrective measures such as spot verifications or referring the matter for prosecution in the case to the CIT (TDS), if the tax so deducted/collected is being utilized by the TAN holder for business.
4. In case of listed companies whose financial results are available in public domain, if there is fall in TDS as compared to earlier year but financial results show business growth, the case must be picked up for survey/spot verification.
5. **Survey/spot verification** may also be resorted to in case of deductors showing negative growth.

Time period for the entire process from identification to passing of order u/s 279(1)/279(2).....

S. No.	Section	Time limit for submitting proposal for sanction u/s 279(1)	Time limit for according sanction u/s 279(1)	Time limit for launching Prosecution	Authority to submit proposal & launch prosecution
1	276B, 276BB	Within 90 days of generation of list on CPC-TDS detection of offence or receipt of information from any other source/ income tax authority	Within 60 days of receipt of information from the AO(TDS)	Within 30 days of receiving approval u/s 279(1)	AO(TDS) having jurisdiction.

Procedure for launching prosecution.....

After identification of potential cases for prosecution by the CPC –TDS in case of mandatory processing or otherwise,

- It should be entered in the ‘Prosecution register’ maintained in Form–C and
- To be reported to the CIT(TDS) who shall also maintain the prosecution register in Form–D

till a specific module in CPC-TDS is made functional for having control on prosecution proceedings, the entries may be made in manual register

Contd....

Information/documents regarding the deductor may be collected by the AO(TDS) once the case is identified for processing :

(a) Details of the company/ firm/ individual

- Name of the company/ firm/individual, Present address, PAN, TAN

(b) Details of its directors/ partners/ proprietor etc

- Name of Directors/ Partners/ Proprietor as applicable for the relevant year
- Date of birth
- PAN & residential address

(c) Accounts of the deductor for the relevant year showing late payments.

(d) Copies of the TDS statement filed by assessee deductor.

(e) Copies of challans of late deposit of TDS by the assessee deductor.

Contd....

Information/documents regarding the deductor may be collected by the AO(TDS) once the case is identified for processing :

- (f) Copies of the intimations showing late payment interest for all the quarters of the relevant assessment year, if it is available.**
- (g) Copies of Audit report, if they show default.**
- (h) While collecting above information, AO(TDS) may also collect other details that may help the CIT(TDS) take a considered decision as also assist subsequent compounding proceedings (if any) viz. (a) whether the default was only in one year and no defaults took place later, (b) whether the deductor has himself rectified the mistake and deposited the tax along with interest prior to issue of notice by the department, (c) whether the same offence has been compounded earlier and if yes, how many time etc.**

Procedure

- The AO(TDS) after collecting the above information/documents shall issue show cause notices to the person responsible for deduction (directors/principal officers/partners/members/karta).
- It may be ensured that the reply is furnished within 30 days of the issue of the show cause notice.
- The AO(TDS) shall examine the reasons/reply for non-compliance and will prepare the proposal in Form 'F' (as prescribed in Prosecution Manual) and send it to the CIT(TDS) through proper channel.

Procedure

- An entry can be made by the AO(TDS) in the Form 'C' (manual register or the specific module for prosecution as and when developed on TRACES) as soon as the proposal is moved.
- The CIT(TDS) is the competent authority to accord sanction u/s 279(1).
- The assessee deductor can at any stage of the proceedings, file a compounding application before the Pr. Chief Commissioner of Income-tax/Chief Commissioner of Income-tax. Instruction vide F.No.285/35/2013-IT(Inv.V)/108 dt. 23.12.2014
- The CIT(TDS) after according sanction u/s 279(1) shall send back the records to the authority seeking sanction with sanction order in duplicate, one for filing in the Court with complaint and other for the record.

Procedure

- The AO(TDS) shall, after entering receipt of the sanction order in the prosecution register maintained by him, ensure that the complaint is launched in the competent Court having jurisdiction over the place where the offence is committed.
- The CIT(TDS) & the AO(TDS) shall both make an entry in the respective registers maintained manually or in the utility as and when available in TRACES.

Note: If any such prosecutable offence comes to light during the proceedings before the appellate authorities, revision authorities or any other proceedings, same shall also be treated at par with other prosecutable cases as enumerated under Chapter-XVII of the Income Tax Act, 1961 and action shall be initiated in accordance with procedure as laid vide this SOP.

Roles of different TDS Authorities in addressing the issue of top deductors paying less/no tax with respect to previous F.Y.s

I. Role of Pr. CCIT/CCIT(TDS):

- a. Interacting with the CIT(TDS) on a regular basis monitoring the fluctuation in the TDS/TCS collection.
- b. Apprising the Zonal Member/Member(R) of the fluctuations and reasons thereof alongwith Action Taken or proposed through monthly D.O. by 10th of the following month and a copy of the D.O. shall also be sent to Principal DGIT(Admn.)

II. Role of CIT (TDS):

- a. Discussing top cases with substantial fall compared to previous years with the Range Head.
- b. Analysing the reasons for fall in the TDS/TCS collection in the top cases and also examining the same section-wise.
- c. Suggesting follow-up action like spot verification/survey etc.
- d. Incorporating the action taken, in monthly DO.

Roles of different TDS Authorities in addressing the issue.....

III. Role of Addl. CIT(TDS):

- a. Examining the cases with substantial fall compared to previous years and also suggesting action on potential cases.
- b. Analysing the overall reasons for lower deduction or collection and also TDS/TCS section-wise analysis of negative trend.
- c. Taking follow-up action like spot verification/survey etc.
- d. Incorporating the action taken in monthly DO.

IV. Role of AO - TDS:

- a. Issuing letters to all TAN holders with substantial fall compared to previous years.
- b. Asking the Inspector to follow up these cases.
- c. Examining the negative trend in TDS/TCS collection section-wise.
- d. Getting market information about business prospects of the TAN holder.
- e. Discussing all such cases with the Range head and also suggest corrective measures, if necessary.

Roles of different TDS Authorities in addressing the issue.....

V. Role of CIT(TDS-CPC), Ghaziabad:

- a. Providing list of top deductors with 3years comparative chart including nature of the payment to each AO - TDS and such report should be generated on real time data.
- b. Providing copy of such information to jurisdictional Pr. CCIT/CCIT(TDS) as well.
- c. Analysing and updating sector-wise TDS growth in the other CCIT charges.

Thank You...!!!

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