

# ***PROCEDURAL ASPECTS OF TAX DEDUCTED AT SOURCE***

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# Rates of TDS

Section	Nature of Payment in brief	CUT OFF AMOUNT		Rate %
		30.06.2010	01.07.2010	HUF/IND & others
192	Salaries	salary income must be more than exemption limit		average rate
193	Interest on Securities	nil	nil	10
194	Deemed dividend	nil	nil	10
194A	Interest other than Int on securities (by Bank)	10000	10000	10
	Interest other than Int on securities (by others)	5000	5000	10
194B	Lottery / Cross Word	5000	10000	30
	Puzzle			
194BB	Winnings from Horse race	2500	5000	30

# Rates of TDS

section	brief	Cut off amt. (upto 1-06-2010)	Cut off amt. (from 1-07-2010)	Rate%
194C(1)/194C(2)	Contracts	20000 (single payment) and 50,000/- (aggregate)	30000 (single payment) and 75,000/- (aggregate)	1 in case of Ind./HUF and 2% for others
	Sub-contracts/ advertisements			
194D	Insurance Commission	5000	20000	10
194EE	Payments out of	2500	2500	20% in case of ind/HUF and <b><u>NIL</u></b> for others
	deposits under NSS			
194F	Repurchase of units	1000	1000	20
	by MF/UTI			
194G	Commission on sale	1000	1000	10
	of lottery tickets			

# Rates of TDS

section	brief	Cut off amt. (upto1-06-2010)	Cut off amt. (from 1-07-2010)	Rate%
194H	Commission or	2500	5000	10
	Brokerage			
194I	Rent (Land &	120000	180000	10
	building)			
	Rent (P & M ,	120000	180000	2
	Equipment, furniture			
	& fittings)			
194J	Professional/Technical	20000	30000	10
	charges/Royalty &			
	Non-compete fees			
194LA	Compensation on	100000	100000	10
	acquisition of			
	immovable property			

# Procedure and Scheme of TDS in brief

The procedure to be followed by the payer:

- Application in **Form No. 49B** for allotment of TAN or TCAN.
- Payer of income is to deduct tax from the income / payment mentioned in the various sections i.e S.192 to 196D.
- Tax deducted should be deposited through **Challan No. ITNS 281** within the requisite time to the credit of Central Government.
- Separate Challans should be used to deposit tax under each section.
- Correct nature of payment code to be indicated in the relevant column in challan.
- **Separate Challans** should be used to deposit tax in case of corporate and non corporate assesses.
- Certificate of tax deduction at source should be issued in specified time. [ TDS/TCScertificates to be issued even after 31-3-2010]
- **Quarterly statement** of tax deduction at source should be filed by payer.

# Relevant statutory provisions

## Sec. 195A: Income payable “net of tax”

- TDS- liability of the payer.
- If any amount is paid net of tax, the taxability has to be calculated by grossing up the amount, since the tax itself (borne by the payer) represents the income of the payee.

## Sec. 196: No TDS if payments made to the following:

- The Government
- RBI
- Corporation established by or under a Central Act.
- Mutual Fund u/s 10(23D)

### **Note:**

***payments covered by sec. 196 means any sum payable by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or any other income accruing or arising to it.***

## Certificate for deduction at lower rate- Section 197 rw Rule 28AA

- Where Assessing officer is **satisfied** that the total income of the recipient justifies deduction of income tax at **lower rate or no deduction** of income tax u/s 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194I, 194J, 194K, 194LA and 195, the Assessing officer on the application made by the Assessee in **Form No. 13 (as prescribed in Rule 28)**, give him a certificate lowering the rate of tax deduction or no deduction at all.

**Note:**  
**No certificate u/s 197 to be issued by the AO unless the application contains PAN of the applicant. [w.e.f 1-4-2010, s.sec. (4) to newly inserted section 206AA.]**  
**Sec. 197 is not applicable to sec. 194B, 194BB, 194E, 194EE, 196A, 196B, 196C and 196D.**



## Rule 28AA (as substituted by Notification No. 16/2011, dated 29-03-2011)

- AO to issue certificate u/s 197, if satisfied that existing and estimated tax liability of a person justifies the tax deduction at lower rate/ no deduction.
- **Manner of determining The existing and estimated liability [R. 28AA(2)]**: liability determined by the AO 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) Certificate valid for such period as may be specified in the certificate, unless it is cancelled.
- (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.]

➤ *Certificate to be generated and issued mandatorily through ITD system only. If not possible , data to be uploaded within 7 days of the date of manual issue.*

**[Instruction no. 4/2010, dated 25-05-2010]**

*\* Applicable to Non resident also*

# Issues

- **Order u/s 197 for rejection can be revised u/s 264**: the rejection of an application under Section 197 by the assessing officer is an order and, hence, revisable under Section 264 by the Commissioner. *Laresen and Turbo Ltd. and another v. Asst. CIT (TDS) and others, [2010] 326 ITR 514 (Bom)*
- **The orders passed u/s 195(2) and 197 are provisional and tentative.** These orders **do not bind the AO in regular assessment proceedings.** and do not preempt the Department from passing appropriate orders of assessment. The fact that a determination u/s 195 & 197 is an “order” subject to challenge u/s 264 does not make any difference. *[Areva T & D vs. Asstt. DIT & Ors. WP(C) No.12859, 12860, 12863, 12864, 12865, 12866 of 2009]*

# Issues

- AO is not empowered to issue certificate retrospectively [*Sri Santhalakshmi Mills (P) Ltd. v. ITO 99 TTJ (Chennai) 1134/ [2008] 25 SOT 40*]
- Where certificate u/s 197 was granted for the preceding financial year, it was held that no cogent reasons have been given for taking a different view than what the authority had taken in the past year and as such Asstt. CIT was directed to pass fresh order in accordance with law. *Infrastructure Development Authority v. CIT (2010) 321 ITR 278 (Pat.)*

# Declaration for no deduction of tax at source- Section 197A

Particular	Section	Applicability No TDS	Form
Resident Individual ( Provided tax on total income is nil )	197A(1)	194, 194EE	15 G
Person other than Company or a firm ( Tax on total income is nil)	197A (1A)	193,194A, 194K	15 G
Senior Citizen ( if tax on estimated total income is nil)	197A(1C)	193,194,194A, 194EE,194K	15 H

***Note : Section 197 A(1B) inserted to provide that above provision of Section 197A(1) & 197A(1A) shall not be applicable if the assessee's Income exceeds the maximum amount not chargeable to tax even if Tax on total income is nil.***

***➤This section does not apply to Non resident except those who falls u/s 195(3). Forms applicable to them are 15 C & 15D***

# *Other provisions*

- Tax deducted (other than the tax paid u/s 192(1A), be deemed to be income received of the assessee. [sec. 198]
- Tax deducted to be treated as paid on behalf of the person from whose income tax is deducted. [sec. 199(1)]
- Credit of TDS to be allowed according the provisions contained in **Rule 37BA**. [sec. 199(3)]

# Rule 37BA- a brief [credit of TDS]

- (1) Credit to be given to the deductee.
- (2) Credit given to person other than deductee [in case where sec. 60, 61, 64, 93 or 94 apply, in case of AOP, HUF or joint ownership of asset , property etc.). In that case deductee need to file a declaration with the name, address, PAN of the person to whom credit is to be given and deductor need to issue a certificate to such person and and keep the declaration in his safe custody.
- (3) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. If more than one A.Y then credit to be given proportionately acc. to income.



contd..

4. Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of—

(i) the information relating to TDS furnished by the deductor to the income-tax authority or the person authorised by such authority; and

(ii) the information in the return of income in respect of the claim for the credit,

*subject to verification in accordance with the risk management strategy formulated by the Board from time to time.]*

# ISSUES

- Deductee will not be entitled to have benefit or credit for the whole amount mentioned in the TDS certificate, if the whole income relatable to that amount is not shown and is not assessable in that assessment year. [*Pardeep Kumar Dhir v. ACIT (2008) 303 ITR(AT) 45(Chd)*]
- Sec. 198 and 199 do not in any way change the year of assessability of income which depends upon the method of accounting regularly employed by the assessee. [*Varsha G. Salunke v. Dy. CIT (2006) 98 ITD 147 (Mum) TM*]

# Duty of deductor- sec. 200

- to deposit the TDS with the CG within the time prescribed in Rule 30. (By deductor (or employer referred in sec. 192(1A))
- to prepare the prescribed statements (w.e.f 1-10-2009) and file the same within the prescribed time & manner to CG.(statements, and manner & time of filing prescribed in Rule 31A)

## Note:

provisions of s.s(3) of sec. 200 are modified by Finance (No.2)Act, 2009 w.e.f 1-10-2009 in order to provide administrative flexibility in deciding the periodicity of TDS/TCS related statements. , besides prescribing their form & manner. Prior to such amendment, section specifically provided for statements to be filed quarterly.

- Deductor obliged to deduct tax at higher rate if the deductee fails to furnish his PAN to the deductor 'or' the PAN provided is not valid for any reason 'or' the PAN does not belong to the deductee. [s. 206AA(1)/(6)].

# Deposit of TDS- sec. 200 rw Rule 30

<b>TAX is deducted by Govt Department</b>		<b>TCS</b>
Tax deposited without challan	Same day	Same day
Tax deposited with challan	7 <sup>th</sup> of next month	7 <sup>th</sup> of next month
Tax on perquisites opt to be deposited by the employer	7 <sup>th</sup> of next month	7 <sup>th</sup> of next month
<b>TAX is deducted by other</b>		
Tax deducted/paid in March	30 <sup>th</sup> April of next year <u>notification 41/2010</u> <u>dated 31.05.2010</u>	1 week from the end of the month in which tax is collected
Other months & tax on perquisites opted to be	7 <sup>th</sup> of next month	1 week from the end of the month in which tax is collected

# Effect of amendment

- The time schedule for deposit of TDS is applicable to tax deducted/ collected on or after 1-4-2010.
- Prior to amendment, tax deducted on last day of accounting year could be deposited within 2 months from the end of the F.Y. Now the tax deducted on 31<sup>st</sup> March (not the last day of the accounting year) should be deposited by 30<sup>th</sup> April following the end of F.Y.

# Quarterly payment allowed in special cases

- On permission of AO (with prior approval of JC ), quarterly deposit of TDS from salary

Quarter ending	Date of deposit
<b>30<sup>th</sup> June</b>	<b>7<sup>th</sup> July</b>
<b>30<sup>th</sup> Sep</b>	<b>7<sup>th</sup> Oct.</b>
<b>30<sup>th</sup> Dec</b>	<b>7<sup>th</sup> Jan.</b>
<b>31<sup>st</sup> Mar.</b>	<b>30<sup>th</sup> April</b>

# Deposit of TDS

- TDS to be deposited to the credit of CG by remitting to any branch of RBI, SBI or any branch of selected public sector banks where income tax offices are situated.
- TDS can be deposited from any office of the assessee. Further deductions could be deposited with one officer only. *[Larsen & Toubro Ltd. v. ITO (TDS)(2005) 278 ITR 369 (Ori.)]*



# Mandatory E-payment of tax

## CIRCULAR NO. 5/2008, DATED 14-7-2008

- taxpayers who are mandatorily required to electronically pay taxes on or after 1-04-2008:
  - (i) company; and
  - (ii) a person (other than a company), to whom provisions of section 44AB of the I.T Act, 1961 are applicable. **[notification S.O. No. 493(E), dated 13.3.2008]**
- It is not necessary for the assessee to make payment of taxes from his own account in an authorized bank. However, PAN of assessee need to be mentioned in

Note: Electronically means payment of tax by way of - (i) internet banking facility of the authorized bank: or (ii) credit or debit cards.

Instruction regarding parameters for processing e-TDS returns **[F.No. 275/73/2009-IT (B)] dated 8-12-2010**

# Filing of TDS Returns

## Quarterly statements:

- Statement of deduction of tax under **section 192** – **Form no. 24Q**
- Statement of deduction of tax under **other sections**-
  - In case of the deductee being a non-resident or a foreign company or NOR –**Form no. 27Q**
  - In case of all other deductees –**Form no. 26Q**

**Statement of deduction of tax under s.s(3) of sec. 200 (r.w rule 31A) & Notification No. 41/2010**

Quarter ended	Due date
30th June	15th July of the financial year
30th September	15th October of the financial year
31st December	15th January of the financial year
31st March	15th May of the financial year immediately
	following the financial year in which
	deduction is made

# E-TDS Return

## NOTIFICATION No. 238/2007, dated 30-8-2007

### **Mandatory for:**

- All Government department/office or
- All companies.or
- All person required to get his accounts audited under section 44AB in the immediately preceding financial year; or
- The number of deductees' records in a quarterly statement for any quarter of the immediately preceding financial year is equal to or more than fifty,

# Processing of statements of tax deducted at source- Sec. 200A

- Quarterly returns filed u/s 200 to be processed as per the provisions of **newly inserted section 200A. [By Finance (No.2)Act, 2009, w.e.f 1-4-2010.]**
- After processing an intimation to be sent to assessee within **one year** from the end of the F.Y in which the statement is filed. **(proviso to s.s(1) to sec. 200A)**
- Refund is regulated by **CBDT CIRCULAR NO. 2/2011 [F.NO. 385/25/2010-IT(B)], DATED 27-4-2011**

**CIRCULAR NO. 2/2011 [F.NO. 385/25/2010-IT(B)],**  
**DATED 27-4-2011- refund of TDS**

- refund would be the difference between the actual payment made by the deductor to the credit of the CG ;and tax deductible at source
- excess payment during the financial year concerned- credit allowed in the quarterly statement of TDS of the next quarter during the financial year
- excess amount beyond the financial year concerned- claim can be made to the Assessing Officer (TDS) concerned
- Refund made after adjusting the existing tax liability of the assessee.

**Note: no claim of refund can be made after two years from the end of financial year in which tax was deductible at source**

**this circular will be applicable for claim of refunds for the period upto 31-3-2010**

# Consequences of default by deductor

- Failure to deduct or pay the TDS would make the deductor an **assessee in default (sec. 201(1))**
- Charge of interest **u/s.s (1A) of sec. 201 @1% p.m** or part of the month from the date on which tax is deductible to the date on which tax is deducted & **1.5% p.m** or part from the date of deducting the TDS to the date on which such tax is so paid.
- Levy of penalty **u/s 221**
- Penal consequences u/s 271C(1)(a), 272BB, 272A
- In case of failure to remit the tax deducted/collected, rigorous imprisonment ranging from 3 months to 7 years and fine can be levied.

**Note: interest u/s 201(1A) to be paid before furnishing the statement u/s 200(3).**

**Circular No. 7 of 2003 dated 5<sup>th</sup> September, 2003 [ 263 ITR 62 ST] – In this circular it was stated that where the payee has paid the tax directly then the payer shall not be treated as assessee in default.**

# ISSUES

*ICICI BANK LTD Vs DEPUTY COMMISSIONER OF INCOME TAX, ITA No. 11/ Lkw /2011, Assessment Year : 2009-2010, Dated: March 23, 2011*

- held payment made by cheque is deemed to have been made on the date of delivery of cheque and not on the date of encashment.
- **Ref made to the CBDT Circular No. 261 dated 8th August 79** wherein stated terms of rule 80 of the Compilation of the Treasury Rules, if a cheque or draft is tendered in payment of Government dues and accepted under the provisions of rule 79 (ibid) is honored on presentation the payment is deemed to have been made on the date on which it was handed over to the Government bankers.



# ISSUES

## *Asstt. CIT vs. Merchant Shipping Services (P.) Ltd., [2011] 129 ITD 109 (Mum.)*

- a person responsible to deduct tax at source cannot be treated as an assessee in default in respect of tax under section 201(1) if payee has paid tax directly
- However, liability of payer to interest under section 201(1A) still exists for period between date on which tax was deductible till date on which tax was actually paid by payee
- That maximum time-limit for initiating and completing proceedings u/s 201(1) has to be at par with time-limit available for initiating and completing reassessment .

[2010] 7 taxmann.com 7 (Uttarakhand), CIT vs. Enron Expat Services Inc.

- Section 201(1A) of Income-tax Act applies only when during a financial year whole or any part of tax deductible has not been deducted.
- The obligation to deduct tax at the time of payment, which is the mandate of sub-section (1) of section 192, stands extended upto the end of the financial year by virtue of the provisions contained in sub-section (3) of section 192

[2001] 170 CTR 424(Del) CIT v. Premnath Motors Pvt. Ltd.

Levy of interest u/s 201(1A) is mandatory and automatic. The purpose of levy is to claim compensation in the amount which ought to have been deducted and deposited & has not been done.

Other ref: Kanoi Industries Ltd. v. ACIT (2003) 261 ITR 488 (Cal.)  
Ernakulam District Co-operative Bank Ltd. v. ACIT (2005) 272 ITR 95(Ker.)

# Limitation u/s 201 & 201(1A)

[2010] 323 ITR 230 (DELHI), CIT vs. Hutchison Essar Telecom Ltd./  
[2010] 5 ITR(TRIB.) 426 (DELHI) Block Development Officer v. ITO

- Period of limitation for proceedings under section 201 and 201(1A), to be taken as four years since no limitation is provided specifically under the said section.
- **Followed:** CIT v. NHK Japan Broadcasting Corpn.[2008] 305 ITR137(Del), Bhatinda District Co-op. Milk Producers Union Ltd. [2007] 9 RC 637; 11 SCC 363

*[2010] 190 Taxman 304 (SC), CIT vs. British Airways*

- Whether question on point of limitation formulated by Tribunal in instant case need not be gone into for simple reason that at relevant time, there was a debate on question as to whether TDS was deductible under Act on foreign salary payment as a component of total salary paid to an expatriate working in India - Held, yes - Whether even otherwise assessee could not be said to be in default as it had paid differential tax and interest and further, undertook not to claim refund of amounts paid - Held, yes

*T.H.E. Makers P. Ltd. vs. ITO (TDS), [2010] 1 ITR(TRIB.) 611 (DELHI)*

- There is no provision in Act which holds that if assessee having deducted tax does not pay to credit of Government, it will be absolved from said liability on demonstration of reasonable cause.

An order u/s 201 is not an order of assessment within the meaning of sec. 153 because an assessment under the Act and a liability to deduct tax, both are different things. Actual assessment may take place after the liability to deduct has arisen and the period of limitation prescribed in sec. 153 for completion of assessment does not apply to liability u/s 195 or sec. 201.

[*CIT v. Black Wood Hodge (India) (P.) Ltd. (1971) 81 ITR 807(Cal.)*]

- Levy of interest u/s 201 for failure to deduct tax is mandatory and payment of tax subsequently by recipient is not relevant.

*CIT v. Rathi Gum Industries (1995) 213 ITR 98(Raj.), Kanoi Industries (P.) Ltd. v. Asstt. CIT (2003) 261 ITR 488(Cal), Babcock Power (Overseas Projects) Ltd. v. Asstt. CIT (2002) 81 ITD 29 (Del-Trib.)*

- **A person when not an assessee in default:** *(1971) 82 ITR 607 (SC) CIT v. West Coast Paper Mills Ltd. , (1982) 134 ITR 17(Bom.) Premier Tyres Ltd.:* A person who is not under an obligation under a specific provision of sections 192 to 196D to make deduction of tax at source cannot be treated as an assessee in default.

- Written order is necessary for treating as assessee in default: *Mettur Chemical & Industrial Corporation Ltd. v. IAC (1984) 150 ITR 341 (Mad.)*
- Non uniform deduction of tax from salaries: *Grasim Industries Ltd. v. ITO (2005) 4(II)ITCL 522(Jodh. Trib.)/ 92 TTJ 944.*

Where tax is deducted and also deposited as per law and there was no loss to revenue, interest u/s 201(1A) could not be levied on the ground that there was unequal deduction of tax in different months.



- where payer fails to deduct tax at source, assessing authorities should examine about the payment of taxes by the recipient before enforcing the demand against the person obliged to deduct. [CIT v. LIC of India (1987) 166 ITR 191(MP); CIT v. Kannan, Devan Hill Produce Co. Ltd (1986) 161 ITR 477 (Ker.); Citi Bank N.A. v. CIT (2003) 259 ITR 377 (Bom.)]
- Orders u/s 201(1)&201(1A) passed beyond four years shall be time barred, however, no limit is given in law – ITAT considers four years as reasonable. [ NHK – Japan Broadcasting Corporation V. DCIT (2006) 101 TTJ (del.) 292]
- There could be no recovery of tax alleged to be in default from the payer since payee paid the tax on amounts received from the payer. Hindustan Coca Cola Beverage (P) Ltd. v. CIT [2007] 293 ITR 0226.

# Consequences of default

## Disallowance of payments-S.40(ia)..

- ❑ Following payments to resident attracts Sec 40(ia)
  - Any interest [ S. 193 & 194A ]
  - Any commission or brokerage [ 194H ]
  - Rent or Royalty [ S. 194I ]
  - Any fees for professional or technical fees [ 194J ]
  - Amount payable to contractor or sub contractor for carrying out any work (including supply of labour for carrying out any work) [ 194C ]
- ❑ Failure to deduct tax or deposit tax in case of a resident -Payment not admissible u/s 40(ia).
- ❑ Admissible in the year in which tax is paid.

Note: As per amendment by Finance Act, 2010, no deduction in respect of the payments covered u/s 40a(ia) where tds has not been deducted or after deduction not been paid on or before the due date specified in sec. 139(1).(w.e.f. 1-4-2010).

*Thus similar treatment to payments made in the month of March and rest of the year.*

# TDS certificate- sec. 203

- TDS certificate to be is to the payee.
- TDS certificate in Form no. 16(salary)/16A (other cases)- **rule 31**
- Certificate (in form 16A)to be issued quarterly-
  - within 15 days from the due date for furnishing the statement of TDS under Rule 31A. i.e till 30<sup>th</sup> July, 30<sup>th</sup> Sep, 30<sup>th</sup> Oct. & for the quarter ending 31<sup>st</sup> March- by 30<sup>th</sup> May of the F.Y following the year of deduction.
- Certificate in form 16 to be issued annually[by 31st May of the F.Y following the year of deduction].
- Issue of certificate for tax deduction at source under section 203 is mandatory in all cases where tax is deducted at source, including cases where payments are made 'net of tax' in terms of section 195A.—Circular : No. 785, dated 24-11-1999.

**Note: consolidated certificate at the end of the year cannot be issued.**

**PAN of deductee and TAN of deductor to be mentioned in certificate.**

**Form 16 can be digitally signed. [However, as per latest circular no. 3/2011, even TDS certificate in form 16A can be digitally signed]**

# CIRCULAR NO. 3/2011 [F. NO. 275/34/2011-(IT-B), DATED 13-5-2011

## CBDT'S INSTRUCTIONS ON ISSUANCE OF TDS CERTIFICATES IN FORM NO. 16A AND OPTION TO AUTHENTICATE SAME BY WAY OF DIGITAL SIGNATURE

4. In view of the above, for proper administration of the Act, the Board have, in exercise of powers under section 119 of the Act, **decided the following:—**

### 4.1. Issue of TDS Certificate in Form No. 16A

**(i) For deduction of tax at source made on or after 1-4-2011:**

*(a) Form 16A to be issued generated **through TIN central system** and which is **downloaded from the TIN Website** with a **unique TDS certificate number** in respect of all sums deducted on or after the 1st day of April, 2011 under any of the provisions of Chapter-XVII-B other than section 192 by the **following deductors:***

being a company including a banking company to which the Banking Regulation Act, 1949 applies and any bank or banking institution, referred to in section 51 of that Act or a cooperative society engaged in carrying the business of banking,

- (b) The deductor, other than the person referred to in item (a) above, **may, at his option**, issue TDS Certificate in Form No.16A generated through TIN central system and which is downloaded from the TIN Website with a unique TDS certificate number.

Where certificate is as per the procedure above, Authentication digitally is permitted.  
Deductor can authenticate either by using digital signature or manual signature.

**(ii) For deduction of tax at source made during financial year 2010-11:**

issuing the TDS certificate in Form 16A generated through TIN central system which is downloaded from the TIN Website with a unique TDS certificate number, is at the **option of the deductor**.

*The deductor being a person other than a person referred to in item 4.1(i)(a) above and who do not issue the TDS Certificate in Form No.16A by downloading from the TIN Website shall continue to authenticate TDS certificate in Form No.16A by manual signature only.*

***It is further clarified that TDS certificate issued in Form No. 16A by the deductors covered by para 4.1(i)(a) in accordance with this circular and procedure, format and standards specified by the Director General of Income-tax (Systems) shall only be treated as a valid TDS certificate in Form No. 16A for the purpose of section 203 of the Act read with Rule 31 of the IT Rules, 1962.***

# TAN ( S. 203A)

- Payer shall apply for TAN in Form NO. 49 B ( Rule 114A) with in one month from end of month in which tax is deducted for the first time.
- TAN should be quoted in all Challans, TDS Certificates, Returns delivered in accordance with the provisions of sec. 206 or sec. 206C(5A)/(5B) and all other prescribed documents.

# Higher Rate of TDS- Press Release

## Press Release dated 20-01-2010, [F.No.402/92/2006-MC (04 of 2010)]

- TDS @ 20% in case deductee does not furnish his PAN
- Applicable w.e.f 1-4-2010
- New rules applicable even to non-residents
- Even a non- resident is required to apply a PAN if he is in receipt of any income taxable in India.

*Similar provisions in Sec. 206AA of the Income Tax Act, 1961 (inserted by Fin.(No.2) Act, 2009, w.e.f 1-4-2010, which has an overriding effect over the entire Income Tax Act.*



**PRESS RELEASE NO. 402/92/2006-MC (03 of 2011), dated 10-2-2011**

- **Refund without verification- if**, the difference between the amount claimed in the return (ITR-1 to ITR-6) and the amount reflected in the TDS return (AS-26 statement) does not exceed one lakh rupees. This will enable the Income Tax department clear nearly 95 percent refunds without verifying each TDS claim. **Cases with zero-matching, invalid TAN and difference exceeding Rs. 1 lakh will, however, be cleared only after due verification.** This precaution is necessary to avoid refund frauds.
- Earlier, the Chairman CBDT had directed all Chief Commissioners to upload necessary data so that the refunds can be issued expeditiously. It will be for the first time that most income tax refunds of the current assessment year will be dispatched to the taxpayers within the current financial year itself.

# Furnishing of statements of TDS sec. 203AA rw rule 31AB

- A statement is required to be prepared and delivered to every person from whose income the tax has been deducted or in respect of whose income the tax has been paid.
  - Statement to be delivered by DGIT(Systems) or the person authorised by him [from 1-4-2008 onwards]
  - **Form 26AS**
  - Due date 31<sup>st</sup> July following the F.Y during which taxes were deducted or collected or paid.
    - **[rule 31AB]**

# Penal provisions

Section	Nature of default	Penalty (Equals)	Officer	App. Of S. 273
271 C	Failure to deduct	Amount failed to deduct	JC	Yes
272A(2)(f)	Failure to file decl. ref in sec. 197A In Form No. 15G/15H in time	Rs. 100 per day of default, may extend upto tax deductible	JC	Yes
272A(2)(g)	Failure to issue TDS certificate	-----do-----	JC	Yes
272A(2)(i)	Failure to furnish statem. U/s 192(2C) [ tax on non monetary perqs. by employer]	Rs. 100 per day of default.	JC	Yes
272A(2)(k)	Failure to furnish quarterly statement.	Rs. 100 per day of default, but cannot exceed amount of TAX	JC	Yes

## *Penal provisions*

Section	Nature of default	Penalty (Equals)	Officer	App. Of S. 273
272A(2)(I)	Failure to deliver quarterly statement in time	Rs. 100 per day of default.	JC	Yes
272BB	Failure to apply or Quote or quoted false TDSAN	Rs.10000	AO	Yes
276 B	Failure to pay TDS to credit of C.G.	Rigorous imprisonment of 3 months extending up to 7 years	From Sanction of Comm.	

# Section 271C- TDS Default

## Nature of default

- Failure to deduct the whole or any part of tax as reqd. under chapter XVII B
- Failure to pay the whole or any part of tax as reqd. u/s 1150 or 194B (second prov.) w.e.f. 01/06/1997
- **Quantum of penalty**- amount equal to tax which has not been paid
- Sec. 273 B applicable or not- yes
- Person who can impose the penalty- Joint Commissioner

## Scope of sec 271C

### Bifurcation of offence:

- For failure to deduct tax at source , only a penalty u/s 271C is leviable while this default no longer attracts prosecution u/s 276B.
- For failure to deposit the tax deducted at source , penalty u/s 221 will be levied & prosecution u/s 276B is also attracted but no penalty will be attracted u/s 271C.
- The default which attracts penalty u/s 271C also invites a charge of interest u/s 201(1A).

**THANK YOU**

**BY: CA SANJAY K. AGARWAL**

*Assisted by: CA Monika Jain*