



HANDBOOK ON TAX DEDUCTED AT SOURCE (TDS)



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**

(Statutory Body under an Act of Parliament)

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1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stakeholders.

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President's Message

I am pleased to note that the Taxation Committee of the Institute is bringing out a 'Handbook on TDS' for the readers. I hope this publication will enrich the readers about the various provisions of the Income Tax Act relating to Tax Deduction at source (TDS).

The Income Tax Act provides for penalty and prosecution for any default in respect of deduction of tax at source or deposit of the deducted amount in the Government account. The Tax Deductors need to be well conversant with the provisions relating to Tax Deduction at Source as provided the Income Tax Act. This "Handbook on TDS" is an attempt to put forth the various provisions on the subject in a lucid yet precise manner.

I congratulate CMA Niranjana Mishra, Chairman of Taxation Committee and other members of the Committee for their commitment and dedication. I would like to acknowledge the dedicated efforts of Tax Research Department for releasing this Handbook. I wish them all the Luck!!

With Warm Regards,

CMA Amit A. Apte

21st December, 2018



CHAIRMAN'S MESSAGE

Income Tax Deducted at Source (ITDS) was introduced to collect tax at the source from where an individual's income is generated. The government uses TDS as a tool to collect tax in order to minimise tax evasion by taxing the income (partially or wholly) at the time it is generated rather than at a later date. TDS is applicable on the various incomes such as salaries, interest received, commission received etc.

TDS is not applicable to all incomes and persons for all transactions. Different rates of TDS have been prescribed by the Income Tax Act for different payments and different categories of recipients. For example, payment of redemption proceeds by a debt mutual fund to a resident individual is not subject to TDS but for a Non-resident Indian is subject to TDS.

TDS works on the concept that every person making specified type of payments to any person shall deduct tax at the rates prescribed in the Income Tax Act at source and deposit the same into the government's account. Handling the TDS issues professionally is a challenge. I think this hand-book will serve as a very good knowledge and information source in handling unforeseen challenges.

I congratulate Team – Tax Research, commendable job by the entire Team in publication of this 'Handbook on TDS'. I am happy and would like to congratulate other members of the Taxation Committee and knowledge contributors of the Institute for their efforts to bring this out. CMA Waman Parkhi, CMA Antaryami Acharya, CMA Niranjana Swain and CMA Veera Raghavan deserve a special mention here for their untiring efforts in bringing out this publication. My best wishes to all for its all future endeavours. Keep soaring high...

A handwritten signature in black ink, appearing to read 'Niranjana Mishra'.

CMA Niranjana Mishra
21st December 2018

P R E F A C E

Tax Deducted at Source or TDS is a type of tax that is deducted from an individual's income on a periodic or occasional basis. TDS can be applicable for income that are regular as well as irregular in nature. Income Tax Act, 1961 regulates TDS in India through Central Board of Direct taxes (CBDT) under the Indian Revenue Services (IRS). TDS rule directs the payee or employer to deduct a certain amount of tax before making full payment to the receiver. TDS is applicable for salary, commission, professional fees, interest, rent, etc. Since TDS is collected at the source of one's income, it effectively minimises evasion of tax by getting the income taxed, whether completely or moderately at that point of time.

Tax Deducted at Source or TDS is applicable in the following cases:

- Income from salary
- Income from interest
- Income from sale of property
- Income from EPF withdrawals.

There are many minute details in these aspects of the above which are needed to be handled carefully. Professionals dealing in this field would surely find this handbook an easy source of information to fall back up during their professional deliberations

Here, we would also like to thank and acknowledge the immense contributions of **CMA Waman Parkhi, CMA Antaryami Acharya, CMA Niranjan Swain** and **CMA Veera Raghavan** without whose hard work, toil and guidance the handbook could have never acquired its shape. The department is indebted to them for their contributions. **CMA Niranjan Mishra**, Chairman – Taxation Committee has been our guiding star. Thank you Sir.

Tax Research Department

The Institute of Cost Accountants of India
21st December, 2018

ACKNOWLEDGEMENTS

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HANDBOOK ON TAX DEDUCTED AT SOURCE (TDS)

Introduction to TDS

TDS is basically a part of direct tax. It has to be deducted by a person for certain payments made by them. TDS is one of the modes of collection of taxes, by which a certain percentage of amounts are deducted by a person at the time of making/crediting certain specific nature of payment to the other person and deducted amount is remitted to the Government account. It is similar to "pay as you earn" scheme also known as Withholding Tax in many other countries, example is USA. The concept of TDS envisages the principle of "pay as you earn". It facilitates sharing of responsibility of tax collection between the deductor and the tax administration. It ensures regular inflow of cash resources to the Government. It acts as a powerful instrument to prevent tax evasion as well as expands the tax net.

Tax must be deducted at the time of payment in cash or cheque or credit to the payee's account whichever is earlier. Credit to payable account or suspense account is also considered to be credit to payee's account and TDS must be made at the time of such credit

Definition of TDS

TDS stands for tax deducted at source. As per the Income Tax Act, any company or person making a payment is required to deduct tax at source if the payment exceeds certain threshold limits. TDS has to be deducted at the rates prescribed by the tax department.

The company or person that makes the payment after deducting TDS is called a deductor and the company or person receiving the payment is called the deductee. It is the deductor's responsibility to deduct TDS before making the payment and deposit the same with the government. TDS is deducted irrespective of the mode of payment—cash, cheque or credit—and is linked to the PAN of the deducted.

Overview of TDS

Tax deduction at source (TDS) is an instrument designed for quick and smooth collection of tax due to the tax department from the taxpayer. The objective of TDS could be said, in general, to be maximization of revenue collection while minimizing the cost of collection. It should be easier to deduct tax from all employees by one employer than for the tax administration to collect from each individual separately. This is so especially for wage and salary income; and this is why such income is subject to TDS in a wide cross section of countries.



The problem of tax evasion is a fundamental reason for expanding the scope of TDS. It depends on the economic and tax structures, types of income, and social attitudes. The economic theory of tax evasion has limitations since it rests solely on attitudes towards risk, with full information regarding the tax administration's behavior. In reality, the latter itself can vary, based on a well planned strategy or suffering from negligence or selective indulgence.

Tax Deduction at Source is a means of collecting income tax in India from the hands/source of Payer to Payee / Assessee, under the Indian Income Tax Act of 1961. Any payment covered under Income tax provisions for TDS shall be made after deducting Tax at source in prescribed percentage. It is managed by the Central Board for Direct Taxes and is part of the Department of Revenue managed by Indian Revenue Service. It has a great importance while conducting tax audits. Assessee deducting Tax at source is also required to file quarterly return. Quarterly/Annual Returns state the TDS amount deducted & paid to government during the Quarter/year to which it relates.

Main Features of TDS

1. Responsibility for deduction or collection of tax at source is fixed on specified persons.
2. Every specified person responsible for deduction of tax at source is required to obtain a tax deduction Account Number.
3. Time for payment of tax deducted or collected at source to the Government account is prescribed.
4. Certificates of TDS have to be issued to the tax payers on prescribed forms and within specified time.
5. Every person responsible for deduction of tax at source shall file quarterly statements
6. Tax has to be deducted/collected at the specified rates.
7. Conditions for less or no deduction of tax are specified.
8. Statements of TDS have to be submitted on prescribed forms and within specified time.
9. Penal and other consequences for non-compliance are provided.

The concept of TDS was introduced with an aim to collect **tax** from the very **source of income**. As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct **tax at source** and remit the same into the account of the Central Government. With above, the tax base is identified and made known to the Income tax authorities.

In the international perspective, TDS in India can be said to be moderate in terms of both its coverage and share in total income tax collection. Some of the countries do not depend on TDS, while some others (such as Canada, Indonesia, Malaysia, Philippines and the USA) heavily depend on TDS. In the latter group of countries, the share of TDS in total collection of income tax of a country is not less than 60 per cent. In fact, it has been more than 80 per cent in Canada and the USA.



Responsibility for deducting tax at source

Every person responsible for making payment of nature covered by TDS provisions of Income Tax Act shall be responsible to deduct tax.

These persons are mainly-Principal Officer of a company for TDS purpose including the employer in case of private employment or an employee making payment on behalf of the employer.

- DDO (Drawing & Disbursing Officer), In case of Govt. Office any officer designated as such.

- In the case of "interest on securities" other than payments made by or on behalf of the Central govt. or the State Government, it is the local authority, corporation or company, including the Principal Officer thereof.

Such person is called Deductor while the person from whom the tax is deducted is called Deductee.

Key Responsibilities of Deductor

1. Obtain TAN Every deductor is required to obtain a unique identification number called TAN (Tax Deduction Account Number) which is a ten digit alpha numeric number e.g.ABCD12345E. This number has to be quoted by the deductor in every correspondence related to Income Tax matters concerning TDS.
2. He/She should obtain PAN of the deductee.
3. He/She should deduct the tax at correct rate.
4. The tax deducted has to be deposited in the designated banks within specified time. (Govt. deductors shall transfer the tax deducted through book entry in Government account).This is detailed below:
 - By or on behalf of the Government: on the same day,
 - By or on behalf of any other person: On or before the 7th of the following month. However, for the month of March the tax should be remitted by 30th April.
5. Use challan no. 281 for depositing TDS amount

Understanding TDS

TDS is deducted on the following types of payments. The list is just an illustration.

- Salaries
- Interest payments by banks
- Commission payments
- Rent payments
- Consultation fees
- Professional fees
- Rent
- Other Incomes as per TDS provisions (Sec 192-195)

TDS on different types of payments

Chapter XVIIA, XVIIIB & XVIIIBB deals with the Tax deduction and collection



at source. The provisions are covered in the sections 190 to 206CA of the Income Tax Act 1961. Only the relevant sections dealing with deduction of tax at source are discussed below.

Sl No	Section	Heads of Income/Payment from which TDS to be made.
1	192	Salary
2	192A	Payment of accumulated balance in EPF due to an Employee
3	193	Interest on Securities
4	194	Dividend
5	194A	Payment of Interest other than Interest on securities
6	194B	Winning from Lottery or crossword puzzle
7	194BB	Winning from horse races
8	194C	Payments or credit to a resident contractor/Sub contractor Contractors
9	194D	Insurance commission
10	194DA	Payment in respect of life insurance policy
11	194E	Payment to nonresident sports men and sports associations
12	194EE	Payment in respect of deposit under National Saving Scheme 1987
13	194F	Payment on account of repurchase of units of MF or UTI
14	194G	Commission on sale of lottery tickets.
15	194H	Commission or brokerage,
16	194I	Rent payments on P&M, land/building/furniture/fitting
17	194IA	Transfer of immovable property
18	194IB	Payment/credit of Rent by individual/HUF not covered u/s 44AB in immediate preceding financial year.
19	194IC	Payment under joint development agreement
20	194J	Fees for professional and technical services
21	194LA	Payment of compensation on acquisition of certain immovable property.
22	195	Other Sums

Rates for tax deduction at source

Tax is to be deducted at source strictly as per the prescribed rates applicable for different type of payments and nature/residential status of Recipients. The recipient of income i.e deductee has to intimate his PAN and if not given, tax has to be deducted either at the individual prescribed rates or at the rate of 20% whichever is higher, by virtue of section 206AA of Income Tax Act. The prescribed rates may change in finance acts amended / passed along with the union budget.

**TDS Table For Assessment year 2019-20 – Resident and Non resident**

Particulars	TDS Rates (in%)
1. In the case of a person (Recipient) other than a company	
1.1 where the person is resident in India-	
Section 192: Payment of salary	Normal Slab Rate
Section 192A: Payment of accumulated balance of provident fund which is taxable in the hands of an employee.	10
Section 193: Interest on securities – Exempt upto Rs 5,000/ during the financial year	
a) any debentures or securities for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;	10
b) any debentures issued by a company where such debentures are listed on a recognized stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made there under;	10
c) any security of the Central or State Government;	10
[i.e. 8% Savings (Taxable) Bonds, 2003 and 7.75% Saving (Taxable) Bonds, 2018]	
d) interest on any other security	10
Section 194A: Income by way of interest other than "Interest on securities" - Exempt upto Rs5,000/- for any interest and Rs 10,000/- for bank interest, cooperative society & post office interest. For senior citizen the same is Rs 50,000/- instead of Rs 10,000/-	10
Section 194B: Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort – Exempt upto Rs 10,000/- during the financial year	30
Section 194BB: Income by way of winnings from horse races - Exempt upto Rs 10,000/- during the financial year	30
Section 194C: Payment to contractor/sub-contractor– Exempt upto Rs 30,000/- subject to the clause that the aggregate amount does not exceed Rs 100,000/- per financial year	
a) HUF/Individuals	1
b) Others	2
Section 194D: Insurance commission – Exempt upto Rs 15,000/- during the financial year	5
Section 194DA: Payment in respect of life insurance policy – Exempt upto Rs 100,000/- during the financial year	1



Particulars	TDS Rates (in%)
Section 194EE: Payment in respect of deposit under National Savings scheme – Exempt upto Rs 2,500/- during the financial year	10
Section 194F: Payment on account of repurchase of unit by Mutual Fund or Unit Trust of India	20
Section 194G: Commission, etc., on sale of lottery tickets – Exempt upto Rs 15,000/- during the financial year.	5
Section 194H: Commission or brokerage - Exempt upto Rs 15,000/- during the financial year.	5
Section 194-I: Rent Exempt upto Rs 1,80,000/- during the financial year.	
a) Plant & Machinery	2
b) Land or building or furniture or fitting	10
Section 194-IA: Payment on transfer of certain immovable property other than agricultural land. Exempt upto Rs 50,00,000/- during the financial year	1
Section 194-IB: Payment of rent by individual or HUF not liable to tax audit - Exempt upto Rs 50,000/- during the financial year	5
Note: This provision is applicable from June 1, 2017	
Section 194-IC: Payment of monetary consideration under Joint Development Agreements	10
Section 194J: Any sum paid by way of technical or professional services as below - Exempt upto Rs 30,000/- during the financial year	10
a) Fee for professional services,	
b) Fee for technical services	
c) Royalty,	
d) Remuneration/fee/commission to a director or	
e) For not carrying out any activity in relation to any business	
f) For not sharing any know-how, patent, copyright etc.	
Note: With effect from June 1, 2017 the rate of TDS would be 2% in case of payee engaged in business of operation of call center.	
Section 194LA: Payment of compensation on acquisition of certain immovable property - Exempt upto Rs 2,50,000/- during the financial year	10
Note: With effect from April 1, 2017, no deduction of tax shall be made on any payment which is exempt from levy of income-tax under Right to Fair Compensation Act, 2013.	
Section 194LBA(1): Business trust shall deduct tax while distributing, any interest received or receivable by it from a SPV or any income received from renting or leasing or letting out any real estate asset owned directly by it, to its unit holders.	10



Particulars	TDS Rates (in%)
Section 194LBB: Investment fund paying an income to a unit holder [other than income which is exempt under Section 10(23FBB)]	10
Section 194LBC: Income in respect of investment made in a securitisation trust (specified in Explanation of section 115TCA)	25% in case of Individual or HUF
	30% in case of other person
Any Other Income	10
1.2 where the person is not resident in India-	
Section 192: Payment of Salary	Normal Slab Rate
Section 192A: Payment of accumulated balance of provident fund which is taxable in the hands of an employee.	10
Section 194B: Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30
Section 194BB: Income by way of winnings from horse races	30
Section 194E: Payment to non-resident sportsmen/sports association	20
Section 194EE: Payment in respect of deposits under National Savings Scheme	10
Section 194F: Payment on account of repurchase of unit by Mutual Fund or Unit Trust of India	20
Section 194G: Commission, etc., on sale of lottery tickets	5
Section 194LB: Payment of interest on infrastructure debt fund	5
Section 194LBA(2): Business trust shall deduct tax while distributing any interest income received or receivable by it from a SPV to its unit holders.	5
Section 194LBA(3): Business trust shall deduct tax while distributing any income received from renting or leasing or letting out any real estate asset owned directly by it to its unit holders.	30
Section 194LBB: Investment fund paying an income to a unit holder [other than income which is exempt under Section 10(23FBB)].	30
Section 194LBC: Income in respect of investment made in a securitisation trust (specified in Explanation of section 115TCA)	30
Section 194LC: Payment of interest by an Indian Company or a business trust in respect of money borrowed in foreign currency under a loan agreement or by way of issue of long-term bonds (including long-term infrastructure bond)	5



Particulars	TDS Rates (in%)
Note: With effect from April 1, 2018 benefit of such concessional TDS rate has been further extended by three years. Now TDS at concessional rate of 5% will be applicable for borrowings made before July 1, 2020.	
Section 194LD: Payment of interest on rupee denominated bond of an Indian Company or Government securities to a Foreign Institutional Investor or a Qualified Foreign Investor	5
Note: With effect from April 1, 2018 benefit of such concessional TDS rate has been further extended by three years. Now TDS at concessional rate of 5% will be applicable for borrowings made before July 1, 2020.	
Section 195: Payment of any other sum to a Non-resident	
a) Income in respect of investment made by a Non-resident Indian Citizen	20
b) Income by way of long-term capital gains referred to in Section 115E in case of a Non-resident Indian Citizen	10
c) Income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-Section (1) of Section 112	10
d) Income by way of long-term capital gains as referred to in Section 112A	10
e) Income by way of short-term capital gains referred to in Section 111A	15
f) Any other income by way of long-term capital gains [not being long-term capital gains referred to in clauses 10(33), 10(36) and 112A	20
g) Income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in Section 194LB or Section 194LC)	20
h) Income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of Section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of Section 115A of the Income-tax Act, to a person resident in India	10



Particulars	TDS Rates (in%)
i) Income by way of royalty [not being royalty of the nature referred to point g) above E] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy	10
j) Income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy	10
k) Any other income	30
Section 196B: Income from units (including long-term capital gain on transfer of such units) to an offshore fund	10
Section 196C: Income from foreign currency bonds or GDR of an Indian company (including long-term capital gain on transfer of such bonds or GDR)	10
Section 196D: Income of foreign Institutional Investors from securities (not being dividend or capital gain arising from such securities)	20
2. In the case of a company-	
2.1 where the company is a domestic company-	
Section 193: Interest on securities	
a) any debentures or securities for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;	10
b) any debentures issued by a company where such debentures are listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder;	10
c) any security of the Central or State Government;	10
[i.e. 8% Saving (Taxable) Bonds, 2003 and 7.75% Saving (Taxable) Bonds, 2018]	
d) interest on any other security	10
Section 194: Dividend	10



Particulars	TDS Rates (in%)
Section 194A: Income by way of interest other than "Interest on securities"	10
Section 194B: Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30
Section 194BB: Income by way of winnings from horse races	30
Section 194C: Payment to contractor/sub-contractor	
a) HUF/Individuals	1
b) Others	2
Section 194D: Insurance commission	10
Section 194DA: Payment in respect of life insurance policy	1
Section 194EE: Payment in respect of deposit under National Savings scheme	10
Section 194F: Payment on account of repurchase of unit by Mutual Fund or Unit Trust of India	20
Section 194G: Commission, etc., on sale of lottery tickets	5
Section 194H: Commission or brokerage	5
Section 194-I: Rent	
a) Plant & Machinery	2
b) Land or building or furniture or fitting	10
Section 194-IA: Payment on transfer of certain immovable property other than agricultural land	1
Section 194-IC: Payment of monetary consideration under Joint Development Agreements	10
Section 194J: Any sum paid by way of	10
a) Fee for professional services,	
b) Fee for technical services	
c) Royalty,	
d) Remuneration/fee/commission to a director or	
e) For not carrying out any activity in relation to any business	
f) For not sharing any know-how, patent, copyright etc.	
Note: With effect from June 1, 2017 the rate of TDS would be 2% in case of payee engaged in business of operation of call center.	



Particulars	TDS Rates (in%)
Section 194LA: Payment of compensation on acquisition of certain immovable property	10
Note: With effect from April 1, 2017, no deduction of tax shall be made on any payment which is exempt from levy of income-tax under Right to Fair Compensation Act, 2013.	
Section 194LBA(1): Business trust shall deduct tax while distributing, any interest received or receivable by it from a SPV or any income received from renting or leasing or letting out any real estate asset owned directly by it, to its unit holders.	10
Section 194LBB: Investment fund paying an income to a unit holder [other than income which is exempt under Section 10(23FBB)] .	10
Section 194LBC: Income in respect of investment made in a securitisation trust (specified in Explanation of section 115TCA)	10
Any Other Income	10
2.2 where the company is not a domestic company*-	
Section 194B: Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30
Section 194BB: Income by way of winnings from horse races	30
Section 194E: Payment to non-resident sports association	20
Section 194G: Commission, etc., on sale of lottery tickets	5
Section 194LB: Payment of interest on infrastructure debt fund	5
Section 194LBA(2): Business trust shall deduct tax while distributing any interest income received or receivable by it from a SPV to its unit holders.	5
Section 194LBA(3): Business trust shall deduct tax while distributing any income received from renting or leasing or letting out any real estate asset owned directly by it to its unit holders.	40
Section 194LBB: Investment fund paying an income to a unit holder [other than income which is exempt under Section 10(23FBB)].	40
Section 194LBC: Income in respect of investment made in a securitisation trust (specified in Explanation of section 115TCA)	40
Section 194LC: Payment of interest by an Indian Company or a business trust in respect of money borrowed in foreign currency under a loan agreement or by way of issue of long-term bonds (including long-term infrastructure bond)	5



Particulars	TDS Rates (in%)
Note: With effect from April 1, 2018 benefit of such concessional TDS rate has been further extended by three years. Now TDS at concessional rate of 5% will be applicable for borrowings made before July 1, 2020.	
Section 194LD: Payment of interest on rupee denominated bond of an Indian Company or Government securities to a Foreign Institutional Investor or a Qualified Foreign Investor	5
Note: With effect from April 1, 2018 benefit of such concessional TDS rate has been further extended by three years. Now TDS at concessional rate of 5% will be applicable for borrowings made before July 1, 2020.	
Section 195: Payment of any other sum	
a) Income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-section (1) of Section 112	10
b) Income by way of long-term capital gains as referred to in Section 112A	10
c) Income by way of short-term capital gains referred to in Section 111A	15
d) Any other income by way of long-term capital gains [not being long-term capital gains referred to in clauses 10(33), 10(36) and 112A	20
e) Income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in Section 194LB or Section 194LC)	20
f) Income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976 where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of Section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of Section 115A of the Income-tax Act, to a person resident in India	10



Particulars	TDS Rates (in%)
g) Income by way of royalty [not being royalty of the nature referred to in point e) above C] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
A. where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976	50
B. where the agreement is made after the 31st day of March, 1976	10
h) Income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
A. where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976	50
B. where the agreement is made after the 31st day of March, 1976	10
i) Any other income	40
Section 196B: Income from units (including long-term capital gain on transfer of such units) to an offshore fund	10
Section 196C: Income from foreign currency bonds or GDR of an Indian company (including long-term capital gain on transfer of such bonds or GDR)	10
Section 196D: Income of foreign Institutional Investors from securities (not being dividend or capital gain arising from such securities)	20
* The rate of TDS shall be increased by applicable surcharge and Health & Education cess.	
[As amended by Finance Act, 2018]	

Regular assessment in regard to any income, even though made in the later period in relevant assessment year, tax on such income is payable in the previous year itself in different forms and modes i.e.

1. Tax deduction at source – Sec 192-197
2. Tax collection at source – Sec 206
3. Advance Tax. – Sec 208

All such deducted/collected from payments/credit to recipients and deposited taxes in the previous year to Govt. treasury against their PAN, are otherwise known as prepaid taxes and are deductible/reduced from



the total tax dues of the assessee for the relevant assessment year.

There are 31 items of income/payment from which tax is deductible at source. On the other hand, there are 11 items of receipts for which tax has to be collected at source. In case of income, in respect of which provision is not made under Chapter XVII for deducting income tax at the time of payment and in case where income tax has not been deducted in accordance with the provisions of said chapter as TDS, income tax liability still rests with the assessee which has to be paid by him in the form of advance tax or otherwise.

TDS on different types of payments

Under the scheme of tax deduction at source (TDS), persons responsible for making payment/credit of income, are responsible to deduct tax at source and deposit the same to the government treasury within stipulated time followed with filing the required returns. The recipient of net income is liable to tax on the gross amount as per applicable rate and the amount so deducted shall be adjusted/reduced from his total tax liability. As TDS rates are changed in Finance Acts amended from time to time and the relevant rate for the applicable previous years has to be applied by the deductor as normal TDS rates.

When Recipient does not furnish his PAN to the deductor, he is supposed to deduct the applicable rate of TDS or 20% whichever is higher (section 206AA) w.e.f 1/4/2010.

The rule is however subject to following exceptions.

- Certain payments of interest to anon resident u/s 194LC
- Where tax is deductible at a rate less than 20% as per provisions of DTAA
- Under section 192A, tax is deductible at marginal rate of Tax i.e 35.88% from FY2018-19
- Recipient is located in a notified jurisdictional area sec 94(A)5, the payer will deduct tax at the rates in force or 30% whichever is higher.

The main responsibilities and procedure for TDS outlined below should be kept in mind and it is necessary to follow.

1. Payer of any payment subject to TDS (except 194-IA & 194-IB) has to apply for Tax deduction/collection account number (TDCAN) in form no 49B. Payers those who have obtained TAN and TCAN separately under the erstwhile provisions of IT Act prior to 1.10.2004, they need not apply for separate numbers.
2. Tax has to be deducted from the income/payment mentioned in various sections i.e section 192 to 196D
3. Amount deducted has to be deposited in challan 281 within the requisite time to the credit of central govt.
4. Tax has to be deducted at the basic rates prescribed under various sections. only in case of tax deduction from Salary(resident & non resident), payment/credit of any sum to a non resident, foreign company applicable surcharge, education cess, secondary higher



education cess has to be added to basic rate.

5. As per section 206AA if PAN is not provided, the rate of TDS shall be normal rate or 20% whichever is higher.
6. Payee has to be issued with certificate of Tax deduction at source on or before specified date.
7. Payer has to prepare prescribed statements for such period and file the same with prescribed Income tax authority, duly verified by the filer in the prescribed manner.

Synopsis of important Clauses in regards Date durations, Forms and Rules for Relevant Sections of TDS

Deduction of Tax from Salary- section 192 – Time and Mode

Relevant Rules regarding Time and mode of payment to Government account of tax deducted at source or tax paid under sub-section (1A) of section 192 are explained below

Rule 30

1. All sums deducted in accordance with the provisions of Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government—
 - (a) on the same day where the tax is paid without production of an income-tax challan; and
 - (b) on or before seven days from the end of the month in which the deduction is made or income-tax is due under sub-section (1A) of section 192, where tax is paid accompanied by an income-tax challan.
2. All sums deducted in accordance with the provisions of Chapter XVII-B by deductors other than an office of the Government shall be paid to the credit of the Central Government—
 - (a) on or before 30th day of April where the income or amount is credited or paid in the month of March; and
 - (b) in any other case, on or before seven days from the end of the month in which—
 - i. the deduction is made; or
 - ii. Income-tax is due under sub-section (1A) of section 192.

(2A) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), any sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of [thirty days] from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QB.]

(2B) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), any sum deducted under section 194-IB shall be paid to the credit of the Central Government within a period of thirty days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form



No. 26QC.]

3. Notwithstanding anything contained in sub-rule (2), in special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192 or section 194A or section 194D or section 194H for the quarters of the financial year specified to in column (2) of the Table below by the date referred to in column (3) of the said Table:—

TABLE

Sl. No.	Quarter of the financial year ended on	Date for quarterly payment
(1)	(2)	(3)
1	30th June	7th July
2	30th September	7th October
3	31st December	7th January
4	31st March	30th April

4. In the case of an office of the Government, where tax has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person by whatever name called to whom the deductor reports the tax so deducted and who is responsible for crediting such sum to the credit of the Central Government, [shall submit a statement in Form No.24G to the agency authorised by the Principal Director of Income-tax (Systems) in respect of tax deducted by the deductors and reported to him.]

(4A) Statement referred to in sub-rule (4) shall be furnished—

- (a) on or before the 30th day of April where the statement relates to the month of March; and
(b) in any other case, on or before 15 days from the end of relevant month.

(4B) Statement referred to in sub-rule (4) shall be furnished in the following manner,

- (a) electronically under digital signature in accordance with the procedures, formats and standards specified under sub-rule (5); or
(b) electronically along with the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (5).

(4C) The persons referred to in sub-rule (4) shall intimate the number (hereinafter referred to as the Book Identification Number) generated by the agency to each of the deductors in respect of whom the sum deducted has been credited.]

5. The Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing



- and verification of the statements and shall be responsible for the day-to-day administration in relation to furnishing of the information and verification of the statements.].
- 6(i) Where tax has been deposited accompanied by an income-tax challan, the amount of tax so deducted or collected shall be deposited to the credit of the Central Government by remitting it within the time specified in clause (b) of sub-rule (1) or in sub-rule (2) or in sub-rule (3) into any branch of the Reserve Bank of India or of the State Bank of India or of any authorised bank.
 - (ii) Where tax is to be deposited in accordance with clause (i), by persons referred to in sub-rule (1) of rule 125, the amount deducted shall be electronically remitted into the Reserve Bank of India or the State Bank of India or any authorised bank accompanied by an electronic income-tax challan.
 - (6A) Where tax deducted is to be deposited accompanied by a challan-cum-statement in Form No. 26QB, the amount of tax so deducted shall be deposited to the credit of the Central Government by remitting it electronically within the time specified in sub-rule (2A) into the Reserve Bank of India or the State Bank of India or any authorised bank.]
 - (6B) Where tax deducted is to be deposited accompanied by a challan-cum-statement in Form No.26QC, the amount of tax so deducted shall be deposited to the credit of the Central Government by remitting it electronically within the time specified in sub-rule (2B) into the Reserve Bank of India or the State Bank of India or any authorized bank.]
 - 7. For the purpose of this rule, the amount shall be construed as electronically remitted to the Reserve Bank of India or to the State Bank of India or to any authorised bank, if the amount is remitted by way of—
 - (a) internet banking facility of the Reserve Bank of India or of the State Bank of India or of any authorised bank; or
 - (b) debit card.
 - (7A) The Director General of Income-tax (Systems) shall specify the procedure, formats and standards for the purposes of remitting the amount electronically to the Reserve Bank of India or the State Bank of India or any authorised bank and shall be responsible for the day-to-day administration in relation to the remitting of the amount electronically in the manner so specified.]

Rules relating to Certificate of tax deducted at source to be furnished under section 203

- 1. The certificate of deduction of tax at source by any person in accordance with Chapter XVII-B or the certificate of payment of tax by the employer on behalf of the employee under sub-section (1A) of section 192 shall be in—
 - (a) Form No. 16, if the deduction or payment of tax is under section 192; and
 - (b) Form No. 16A if the deduction is under any other provision of



Chapter XVII-B.

2. The certificate referred to in sub-rule (1) shall specify:—
 - (a) valid permanent account number (PAN) of the deductee;
 - (b) valid tax deduction and collection account number (TAN) of the deductor;
 - (c) (i) book identification number or numbers where deposit of tax deducted is without production of challan in case of an office of the Government;
(ii) challan identification number or numbers in case of payment through bank;
 - (d) (i) receipt number of the relevant quarterly statement of tax deducted at source which is furnished in accordance with the provisions of rule 31A;
(ii) receipt numbers of all the relevant quarterly statements in case the statement referred to in clause (i) is for tax deducted at source from income chargeable under the head "Salaries".
3. The certificates in Forms specified in the Table below shall be furnished to the employee or the payee, as the case may be, as per the periodicity specified

Sl No	Form No	Details
1	Form 16	Annual By 15th day of June of the financial year immediately following the financial year in which the income was paid and tax deducted
2	Form 16A - Quarterly	Within fifteen days from the due date for furnishing the statement of tax deducted at source under rule 31A

- (3B) Every person responsible for deduction of tax under section 194-IB shall furnish the certificate of deduction of tax at source in Form No.16C to the payee within fifteen days from the due date for furnishing the challan-cum-statement in Form No.26QC under rule 31A after generating and downloading the same from the web portal specified by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or the person authorised by him.
4. If an assessee is employed by more than one employer during the year, each of the employers shall issue Part A of the certificate in Form No. 16 pertaining to the period for which such assessee was employed with each of the employers and Part B may be issued by each of the employers or the last employer at the option of the assessee.
 5. The deductor may issue a duplicate certificate in Form No. 16 or Form No. 16A if the deductee has lost the original certificate so issued and makes a request for issuance of a duplicate certificate and such duplicate certificate is certified as duplicate by the deductor.
 - (i) Where a certificate is to be furnished in Form No. 16, the deductor may, at his option, use digital signatures to authenticate such certificates.



- (ii) In case of certificates issued under clause (i), the deductor shall ensure that –
 - (a) the provisions of sub-rule (2) are complied with;
 - (b) once the certificate is digitally signed, the contents of the certificates are not amenable to change; and
 - (c) the certificates have a control number and a log of such certificates is maintained by the deductor.
- (6A) The Director General of Income-tax (Systems) shall specify the procedure, formats and standards for the purposes of generation and download of certificates and shall be responsible for the day-to-day administration in relation to the generation and download of certificates from the web portal specified by him or the person authorised by him.

Statement of deduction of tax under sub-section (3) of section 200

31A. (1) Every person responsible for deduction of tax under Chapter XVII-B, shall, in accordance with the provisions of sub-section (3) of section 200, deliver, or cause to be delivered, the following quarterly statements to the Director General of Income-tax (Systems) or the person authorised by the Director General of Income-tax (Systems), namely:—

- (a) Statement of deduction of tax under section 192 in Form No. 24Q;
- (b) Statement of deduction of tax under sections 193 to 196D in—
 - (i) Form No. 27Q in respect of the deductee who is a non-resident not being a company or a foreign company or resident but not ordinarily resident; and
 - (ii) Form No. 26Q in respect of all other deductees.
- (2) Statements referred to in sub-rule
 - (1) for the quarter of the financial year ending with the date specified in column
 - (2) of the Table below shall be furnished by the due date specified in the corresponding entry in column
 - (3) of the said Table:

Table

Sl No	Date of ending of quarter of financial year	Due date
(1)	(2)	(3)
1	30 th June	31 st July of the financial year
2	30 th September	31 st October of the financial year
3	31 st December	31 st January of the financial year
4	31 st March	31 st May of the financial year immediately following the financial year in which the deduction is made



4. (i) The statements referred to in sub-rule (1) may be furnished in any of the following manners, namely:—
 - (a) furnishing the statement in paper form;
 - (b) furnishing the statement electronically under digital signature in accordance with the procedures, formats and standards specified under sub-rule (5);
 - (c) furnishing the statement electronically along with the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (5).]
 5. Where,—
 - (a) the deductor is an office of the Government; or
 - (b) the deductor is the principal officer of a company; or
 - (c) the deductor is a person who is required to get his accounts audited under section 44AB in the immediately preceding financial year; or
 - (d) the number of deductee's records in a statement for any quarter of the financial year are twenty or more, the deductor shall furnish the statement in the manner specified in [item (b) or item (c) of clause (i)].
 6. Where deductor is a person other than the person referred to in clause (ii), the statements referred to in sub-rule (1) may, at his option, be delivered or cause to be delivered in the manner specified in [item (b) or item (c) of clause (i)].
- (3A) A claim for refund, for sum paid to the credit of the Central Government under Chapter XVII-B, shall be furnished by the deductor in Form 26B electronically under digital signature or verified through an electronic process] in accordance with the procedures, formats and standards specified under sub-rule (5).]
3. The deductor at the time of preparing statements of tax deducted shall,—
 - (i) quote his tax deduction and collection account number (TAN) in the statement;
 - (ii) quote his permanent account number (PAN) in the statement except in the case where the deductor is an office of the Government;
 - (iii) quote the permanent account number of all deductees;
 - (iv) furnish particulars of the tax paid to the Central Government including book identification number or challan identification number, as the case may be;
 - (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;
 - (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;]
- (vii) furnish particulars of amount paid or credited on which tax was not deducted in view of the furnishing of declaration under sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A by the payee;]
 - (viii) furnish particulars of amount paid or credited on which tax was not deducted in view of the notification issued under sub-section (1F) of section 197A.
- (4A) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) or sub-rule (3) or sub-rule (4), every person responsible for deduction of tax under section 194-IA shall furnish to the Director General of Income-tax (System) or the person authorised by the Director General of Income-tax (System) a challan-cum-statement in Form No. 26QB electronically in accordance with the procedures, formats and standards specified under sub-rule (5) within [thirty days] from the end of the month in which the deduction is made.]
- (4B) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) or sub-rule (3) or sub-rule (4), every person responsible for deduction of tax under section 194-IB shall furnish to the Principal Director General of Income-tax (Systems) or Director General of Income-tax (System) or the person authorised by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) a challan-cum-statement in Form No.26QC electronically in accordance with the procedures, formats and standards specified under sub-rule (5) within thirty days from the end of the month in which the deduction is made.]
5. The Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the statements or claim for refund in Form 26B and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements or claim for refund in Form 26B in the manner so specified.]
6. Where a statement of tax deducted at source is to be furnished for tax deducted before the 1st day of April, 2010, the provisions of this rule and rule 37A shall apply as they stood immediately before their substitution or omission by the Income-tax (Sixth Amendment) Rules, 2010.]

Rules relating to Annual statement of tax deducted or collected or paid.

31AB.The Director General of Income-tax (Systems) or the person authorised by him shall deliver,—

- (i) to every person from whose income the tax has been deducted; or
- (ii) to the buyer referred to in sub-section (1) or, as the case may be, to the licensee or lessee referred to in sub-section (1C) of section 206C from whom the amount has been collected; or



- (iii) to every person in respect of whose income the tax has been paid, a statement referred to in section 203AA or the second proviso to sub-section (5) of section 206C, in Form No. 26AS by the 31st July following the financial year during which taxes were deducted or collected or paid.

Forms Required for Sec 192 – Form 15CA, 15CB, 16A, 24G, 26AS, 26B, 26Q and 27A

Section 194A- Interest other than Interest on securities

Tax deducted at NIL rate or lower rate for 194A

If a declaration is submitted u/s 197A by the recipient to the payer along with his/her PAN, then no tax is deductible if the following conditions are satisfied:

- Recipient is a person other than a company/firm
- Tax on total income of the previous year (PY) is nil
- Total income does not exceed the exemption limit (i.e. for AY 2019-20, Rs. 2,50,000 or Rs. 3,00,000 or Rs. 5,00,000, as applicable). This condition is not applicable if the recipient is a resident senior citizen.

Such a declaration shall be given in duplicate in form 15G (15H for senior citizens). In case of Senior Citizens Saving Scheme, 2004 (SCSS), investors can submit the declaration. Nominees of investors of SCSS can also produce the declaration at the time of payment after the death of the depositor. On submission of declaration to the bank, bank shall not deduct tax (subject to the conditions) on payment of interest.

Section 194C: Payments to contractors

Rule – 28: Application for certificates for deduction of tax at lower rates

- An application by a person for a certificate under sub-section (1) of section 197 shall be made in Form No. 13.

Related Rule(s) under Income-tax Rules

Rule – 28, Rule – 28AA, Rule – 28AB, Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule- 37BA

Forms Required for Sec 194C – Form 15CA, 15CB, 16A, 24G, 26AS, 26B, 26Q and 27A

Section -194D: Insurance commission

Related Rule(s) under Income-tax Rules

Rule – 28, Rule – 28AA, Rule – 28AB, Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule- 37BA

Forms Required for Sec 194D – Form 15CA, 15CB, 16A, 24G, 26AS, 26B, 26Q and 27A

Section 194DA: Payment in respect of life insurance policy

Related Rule(s) under Income-tax Rules

Rule – 29C, Rule – 31, Rule – 31A, Rule – 31AB and Rule – 37 BA

Forms Required for Sec 194DA – Form 15CA, 15CB, 16A, 24G, 26AS, 26B, 26Q



and 27A

Section 194E: Payments to non-resident sportsmen or sports associations.

Related Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA, Rule – 37BB

Forms Required for Sec 194E – Form 15CA, 15CB, 16A, 24G, 26AS, 26B, 27Q and 27A

Section 194EE: Payments in respect of deposits under National Savings Scheme, etc.

Related Income-tax Rules

Rule – 29C, Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA

Forms Required for Sec 194EE – Form 15G, 15H, 16A, 24G, 26AS, 26B, 26Q and 27A

Section 194F: Payments on account of repurchase of units by Mutual Fund or Unit Trust of India.

Related Rule(s) under Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA

Forms Required for Sec 194F – Form 16A, 24G, 26AS, 26B, 26Q and 27A

Section 194G: Commission, etc., on the sale of lottery tickets.

Related Rule(s) under Income-tax Rules

Rule – 28, Rule – 28AA, Rule – 28AB, Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA

Forms Required for Sec 194G – Form 13, 16A, 24G, 26AS, 26B, 26Q and 27A

Section 194H: Commission or brokerage.

Related Rule(s) under Income-tax Rules

Rule – 28, Rule – 28AA, Rule – 28AB, Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA

Forms Required for Sec 194H – Form 13, 16A, 24G, 26AS, 26B, 26Q and 27A

Section 194I: Rent.

Related Rule(s) of Income-tax Rules

Rule – 28, Rule – 28AA, Rule – 28AB, Rule – 30, Rule – 31, Rule – 31A, , Rule – 31AB, Rule – 37BA

Forms Required for Sec 194I – Form 13, 16A, 24G, 26AS, 26B, 26Q and 27A

Section 194-IA: Payment on transfer of certain immovable property other than agricultural land.

Related Rule(s) of Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA,

Forms Required for Sec 194IA – Form 16B, 26AS, 26B, 26QB and 27A

Section 194-IB: Payment of rent by certain individuals or Hindu undivided family.

Related Rule(s) under Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB,



Forms Required for Sec 194IB – Form 16C, 26AS, 26QB and 27A

Section 194J: Fees for professional or technical services

Related Rule(s) under Income-tax Rules

Rule – 26B, Rule – 28, Rule – 28AA, Rule – 28AB, Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA

Forms Required for Sec 194J – Form 13, 16A, 24G, 26AS, 26B, 26Q and 27A

Section 194LA: Payment of compensation on acquisition of certain immovable property

Related Rule(s) under Income-tax Rules

Rule – 28, Rule – 28AA, Rule – 28AB, Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA

Forms Required for Sec 194LA – Form 13, 16A, 24G, 26AS, 26B, 26Q and 27A

Section 194LB: Income by way of interest from infrastructure debt fund.

Related Rule(s) under Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA, Rule – 37BB

Forms Required for Sec 194LB – Form 15CA, 15CB, 16A, 26AS, 26B, 26Q and 27A

Section 194LBA: Certain income from units of a business Trust

Related Rule(s) under Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA

Forms Required for Sec 194LBA – Form 16A, 26AS, 26B, 26Q and 27A

Section 194LLB: Income in respect of units of investment fund.

Related Rule(s) under Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA

Forms Required for Sec 194LLB – Form 16A, 26AS, 26B, 26Q and 27A

Section 194LC: Income by way of interest from Indian company.

Related Rule(s) under Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA, Rule – 37BB

Forms Required for Sec 194LC – Form 15CA, 15CB, 16A, 26AS, 26B, 27Q and 27A

Section 194LD: Income by way of interest on certain bonds and Government securities.

Related Rule(s) under Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA, Rule – 37BB

Forms Required for Sec 194LD – Form 15CA, 15CB, 16A, 26AS, 26B, 27Q and 27A

Section 195: Other sums

Related Rule(s) under Income-tax Rules

Rule – 26, Rule – 28, Rule – 28AA, Rule – 28AB, Rule – 29B, Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA, Rule – 37BB

Forms Required for Sec 195 – Form 13, 15C, 15CA, 15CB, 15D, 16A, 24G,



26AS, 26B, 27Q and 27A

Section 196A: Income in respect of units of non-residents.

Related Rule(s) under Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA

Forms required for 196A – 16A, 24G, 26AS, 26B, 27A, 27Q

Section 196B: Income from units

Related Rule(s) under Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA, Rule – 37BB

Forms required for 196B – 15CA, 15CB, 16A, 24G, 26AS, 26B, 27A, 27Q

Section 196C: Income from foreign currency bonds or shares of Indian company.

Related Rule(s) under Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA, Rule – 37BB

Forms required for 196C – 15CA, 15CB, 16A, 24G, 26AS, 26B, 27A, 27Q

Section 196D: Income of Foreign Institutional Investors from securities.

Related Rule(s) under Income-tax Rules

Rule – 30, Rule – 31, Rule – 31A, Rule – 31AB, Rule – 37BA, Rule – 37BB

Forms required for 196D – 15CA, 15CB, 16A, 24G, 26AS, 26B, 27A, 27Q

Section 197: Certificate for deduction at lower rate.

Related Rule(s) Income-tax Rules

Rule – 28, Rule – 28AA, Rule – 28AB, Rule – 29

Form required for 197 – Form 13

Section 197A: No deduction to be made in certain cases

Related Rule(s) under Income-tax Rules

Rule – 29C

Form required for 197A – Form 15 G and 15 H

Section 199: Credit for tax deducted.

Related Rule under Income Tax Rules:

Rule 37BA

Prescribed Forms as per Income-tax Rules (Synopsis) in brief as mentioned above.

Sl No	Form No	Description
1	Form No. 13	Application by a person for a certificate under section 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. (See Rule 28 & 37G).
2	Form No. 15G	Declaration under section 197A(1) and section 197A(1A) to be made by an individual or a person (not being a company or firm) claiming certain incomes without deduction of tax. (See Sec 197A(1), 197A(1A) & Rule 29C).



Sl No	Form No	Description
3	Form No. 15H	Declaration under section 197A(1C) to be made by an individual who is of the age of sixty years or more claiming certain incomes without deduction of tax. (See Sec 197A(1C) & Rule 29C)
4.	Form No. 15C	Application by a banking company for a certificate under section 195(3) of the Income-tax Act, 1961, for receipt of interest and other sums without deduction of tax. (See Rule 29B)
5.	Form No. 15D	Application by a person other than a banking company for a certificate under section 195(3) of the Income-tax Act, 1961, for receipt of sums other than interest and dividends without deduction of tax. (See Rule 29B)
6.	Form No. 15CA	Information to be furnished for payments to a non-resident not being a company, or to a foreign company. (See Rule 37BB)
7.	Form No. 15CB	Certificate of an accountant (See Rule 37BB)
8.	Form No. 16A	Certificate under section 203 of the Income-tax Act, 1961 for tax deducted at source (See Rule 31(1)(b))
9.	Form No. 16B	Certificate under section 203 of the Income-tax Act, 1961 for tax deducted at source (See Rule 31(3A))
10.	Form No. 24G	TDS/TCS Book Adjustment Statement (See Sec 30 & Rule 37CA)
11.	Form No. 26AS	Annual Tax Statement under section 203AA (See Sec 203AA & second provision to Sec 206C(5) and Rule 31AB)
12.	Form No. 26B	Form to be filed by the deductor, if he claims refund of sum paid under Chapter XVII-B of the Income-tax Act, 1961 (See Rule 31A(3A))
13.	Form No. 26Q	Quarterly statement of deduction of tax under sub-section (3) of section 200 of the Income-tax Act, 1961 in respect of payments other than Salary for the quarter ended June/ September/ December/ March. [See section 193, 194, 194A, 194B, 194BB, 194C, 194D, 194EE, 194F, 194G, 194H, 194I, 194J, 194LA, and rule 31A]
14.	Form No. 26QB	Challan –cum – statement of deduction of tax under section 194-IA. [See section 194-IA, rule 30 and rule 31A]
15.	Form No. 26QC	Challan-cum-statement of deduction of tax under section 194-IB. (See Section 194 IB, rule 30(2B & 6B) and rule 31A(4B))
16.	Form No. 27A	Form for furnishing information with the statement of deduction/collection of tax at source filed on computer media for the period (From.....to.....(dd/mm/yy)



SI No	Form No	Description
17.	Form No. 27Q	Quarterly statement of deduction of tax under sub-section (3) of section 200 of I.T. Act, 1961 in respect of payments other than Salary made to non-residents for the quarter ended June/ September/ December/ March. [See section 194E, 194LB, 194LC, 195, 196A ,196B, 196C, 196D, and rule 31A]
18.	Form No. 27BA	Form for furnishing accountant certificate under first proviso to sub-section (6A) of section 206C of the Income-tax Act, 1961 for removing short collection and/ or Non collection of Tax at source. (See Rule 37J)
19.	Form No. 27C	Declaration under sub-section (1A) of section 206C of the Income-tax Act, 1961 to be made by a buyer for obtaining goods without collection of tax. (See Rule 37C)
20.	Form No. 27D	Certificate under section 206C of the Income-tax Act, 1961 for tax collected at source. (See Rule 37D).
21.	Form No. 27EQ	Quarterly statement of collection of tax at source under sec 206C for the quarter ended June/September/ December/March. (See Sec 206C and rule 31AA).
22.	Form No. 26QA	Quarterly return for the quarter ended June/September/December/March of the Financial Year in respect of payment of interest to residents without deduction of tax under section 206A. (See Rule 31AC).
23.	Form No. 26QAA	Quarterly return under section 206A for the quarter ended June/September/December/March.(See Sec 206A & Rule 31AC).
24.	Form No. 49B	Form of application for allotment of Tax Deduction and Collection Account Number under section 203A of the Income-tax Act, 1961. (See Sec 203A & Rule 114A).
26.	Form No 16C	TDS certificate for rent as per Budget 2017 for Sec 194 IB. See Rule 31(3B)

Different Rules used in above TDS sections – A brief summary

SI No	Form No	Description
1	RULE 28	Application for certificate for deduction of tax at lower rates. The application to be made for the above u/s 197 shall be made in Form 13.
2	RULE 28AA	Application for certificate for deduction at lower rates or no deduction of tax from income other than dividends.
3.	RULE 28AB	Certificate of no deduction of tax in case of certain entities 28AB. Subject to the person is in receipt of income or deemed income derived from property held under trust wholly for charitable or religious purposes and who claims exemption under section 11 or section 12.



SI No	Form No	Description
4.	RULE 29	Certification of no deduction of tax or deduction at lower rates from dividends u/s 197 (1).
5.	RULE 29C	Declaration by person claiming receipt of certain incomes without deduction of tax. (1) A declaration under sub-section (1) or under sub-section (1A) of section 197A shall be in Form No. 15G and declaration under sub-section (1C) of section 197A shall be in Form No. 15H.
6.	RULE 30	Time and mode of payment to government account of tax deducted at source or tax paid under sub section 192(1A)
7.	RULE 31	Certificate of Tax deducted at source to be furnished u/s 203 in Form 16 or Form 16A
8.	RULE 31A	Statement of deduction of tax u/s 200(3). Person responsible for deduction of tax u/s 200(3) shall deliver the quarterly statement namely For deduction of tax u/s 192 in Form 24Q, deduction of tax u/s 193 to 196D in Form 27Q or 26Q as applicable
9	RULE 31AB	Annual Statement of Tax Deducted or tax Collected.
10	RULE 31AC	Maintenance of particulars of time deposits by a banking company for furnishing quarterly return u/s 206A. Form to be used 26 QA.
11	RULE 31ACB	As per the rule 31ACB the certificate from an accountant u/s 201(1) shall be furnished in Form 26A to the principal director in accordance with format, procedure and standards.
12	RULE 36	Prescribed persons for Sec 206
13	RULE 36A	The returns referred to in rules 37 and 37A shall be furnished to the Director General of Income-tax (Systems) or the person or agency authorized by the Director General of Income-tax (Systems)
14	RULE 37BA	Credit for tax deducted at source for the purpose of Sec 199.
15	RULE 37BB	A person responsible for making a payment to a non-resident or to a foreign company has to provide the following details for payments made in form 15CA



SI No	Form No	Description
16	RULE 37BC	In the case of a non-resident, not being a company, or a foreign company (hereafter referred to as 'the deductee') and not having permanent account number the provisions of section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the details and the documents specified in sub-rule (2) to the deductor.
17.	RULE 29B	Application for certificate authorizing receipt of interest on securities (other than interest payable on securities referred to in proviso to section 193) and other sums without deduction of tax.
18.	RULE 26	Rule 26 of the Income-tax Rules, 1962 which states that "For the purpose of deduction of tax at source on any income payable in foreign currency, the rate of exchange for the calculation of the value in rupees of such income payable to an assessee outside India shall be the telegraphic transfer buying rate of such currency as on the date on which the tax is required to be deducted at source under the provisions of Chapter XVIIIB by the person responsible for paying such income.
19.	RULE 26B	of Statement particulars of income under heads of income other than "Salaries" for deduction of tax at source u/s 192 (1)
20.	RULE 31 (3A)	Every person responsible for deduction of tax under section 194-IA shall furnish the certificate of deduction of tax at source in Form No.16B to the payee within fifteen days from the due date for furnishing the challan-cum-statement in Form No. 26QB under rule 31A after generating and downloading the same from the web portal specified by the Director General of Income-tax (System) or the person authorized by him.

BRIEF INFORMATION ABOUT TAX COLLECTED AT SOURCE TCS

Tax collected at source (TCS) is the tax payable by a seller which he collects from the buyer at the time of sale. Section 206C of the Income-tax act governs the goods on which the seller has to collect tax from the purchasers.

Section 206: Persons deducting tax to furnish prescribed returns.

Related Rule(s) under Income-tax Rules

Rule – 36 & Rule – 36A

Section 206A: Furnishing of quarterly* return in respect of payment of interest to residents without deduction of tax.



Rule – 31AC

Section 206AA: Duty of Payee/Deductee: Requirement to furnish Permanent Account Number

Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—

at the rate specified in the relevant provision of this Act; or

at the rate or rates in force; or

at the rate of twenty per cent.

Relaxation from deduction of tax at higher rate under section 206AA.

Rule 37BC

BRIEF INFORMATION ABOUT ADVANCE TAX

Any person having an estimated tax liability of Rs.10,000 or more in a year is required to pay tax in advance. This payment of tax in advance and in installments is known as advance tax payment. Section 208 of the Income Tax Act deals with advance tax payment and Section 234C of the Income Tax Act deals with delay in remitting advance tax payment.

TDS – Assessment, Appeal & Penalty procedure

TDS assessment and Time limit

The courts have held that the time limit for completion of TDS assessment would be governed by section 231 of the Income tax Act. Section 231 was omitted by the Direct tax Laws (Amendment) Act, 1987 w.e.f. 1-4-89. A question therefore arise what will then be given the time limit for completion of TDS assessment. In the present Income Tax Act, there is no section which prescribes the time limit for completion of TDS assessment i.e. assessment under section 201 & under section 201(1A). Though no time-limit has been prescribed for passing orders u/s 201 & 201(1A), various Benches of the Tribunal have held that , the AO cannot be permitted to pass order after undue delay & that some reasonable time-limit must be prescribed within which the IT authorities should pass an order. The case law to be referred here is **Mass Awash (P.) Ltd. [2017] 83 taxmann.com 306.**

The Tribunals have further held that an order be passed within four financial years from the end of the financial year. Suppose, if the financial year ends on 31st March, 2008 i.e assessment year 2008 - 2009 the order will be barred by limitation if it is passed after 31st March, 2012. It will not make any difference if there is a survey u/s 133A during the intervening period. The usual argument of the Dept is that since in many cases no TDS is deducted no TDS returns are filed and by the time a survey action is taken the time limit of 4 financial year might be near. However, the aforesaid view of the Dept was not acceptable in view of the fact that there can be scrutiny proceedings u/s 143(2) & the AO during the course of scrutiny will definitely come to know whether TDS has been deducted or not and at the appropriate rate. The aforesaid time limit will apply not only to a case



where “an assessee-in-default” u/s 201 for non-deduction of tax or for short deduction of tax, but will also govern levy of interest u/s 201(1A) because both the proceeding are linked.

The Bombay High Court (HC) in the case of Mahindra & Mahindra (the taxpayer) upheld the view of the Income-tax Appellate Tribunal (Tribunal) that the time limit for initiating and completing proceedings under section 201(1)/(1A) of the Income-tax Act, 1961 (the Act) was the same as the time limit available for initiating and completing of reassessment proceedings. The relevant case laws are discussed in Chapter 10,

Interest Leviable:

Section 201 (1A) of the IT Act 1961 prescribes the rate at which interest is leviable for non-deduction of tax at source and interest leviable for non-remittance of tax deducted at source. This section was amended in Finance Act with effect from 1 July 2010. As per this amended section interest is payable at the rate of one per cent per month or part there off from the date of deductible on the amount so not deducted and one and half per cent per month or part there off from the date of deduction upto the date of remittance into Government Account. These interests have to be paid before furnishing the quarterly returns. Where the payee had already paid the tax in advance, there is no need for TDS and no interest is leviable.

This was supported by the decision by Gujarat High Court in **CIT vs Rishikesh Co-operative Housing Society Ltd., 251 ITR 310.**

It was also held that interest is payable only upto the date of payment by the deductee into Government Account as held by Allahabad High Court in **CIT Vs Mejastic Hotel Ltd** as the amount was already paid by the deductee/payee even though the deductor/ payer failed to deduct tax at source.

The Delhi High Court in the case of **ITO Vs Allen Alfred Advertising [2006] 8 SOT 312** held that where payee paid the tax, there is no question of levy of interest in the hands of the payer and he cannot be held as assessee-in default. It was also held in **CIT Vs Tide Water Marine International 309 ITR 85 Uttarakhand** that in the event of default by the deductor, the payee is not responsible for payment of interest.

Assesse-in-default

Section 191 deals with the payment of tax by the assessee directly if tax is not deducted at source or not required according to the provisions relating to the deduction of tax at source. As per the explanation inserted in Finance Act 2008, if the payer has not deducted the tax at source as required under the Act or after deducting the tax failed to remit the whole or part thereof of the tax and the payee had also not remitted the tax directly, then the persons responsible for payment shall deemed to be an assessee in default within the meaning of Section 201 (1) in respect of tax not deducted at source. This is equally applicable for non-deduction and payment of tax on non-monetary prerequisites under section 192 (1A) of the Act.

As per provisions of Section 221, when an assessee is in default or deemed to be in default, he shall in addition to the amount of arrears and the interest payable be liable to pay penalty not exceeding the tax in arrears. But if the deductor had reasonable cause of non-deduction of tax at



source as required, then no penalty is leviable. The concerned assessing officer can impose penalty. The Finance Act 2012 had amended Section 201 with effect from 1 July 2012 which provided that if the assessee failed to deduct whole or part of tax on the payment to be made to a resident should not be deemed to be an assessee in default if such resident payee had furnished his return of income u/s 139 and has accounted such payment as income and paid the tax due thereon and the payer furnishes a certificate in prescribed form from an accountant to that effect, then he will not be treated as assessee-in-default. It is clear that any failure to recover tax from the payments made to non-residents would not be covered under this section and for non-deduction and payment, the payer would be treated as assessee-in default. When a person is not treated as assessee-in default, then no interest could be recovered from him. Similarly, when tax was paid by the payee, no interest is recoverable from the payer as per the provisions of Section 201.

Penalties

Under various sections, penalty can be imposed for different types of non-compliance of the provisions relating to TDS. They are detailed below.

Penalty for not-deducting tax at source [Section 271C]

Failure to deduct the whole or part of the tax at source shall attract penalty equal to the amount which is not deducted. If there is adequate reasons for non-deduction of tax at source, then the Assessing Officer (AO) will not levy any penalty.

Penalty for not-collecting tax at source [Section 271CA]

Failure to collect and remit the whole or part of the tax at source shall attract penalty equal to the amount which is not collected. If there is adequate reasons for non-collection of tax at source, then the Assessing Officer (AO) will not levy any penalty.

Penalty for non-delivering Form 15G and Form 15H [Section 272A(2)(f)]

Failure to deliver within the time limit a copy of the declaration in Form 15G or Form 15H as per Section 197A attracts a penalty of Rs100 per day of default but the penalty should not exceed the amount of tax deductible if the declaration is not submitted by the deductee. The Chief Commissioner can impose this penalty. If the deductor had reasonable cause for not delivering these forms, penalty can be waived as per section 273.

Penalty for failure to issue certificate [Section 272A(2)(g)]

As per the provisions of Section 272A (2) (g), failure to issue Tax Deducted at Source certificate as required under Section 203 or Section 206C shall attract a penalty of Rs100 per day of default but not exceeding the amount of Tax Deducted at Source. The Joint Commissioner can impose the penalty. If the deductor had reasonable cause for delay or failure to issue the certificates, no penalty is leviable.

Non-submission of Non-monetary Perquisite Statement [Section 272A(2)(i)]

Failure to furnish a statement as required by Section 192(2C) relating to payment of tax on non-monetary perquisites of the employees attracts



penalty at the rate of Rs100 per day during which failure continues. But if the deductor had reasonable cause of non-furnishing of statement as required, then no penalty is leviable. The concerned Joint Commissioner can impose penalty.

Non-submission of Quarterly Statement [Section 272A(2)(k)]

Failure to submit the quarterly statement within the time specified under Section 206A (1) attracts penalty of ` 100 per day of default but penalty not to exceed the amount of tax payable. But if the deductor had reasonable cause of non-furnishing of statement as required, then no penalty is leviable. The concerned Joint Commissioner can impose penalty.

Not intimating PAN to Tax Deductor [Section 272B(1)]

As per the provisions of Section 272B (1), if the deductee did not intimate his PAN to the Deductor, he is liable for a penalty of Rs10000.

Penalty for not quoting PAN [Section 272B(2)]

As per provisions of Section 272B(2), if the deductor is not quoting PAN of the payees in the Certificates and Statements, he is liable for a penalty of Rs 10000.

Penalty for failure for not quoting TAN [Section 272BB(1)]

Failure to apply for Tax Deduction and Collection Account No. (TAN) and failure to quote TAN in Challans, Certificates and Statements or quoting false TAN shall attract a penalty of Rs10,000. But if the deductor had reasonable cause of non-furnishing of statement as required, then no penalty is leviable. The concerned Joint Commissioner can impose penalty.

Prosecution for non-payment

Section 276B deals with prosecution for non-payment of tax deducted at source. If a person who had deducted tax at source but failed to pay into the Government Account or makes delayed payments shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may be extended to 7 years and fine. The imprisonment is over and above the penalty. Some of the important points to be noted in this respect were

The prosecution is possible for delayed payment an non-payment of tax deducted.

Even if the tax payer had deducted and deposited after the due date, prosecution is possible.

Prosecution is not possible for not deducting tax at source, not filing return in time, not issuing certificate etc.,

If prosecution is not sustainable, then the penalty imposed can be cancelled on merits.

Compounding

The Concept of compounding of offences was incorporated as a measure to avoid the long drawn process of prosecution which would save both cost



and time in exchange of payment of penalty to the aggrieved. Section 279(2) deals with compounding of offences. As per the provisions of this section, before or after institution of any proceedings for offence under the provisions of TDS/TCS recoverable and remittance into Government Account be compounded by the Principal Chief Commissioner of Income Tax or Chief Commissioner or Principal Director General or a Director General. The CBDT had issued detailed guidelines in 2008 which was amended in 2013 as detailed below.

Section 279(2) of the Act provides that any offence under chapter XXII of the Act may, either before or after the institution of proceedings, be compounded by the CCIT/DGIT. As per section 2(15A) and 2(21) of the Act, Chief Commissioner of Income Tax includes Principal CCIT and Director General of Income tax includes Principal DGIT.

Classification of Offences

The offences under Chapter-XXII of the Act are classified into two parts (Category 'A' and Category 'B') for the limited purpose of compounding of the offences.

Category 'A'

Offences punishable under the following sections are included in **Category 'A'**:

Sl No	Section	Description of the section
(i)	276	(Prior to 01/04/1976)- Failure to make payment or deliver returns or statements or allow inspection.
(ii)	276B	(Prior to 01/04/1989) -Failure to deduct or pay tax
(iii)	276B	(w.e.f. 01/04/1989 and up-to 30/5/1997)- Failure to pay tax deducted at source under chapter XVII-B
(iv)	276B	Failure to pay tax deducted at source under chapter XVII-B or tax payable under section 115 -0 or 2nd proviso to section 194B to the credit of the Central Government (w.e.f. 01/06/1997)
(v)	276BB	Failure to pay the tax collected at source
(vi)	276DD	(Prior to 1.04.1989) – Failure to comply with the provisions of section 269SS
(vii)	276E	(Prior to 1.04.1989) – Failure to comply with the provisions of section 269T
(viii)	277	False statement in verification etc. with reference to Category 'A' offences
(ix)	278	Abetment of false return etc. with reference to Category 'A' Offences

Category 'B'

Offences punishable under the following sections are included in **Category 'B'**:



Sl No	Section	Description of the section
(i)	275A	Contravention of order made u/s 132(3)
(ii)	275B	Failure to comply with the provisions of Section 132 (1) (iib)
(iii)	276	Removal, concealment, transfer or delivery of property to thwart tax recovery
(iv)	276A	Failure to comply with the provision of sections 178 (1) and 178(3)
(v)	276AA	(prior to 01/10/1986)-Failure to comply with the provisions of section 269 AB or section 269 I
(vi)	276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
(vii)	276 (C) (1)	Wilful attempt to evade tax etc
(viii)	276 (C) (2)	Wilful attempt to evade payment of taxes etc
(ix)	276CC	Failure to furnish returns of Income
(x)	276CCC	Failure to furnish returns of income in search cases in block assessment scheme
(xi)	276D	Failure to produce accounts and documents
(xii)	277	False statement in verification etc. with reference to Category 'B' offences
(xiii)	277A	Falsification of books of account or documents etc.
(xiv)	278	Abetment of false return etc. with reference to Category 'B' offences

Eligibility Conditions for compounding:

- (1) The following conditions should be satisfied for considering compounding of an offence:
- (2) The person makes an application to the CCIT/DGIT having jurisdiction over the case for compounding of the offence(s) in the **prescribed format**
- (3) The person has paid the **outstanding** tax, interest, penalty and any other sum due, relating to the offence for which compounding has been sought

The person 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.

The person undertakes to withdraw appeal filed by him, 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



Compounding Procedure:

1. On receipt of the application for compounding, the same shall be processed by the Assessing Officer/Assistant or Deputy Director concerned and submitted promptly along-with duly filled in check-list as per **Annexure-2 of the notification** to the authority competent to compound, through proper channel.
2. The competent authority shall duly consider and dispose of every application for compounding through a speaking order in the prescribed format as per **Annexure-3 for the notification** within the time limit prescribed by the Board from time to time. In absence of such a prescription, the application should be disposed off **within 180 days** of its receipt. However, while passing orders on the compounding applications, the period of time allowed to the assessee for paying compounding charges shall be excluded from the limitation specified above.
3. Where compounding application is found to be acceptable, the competent authority shall intimate the amount of compounding charges to the applicant requiring **him** to pay the same **within 60 days** of receipt of such intimation. Under exceptional circumstances and on receipt of a written request for further extension of time, the competent authority may extend this period up-to further period of **120 days**. Extension beyond this period shall not be permissible except with the previous approval of the Member (Inv), CBDT on a proposal of the competent authority concerned.
4. However, wherever the compounding charges are paid beyond 60 days as extended by the competent authority, the applicant shall have to pay **additional compounding charge** at the rate of 2% per month or part of the month of the unpaid amount of compounding charges.
5. The **competent** authority shall pass the compounding order **within 30 days** of payment of compounding charges. Where compounding charge is not deposited within the time allowed, the compounding application may be rejected after giving the applicant an opportunity of being heard. The order of rejection shall be brought to the notice of the Court immediately through prosecution counsel in the cases where prosecution had been instituted

Fees for compounding

Section 276B- Failure to pay the tax deducted at source - Three per cent per month or part of a month of the amount of tax in default disclosed in the compounding application.

Section 276C(1)- Wilful attempt to evade tax etc.100% of the amount sought to be evaded.

Section 276C(2)- Wilful attempt to evade payment of any tax etc. 3 % per month or part thereof of the amount of tax etc., the payment of which was sought to be evaded, for the period of default.

Section 276CC- Failure to furnish returns of income - Two per cent per month



or part of a month of the tax and interest determined on assessment or reassessment

Section 276DD- Failure to comply with the provisions of Section 269 - A sum equal to 20% of the amount of any loan or deposit accepted in contravention of the provisions of Section 269SS

Section 276E- Failure to comply with the provisions of Section 269T - A sum equal to 20% of the amount of deposit repaid in contravention of the provision of Section 269T.

Section 277- False statement in verification etc –

Where same set of facts and circumstances attract prosecution under section 277 in addition to the offence in connection with which prosecution under section 277 got attracted in case of the same person, no separate compounding fee shall be charged for offence under section 277.

Where same set of facts and circumstances attract prosecution under any offence as well as u/s 277 and /or 278, normally, a compounding fee @ 10% of the 'compounding fee for the main offence' shall be charged from each of the person charged under sections 278B or 278C

In case where no offence under any other sections of I.T. Act is involved except under section 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.

Offences, other than those described above which no compounding fee has been prescribed, the authority competent to compound may determine the amount of compounding fee having regard to the nature and magnitude of the offence, subject to levy of a **minimum compounding fee of Rs 25,000/-** for each such offence.

Standard Operating Procedures 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. Presently, the monetary limit specified for cases to be considered for prosecution is as under:

Cases, where amount of tax deducted is 1,00,000 or more and the same is not deposited by the due date prescribed under the Income Tax Act, 1961 read with the Income Tax Rules, 1962 shall mandatorily be processed for prosecution in addition to the recovery.

Cases, where the tax deducted is between 25,000 and 1,00,000 and the same is not deposited by the due date prescribed under the Income Tax Act, 1961 read with the Income Tax Rules, 1962 may be processed for prosecution depending upon the facts and circumstances of the case, like where there are instances of repeated defaults and/or tax has not been deposited till detection

CPC-TDS/TRACES will generate a list of prosecutable cases for mandatory processing for prosecution (List-A) in accordance with the criteria laid down



by the CBDT vide its instruction dated 07.02.2013 or any other modified criteria, if the same is done in view of suggestions made in this regard. Such identification shall be done within one month of the filing of the quarterly TDS statement. CPC – TDS following the Instruction dated 07.02.2013, adopted following two parameters for identifying prosecutable case for mandatory processing:-

- (i) where Late Payment Interest had not been paid completely/not paid at all till that date;
- (ii) where deduction had been made but no challan was available in the account of the deductor i.e. the amount was not at all paid to the Government account. (Vide F.No. CPC(TDS)/Prose cases/2014-15 dated 15.09.2014, limit of ₹1,00,000/- for the cases of Late Payment Interest and for Short Payment all the cases have been approved.)

CPC-TDS will generate another list of cases(List-B) involving defaults of delay in payment of Rs25,000 to Rs1,00,000/- along with default sheets for the year as well as preceding year and subsequent year (if details are available), within one month of the filing of the quarterly TDS statement, to help AO(TDS) to identify cases fit for prosecution based on facts and circumstances of the case. The AO(TDS) can identify the cases from second list and also from the information gathered from external sources to complete identification of second category of cases and enter them in prosecution register maintained manually or on utility to be provided by CPC-TDS.

It may be noted that the TDS cases, otherwise dealt by the International Taxation Division, with respect to payments made to non-residents also required to be dealt with in the same manner as other cases under Chapter-XV II of the Income Tax Act, 1961.

- ❑ In cases of default in furnishing the quarterly TDS statement, CPC-TDS shall generate the list of such non-filers within one month from due date and communicate to the AO(TDS) for issue of notice and further pursuit.

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 (page 74 of the Prosecution Manual) and to be reported to the CIT(TDS) who shall also maintain the prosecution register in Form-D (page 75 of the Prosecution Manual). Till a specific module in CPC-TDS is made functional for having control on prosecution proceedings, the entries may be made in manual register.

Following 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 No	TAN NO



(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.
- (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.
 - (i) whether the default was only in one year and no defaults took place later,
 - (ii) whether the deductor has himself rectified the mistake and deposited the tax along with interest prior to issue of notice by the department,
 - (iii) whether the same offence has been compounded earlier and if yes, how many times etc.
- ❑ 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), within 45 days of receipt of the list of prosecutable cases from CPC-TDS in accordance with Sections 278B/278C read with sections 276B/276BB of the Income-tax Act, 1961.
- ❑ It may be ensured that the reply is furnished within 30 days of the issue of the show cause notice. In case no reply is furnished within 30 days, it shall be presumed that the person responsible for deduction has no cause to state and the matter may be pursued further.
- ❑ 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. Separate proposal should be submitted for separate assessment years. The Form 'F' will indicate inter alia, the following:
 - (i) The facts indicating the commission of offence.
 - (ii) Chronology of events, primary & secondary evidences to establish the offence.
 - (iii) Present stage of the proceedings relating to the commission of offence.
 - (iv) List of documentary evidences including depositions, submissions to prove the offence.



- (v) List of witnesses on which the departmental case depends.
- (vi) Any other facts or evidence to establish the offence.
- (vii) It has to be clearly mentioned in the proposal whether the offence is second or subsequent offence in terms of Section 278A.

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.

- ❑ While the AO(TDS) will mandatorily refer all the cases of TDS default exceeding 1 lakh to CIT(TDS), cases of defaults between 25,000 - 1 lakh shall be referred to the CIT(TDS) only if he is satisfied that it is a case fit for prosecution. The report to CIT(TDS) shall be submitted within 60 days of the issue of show cause notice. Time granted to furnish the reply may be excluded from this time limit.
- ❑ The CIT (TDS) is the competent authority to accord sanction u/s 279(1). He shall -
 - (a) If he is of the opinion that the case is prima facie fit for prosecution, then, issue show cause notice(s) to all proposed accused(s) u/s 276B/276BB r.w.s. 278B of the I.T. Act as to why sanction for launching of prosecution should not be accorded. The show cause notice can be generated from the online module on TRACES, as and when the facility is made available.
 - (b) He shall after hearing the assessee and after proper application of mind clearly enunciate that while processing the cases for prosecution u/s 276B/276BB r.w.s. 278B, a fair and judicious view has been taken in view of the provisions of Section 278AA before filing the complaint(s). This should get reflected in both the sanction orders passed by the Commissioners/Directors under Section 279(1) and the complaints filed with the competent Courts:
 - (i) There is no statutory requirement for obtaining opinion of the Counsel before granting sanction for prosecution. However, given the fact that TDS offences are technical in nature, such reference could be made in complex situations like identification of accused(s) etc to avoid legal infirmities in prosecution proposals/complaints. In such cases, it should be ensured that the opinion should be obtained from the Counsel within 30 days. If after examining the opinion of the Standing Counsel, he is satisfied that it is a fit case for prosecution, he shall pass a speaking order u/s 279(1) separately for each assessment year.
 - (ii) In case he is not satisfied after receiving reply, he shall drop the proceedings.

An entry shall be made by the CIT(TDS) in the prosecution register or in the utility as and when available in TRACES on passing of such orders as mentioned in para (b) above or as soon as the decision to drop proceedings is made. The CIT(TDS) shall complete the process and pass an order u/s 279 sanctioning prosecution or dropping the show cause notice within 60 days of receipt of the proposal.



- ❑ 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 should be followed in dealing with the compounding applications. If a person who has committed an offence(s) under S.276B/276BB files an application for compounding of the said offence(s), the application should be processed on priority basis and mandatorily be disposed off within the time frame as prescribed by the Central Action Plan guidelines. During the pendency of the compounding application, the CIT(TDS) shall keep the prosecution proposal pending. However, if the application is not decided within the prescribed time, the CIT(TDS) shall proceed to file the c
- ❑ 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.
- ❑ 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.
- ❑ Similarly, 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.

Time Frame

The time period for the entire process from identification to passing of order u/s 279(1)/279(2) should be as under:

Note: Readers may refer the above mentioned department's notification for full content.

Sl. 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	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.
2	276BB	-do-	-do-	-do-	-do-



Standard Operating Procedure defining the roles of different TDS Authorities in addressing the issue of prosecution and compounding of TDS cases

Role of Principal CCIT/CCIT (TDS):

- (i) Taking quarterly review meeting with CIT (TDS) monitoring progress in all cases identified for prosecution.
- (ii) Apprising the Zonal Member of the progress/ outcome made during the month through monthly DO. Copy of such progress shall also be sent to Pr. DGIT (Admn.), New Delhi for information and monitoring.
- (iii) Disposing all compounding petitions received expeditiously and within the time period prescribed in the Central Action Plan. While disposing off compounding petitions, speaking orders are expected to contain those facts based on which a fair and judicious view has been taken in accordance with relevant provisions of the Income Tax Act, 1961.

Role of CIT (TDS)

- (i) Ensuring that the Guidelines issued vide F.No.285/35/2013-IT(Inv.V)/108 dt. 23.12.2014 are adhered to.
- (ii) Monitoring the action in the cases of mandatory processing for prosecution generated by the CPC-TDS on a monthly basis.
- (iii) Guiding AO(TDS) to shortlist the cases for processing of prosecution on the basis of list-B and identified on the basis information received from external sources such as spot verification/survey and monitoring action thereon.
- (iv) Maintaining a register in Form-D or in online utility as and when made available in TRACES wherein record of all cases identified for prosecution should be kept.
- (v) Processing all the proposal received by him and if he is of the opinion that the case is prima facie fit for prosecution, issue show cause notices to the accused(s) u/s 276B/276BB r.w.s. 278B or 278C as to why sanction for launching of prosecution should not be accorded.
- (vi) Seeking opinion of the Prosecution or Standing Counsel, as the case may be, about suitability of the case for launching of prosecution and as well as strength of the case against accused(s). Ensuring that the opinion is obtained from the Counsel within 30 days.
- (vii) Examining the opinion of the Standing Counsel and on satisfaction that it is a fit case for prosecution, passing speaking orders u/s 279(1) in the case of accused(s) for each assessment year separately. In case he is not satisfied, he shall drop the proceedings.
- (viii) Completing the process and passing an order u/s 279 sanctioning prosecution or dropping the show cause notice within 60 days of receipt of the proposal.
- (ix) Making an entry for the following events in the manual register or in the utility created in TRACES:



- (a) On receipt of proposal from the AO (TDS).
- (b) On issue of show cause notice to the accused / co-accused.
- (c) On passing of sanction order u/s 279(1) or on dropping of the proceedings as the case may be.
- (d) On receipt of compounding application / report on the compounding application.
- (e) On filing of complaint / launching of prosecution before the competent court.
- (f) On receipt of order of competent Court
- (g) On appeal, if any appeal is filed.

Role of Addl.CIT (TDS)

Discussing cases of list-B generated by CPC-TDS and list prepared on the basis of information received from external sources such as spot verification/ survey with AO (TDS) and also guiding them in short listing the cases fit for prosecution.

Monitoring timely action in all the cases involving mandatory processing for prosecution or cases identified otherwise and to report the progress to the CIT (TDS) in the monthly DO.

Role of AO (TDS)

- (i) Downloading list of cases identified by CPC-TDS for mandatory proceeding of cases (list-A).
- (ii) Downloading list-B of cases for identification of cases based on facts and circumstances of the cases and also to examine cases on the basis of information gathered from external sources such as spot verification / surveys and shortlist cases fit for prosecution amongst these cases after discussion with Range Head and CIT(TDS).
- (iii) Initiating action and collecting information in accordance with the procedures laid down above.
- (iv) Issuing show cause notice to all the accused(s) identified by him giving due opportunity to the accused within 45 days of receipt of the list of prosecutable cases from CPC-TDS.
- (v) Sending the proposal prepared in Form 'F' along with other information /documents to the CIT (TDS) through proper channel.
- (vi) Making an entry for the following events in the manual register or as and when in the utility made available in TRACES:
 - (a) Initiation of proceedings for prosecution.
 - (b) Sending the proposal to the CIT (TDS) for necessary action.
 - (c) Date of receipt of sanction u/s 279(1) of CIT(TDS).
 - (d) Filing of complaint / launching of prosecution in the competent court on receiving order u/s 279(1).
 - (e) In case report on the compounding application is to be sent on filing of compounding application by the deductor, date of the report as well as when order on such application is received from the competent authority.



- (f) On receiving orders of the competent Court in the case, date of filing of appeal, if any filed.

Role of CIT(CPC-TDS):

- (i) Generating list-A of defaulters along with their statement of defaults for mandatory processing of cases for prosecution involving delayed payment of 1 lakhs or more as prescribed in the present Instruction and make it available to AO(TDS) as well as the CIT(TDS) within one month of the filing of the quarterly TDS statement.
- (ii) Generating list-B of cases involving defaults of delay in payment of 25,000/- to 1,00,000/- along with default sheets for the year as well as proceeding year and subsequent year (if dates are available), to help CIT(TDS) AO(TDS) to identify cases fit for prosecution based on facts & circumstances of the cases within one month of the filing of the quarterly TDS statement.
- (iii) Generating a list of non-filers of TDS statement within one month of the due date and communicating to the AO (TDS) with a copy to the CIT (TDS).
- (iv) Developing and maintaining a specific module/utility in TRACES for identification and control over prosecution proceedings where all the details of each case of prosecution can be maintained online.

Procedure for appeals

At times it may happen that the taxpayer is aggrieved by an order of the Assessing Officer including TDS. In such a case he can file an appeal against the order of the Assessing Officer before the Commissioner of Income-tax (Appeals).

Provisions relating to appeals to Commissioner of Income-tax (Appeals).

Appealable order

The Commissioner of Income-tax (Appeals) is the first appellate authority. Section 246A specifies the orders against which an appeal can be filed before the Commissioner of Income-tax (Appeals). The list of major orders against which an appeal can be preferred before the Commissioner of Income-tax (Appeals) is given below:

- Order passed against the taxpayer in a case where the taxpayer denies the liability to be assessed under Income Tax Act 1961.
- Intimation issued under section 143(1)/(1B) where adjustments have been made in income offered to tax in the return of income.
- Intimation issued under section 200A (1) where adjustments are made in the filed statement.
- Assessment order passed under section 143(3) except in case of an order passed in pursuance of directions of the Dispute Resolution Panel
- An assessment order passed under section 144. Order of Assessment, Re-assessment or Re-computation passed after reopening the assessment under section 147 except an order passed in pursuance of directions of the Dispute Resolution Panel.



- An order referred to in section 150.
- An order of assessment or reassessment passed under section 153A or under section 158BC in case of search/seizure.
- Assessment or reassessment order passed under section 92CD(3).
- Rectification order passed under section 154 or under section 155.
- Order passed under section 163 treating the taxpayer as agent of non-resident.
- Order passed under section 170(2)/(3) assessing the successor of the business in respect of income earned by the predecessor.
- Order passed under section 171 recording the finding about partition of a Hindu Undivided Family.
- Order passed by Joint Commissioner under section 115VP (3) refusing approval to opt for tonnage-tax scheme to qualifying shipping companies.
- Order passed under section 201(1)/ 206C(6A) deeming person responsible for deduction of tax at source as assessee-in-default due to failure to deduct tax at source or to collect tax at source or to pay the same to the credit of the Government.
- Order determining refund passed under section 237.
- Order imposing penalty under section 221/ 271/ 271A/ 271AAA/ 271F/ 271FB/ 272A/ 272AA/ 272B/ 272BB/ 275(1A)/ 158BFA(2)/ 271B/ 271BB/ 271C/ 271CA/ 271D/ 271E/ 271AAB.
- Order imposing a penalty under Chapter XXI.

Time-limit for presenting an appeal

As per Section 249(2), appeal should be presented within 30 days of the following date:

- (a) Where the appeal relates to any assessment or penalty, the date of service of notice of demand relating to the assessment or penalty.
- (b) Where appeal is under section 248, i.e., appeal by a person denying liability to deduct tax under section 195, the date of payment of tax.
- (c) In any other case, the date on which intimation of the order sought to be appealed against is served.

The Commissioner of Income-tax (Appeals) may admit belated application on sufficient cause being shown. Application for condonation of delay in filing the appeal, giving the reasons for the delay, along with necessary evidences should be filed with Form No. 35 (i.e., form of appeal).

The Commissioner of Income-tax (Appeals) can condone the delay in filing the appeal if genuine reason exists for delay.

Form of appeal

The CBDT had substituted the Rule 45 of Income-tax Rules, 1962 relating to filing of Form of appeal to CIT(A) vide Income-tax (3rd Amendment) Rules, 2016. By virtue of such amendment, the CBDT had issued a new Form No. 35



for filing an appeal before CIT (A). Further, e-filing of Form has been made mandatory for persons for whom e-filing of return of income is mandatory.

Signature to the appeal

The form of appeal, the grounds of appeal and the form of verification are to be signed and verified by the person authorised to sign the return of income under section 140 as applicable to the taxpayer. In other words, form of appeal is to be signed and verified by following:

- (a) In case of appeal by an individual taxpayer, by the individual taxpayer himself or by a person duly authorised by him who is holding a valid power of attorney
- (b) In case of a Hindu Undivided Family, by the Karta of the family or if Karta is absent from India or is not capable for signing, by any other adult member of such family.
- (c) In case of a company, by the Managing Director or if Managing Director is not available or where there is no Managing Director by any director of the company.
- (d) In case of foreign company, by a person who holds a valid power of attorney from such company.
- (e) In case of a firm, by the Managing Partner or if Managing Partner is not available or where there is no Managing Partner by any partner (not being a minor)
- (f) In case of a LLP, by the Designated Partner or if Designated Partner is not available or where there is no Designated Partner by any partner.
- (g) In case of a Local Authority, by the Principal Officer thereof
- (h) In case of a Political Party, by the Chief Executive Officer of such party
- (i) In case of any other Association, by the Principal Officer thereof or by any member of the Association.
- (j) In case of any other Person, by that Person or by some person competent to act on his behalf.

Pre-deposit of tax

Before filing the appeal, the taxpayer should pay the tax determined as per the return of income filed by him.

If no return of income is filed, the taxpayer should pay tax equal to the amount of advance tax payable by him. However, on application made by the taxpayer, the Commissioner of Income-tax (Appeal) may exempt the taxpayer from payment of tax before filing the appeal. Such benefit is granted if good and sufficient reason is proved by the taxpayer for non-payment of tax before filing the appeal.

Documents to be submitted for appeal

- Form No. 35 (including statement of facts and grounds of Appeal) – in duplicate. However, e-filing has been made mandatory for persons for whom e-filing of return of income is mandatory w.e.f 1/3/2016.
- One certified copy of order, appealed against.



- ❑ Notice of demand in original.
- ❑ Copy of challans of fees the details of the challan (i.e., BSR code, date of payment of fee, serial number and amount of fee) are required to be furnished in case of e-filing of form of appeal.

Fees

The fees for filing the appeal before the Commissioner of Income-tax (Appeals) are as follows

Where assessed income (i.e. total income as determined by the Assessing Officer) is:

Less than or equal to Rs 1,00,000	→	Rs. 250
More than Rs1,00,000 but less than Rs 2,00,000	→	Rs. 500
More than Rs2,00,000	→	Rs. 1,000

Where subject-matter of appeal relates to any other matter,

i.e., other than above → Rs. 250.

Procedure of the appeal

- ❑ After the receipt of Form no. 35, the Commissioner of Income-tax (Appeals) will fix the date and place for hearing the appeal.
- ❑ The date and place will be communicated to the taxpayer and to the Assessing Officer against whose order appeal is preferred. The communication will be made by issuing a notice to both the parties.
- ❑ In the appeal proceedings the taxpayer or the Assessing Officer can either appear personally or can appear through an authorized representative.
- ❑ The Commissioner of Income-tax (Appeals) would hear the appeal and may adjourn the appeal from time-to-time.
- ❑ Before passing the order, the Commissioner of Income-tax (Appeal) may make such further inquiries as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result to him.
- ❑ During the course of appeal, the Commissioner of Income-tax (Appeals) may allow the taxpayer to go into additional grounds of appeal. However, additional grounds will be accepted only if the Commissioner of Income-tax (Appeals) is satisfied that omission of these grounds from the form of appeal was not wilful or unreasonable.

Filing of additional evidences

During the appeal proceedings before the Commissioner of Income-tax (Appeals), the taxpayer is permitted to produce only those evidences (whether oral or documentary) which were produced by him before the Assessing Officer. In other words, the Commissioner of Income-tax (Appeals) will not permit the taxpayer to produce any additional evidences which were not produced by him before the Assessing Officer. However, in following circumstances additional evidence will be accepted by the Commissioner of Income-tax (Appeals)

- (a) Where the Assessing Officer has refused to admit evidence which ought to have been admitted; or



- (b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to be produced by the Assessing Officer; or
- (c) Where the appellant was prevented by sufficient cause from producing any evidence before the Assessing Officer which is relevant to any ground of appeal; or
- (d) Where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Please note -

- Normally, the taxpayer has to make an application for acceptance of additional evidences. In other words, the additional evidences are to be accompanied with an application stating the reasons for their admission.
- On receipt of such an application, the Commissioner of Income-tax (Appeals) may admit the same after recording reasons in writing for the admission of these evidences.
- Before taking into account the additional evidence filed by the taxpayer, the Commissioner of Income-tax (Appeals) has to provide a reasonable opportunity to the Assessing Officer for examining the additional evidence or the witness, as well as to produce evidences to rebut additional evidences produced by the taxpayer.

Decision of the Commissioner of Income-tax (Appeals)

After hearing the case/arguments, the Commissioner of Income-tax (Appeals) will pass his order. The order will be in writing. The order will be passed for disposal of the appeal and will state the decision on each ground of appeal along with reasons.

In case of an appeal against the assessment order the Commissioner of Income-tax (Appeals) may confirm, reduce, enhance or annul the assessment (including assessment in respect of which proceedings before the Settlement Commission abates).

In case of an appeal against the penalty order the Commissioner of Income-tax (Appeals) may confirm, reduce or enhance the penalty.

Before enhancing any assessment or penalty, the Commissioner of Income-tax (Appeals) has to provide a reasonable opportunity to the taxpayer to present his case against such enhancement.

While disposing of an appeal, the Commissioner of Income-tax (Appeals) may consider and decide any matter arising out of the proceedings in which order appealed against was passed, even if such matter was not raised by the taxpayer before the Commissioner of Income-tax (Appeals).

Disposal of appeal

Where it is possible, the Commissioner of Income-tax (Appeal) shall dispose of the appeal within a period of one year from the end of the financial year in which appeal is filed. The order should be issued within 15 days of last hearing. (Instruction No. 20/2003 [file no. 279/Misc 53/ 2003- ITJ], Dated



23.12.2003).

TDS PROVISIONS APPLICABLE TO NON RESIDENT INDIANS (NRI)

The below areas deals with TDS applicable to NRI.

The following sections of the Act deal with deduction of tax at source from the payments made to Non-Residents and Payment to Foreign Companies for specific payments as detailed below.

Sec no	Coverage
192	TDS on Salary Income
194 E	TDS on payments to non-resident sports persons or sports associations
194 LB	TDS on income by way of interest from infrastructure bonds
194 LC	TDS on income by way of interest from Indian Company
194 LD	TDS on income by way of interest on certain Govt. Securities
196 C	TDS on income from Foreign Currency bonds or shares in Indian Companies
196B	TDS on payments in respect of Units to an Offshore fund
196 D	TDS on income of foreign institutional investors (FIIs) from securities
195	Tax deduction at source for payments to Non-Residents

Payer as per this section 195

The Finance Act 2012 had inserted the Explanation 2 retrospectively from 1 April 1962 to Section 195(1) to the effect that obligation to deduct tax under section 195(1) applies and shall deemed to have applied and extends and deemed to have extended always to all persons whether resident or non-resident has

- a. A residence or place of business or business connection in India
- b. Or any other presence in any manner whatsoever in India.

It is indisputably true that such explanation inserted with retrospective effect provides that obligation to comply with sub-section [1] of Section 195 would extend to any person resident or non-resident, whether or not non-resident person has a residence or place of business or business connections in India or any other persons in any manner whatsoever in India.

This expression which is added for removal of doubt is clear from the plain language thereof, may have a bearing while ascertaining whether certain payment made to a non-resident was taxable under the Act or not. However, once the conclusion is arrived that such payment did not entail tax liability of the payee under the Act, as held by the Supreme Court in the case of *GE India Technology Centre P. Limited* [Supra], sub-section [1] of Section 195 of the Act would not apply. The fundamental principle of deducting tax at source in connection with payment only, where the sum is chargeable to tax under the Act, still continues to hold the field. In the case **G.E India Technology Centre P. Limited vs. Commissioner of Income-Tax & Anr** reported in [2010] 327 ITR 456 (SC) the Revenue has not seriously



contended that the payment to foreign commission agent was not taxable in India. Tax Appeal was therefore dismissed.

Agent of Non-resident is liable to deduct Tax

Every agent of Non-resident is liable to deduct tax himself and he is the person responsible to deduct tax as per Section 204. The term Agent is defined in Section 163.

Applicable rate

Department's Circular no. 728 dated 30-5-1995 clarifies rates in force.

If the sum is payable by the resident is taxable income in the hands of the non-resident recipient, then tax has to be deducted on the gross amount. Section 195(2) prescribes that tax can be deducted at a lower rate in cases where the payer to a non-resident considers that the whole of such would not be income chargeable to tax in the hands of the recipient, and then he can approach the appropriate income tax authority to determine the tax payable by the recipient. The payer can make the application any time before making payment.

Grossing up (Section 195A) with example

Where under agreement or other arrangement, the payer has to pay the amount, then grossing up of income was to be made to determine the income and tax has to be deducted accordingly as detailed below.

	Rs
Amount payable to non-resident	100000.00
Rate applicable	10
Grossed amount $\left(\frac{1,00,000 \times 100}{100 - 10} \right)$	111111.10
Tax payable by the payer	11111.10
Taxable income of the non-resident recipient	111111.10

This is called multiple grossing up.

In respect of non-monetary perquisites, no such grossing up can be done.

In section 195 of the Income-tax Act, for sub-section (6), the following sub-section was substituted with effect from the 1st day of June, 2015, as detailed below

"The person responsible for paying to a non-resident, (not being a company), or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed."

Payment to non-residents by non-residents

Payments by non-residents to non-residents also attracts section 195 of the Act as explained below. Similarly payments to agents of non-residents also attracts section 195.

Payments for Software, Expansion of the Scope of Royalty and Meaning of Process:

The Finance Act 2012 had added explanation no 4, of Section 9 (1) (vi)



to the effect that payments for software are to be treated as payment of royalty and hence tax is liable to be deducted. Similarly explanation 5 was added to include payments in consideration in respect of any right, property or information whether or not. Explanation 2 to Sec 9 (1) (vi) states. Royalty means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for— (i) the transfer of all or any rights (including the granting of a license) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property (ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property (iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property (iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill (iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB (sec 44BB contains special provisions pertaining to the business of exploration of minerals, oils etc – dealt with in the chapter " Profits and gains of business or profession) (v) the transfer of all or any rights (including the granting of a license) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films ; or (vi) the rendering of any services in connection with the activities referred to in the above clauses.

The term, "computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data.

Explanation 6 is also included to that effect that the expression "Process" includes or deemed to be always included including up-linking, amplification conversion for down linking of any signal, cable or optic fiber or by any other technology whether or not such process is secret.

If income is exempt or not-chargeable to tax then no TDS.

The basic requirement of section 195 is that the income must be taxable in order to attract tax deducted at source under this section. In other words, when the payment were not chargeable to tax or exempt from tax like dividends in the hands of the non-residents, then payer need not deduct tax at source as per Section 195.

Penalties in case of Non-Compliance

As every section has some rules and regulations if anyone tries to break or violates it, he/she may face the following consequences:

If withholding tax is not being deducted or not submitted at time then u/s.40a(i), his allowances are cancelled, deduction in year of payments.

If the TDS is deducted by the payer, but not submitted within time then interest @1.50 per month or part of the month (varying for different situations and nature of payments) from the date of deduction to date of deposit (Sec.201 (1A)) is charged.



If the TDS is deducted by payer and is not paid then – Penalty equivalent to the TDS amount is charged under Sec.221.

TDS deducted short i.e. partial or a part of TDS is submitted and rest is withheld – Penalty faced is equivalent to difference between actual deductible and deducted amount Sec.271C i.e. not exceeding the amount of TDS.

Relevant Case Laws in brief

1. In *Tekniskil (Sendirian) Bernhand in re (1996) [222 ITR 551]*

The Authority for Advance Ruling held that where the non-resident recipient is not chargeable to income tax in India on the income of Royalties/technical fees etc., which effectively form part of business profits of the non-residents and the fact that the non-resident did not have any permanent establishment in India, the question of tax deducted at source would not rise merely because the non-resident is getting payments from India.

2. In *IMP power Ltd Vs ITO (2006) 9SOT 156*

The Bombay High Court held that there is no obligation to deduct tax at source as the legal fees paid in connection with legal cases in UK as the expenditure was incurred outside India.

3. *Supreme Court settles 'paid' vs 'payable' debate; confirms disallowance of expenditure paid during the year without deduction of TDS*

Section 40(a)(ia) of the Income Tax Act, 1961 (ITA) provides that failure to deduct Tax Deducted at Source (TDS or withholding tax) on certain specified sums payable to a resident results in denial of tax deduction of the relevant expenditure. Based on the expression 'payable' used in Section 40(a)(ia) of the ITA, a doubt arose whether the disallowance of expenditure is applicable only in those cases where the expenditure remained 'payable' at the end of the year on which TDS has not been deducted or whether the disallowance would equally apply where the expenditure has already been 'paid' to the vendor during the year without deduction of TDS

While the majority of the High Court's held that disallowance would arise even for expenditure already 'paid' during the year without deduction of TDS, the Allahabad High Court [3] ruled in favor of the taxpayer and held that disallowance would arise only for expenditure remaining 'payable' at the end of the year on which TDS has not been deducted. The Supreme Court dismissed the Special Leave Petition (SLP) filed by the Tax Authorities against the Allahabad High Court judgment.

The controversy around this issue has now been settled by the Supreme Court in a recent case, which is discussed below.

Facts of the case During Tax Year 2005-06, the taxpayer paid freight charges to three individual subcontractors without deduction of TDS. The Tax Authorities disallowed these charges under Section 40(a)(ia) of the ITA. The Appellate Authorities, as well as the Himachal Pradesh High Court, confirmed such disallowance.

Supreme Court judgment Upon an appeal by the taxpayer, the Supreme Court also confirmed the Tax Authorities order and held as



under:

Although grammatically the words 'paid' and 'payable' denote different meanings, the same is not significant to the interpretation of Section 40(a)(ia) of the ITA.

As per the provisions in the ITA dealing with the requirement to deduct TDS, it is a statutory obligation of a person to deduct TDS at the time of credit of the sum to the vendor's account or at the time of payment, whichever is earlier. There are other sets of provisions in the ITA read with the Rules, which provide for the deposit of such TDS into the government account and filing of a TDS statement within the prescribed time limits. The ITA provides for adverse consequences such as disallowance of expenditure, interest, penalty, etc. in the case of violation of these provisions relating to TDS in the ITA.

When the entire scheme in the ITA for obligation to deduct TDS, paying it over to the government and consequences that can arise in case of violation of such statutory obligations are read conjointly and holistically, the taxpayer's interpretation that the word 'payable' occurring in Section 40(a)(ia) of the ITA refers to only those cases where the amount is yet to be paid and does not cover the cases where the amount is actually paid cannot be accepted.

If the taxpayer's interpretation is accepted, it would mean that even when a person violates the provisions relating to TDS deduction, he would go scot-free without suffering any adverse consequences of the default provided in the ITA. Furthermore, it would mean that the provisions of disallowance of expenditure would not apply to the taxpayers following cash system of accounting.

Section 40(a)(ia) of the ITA does not indicate that it is applicable only to taxpayers following the mercantile system of accounting.

The law mandates a person to deduct TDS not only on the amounts payable but also when the amounts are actually paid. Therefore, any person who does not adhere to this statutory obligation has to suffer the consequences which are stipulated by the law.

The Allahabad High Court judgment (which was favourable to the taxpayer) did not consider these aspects and straightaway concluded the issue without any discussion. It did not decide the question of law correctly. Furthermore, the dismissal of SLP by Supreme Court does not amount to the acceptance of the judgment of the Allahabad High Court.

4. No deduction of TDS from 'Tips' collected and paid by the hotel:

In the case of *EIH Ltd. v. Income-tax Officer* [2017] 78 taxmann.com 242, the Delhi Tribunal held that when hotels collect the tips from the customers, they receive the amount in fiduciary capacity on behalf of the waiters. It does not come under preview of contract of employment between the hotels and the employees, therefore, hotels (employer) are not liable to deduct TDS under section 192 on the tips recovered from the customers. The current ruling follows the case of *ITC Ltd. v. CIT* [2016] 68 taxmann.com 323 (SC), wherein the Hon'ble Supreme Court held



that ITC was not liable to deduct TDS under section 192 on the tips paid to employees collected from customers.

5. Withholding obligation under section 195(1) of the Income-tax Act when there is no income chargeable to tax -

“GE India Technology Centre Private Limited v. Commissioner of Income Tax [2010] [327 ITR 456]”

In a landmark judgment, the Supreme Court put an end to the controversy created by the Karnataka High Court on the need to withhold taxes even when the underlying payment was not chargeable to tax in India. The Supreme Court while setting aside the judgment of the Karnataka High Court in respect of payments to non-residents held that:

- ❑ The expression “sums chargeable under the provisions of the Act” in section 195(1) of the Income-tax Act is the crucial determining factor.
- ❑ The phrase “sums chargeable” under the provisions of the Act refers to the amounts that have an element of income in them as required under the provisions of the Income-tax Act and the treaty provisions.
- ❑ The contention of the tax authorities that the assesses have to make an application in every case of remittance even when the income has no territorial nexus with India or is not chargeable in India was rejected.
- ❑ Accepting the contention of the tax authorities would lead to the obliteration of the expression “sum chargeable under the provisions of the Act” as given under section 195(1) of the Income tax Act.
- ❑ Any person paying any sum to a non-resident

The Supreme Court stated that

The said sub-section gets attracted only in cases where the payment made is a composite payment in which a certain proportion of payment has an element of “income” chargeable to tax in India. It is in this context that the Supreme Court stated, “If no such application is filed, income-tax on such sum is to be deducted and it is the statutory obligation of the person responsible for paying such ‘sum’ to deduct tax thereon before making payment. He has to discharge the obligation to TDS”. If one reads the observation of the Supreme Court, the words ‘such sum’ clearly indicate that the observation refers to a case of composite payment where the payer has a doubt regarding the inclusion of an amount in such payment which is eligible to tax in India. In our view, the above observations of this Court in Transmission Corporation case (1999) 239 ITR 587 (SC) which are put in italics have been completely, with respect, misunderstood by the Karnataka High Court to mean that it is not open for the payer to contend that if the amount paid by him to the non-resident is not at all ‘chargeable to tax in India, then no tax is required to be deducted from such payment.

6. Interconnect/access/port charges paid to BSNL whether liable to withholding under section 194J of the Income-tax Act services’

Commissioner of Income-tax, Delhi v. Bharti Cellular Ltd. [2010] [234 CTR 146]



On a question whether TDS was deductible by M/s. Bharti Cellular Limited when it paid interconnect charges/access/port charges to BSNL, the Supreme Court while remanding the case held that:

- ❑ The expression 'technical services' comes in between the words 'managerial' and 'consultancy' services in the Act. Various decisions of the High Courts and Tribunals have taken a view that the expression 'technical services' has to be read in the narrower sense by following the rule of *Noscitur a sociis* i.e., questionable meaning of a word can be derived from its association with other words.
- ❑ There is, however, no expert evidence from the Department's side to show how human intervention takes place in the present fact pattern. Expert evidence is required to decide whether there is any manual intervention involved during the traffic of such calls. In a situation where the taxpayer is allotted a fixed capacity and in case this capacity is exhausted, it is unclear whether any human involvement is required in allocating additional capacity on an urgent basis. Thus, whether at any stage, any human intervention is involved needs to be examined based on the technical evidence from technical experts. This would enable appellate authorities to decide the legal issue based on factual foundation.
- ❑ The matter was remanded, directing the assessing officer to examine a technical expert from the side of the Department and to decide the matter within a period of four months. Further, the Court also gave an opportunity to the Respondent to examine its expert and to adduce any other evidence.
- ❑ The CBDT to issue directions to all its officers, that in such cases, the Department need not proceed only by the contracts placed before the officers. With the emergence of our country as one of the BRIC countries and with the technological advancement matters such as present one will keep on recurring and hence time has come when Department should examine technical experts so that the matters could be disposed of expeditiously and further it would enable the Appellate Forums, including this Court, to decide legal issues based on the factual foundation.
- ❑ However, interest or penalty cannot be levied on the taxpayer and other parties to this case for the following reasons:
- ❑ There is no loss of revenue to the Tax Authority for not withholding taxes on such payments as taxes have already been paid by the recipient; and
- ❑ The question of taxability of the payments as FTS is still not determined. Therefore, there would be no levy of penal interest prior to the date of fresh adjudication.

7. Withholding obligation under section 194H on discount to distributors on sale of Sim cards or recharge coupons

Vodafone Essar Cellular Ltd. v. ACIT [2010] [45 DTR 217, Kerala High Court]

On a question whether Section 194H is applicable for the "discount" given by the assessee to the distributors in the course of selling Sim Cards



and Recharge coupons under prepaid scheme against advance payment received from the distributors, the Kerala High Court held that the supply of the Sim Card is only for the purpose of rendering continued services by the assessee to the subscriber of the mobile phone. Consequently, the charges collected by the assessee at the time of delivery of Sim Cards or Recharge coupons is for rendering services to ultimate subscribers. The distributor is the middleman arranging customers or subscribers for the assessee after ensuring proper identification and documentation. Besides the discount given at the time of supply of Sim Cards and Recharge coupons, the assessee is not paying any amount to the distributors for the services rendered by them, like getting the subscribers identified, doing the documentation work and enrolling them as mobile subscribers to the service provider namely, the assessee. The argument that the relationship between the assessee and the distributors is principal to principal basis is not acceptable. The distributor is an agent and canvasses business for the assessee. The terminology used by the assessee for payment to the distributors is immaterial. In substance the discount given at the time of sale of Sim Cards or Recharge coupons by the assessee to the distributors is a payment for services rendered to the assessee and falls within section 194H. The contention that discount is not paid by the assessee to the distributor but is reduced from the price and so deduction u/s 194H is not possible is not acceptable because the assessee should have given discount net of the tax amount or given full discount and recovered tax amount thereon from the distributors. The above principle has been upheld by the Delhi High Court in C.I.T v. Idea Cellular Limited [2009, 325 ITR 148]

8. Associated Cement Co. Limited-vs-CIT 201 ITR 435 SC:

In this case, the assessee entered into contract with a contractor for supply of labour for loading and unloading of goods. The question before the court was whether assessee was required to deduct tax at source from the payments made to the contractor. The apex court observed as under:

Any work" means any work and not a "works contract", which has a special connotation in the tax law. Indeed, in the sub-section, the "work" referred to therein expressly includes supply of labour to carry out a work. It is a clear indication of the Legislature that the "work" in the sub-section is not intended to be confined to or restricted to "works contract". Work envisaged in the sub-section, therefore, has a wide import and covers "any work" which one or the other of the organizations specified in the sub-section can get carried out through a contractor under a contract and further it includes obtaining by any of such organizations supply of labour under a contract with contractor, for carrying out its work which would have fallen outside the" work ", but for its specific inclusion in the sub-section."

However, the above decision was misunderstood by the revenue as well as some High Courts. The CBDT, considering the SC judgment, was of the view that such expression is of widest import and, therefore, would include all types of contract. Accordingly, it issued



a circular No 681 dated 8.3.94 wherein it was stated that in view of SC judgment, section 194C would apply to all types of contracts including transport contracts, labour contracts, service contracts, advt. contracts, broadcasting contracts, telecasting contracts, material contracts and works contracts. This led to filing of various writ petitions before various high courts.

9. Birla Cement Works-vs-CBDT 248 ITR 216

The apex court in the above case has clarified by holding that the contract for carriage of goods simplicities would not fall u/s 194C. It was pointed out that the earlier decision in case of Associated Cement Co has been misunderstood by the CBDT. The ratio of that decision was explained as under:

It is evident that Associated Cement Co. Ltd.'s case [1993] 201 ITR 435(SC), was not in respect of transport contracts. The controversy therein was deduction of tax at source from payments made for loading and unloading of goods. The question whether the expression "carrying out any work" would include therein carrying of the goods or not, was not in issue in Associated Cement Co. Ltd.'s case [1993] 201 ITR 435 (SC). That is precisely the question in the present case. The decision in Associated Cement Co. Ltd.'s case [1993] 201 ITR 435 (SC) has not been correctly understood by the Central Board of Direct Taxes. It would not be correct to come to the conclusion, as the Central Board of Direct Taxes did, that the question involved is covered by the decision in the case of Associated Cement Co. Ltd.'s case [1993] 201 ITR 435 (SC)."

Thus, the court held that the expression "Carrying out any work" would not include carriage of goods. Accordingly, the impugned circular to the extent it related to transport contracts was quashed. The carriage of goods would be covered only from 1.7.95 because of insertion of Explanation III which was held to be prospective.

10. S. R. F. Finance Limited-vs-CBDT 211 ITR 861 (Del):

The issue before the court was whether payments made to broker/ commission agent would fall within the scope of section 194C. Considering the various circulars and the various amendments proposed and dropped, it was observed

One more factor makes the meaning of the section beyond the pale of any doubt. If the term "any work" in section 194C by itself covers any kind of service, the words found in the bracket, in sub-section (1) of section 194C will have to be treated as otiose or superfluous. Supply of labour to carry out any work, is a concept that falls within the concept of "service"; if so, why should Parliament include these words in the bracket, to give an expanded meaning to the term "any work". The Supreme Court in Associated Cement Co. Ltd.'s case [1993] 201 ITR 435 clearly pointed out that but for the specific inclusion of those words (i.e., "including supply of labour for carrying out any work"), in section 194C, obtaining of supply of labour for carrying out the work would have fallen outside the word "work". The concluding part of the Supreme Court observation quoted above brings out the



true purport of the term "any work" in section 194C.

"Any work", certainly is a term of wide import ; but it is not so wide as to comprise within its scope the obtaining of the supply of labour to carry out the work, because, the latter concept is essentially, a concept falling within the sphere of "services". However, the term "any work" is wide enough to cover any kind of work which one can get carried out through another. The essentiality is that, it should be a "work" which is to be "carried out".

In view of the above observations, it was held that act of broker/ commission agent amounts to act of service and thus outside the purview of section 194C. This decision has been quoted just to emphasize the importance of expression in the section. Otherwise, such payments are now covered by section 194H.

11. East India Hotels-vs-CBDT 320 ITR 526 (Bom)

The issue before the court was whether services provided by a hotelier would fall within the scope of the said expression. The court answered in negative by observing as under:

The expression "carrying out any work" in section 194C is limited to any work which on being carried out culminates in to a product result. In other words, the word "work" in section 194C is limited to doing something with a view to achieve the task undertaken or to carry out an operation which produces some result

The services rendered by a hotel to its customers by making available certain facilities/amenities like providing multilingual staff, 24 hour service for reception, telephones, select restaurants, bank counter, beauty saloon, barber shop, car rental, shopping centre, laundry, health club, business centre services etc do not involve carrying out any work which results into production of the desired object and therefore, would be outside the purview of section 194C of the Act.

12. Kurukshetra Darpans (P.) Limited-vs-CIT 169 Taxman 344 PH

In this case, the assessee was a cable network operator who was in the business of distributing cable connections to the customers and charged subscription fee from them. The appellant-assessee entered into a contract with the licensor of various TV channels for local cable distribution system. (A Y 2006-07) It is relevant to mention here that these licensors are not the owners of the TV channels and they only have the exclusive right to market and distribute satellite based television service to various customers and users of the service. In the above-mentioned contract, the assessee was referred to as subscriber or affiliate as he was to pay the subscription to another party referred to as the licensor. These channels are telecasted from abroad and the assessee becomes an affiliate or subscriber of the licensor by entering into an agreement for payment of subscription. The question before the court was cable operator was required to deduct tax u/s 194C. the court held as under:

From the recital of the agreement itself, it is clear that the service that the assessee-subscriber is availing is the receipt of 'telecasting signals' from the licensor or the company. The expression 'service' has



also been referred to mean the TV channel which is dealt with by the licensor or the company. Therefore, what the assessee has transacted for with the licensor or company certainly includes within its ambit broadcasting and telecasting facility. The essence of the contract is to obtain broadcasting and telecasting of TV channels and thereafter its distribution amongst ultimate customers through the cable network of the assessee.

13. Entertainment One India Ltd-vs-ITO(fds) 126 ITD 491(Mum)

The assessee made advances to the producers who approached the assessee with the film projects. AO was of the view that assessee should have deducted tax u/s 194C. The tribunal was of the view that agreement was merely a finance agreement and there was no relationship as that of principal and contractor. Hence, section 194C was not applicable.

14. ACIT-vs-Accenture Services (P) ltd 44 SOT 290 (Mum)

In this case, the assessee deducted tax at source u/s 194C against payments made for hiring of vehicles for transportation of its employees. Under the contract, it was the responsibility of the transporter to provide the staff for running the vehicles as well as for ensuring all legal and operational obligations. The AO treated such payment for hiring of equipment falling u/s 194I and therefore passed an order u/s 201(1) for short deduction of tax. The CIT(A) as well as the Tribunal have held that it was a transport contract falling u/s 194C. Section 194I was held to be not applicable since no hiring was involved.

15. DCIT-vs-Japan Airlines 93 ITD 163 (Del) & Singapore Airlines 7 SOT 84 (Chennai)

Payment to AAI for landing and parking — in the case of Japan Airlines, the tribunal observed as under:

The Airport Authorities of India simply granted permission to landing and parking. It did not grant any exclusive right or interest to J.A.L. in any specific portion of land or building. It granted a license and also provided certain other facilities not necessarily for use of land but for safe landing and parking in pursuance of the guidelines referred to above. Hence, the payments made by the assessee cannot be termed as payment of rent so as to be covered within the purview of section 194-I of the Act

16. Kavita Chug-vs-ITO 44 SOT 95 (Kol)

Assessee engaged in transport business did not own any trucks. Requisition was made on daily basis from the market for transportation of goods to various destinations. The 'A' contended that she never passed her responsibility to truck owners who only delivered goods at necessary destinations at the instance of assessee. The AO found that 83 truck owners were paid more than Rs.50,000/- each. Since no TDS was made, he disallowed the deduction u/s 40(a)(ia). The tribunal held that it was a case of hiring vehicles and therefore, outside the purview of section 194C. Hence, disallowance u/s 40(a)(ia) was not justified.



17. City Transport Corporation-vs- ITO 13 SOT 479 (Mum)

Assessee engaged in business of transporting goods entered into contract with two companies for transporting goods from their factory to any place in India. It did not own any truck but hired the same from different transporters for executing the contract. The freight in respect of each truck was decided at the time of actual dispatch of goods and payment in each case did not exceed Rs.20,000/-. Relying on the circular no 715 dated 8.8.95, it was held that each trip was under a separate contract and there was nothing to show that more than one trip was under the same contract. Hence, no TDS was to be made u/s 194C.

18. ACIT-vs-Manish Dutt 46 SOT 130(Mum)(URO)

In this case, the assessee was engaged in the business of dubbing work in his own studio comprising of various dubbing equipments. Whenever, assessee's studio could not be used, he used to give the work of dubbing to other studios as a sub contractor. The assessee deducted tax u/s 194C @ 2% but AO was of the view that he should have deducted tax @ 20% u/s 194I. The CIT(A) as well as the Tribunal have held that it was a contract for work falling u/s 194C since the assessee had utilized the dubbing services which was in the nature of getting work done through a sub contractor.

19. Sands Advertising Communications-vs-DCIT 37 SOT 179 (Bang)

Assessee was an advertising agency involved in activity of advertising in print media. Its sister concern 'T' was in similar business but was an accredited agency. The assessee entered in to an agreement with 'T' under which all ads created/developed by the assessee for its clients were to be released to print media through 'T' for which certain consideration was to be made to T. The AO was of the view that section 194C was applicable while the stand of assessee was that T was only a routing agency and not a sub contractor. It was held by the tribunal that section 194C is applicable only when payment is to be made to an advertising agency and not when payment is made by ad agency to print media as clarified in the Circular no 715 of 95. Hence, no TDS was required to be made.

20. Mythri Transport Corporation-vs-ACIT 124 TTJ 970(Vishakha)

In this case, the assessee was engaged in the business of transporting goods. It took on hire trucks from different parties and used them in its business for carrying goods of its clients. The hiring charges were paid without deduction of tax at source. AO was of the view that the assessee should have deducted tax at source u/s 194C. The tribunal held that it was a case of mere hiring of trucks and therefore, section 194C was not applicable.

21. TDS provisions not applicable on internet lease line charges u/s 194-I 194C or 194J of Income Tax Act

In a particular case, during the course of assessment proceedings, the AO observed that the assessee had paid lease line charges and internet charges on which according to AO TDS u/s 194-I of the Act had not been deducted.



Accordingly, the AO (TDS) issued notice to the assessee which was replied by the assessee by submitting that the payment to the above said company was for the internet connection and not for use of any plant or equipments and therefore the provisions qua TDS were not applicable either u/s 194-C or 194-I or 194-J of the Income Tax Act, 1961.

The AO, did not find the reply of the assessee convincing and raised demand of tax and interest thereon by treating the assessee in default.

In the appellate proceedings, the CIT(A) dismissed the appeal of the assessee by holding that the provisions of TDS u/s 194I of the Act were applicable on the lease/line/internet charges.

The Tribunal found that the assessee had availed internet services and paid internet /lease charges for the same.

It was observed that the assessee had only availed the internet connection and was not using any asset, plant or machinery which involved payment of rent.

The lease/line charges/internet charges paid were only for use of internet connection and do not fall within the provisions of section 194-I, 194-C and 194-J of the Act. This was held by the Tribunal.

22. EMC VS ITO 37 SOT 31

Assessee an event manager assigned the job of art work and photography to others but did not deduct tax at source against payment made to them. AO was of the view that TDS should have been made u/s 194C (1) since clients of assessee had deducted tax u/s 194J. The assessee contended that it was a case u/s 194C (2) since part of work was assigned to others. However, copies of agreements with the clients not produced by assessee. Hence, the tribunal was of the view that nature of contract was to be seen in the light of treatment given by the clients. Accordingly, the tribunal has confirmed the view of AO since assessee was rendering only professional services u/s 194J.

23. DCIT vs Satish Aggarwal And Company 124 TTJ 542(Amr)

It has been held by the Hon. Tribunal that payments made against mere hiring of trucks would not fall within the scope of section 194C. The following observations are noteworthy: "12. For carrying out any work, manpower is the sine qua non and without manpower, it cannot be said that work has been carried out. Under s. 194C of the Act "carrying out any work" is the substance for making a payment relating to such work, liable for deduction tax at source. The provisions of S.194C are attracted only where any sum is paid for carrying out any work including supply of labour for carrying out any work."

The CIT(A) as well as the Tribunal have held that it was a transport contract falling u/s 194C. Section 194I was held to be not applicable since no hiring was involved. Same view has been taken by the tribunal in the case of Tata AIG General Insurance Co 43 SOT 215(Mum) by observing that no particular car was provided but it was merely an arrangement for transportation of its employees and therefore section 194C would apply and not section 194I.



24. Karnataka Power Transmission Corporation Ltd v. ACIT , 2011], 10 taxmann.com 237 (Bang. ITAT)

When parties enter into two separate contracts, one for material and one for labour, the transaction would not be 'one' and indivisible, but would fall into two separate agreements, one for work/service and the other for sale; in such case the provisions of s. 194C could apply only to the labour contract and not to the materials contract.

25. CIT vs Poompuhar Shipping Corporation Ltd 282 ITR 3(Mad):

In this case, assessee was engaged in Shipping business. It took on hire a ship which was used by it in its business. It paid the hiring charge without deducting the tax at source. The case of the revenue was that section 194C was applicable since Explanation III was clarificatory and had retrospective effect. The court noted that it was not the case of the Revenue that the assessee entered into the said contract with the shipping company for transport of coal from one place to another. Hence, the court was of the view that mere hiring of ships for the purpose of using the same in the assessee's business would not amount to a contract for carrying out any work as contemplated in section 194C. It was also held that the said Explanation was not retrospective.

26. DCIT vs. M/s. S. K. Tekriwal (ITAT Kolkata)

The assessee paid Rs. 3.37 crores as "machine hire charges" on which it deducted TDS u/s 194C at 1%. The AO held that the payment was "rent" and TDS ought to have been deducted at 10% u/s 194-I. He disallowed the expenditure u/s 40(a)(ia). This was reversed by the CIT (A). On appeal by the department, held dismissing the appeal

S. 40(a)(ia) provides for a disallowance if amounts towards rent etc have been paid without deducting tax at source. It does not apply to a case of short-deduction of tax at source. As the assessee had deducted u/s 194C, it was not a case of "non-deduction" of TDS. If there is a shortfall due to difference of opinion as to which TDS provision would apply, the assessee may be treated as a defaulter u/s 201 but no disallowance can be made u/s 40(a)(ia).

27. CIT v. MarutiSubrayPatil [2015] 63 taxmann.com 28/235 Taxman 147 (kar).

Section 194C is applicable and can be invoked where aggregate of payment to a particular contractor in an assessment year exceeds Rs.50,000 (now Rs.1,00,000) and it is not necessary that any single payment has to be in excess of Rs.50,000 (now Rs.1,00,000). The tax shall be deducted on the aggregate amount.

28. Shimla Automobiles (P.) Ltd. v. ITO [2017] 80 taxmann.com 76/164 ITD 9(Chd. – Trib).

Even if aggregate payment by assessee car-dealer to parties did not exceed Rs. 50,000 (now Rs.1,00,000) in a financial year, but onetime payment exceeded Rs. 20,000 (now Rs. 30,000), tax deduction at source is applicable under section 194C

29. S.D. Pharmacy Pvt. Ltd. ITA Nos. 948/Coch/2008, A.Y. 2005-06, dt. 5-5- 2009.



In the above case it was held that trade discount is not in the nature of commission and hence no TDS is required to be deducted u/s 194H of the act. This was again confirmed in the case of Add CIT v Pearl Bottling (P) Limited.

30. ITI Limited 183 taxmann 219

In the above case the Supreme Court held that an employer is under no obligation to collect and examine the supporting evidence to a declaration submitted by an employee to the effect that he has actually utilized the amounts for the specified purposes in deciding the liability to TDS u/s. 192

31. Transwork Information Services Ltd (Now Aditya Birla Minacs Worldwide Limited) 1 ITR 58

In the case of Transwork Information Services Ltd (Now Aditya Birla Minacs Worldwide Limited) 1 ITR 58 the Mumbai ITAT decided that Employer providing composite free Bus pick up and drop facility to employees, not taxable as perquisites. Value of facilities enjoyed by all employees as it is impossible of computation, computation machinery fails hence the employer cannot be treated as assessee in default for failure to deduct tax at source. Again in the case of ACIT vs. Accenture Services P. Ltd. TIOL 618 ITAT–Mum. 295 / (2010) 42-B BCAJ, it was held that the assessee entered into agreements with various transport service providers. Under the agreements entered into, the service provider was to provide transport service at particular locations for transportation of assessee's employees to different destinations and locations mentioned in the agreement. The transport service provider had to provide vehicles along with the requisite staff and relevant facilities, full maintenance and repairs of vehicles, etc. The assessee deducted the tax at source under section 194C, the Assessing Officer was of the view that the payments were covered under section 194I, The Tribunal held that the payment made by the assessee for hiring vehicles for transportation of its employees qualifies for TDS under section 194C and not under section 194I. This was again confirmed in the case of Lotus valley Education Society v ACIT & Ahmadabad Urban Development Authority v ACIT.

32. CIT v Bharti Cellular Ltd 44 DTR 190 (SC)

In the case of CIT v Bharti Cellular Ltd 44 DTR 190 (SC). It was held that Department having not adduced any expert evidence to show that any human intervention is involved during the process when calls takes place so as to bring the payments of interconnect charges /access/pot charges made by the assessee to BSNAL/MTNL within the ambit of "fees for technical services" under section 194J, matter is remitted to AO to examine a technical expert and to decide afresh. Department is not entitled to levy interest under section 201(1A), or impose penalty for non deduction of TDS on the facts and circumstances of the case for the reasons that there is no loss of revenue as tax has been paid by the recipient and the moot question involved in the case is yet to be decided.



33. Samanwaya 34 SOT 332 (Kol) Vs ACIT

In the case of Samanwaya 34 SOT 332 (Kol). It was held that Labour sardars could not be called labour contractors, within the meaning of s. 194C(2), hence provisions of s. 40(a)(ia), cannot be made applicable.

34. Vodafone Essar Limited v DCIT 9 Taxmann.com 31

In the case of Vodafone Essar Limited v DCIT 9 Taxmann.com 31, it was held that Payment of Roaming charges made by Vodafone essar ro other mobile service providers cannot be considered as rent within meaning of explanation of section 194 – I.

35. Tata AIG General Insurance Co. Ltd. vs. ITO 43 SOT 215

In the case of Tata AIG General Insurance Co. Ltd. vs. ITO 43 SOT 215, it was held that assessee, a general insurance company, entered in to an arrangement with one B for facultative reinsurance. As per said arrangement, assessee was liable to pay certain percentage of premium as reinsurance inward commission to B. Assessee was receiving only net premium on reinsurance from B. Profit commission, if any, was shared between assessee and B in certain percentage. Assessing Officer held that assessee was liable to deduct tax on reinsurance commission paid to B under section 194D. The Tribunal held that provisions of section 194D were not applicable to payment of reinsurance commission made by assessee to B.

CONCLUSION

The aim of the handbook on TDS is to give a working understand on the provisions of TDS as well on some current case laws to help the reader understand the nitty and gritty of TDS

In depth reading of Sec 192 to Sec 197 and related Rules, Sub sections and various provisions in regards the same can be referred from the relevant sections of the Income Tax Act

The hand book will serve as an easy reference in regards the TDS laws and applicable rates under different sections.

The book is prepared keeping in mind the day to day requirements of working professionals and persons working in industries

For your valuable feedback and suggestion on the hand book please mail at trd@icmai.in

Action Plan:

1. Successful conduct of Certificate Course on GST.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

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