

# PREVENTIVE STEPS TO MINIMISE TDS/TCS DEFAULT

**U**nder the TDS provisions of the Income Tax Act, responsibility is on the person who pay the money against income to the payee or the person who is responsible to collect tax at source, to deduct or collect the tax at source at the rate as prescribed, deposit the same amount to the government account, file TDS/TCS return and issue TDS/TCS certificate within the stipulated due time. In case of failure to any one of the above steps, TDS/TCS default cases arise. Chapter XVII on Collection and Recovery of Tax contain Section 190 to 206CCA of the Income Tax Act, 1961 govern the provisions related to the TDS/TCA issues.

Following are the some common errors which is generally occurring and cause to the TDS/TCS default Cases.

- Non mentioning PAN of deductee
- Wrong PAN of the deductee
- Short deduction of TDS or collection of TCS
- Non deduction of TDS or collection of TCS
- TDS/TCS deducted/collected but not deposited within the due date
- Non filling of TDS/TCS return or late filing
- Non downloading of TDS/TCS certificate
- Non payment of Interest or late fee after assessment of TDS/ TCS return filed.
- Entry of wrong deductee details in TDS return or collectee in TCS return
- Entry of wrong paid amount to the deductee in TDS/TCS return, etc;



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Generally at the time of payment deductor could not understand from the PAN as furnished by the deductee that whether it is the PAN of an Individual or a HUF or Firm or Company unless deductee provide full information. Suppose a firm M/S Ram Vilash and associates supplies manpower to the company. He furnished his bill and in which PAN is mentioned. But from the bill it is not clear about the status of the firm i.e. whether it is a sole proprietary firm or HUF firm or a partnership firm. If it is a partnership firm then TDS have to deducted @ 2% u/s 194C but TDS has been deducted @ 1% considering it is as a sole proprietary firm or HUF or vice versa @ of 2%. We can avoid such situation. As we know the PAN is of 10 alphanumeric digits. The first three alphabet digit is randomly running digit from AAA to ZZZ, the fourth alphabet digit reflect the status of the person, the fifth alphabet digit reflect the first letter of surname of the person and rest four numerical digit is a running digit from 0001 to 9999 and last digit is of no meaning it is randomly extra alphabet digit for reference in future by the government if require. In the case of an individual the fourth digit will be "P", in case of HUF it will be "H", in case of firm it will be "F", in case of Trust it will be "T", in case of Company it will "C", in case of Association of person it will be "A".

For example my name is Rakesh Kumar Sinha, I am an individual my PAN is as below

XXXPS1234K, here P stands for Individual and S is first letter of my surname Sinha.

Similarly in case of Ram Prasad HUF, PAN is XXXHR4921D, in case of AOP Mahila welfare society PAN is XXXAM6280F, in case of a partnership firm R.K & associates PAN is XXXFR1025E, in case of company Jharkhand Club Limited PAN is XXXCJ2905D....

So from the above we can easily understand the status of person from its PAN and may minimise the short deduction default.

Similarly TAN is of 10 alphanumeric digits. First three alphabets letters refers the tax jurisdiction code and fourth letter reflects the first name of the TAN holder. Next 5 digits are running numeric digits and last digit is a letter. Suppose a Mahila welfare society of Jharkhand then its TAN will be RCHMXXXXX2. RCH refer Ranchi and M is the first letter

of Mahila.

By the above techniques we may easily categorise the PAN/TAN for TDS provisions and may minimise TDS default case of short deduction.

**Following are the some relevant provisions to which deductor should be aware to minimise the short deduction of TDS.**

### **Furnishing of PAN by the Deductee**

1. As per section 206AA it is mandatory to furnish a correct PAN by the payee to the deductor, if does not furnish the PAN TDS will be deducted at the normal rate or at the rate of 20%, whichever is higher. In the following cases section 206AA is not applicable.
  - i. If the payment of interest is made to a non resident under section 194LC is on long term bonds including infrastructure bonds
  - ii. Where tax is deductible as per DTAA's provision and rate of tax is lower than 20%.
  - iii. In case the recipient satisfy the conditions under section 192A [TDS from withdrawal from Employees' Provident Fund Scheme] and does not furnish PAN, tax will be deducted at the maximum marginal rate of tax 42.74%.
  - iv. In case the recipient satisfy the conditions under section 194 O [TDS on payment by e-commerce operator to e-commerce participants] or section 194Q [TDS on payment of certain sum for purchase of goods] and does not furnish PAN, TDS shall be deducted at the rate of 5%.
  - v. In case of non resident, not being a company or a foreign company who satisfy the conditions of rule 37BC, and not having PAN and the nature of payment is of interest, royalty, fees for technical services, dividend and payments on transfer of any capital assets. In such case TDS will be deducted at the regular rate, if the non-resident recipient furnishes the following details/documents to the payer viz; name, e-mail id, contact number, address



in the home country, certificate of being a resident in the home country, Tax Identification Number (TIN) in the home country or Unique identification number through which the deductee is identified in the home country.

vi. The recipient satisfies the conditions of rule 114AAB.

2. As per section 206CC, any person paying any sum or amount on which tax is collectible at source must furnish his PAN to the person responsible for collecting the TCS. If he not furnish PAN then TCS shall be collected at the twice rate as specified in the relevant provision or at the rate of 5%, whichever is higher.

### **Non Filler of Income Tax Return**

With effective from 1st July, 2021 a new section 206AB and 206CCA was inserted. As per this section if the recipient or payer has not filed its income tax return within the due time as stipulated in section 139(1) of the assessment year relevant to the previous year immediately preceding the financial year in which payment is made and the aggregate amount of TDS and TCS is Rs. 50000/- or more in the said previous year, the payer have to deduct TDS or collect tax at twice the normal rate as specified in the relevant provision or at the rate or rates in force or at the rate of 5%, whichever is higher.

Suppose Mr. X is an Individual sole proprietor of M/S Ram Vilash and Associates having turnover below Rs. 1 crore, had supplied manpower to the company during the 2nd quarter of financial year 2022-23. As per the provision of section 194C, TDS have to be deducted at the rate of 1%. In such case the deductor have to see that whether Mr. X has filled its income tax return for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted i.e. of A.Y. 2022-23 on or before 31st July 2022 and TDS deducted and TCS collected during the P.Y. 2021-22 was Rs. 50000 or more.

The provisions of section 206AB are not applicable if tax is deductible under the section 192, 192A, 194B, 194BB, 194-IA, 194-IB, 194LBC, 194M and 194N.

The Central Board of Direct Taxes has provide a new functionality “ Compliance Check” for the section 206AB and 206CCA to make it ease to know about the status of return

filing of deductee. The deductor or collector have to visit Income tax department report portal <https://report.insight.gov.in/reporting-webapp/portal/homePage> and have to register their by using their TAN and other information. From here the tax deductor or the collector can feed the single PAN or bulk PAN of the deductee or collectee and can get a instant report whether the deductee or collectee has furnished its income tax return within the due time as per section 139(1) or not.

In case of overlapping between sections 206AA or 206AB, and 206CC or 206CCA tax shall be deducted or collected at the higher of two rates provided in section 206AA and 206AB or 206CC and 206CCA as the case may be.

### **Recipient is Located in a Notified Jurisdictional Area.**

Where any person located in a notified jurisdictional area is entitled to receive any sum and on which TDS is deductible under any provision of the Act, the payer as per section 94A(5) will deduct tax

- a) at the rates in force or at the rate specified in the relevant provisions of the Act or
- b) at the rate of 30%, whichever is higher.

### **Certificate for deduction of TDS at lower rate**

Under section 197 the assessing officer may issue a certificate for non deduction of TDS or deduction of TDS at lower rate, if he satisfied that the total income of the recipient justifies the deduction of tax at lower rate or non deduction of tax.

In such certificate generally maximum amount of income is mentioned up to which no deduction of tax or deduction of tax at lower rate is allowed. Deductor has to pay care to this amount. When the payment cross that amount in financial year rate of deduction should be at normal rate or start deduction of tax at the applicable rate, when the case is of non deduction of tax.

### **Consequences of default**

Where a person who requires to deduct tax has failed to deduct tax or fails to deposit the tax after deducting the tax fully or partially, such person shall be deemed to be an assessee-in-default under section 201(1) or 201(1A). He will be liable



for payment of tax, interest, penalty and prosecution. Besides, expenses will be disallowed under section 40(a).

***Deductor should follow the following steps after the filing of TDS/TCS return***

**Follow up in Traces**

After uploading of TDS return, deductor should revisit the traces site after 2 or 3 days and find out the status of the statement. If result is assessment with default that means the TDS return is assessed by the department and there is a demand. In such case justification report should download and view the reason of default. If the demand is due to PAN error a rectification return should file to remove the demand. If demand is of short deduction and penalty for late filing and

deductor find it valid then in such case this may be set-off against the un consumed challan or payment have to deposit through the fresh challan. Note in Challan code 400 should select in case of demand payment.

**Rectification of TDS/TCS Return**

TDS/TCS return filed can be rectified latter at any time of any earlier year. For this purpose a conso file have to download from the traces site. In case conso file is not available at traces of earlier previous year say 2005-06 or 2008-09 etc; then in such case an application have to make to the jurisdictional TDS assessing officer for conso file with request number. Once the department provide the same a rectification return can be file.

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