



# DEDUCTION OF TAX AT SOURCE UNDER SECTION 192 OF INCOME TAX ACT – OBLIGATIONS OF EMPLOYER & EMPLOYEE

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This article is in continuance from the article “Deduction of Tax at Source under section 192 of Income Tax Act – What to do & what not to do – By Employer & Employee” of Tax Bulletin – 7<sup>th</sup>

Volume published by Tax Research Department of ICMAI. As stated earlier CBDT has issued a Circular vide No. 29/2017 dated 5<sup>th</sup> December 2017 – Deduction of Tax at Source – “Income Tax Deduction from Salaries under Section 192 of the Income Tax Act, 1961 during Financial Year 2017-18” which may be referred by both Employers and Employees to understand the provisions of law as well as their respective obligations related to deduction income tax at source. While deducting tax at source on payment of salary, a number of obligations cast on the authorized person/Drawing Disbursing Officer (DDO) which are covered under present article. The provisions under income tax act and income tax rules are highlighted below.

## 1. What is the Rate of income tax applied for deduction of tax at source?

- Finance Act, 2017 has prescribed the rate of income-tax for different assessee and for special incomes (capital gain, lottery etc) which is required to be taken for deduction of tax at source under Section 192 of the Act from income chargeable under the head "Salaries" for the financial year 2017-18 (i.e. Assessment Year 2018-19). Either the Finance Act 2017 or Circular No. No. 29/2017 dated 5<sup>th</sup> December 2017 shall be referred for rate of income tax applicable for deduction of tax at source.
- The relevant Acts, Rules, Forms and Notifications are available at the website of the Income Tax Department - [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)

## 2. Deposit of Tax Deducted at source from salary:

Rule 30 prescribes time and mode of payment of tax deducted at source to the account of Central Government.

### (a) Due dates for payment of TDS:

Prescribed time of payment/deposit of TDS to the credit of Central Government account is as under:

#### (i) In case of an Office of Government:

Sl. No	Description	Time up to which to be deposited.
1	Tax deposited without Challan [Book Entry]	Same day
2	Tax deposited with Challan	7 <sup>th</sup> day of next month
3	Tax on perquisites opt to be deposited by the employer.	7 <sup>th</sup> day of next month

#### (ii) In any case other than an Office of Government

Sl. No	Description	Time up to which to be deposited.
1	Tax deducted in March	30 <sup>th</sup> April of next Financial Year
2	Tax deducted in any other month	7 <sup>th</sup> day of next month
3	Tax on perquisites opted to be deposited by the employer	7 <sup>th</sup> day of next month

However, if a DDO applies before the jurisdictional Additional/Joint Commissioner of Income Tax to permit quarterly payments of TDS under section 192, the Rule 30(3) allows for payments on quarterly basis and as per time given in Table below:

Sl. No	Quarter of the financial year ended on	Date for quarterly payment
1	30 <sup>th</sup> June	7 <sup>th</sup> July
2	30 <sup>th</sup> September	7 <sup>th</sup> October
3	31 <sup>st</sup> December	7 <sup>th</sup> January
4	31 <sup>st</sup> March	30 <sup>th</sup> April next Financial Year

## (b) Mode of Payment of TDS

### (i) In case of payment of TDS by Book Entry u/ s 200 (2A):

This mode is applied to an office of the Government, where tax has been paid to the credit of the Central Government *without the production of a challan [Book Entry]*. The Pay and Accounts Officer (PAO) or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person by whatever name called to whom the deductor reports about the tax deducted and who is responsible for crediting such sum to the credit of the Central Government, shall –

- Submit a statement in **Form No. 24G under section 200 (2A)** on or before the 30th day of April where statement relates to the month of March, and in any other case, on or before 15 days from the end of relevant month to the agency (NSDL) authorized by the Director General of Income-tax (Systems) in respect of tax deducted by the deductors and reported to him for that month; and
- Intimate the number (hereinafter referred to as the Book Identification Number or BIN) generated by the agency to each of the deductors in respect of whom the sum deducted has been credited. BIN consists of receipt number of Form 24G, DDO sequence number in Form No. 24G and date on which tax is deposited.

*If the PAO/CDDO/TO etc, as stated above, fails to deliver the statement as required u/s 200(2A), he will be liable to pay, by way of penalty, under section 272A(2)(m), a sum which shall be ₹100/- for every day during which the failure continues. However, the amount of such penalty shall not exceed the amount of tax which is deductible at source.*

### (ii) Payment by an Income Tax Challan:

- In case the payment is made by an income-tax challan, the amount of tax so deducted shall be deposited to the credit of the Central Government by remitting it, within the time limit as stated above, into any office of the Reserve Bank of India or branches of the State Bank of India or of any authorized bank;
- In case of a **company and a person (other than a company), to whom provisions of section 44AB are applicable, the amount deducted shall be electronically remitted** into the Reserve Bank of India or the State Bank of India or any authorized bank accompanied by an electronic income-tax challan (Rule 125).
- The amount shall be *construed as electronically remitted* to the Reserve Bank of India or to the State Bank of India or to any authorized bank, if the amount is remitted by way of:
  - ❖ internet banking facility of the Reserve Bank of India or of the State Bank of India or of any authorized bank; or
  - ❖ debit card. {Notification No. 41/2010 dated 31st May 2010}

## 3. Consequences for Failure to Deposit Tax Deducted:

### (a) Deemed to be an assessee - in - default & liable for Interest:

- If a person **fails to deduct the whole or any part of the tax at source, or, after deducting, fails to pay the whole or any part of the tax to the credit of the Central Government within the prescribed time**, he shall be liable to action in accordance with the provisions of section 201 and shall be deemed to be an assessee-in-default in respect of such tax and liable for penal action u/s 221 of the Act.

- Further Section 201(1A) provides that such person shall be liable to pay simple interest
  - ❖ at the rate of 1% for every month or part of the month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and
  - ❖ at the rate of 1 ½ % for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid.

**It may be noted that the interest that chargeable, is mandatory in nature and has to be paid before furnishing of quarterly statement of TDS for respective quarter.**

**(b) Liable for Penalty u/s 271C:** If any person fails to deduct whole or any part of tax at source or fails to pay the whole or part of tax under the second proviso to section 194B, he shall be liable to pay, **by way of penalty, a sum equal to the amount of tax not deducted or paid by him.**

**(c) Liable for Prosecution u/s 276B:** If a person fails to pay to the credit of the Central Government within the prescribed time, as above, the tax deducted at source by him or tax payable by him under the second proviso to Section 194B, he shall be **punishable with rigorous imprisonment for a term which shall be between 3 months and 7 years, along with fine.**

## 4. Furnishing of Certificate for Tax Deducted - Section 203:

- The DDO / The Authorized person to furnish to the employee a certificate in Form 16 detailing the amount of TDS and certain other particulars by 15<sup>th</sup> June as provided under Rule 31 (w.e.f. 02.06.2017) after the end of the financial year in which the income was paid and tax deducted. **So for the Financial Year 2017-18, the TDS Certificates to be furnished by 15<sup>th</sup> June 2018. The banks which** deducting tax at the time of payment of pension are also required to issue such certificates.
- The certificate in Form 16 shall specify
  - ❖ Valid permanent account number (PAN) of the deductee;
  - ❖ Valid tax deduction and collection account number (TAN) of the deductor;
  - ❖ Book identification number or numbers (BIN) where deposit of tax deducted is without production of challan in case of an office of the Government & Challan identification number or numbers (CIN\*) in case of payment through bank.

**Challan identification number (CIN) means the number comprising the Basic Statistical Returns (BSR) Code of the Bank branch where the tax has been deposited, the date on which the tax has been deposited and challan serial number given by the bank.**

- ❖ Receipt numbers of all the relevant quarterly statements of TDS (24Q). The receipt number of the quarterly statement is of 8 digit.
- All deductors (including Government deductors who deposit TDS in the Central Government Account through book entry) shall issue the **Part A of Form No. 16**, by generating and subsequently downloading it through TRACES Portal and after duly authenticating and verifying it, in respect of all sums deducted under the provisions of section 192 of Chapter XVII-B. (**Ref Circular No.04/2013 dated 17-04-2013**)
- **Part A of Form No 16 shall have a unique TDS certificate number. 'Part B (Annexure)' of Form No. 16 shall be prepared by the deductor manually and issued to**

the deductee after due authentication and verification along with the Part A of the Form No. 16.

- It may be noted that under the new TDS procedure, TAN of deductee / PAN of the deductee and receipt number of TDS statement filed by the deductor, act as unique identifier for granting online credit of TDS to the deductee. **Hence due care should be taken in filling these particulars as well as indicating correct CIN/ BIN in TDS statement.**
- Failures to issue of these certificates to the person concerned, as required by section 203, the DDO / Paying Officer will be liable to pay, by way of penalty, under section 272A(2)(g), a sum which shall be ₹100/- for every day during which the failure continues.
- It is, however, clarified that there is no obligation to issue the TDS certificate in case tax at source is not deductible/deducted by virtue of claims of exemptions and deductions.

**Note: TRACES is a web-based application of the Income - tax Department that provides an interface to all stakeholders associated with TDS administration. It enables viewing of challan status, downloading of NSDL Conso File, Justification Report and Form 16 / 16A as well as viewing of annual tax credit statements (Form 26AS). Each deductor is required to register in the Traces portal. Form 16/16A issued to deductees should mandatorily be generated and downloaded from the TRACES portal.**

#### 5. Filing of the Statement and obtaining TDS certificates (some relevant points to be kept in mind):

(a) TDS certificate (Form 16) would be generated for the deductee only if Valid PAN is correctly mentioned in the Annexure II of Form 24Q in Quarter 4 filed by the deductor. Moreover, employers are advised to ensure in Form 16 that the status of "matching" with respect to "Form 24G/OLTAS" is 'F'. If the status of matching other than 'F', kindly take necessary action promptly to rectify the same. It is pertinent to mention here that certain facilities have been provided to the deductors at website [www.tdscpc.gov.in/](http://www.tdscpc.gov.in/) including online correction of statements (Form 24Q).

(b) The employer should quote the **gross amount of salary** (including any amount exempt under section 10 and the deductions under chapter VI A) in column 321 (Amount paid/credited) of Annexure I of Form 24Q as per NSDL RPU (hereafter Return Preparation Utility).

(c) The employer should quote the amount of salary excluding any amount exempt under section 10 in column 333 (Total amount of salary) of Annexure II of Form 24Q as per NSDL RPU.

(d) TDS on Income (including loss from House Property) under any Head other than the head 'Salaries' offered for TDS (shown in column 339) can be shown in column 350 (Reported amount of TDS by previous employer, as per NSDL RPU).

(e) Employer is advised to quote Total Taxable Income (Column 346) in Annexure II without rounding-off and TDS should be deducted and reported accordingly i.e. without rounding-off of TDS also.

**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.**

#### 6. Authentication by Digital Signatures:

(a) Where a certificate is to be furnished in Form No. 16, the deductor may, at his option, use **digital signatures** to authenticate such certificates.

(b) In case of certificates issued as above at (a) the deductor shall ensure that

- the conditions prescribed in para 5 above are complied with;
- once the certificate is digitally signed, the contents of the certificates are not amenable to change; and
- the certificates have a control number and a log of such certificates is maintained by the deductor.

**The digital signature is being used to authenticate most of the e-transactions on the internet as transmission of information using digital signature is failsafe. It saves time specially in organizations having large number of employees where issuance of certificate of deduction of tax with manual signature is time consuming (Circular No 2 of 2007 dated 21.05.2007)**

#### 7. Furnishing of particulars pertaining to perquisites, etc (Section 192(2C)):

- The person responsible for paying salary / DDO is responsible for providing correct and complete particulars of perquisites or profits in lieu of salary given to an employee in the form and manner of particulars that prescribed in Rule 26A, Form 12BA (Annexure II) and Form 16 of the Rules. Information relating to the nature and value of perquisites is to be provided by the employer in Form 12BA in case salary paid or payable is above ₹1,50,000/-. In other cases, the information would have to be provided by the employer in Form 16 itself.
- An employer, who has paid the tax on perquisites on behalf of the employee shall furnish to the employee concerned, a certificate to the effect that tax has been paid to the Central Government and specify the amount so paid, the rate at which tax has been paid and certain other particulars in the amended Form 16.
- As per Section 139C of the Act, the Assessing Officer can require the taxpayer to produce Form 12BA along with Form 16, as issued by the employer.

**Any false information, fabricated documentation or suppression of requisite information will entail consequences thereof provided under the law.**

**The certificates in Forms 16 and/or Form 12BA specified above, shall be furnished to the employee by 31st May of the financial year immediately following the financial year in which the income was paid and tax deducted. If he fails to issue these certificates to the person concerned, as required by section 192(2C), he will be liable to pay, by way of penalty, under section 272A(2)(i), a sum which shall be ₹100/- for every day during which the failure continues.**

#### 8. Statement of deduction of tax under section 200(3) [Quarterly Statement of TDS]:

- Employer authorised Person / DDO, is required to file duly verified Quarterly Statements of TDS in **Form 24Q** for the periods as given below of each financial year, to the TIN Facilitation Centres authorized-NSDL by DGIT (System's) or at [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) after registering as Deductor.

- The quarterly statement for the last quarter filed in Form 24Q (as amended by Notification No. S.O.704(E) dated 12.5.2006) shall be treated as the annual return of TDS

• **Due dates of filing Quarterly Statements in Form 24Q**

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

- The statements referred above may be furnished in paper form or electronically under digital signature or along with verification of the statement in Form 27A of verified through an electronic process in accordance with the procedures, formats and standards specified by the Director General of Income-tax (Systems).

- All Returns in Form 24Q are required to be furnished in electronically except in case where the number of deductee records is less than 20 and deductor is not an office of Government, or a company or a person who is required to get his accounts audited under section 44AB of the Act. [Notification No. 11 dated 19.02.2013]. The procedure for furnishing the e-TDS/TCS statement is detailed at Annexure VI to CBDT Circular No 29 / 2017 dated 5<sup>th</sup> Dec 2017.

**Particulars of e-TDS Intermediary at any of the TIN Facilitation Centres are available at**  
<http://www.incometaxindia.gov.in> and <http://tin-nsdl.com> portals.

**9. Fee for default in furnishing statements (Section 234E):**

If a person fails to deliver or caused to be delivered a statement within the time prescribed in section 200(3) in respect of tax deducted at source, shall be liable to pay, by way of fee a sum of ₹.200 for every day during which the failure continues subject to maximum amount of tax which was deductible at source. ***This fee is mandatory in nature and to be paid before furnishing of such statement.***

**10. Rectification of mistake in filing TDS Statement:**

A DDO can also file a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered earlier.

**11. Penalty for failure in furnishing statements or furnishing incorrect information - Section 271H**

If a person fails to deliver or caused to be delivered a statement within the time prescribed in section 200(3) or furnishes an incorrect statement, in respect of tax deducted at source, he shall be ***liable to pay, by way of penalty a sum which shall not be less than ₹10,000/- but which may extend to ₹1,00,000/-***. However, the penalty shall not be levied if the person proves that after paying TDS with the fee and interest, if any, to the credit of Central Government, he had delivered such statement before the expiry of one year from the time prescribed for delivering the statement.

**12. Quoting of important information at the time of preparing statements of tax deducted.**

The deductor is required to:

- mandatory quote his tax deduction and collection account number (TAN) in the statement;
- mandatory quote his permanent account number (PAN) in the statement except in the case where the deductor is an office of the Government (including State Government). In case of Government deductors "PANNOTREQD" to be quoted in the e-TDS statement;
- mandatory quote of permanent account number PAN of all deductees;
- furnish particulars of the tax paid to the Central Government including book identification number or challan identification number, as the case may be.
- furnish particular of amounts paid or credited on which tax was not deducted in view of the issue of certificate of no deduction of tax u/s 197 by the assessing officer of the payee.

**13. Matters pertaining to the TDS made in case of Non Resident:**

Where Non-Residents are deputed to work in India and taxes are borne by the employer, if any refund becomes due to the employee after he has already left India and has no bank account in India by the time the assessment orders are passed, the refund can be issued to the employer as the tax has been borne by it [Circular No. 707 dated 11.07.1995].

In respect of non-residents, the salary paid for services rendered in India shall be regarded as income earned in India. It has been specifically provided in the Act that any salary payable for rest period or leave period which is both preceded and succeeded by service in India and forms part of the service contract of employment will also be regarded as income earned in India.

**14. Conclusions:**

The authorised officer / DDO is unnecessarily burden with the responsibility for deduction of tax at source under provisions of income tax act. Any default is having consequential effects such as treating assessee in default, liable to penalty /interest / fee and prosecution etc. There are cases where dispute are also arises in taxability of few incomes of salary while deducting tax at source. So in view of above, it is required to refer amendments to the provisions of law, new Circulars / Notifications to update the knowledge on subject matter. Wherever there is any doubt, reference may be made to the provisions of the Income-tax Act, 1961, the Income-tax Rules, 1962, the Finance Act, the relevant circulars / notifications, etc. In case any assistance is required, the Assessing Officer/the Local Public Relation Officer of the Income-tax Department may be contacted.