

## **Form 26A (non-deduction or short deduction) – Legal provisions, benefits & procedures**

### **Introduction**

There are instances where assessee fail to deduct or short-deduct the [TDS](#) on certain payments. Non-Deduction or short deducted results in the assessee being labelled as “Assessee in Default” under section 201(1) of the Income Tax Act, 1961. These labels “Assessee in Default” comes with the consequences such as interest payment on short deduction/Non-Deduction, prosecution under section 276B, penalty under section 271C and 30% disallowance of expenditure under section 40(a)(ia). However, the Act provides relief under the proviso of Section 201(1) to overcome the title of “Assessee in Default”. Let’s discuss the provision and relief in detail below.

### **Legal Provisions**

Section 201(1) of the Income Tax Act stipulates that failure to deduct or pay TDS leads to being deemed an “Assessee in Default.” However, the proviso to section 201(1) along with rule 31ACB provides relief for resident payees who have met certain criteria, including PAN validation and tax payment. Section 40(a)(ia) pertains to disallowance of expenditure due to non-deduction or non-payment of TDS.

#### **Section 201(1)**

Section 201(1) of the Income Tax Act states that where any person required to deduct TDS under the provisions of the Act but does not deduct or does not pay then, such person shall be deemed to be an assessee in default in respect of such tax.

#### **Proviso to section 201(1) read with rule 31ACB**

Any person who fails to deduct or pay TDS under the provisions of the Act on the amount paid or credit to the resident payee shall not be deemed to an assessee in default in respect of such tax if such resident payee (Deductee)-

- has furnished his return of income under section 139;
- has taken into account such sum for computing income in such return of income; and
- has paid the tax due on the income declared by him in such return of income and the person furnish a certificate to this effect from the chartered accountant in such form as prescribed.

Provided that the person has to pay a simple interest on the sum not deducted or pay from the date which such tax was deductible to the date of furnishing of return of Income. \*\*\* To be paid by “**Deductor**” \*\*\*.

As per the sub-rule (1) of the Rule 31ACB of the Income Tax Rule 1962, the certificate from the chartered accountant under the proviso to section 201(1) shall be furnished in form 26A electronically.

#### Section 40(i)(ia)

In case of non-deduction or non-payment of tax deducted at source (TDS) from certain payments made to residents, the expenditure on which tax was deductible is disallowed under section 40(a)(ia) for the purposes of computing income under the head “Profits and gains of business or profession”.

The disallowance shall be restricted to 30% of the amount of expenditure on which TDS is not deducted.

#### Benefits

- The assessee would not be labelled as “Assessee in Default”.
- The assessee would be allowed with the expenditure disallowed earlier under section 40(i)(ia) in the year when 26A is filed.
- The assessee would be safe from the Penalty and prosecution if reasonable cause is given.

#### Procedure

The CBDT vide [notification number 11/2016 dated 2nd December 2016](#) has provided the procedure for furnishing and verification of Form 26A for removing default of Short Deduction and or Non-Deduction of Tax at source.

\*Earlier to this notification form 26A was filled offline. \*

- Traces of Deductor
  - The deductor has to go to the TRACES portal and submit a request for Form 26A. (Login to traces>Statement and payments>request for 26A/27BA)
  - Select Financial year, Form type(26Q, 24Q and 27EQ) and transaction type (Non-Deduction/collection).

- To submit the transaction details, a .nzip file must be uploaded.

(Procedure for generating .nzip file)

1. Go to Downloads > Requested Downloads
2. Enter the captcha and scroll down unless you see TRACES Sample – 26A – 27BA. Download Utility and sample 26A non-deduction file.
3. In the sample .CSV file, fill the requisite details: PAN of Payee, Date of Payment, Amount paid or credited, section, Amount of TDS, Short/non deducted amount and non-deduction section e., 201(1)
4. Save the file in .CSV format
5. Open the downloaded Utility, and fill in the details: TAN of the deductor, Financial Year, form type, transaction type, location of .CSV file, and location for .nzip file.

- After generating the .nzip file, upload it to the TRACES with the DSC of the authorized signatory.
- The status of form 26A will be submitted after filing.
- Once the status is “Sent to E-Filing” Deductor can proceed further to the E-filing portal.

- E-Portal of Deductor

- Go to the e-filing Portal. Log in as a deductor.
- Select e-File >Income Tax Form>File Income Tax Forms> person not dependent on source of income>Search form 26A>file now.
- Select Financial Year> Select the particular transaction of Traces and choose Assign CA and enter the membership number of the CA who is certifying Annexure A of form 26A.
- CA will be assigned. This request for Form 26A will be displayed in an e-filing portal of the CA.

- E-Portal of Chartered Accountant

- The CA has to login into e-filing. Go to Worklist> For your Action> Annexure A of form 26A/27BA.
- CA will find the name of the Deductor and Payee in whose respect Form 26A is furnished.
- Click on File Now/Submit.
- Fill in the details of the return of Income filed by the Payee like date of filing, mode of filing, acknowledgement number, form type(ITR1,2,3,4,5,6,7), amount of taxable income as per return, The tax due on Income declared and Amount of Tax deposited.
- Fill in the details of the Income under which the said Income transactions have been considered. Information to be filled is – Name of the head under which income is accounted for, Receipts on which tax has not been deducted, gross receipts under the head of income under which the receipts are accounted for, Net receipts under the head of income, taxable income under the head of income.
- Download the nd\_details in case of non-deduction and sd\_detail in case of short deduction.
- Transactions on which the TDS is not deducted or short-deducted will be auto-reflected in the sheet. CA will only need to put (Y/N) on the said transaction in the CA Certification column and upload the sheet back to the portal in .CSV format.
- Fill in the remaining detail and submit the form with DSC.

- E-Portal of Deductor

- Go to the e-filing Portal. Log in as a deductor.
- Select e-File >Income Tax Form>File Income Tax Forms> saved form 26A> check the status of submission by CA as submitted and submit the form 26A with EVC or DSC.

Now log in to TRACES of deductor and the status of form 26A will be changed to pending for processing at TDS-CPC.

After processing, the Status of the form can be processed, rejected, processed with partial rejection, or processed with rejection.

If the status is “Processed” Traces will re-calculate the short deduction and late deduction interest will be generated accordingly by the TRACES, which can be viewed by the Deductor.

\*\*\*\*\*

At times, Traces may require verification through Form 26A to the relevant A.O. In such situations, Form 26A is Processed with the remark “Contact AO for short deduction/Non-Deduction”.

In such cases, the deductor or their authorized representative must visit the relevant A.O with supporting documentation and request that the officer declare the deductor as “Assessee not in default”. The officer will verify the validity of the short deduction/Non-deduction transactions, the payee’s filed return of income, and tax payments. They will also ensure that interest under section 201(1) has been paid up until the date of the payee’s filed return. If everything checks out, the A.O may declare the deductor as “Assessee not in default”.

The government offers Form 26A as an excellent opportunity to save taxes and avoid default, but many people are not aware of these reliefs. I hope that the information provided above is helpful to you.

**Conclusion:** Form 26A offers a pathway to rectify TDS defaults, granting relief from being deemed an “Assessee in Default.” By adhering to the prescribed procedure and fulfilling requirements, taxpayers can avoid penalties, prosecution, and disallowed expenditures.

\*\*\*\*\*

