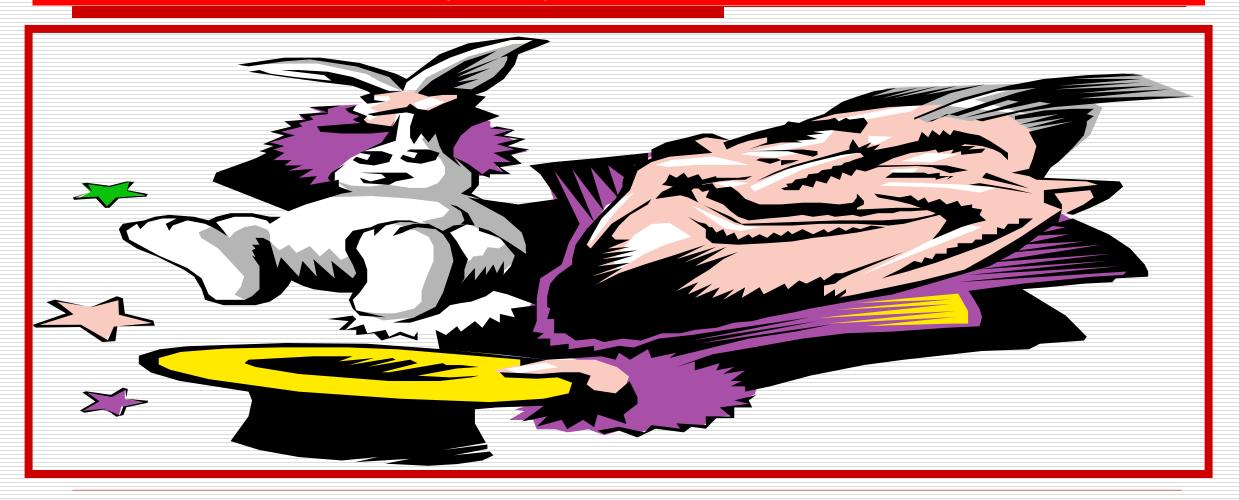
Filing of Returns – Timelines, Penalties, Mistakes and Rectification of Mistake under IT Act – Part -1

By CMA Niranjan Swain. B.Com, CS, FCMA, LLB



What is Section 197 of Income Tax Act, 1961?

- ☐ Section 197 of the Income Tax Act, 1961 allows the taxpayer the facility of **NIL or Lower** tax rate deduction of TDS (or TDS exemption).
- ☐ In order to apply for this you need to submit Form 13 to the assessing officer.

(2) Income Covered Under Section 197

- □ Section 197 application can be made by the recipient of income in case of the following category of receipts where TDS is required to be made under the following Sections:
- Section 192- Payment of Salary
- Section 193- Payment of Interest on securities
- Section 194- Payment of Dividends
- Section 194A- Payment of interest on other than securities
- Section 194C- Payment to contractors and sub-contractors
- Section 194D- Payment of insurance commission
- Section 194G- Payment of commission on the sale of lottery
- Section 194H- Payment of commission or brokerage
- Section 194I- Payment of Rent
- Section 194J- Payment of Fees for Technical services

(2) Income Covered Under Section 197

Section 197 application can be made by the recipient of income in case of the following category of receipts where TDS is required to be made under the following Sections:
 Section 194K- Payment of income in respect of units
 Section 194LA- Payment of compensation on acquisition of immovable property
 Section 194LBB- Payment of income in respect of units of investment fund
 Section 194LBC- Payment of income in respect of investment in securitization trust
 Section 194M- Payment of commission by individual and HUF pursuance of a contract (other than covered under section 194C, 194H and 194J)
 Section 194O- Payment by e-commerce operator to e-commerce participant
 Section 195- Payment to non-resident or foreign companies

No application can be filed under section 197 for the purpose of payment other than above mentioned.

Non Deduction / Lower Deduction of TDS

- □ 1. Receipt of the payment for the sale of property in India by a non-resident seller from the Indian buyer:
- This is the most common situation where a non-resident sells his property in India to the Indian buyer and that Indian buyer disburse the sale consideration after deducting TDS at the rate of 20% on the whole value regardless the gain that seller has actually earned from the property.
- □ 2. Receipt of the payment by a company who does not have PE in India from the customer who is liable to deduct TDS under section 195:
- Indian counterpart, while making payment to the Foreign company who does not have PE in India deduct TDS at the rate of 40% treating them as PE in India.
- By filing an application under section 197, such company may mitigate the higher TDS and may get a certificate for deduction of TDS at the rate as per DTAA provisions.

Non Deduction / Lower Deduction of TDS

□ 3. Where a assessee's NP ratio is low or assessee is in loss:

- In this case the TDS is deducted by the payer at full rate as per Chapter XVII regardless the actual taxability of the payee.
- Where the assessee is in loss or earning at relatively low NP ratio, the actual Taxability of the assessee is quite low or nil (in case of loss).
- By applying for LDC, such assessee may lower their TDS amount and ultimately may mitigate the working capital crisis.

(3) Eligibility for Making an Application Under Section 197

Application can be made where income of any person attracts TDS as per above mentioned sections and income of the recipient justifies non-deduction or lower deduction of income tax based on his estimated final tax liability.

(4) Timeline for Making the Application

Income-tax provision does not provide for a deadline to make an application under Section 197. However, as TDS is made on income of on-going financial year it is advisable to make an **application at the beginning of financial year** in case of regular income throughout the financial year and as and when the need arises in case of one-off incomes.

(5) Validity of an Application Made Under Section 197

□ Section 197 is issued for a particular financial year and stands valid from the date of issue and throughout the financial year unless cancelled by the assessing officer (TDS) before the expiry.

(6) Procedure for Making the Application Under Section 197

- An application for nil/lower deduction of TDS using the FORM 13 is required to be filed with the Assessing Officer (TDS) for seeking permission.
- Such Form 13 can be filed either online or manually.
- The process of filing the application for LDC: Rule 28 of Income Tax Rules governs the procedure of filing application. The application shall be filed in Form 13 on TRACES portal by logging in as 'Taxpayer'.
- ☐ If the applicant satisfies the AO, he would process the issue of the certificate;
- The copy of this certificate can be attached to the invoice given to the deductor, and he can use this to justify the lower tax deduction.

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Extract of Section 197 of Income Tax Act, 1961

197. (1) Subject to rules made under sub-section (2A), where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or, as the case may be, at the time of payment at the provisions of sections 192, 193, 194, 194A, rates in force under the 194C,194D,194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC [, 194M] [, 194-O] and 195, the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.

(6) Procedure for Making the Application Under Section 197

- ☐ (2) Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be.
- □ (2A) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (1) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.
- ☐ The process of filing the application for LDC: Rule 28 of Income Tax Rules governs the procedure of filing application. The application shall be filed in Form 13 on TRACES portal by logging in as 'Taxpayer'.

Procedure for Making the Application

In order to make an application in Form no 13, a taxpayer has to register in the portal https://contents.tdscpc.gov.in/ using his/her PAN. Upon registration under TRACES (TDS-CPC) website, □ A taxpayer has to log in and under the tab 'Statements/Forms', choose 'Request for Form 13'. ☐ An assessee has to file the application for Nil or lower deduction of tax online using a digital signature (DSC) or electronic verification code (EVC). ☐ Similarly, a taxpayer (buyer/licensee/lessee) whose payments are liable for the collection of tax (TCS) under section 206C can file an application in form no 13 seeking a certificate for Nil or lower tax collection at source.

Procedure for Making the Application

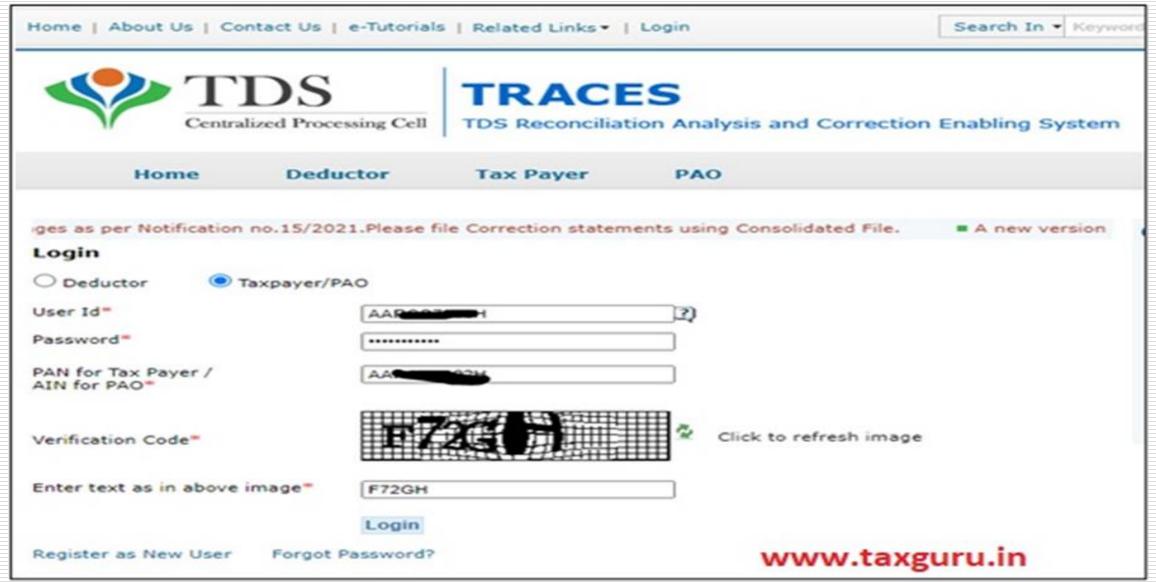
	Jpon	receipt	of the	application,	the	assessing	officer	has to	determ	ine the
exist	ting a	nd estim	nated ta	x liability aft	er tal	king into co	onsidera	tion tax	payable	on the
estin	nated	income	of the	ongoing fir	ancia	al year, ta	x payab	le on the	he asses	ssed or
retur	ned o	or estim	ated ind	come, as the	e cas	se may be	, of the	previou	us four fi	inancial
year	s, exi	sting liak	oility und	der the Incor	ne-ta	x Act, 196	1.			

- ☐ The assessing officer has to also consider the advance tax payment, tax deducted at source and tax collected at source for the ongoing financial year till the date of making of the application.
- ☐ The Nil or lower TDS or TCS application is valid for the period for which it is issued or until the assessing officer cancels it.

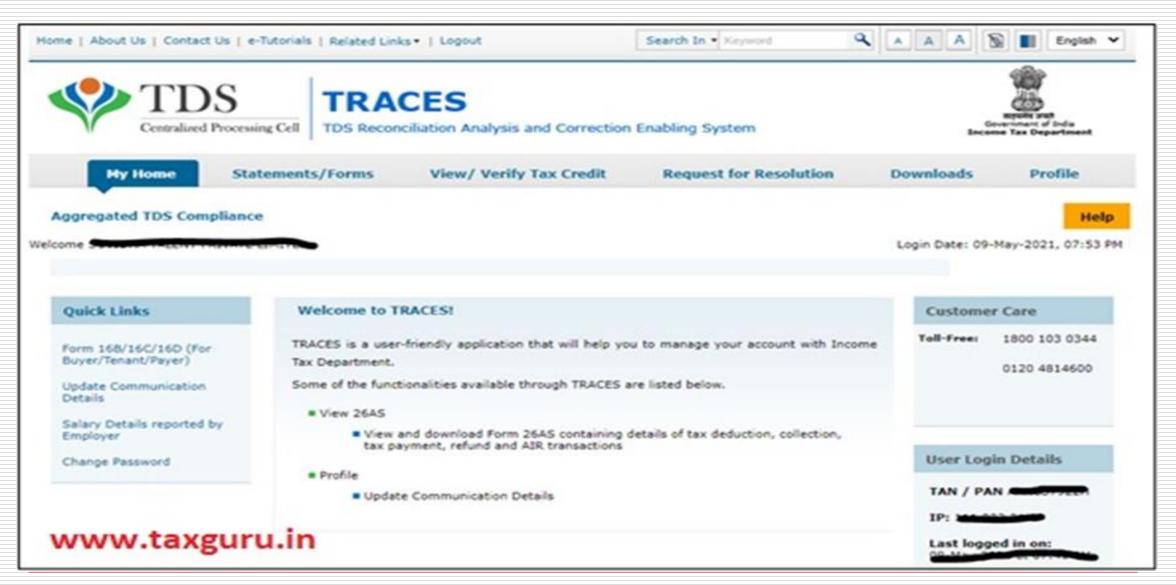
Step by step guide to how to Validate the Certificate u/s 197

- Step 1: Login to TRACES as a Deductor with register User ID and Password.
- If you have not registered, you can read this guide to get registration procedure.
- ☐ The welcome page will be displayed.

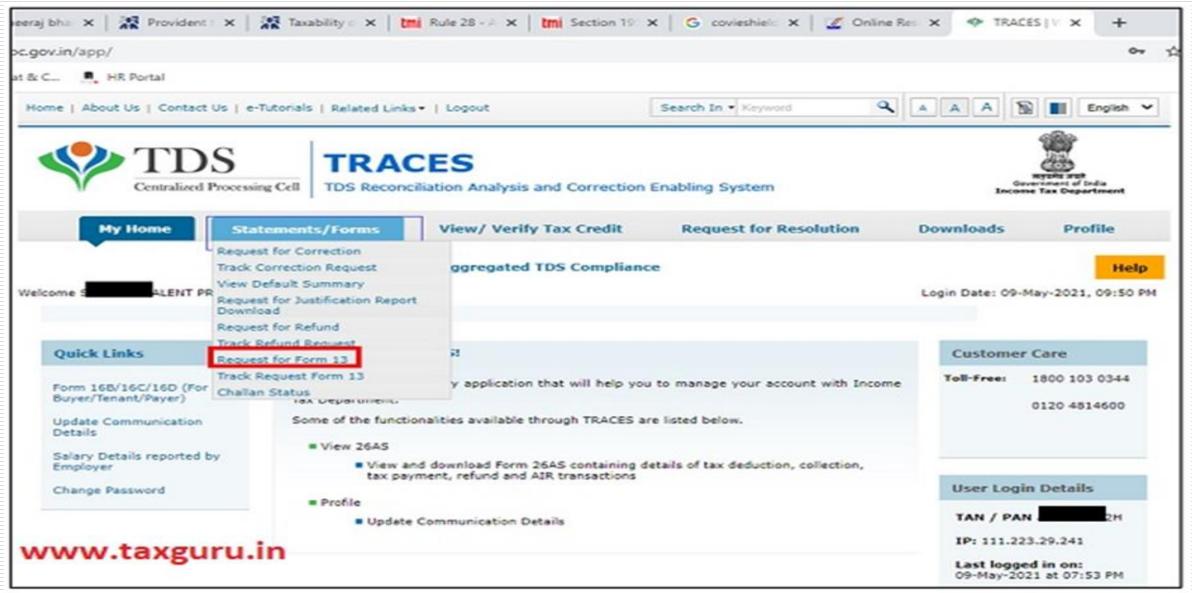
The process of filing the application for LDC STEP-1 – Login to TRACE Portal



After login in, below screen will appear,



Step-2: From 'Statements/Forms' menu select 'Request for Form 13'



By clicking this option, A screen will appear,
 Select the option appearing on the screen.
 If we are applying for a non-resident person or a foreign company, then select 'Non Resident' or 'Not Ordinarily Resident' as the case may be and
 if we are applying for a resident assessee, then select 'Resident'.

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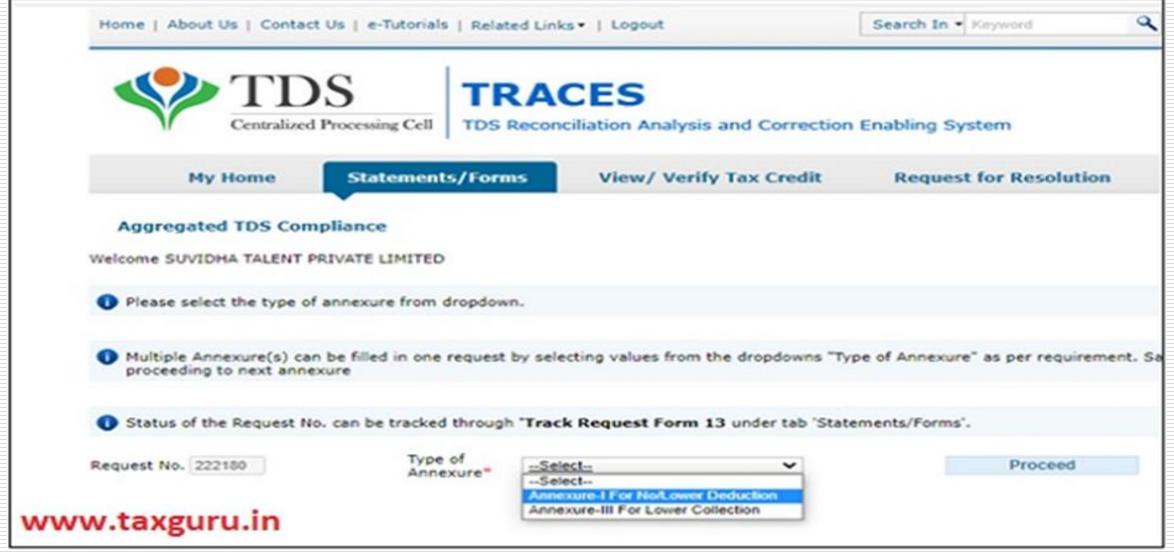
- ☐ Step-4: After step-3, a detailed Form 13 will appear on the screen and below mentioned details shall be filled,
- Status: Whether it's a company, LLP, Partnership firm or individual
- Residential Status: Whether resident or non-resident
- PAN: PAN of the assessee
- Email Id: Email id should be a valid one. Any communication or query raised by the department would be notified on this mail id only
- Mobile No.: A message after filing the application and further communication from the department would be notified on this mobile no. as well

- ☐ Step-4: After step-3, a detailed Form 13 will appear on the screen and below mentioned details shall be filled,
- State: State can be selected as per the convenient of the assessee
- District: Select from the drop down menu. Jurisdictional A.O will be assigned on the basis of State & District given by taxpayer in Original application of Form-13
- Detail of existing Income Tax liability: A table need to be filled up for any liability which is unpaid for the financial year for which application is being filed
- ❖ Estimated total income of the previous year for which application is filed: A projected gross receipt shall be entered here. Note that the LDC will be issued by the department up to this amount only. Therefore, this amount shall be entered carefully

- ☐ Step-4: After step-3, a detailed Form 13 will appear on the screen and below mentioned details shall be filled,
- ❖ Total tax payable including interest for the above mentioned income: Tax liability which will be computed on the basis of above mentioned projected income shall be entered here. The tax rate at which assessee apply will be calculated on the basis of this tax liability and projected receipts as mentioned above.
- Details of income claimed to be exempt: If any income has been claimed to be exempt and included in the projected receipts as reported above, shall be entered here.

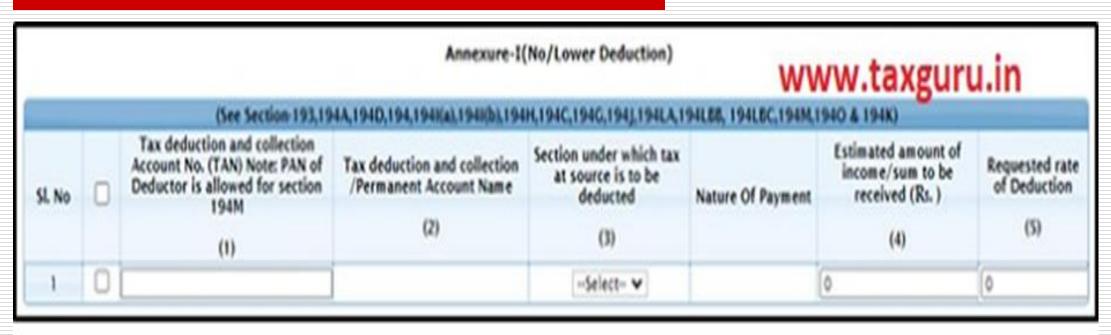
- ☐ Step-4: After step-3, a detailed Form 13 will appear on the screen and below mentioned details shall be filled,
- ❖ Details of payment of advance-tax and tax already deducted/collected: A table need to be filled up by entering the amount which has already been paid as Advance Tax or deducted as TDS. These details may be taken from Form 26AS.
- Thereafter some declaration shall be checked by clicking against the respective options. After all this click on 'Save & Proceed' button.

Step-5: Next, below screen will appear,



Select the 'Annexure-I' and click on 'Proceed' button.

Step-6: After step-5, below table will appear which needs to be filled up,



In this table we need to fill the details of the deductor like TAN, section under which TDS to be deducted, nature of payment (which will be selected from the drop down menu), Estimated amount and tax rate at which the assessee wishes to apply.

At last, supporting documents shall be attached by clicking on the respective links as below,

Go to Basic Details Back Preview & Submit	www.taxguru.in					
Date * 10-May-2021						
I, Alexander II do hereby declare that to the best of my knowledge and belief what is stated a comes/sum referred to in this form are not includible in the total income of any other person under security in this application is correct. I further declare that I am making application in my capacity as Prompetent to make this application and venify it. I am holding permanent account number	tions 60 to 64 of the Income-tax Act, 1961	. I further declare	that what			
Upload						
Upload any other document (For example: Estimated Profit & Loss Account, estimated Balance sheet, Working of MAT liability for all relevant A.Y etc.)	Browse	Files Uploaded				
Upload Details of income claimed to be exempt and not included in the total income***	Browse	Files Uploaded				
Upload return of income for any of the four previous year has been filed in paper form	Browse	Files Uploaded				
Upload Assessment Orders if assessed, for the last four assessment years	Browse	Files Uploaded				
Upload registration/exemption Certificate in case of certain entities covered under section 139(4C) where income is exempt under section 10	Browse	Files Uploaded				
Upload registration/exemption Certificate in case of certain entities covered under section 11 or 12**	Browse	Files Uploaded				
Upload & Fill computation of estimated total income any of the four previous year preceding to the previous year for which return of income has not been filed	Browse	Files Uploaded	Template			
Upload & Fill Estimated Income Computation for which F.Y certificate is sought (Template for estimated income is mandatory to fill by clicking on 'Template')*	Browse	Files Uploaded	Template			

Preview and Submit

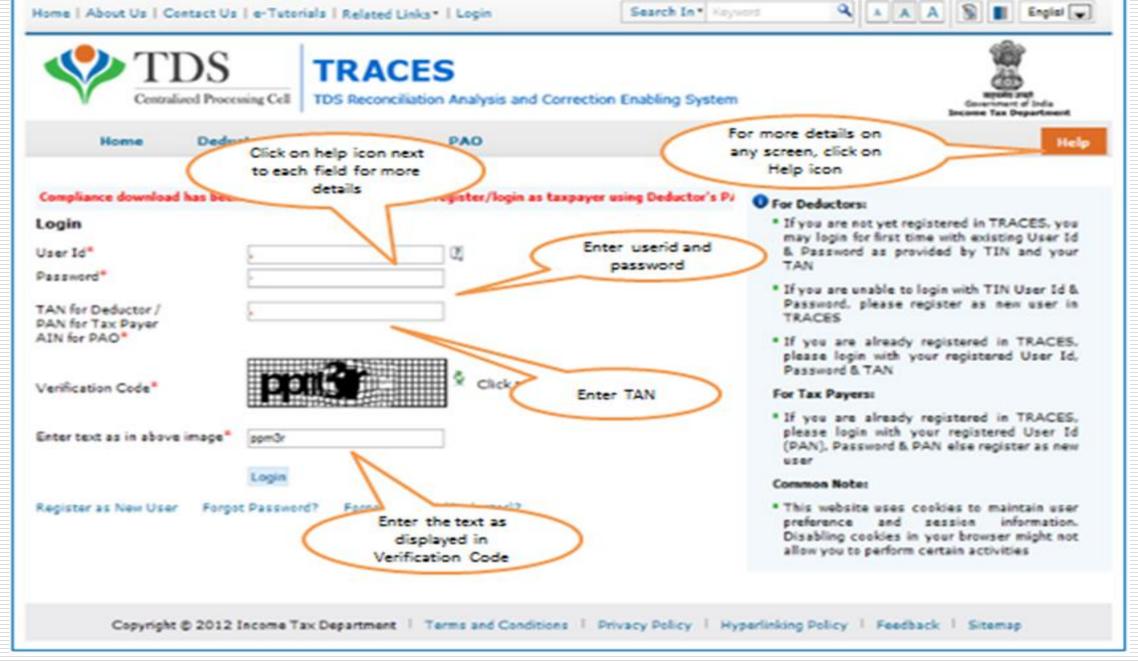
- Document shall be attached by clicking on 'Browse' button as provided against each document description. A template shall also be filled up by clicking on 'Template' button.
- ☐ After uploading all the documents, click on 'Preview & Submit' button and a preview will be appeared on screen where you can cross check all the details and download the preview as well. After that you can submit the Form by using DSC or mobile OTP.
- □ After submission of Form 13, the Jurisdiction will be assigned automatically within 2 or 3 days. The assessing officer may raise further query which can be replied online on the link which will be there when you check the status of your application.

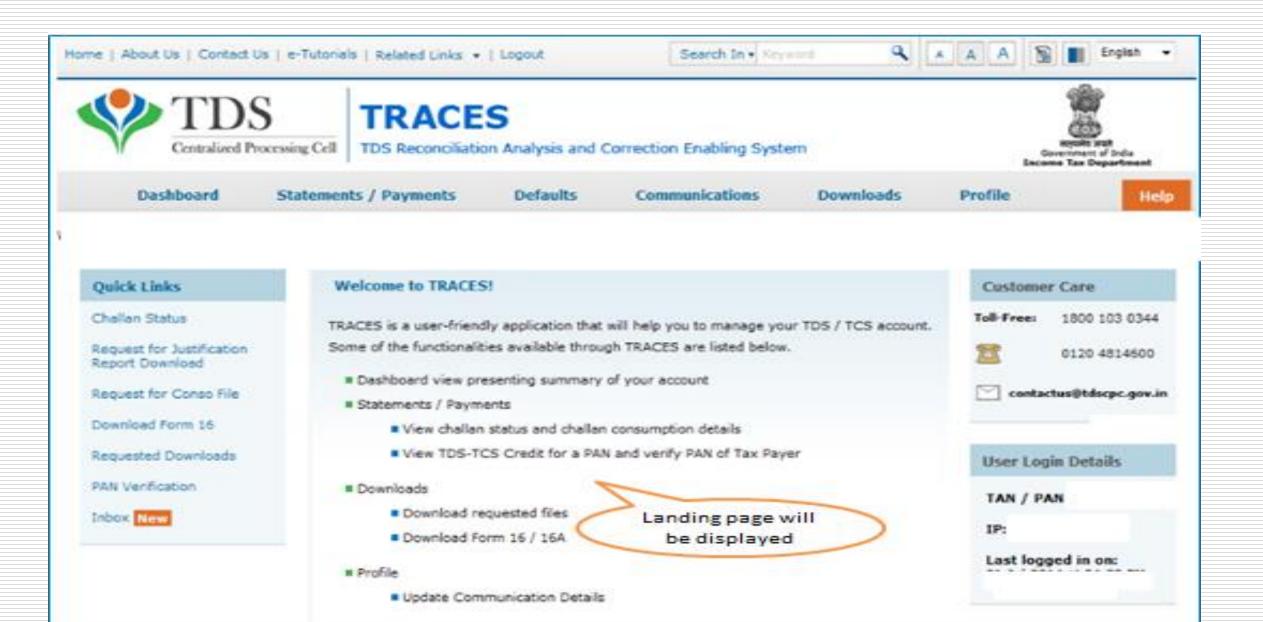
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Documents to be attached along with the Form 13.

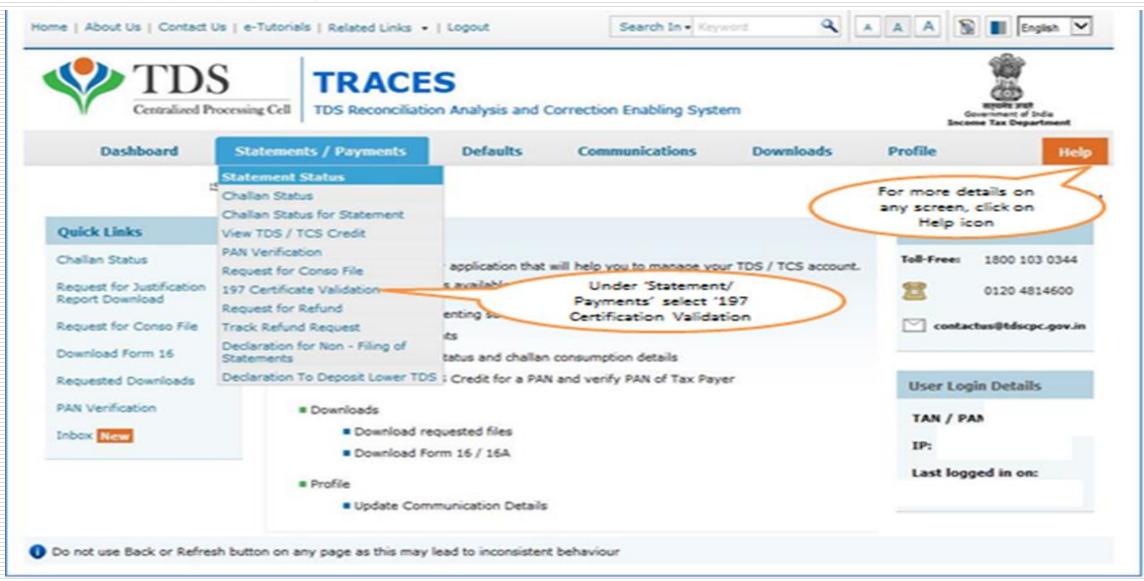
- Projected balance sheet and computation for the financial year for which application is filed. In case of individual, only projected computation is required.
- Audited balance sheet and computation for any one of the four previous year. Not required in case of individual who is not carrying any business or profession
- Copy of exemption certificate, if any exemption is claimed
- Copy of assessment order for the last four years, if any
- Copy of ITR acknowledgment for last four years
- Any other documents e.g. Property papers, copy of agreements etc.
- The certificate once issued by the authority can be downloaded from the link which will be available when you check the status of the application.

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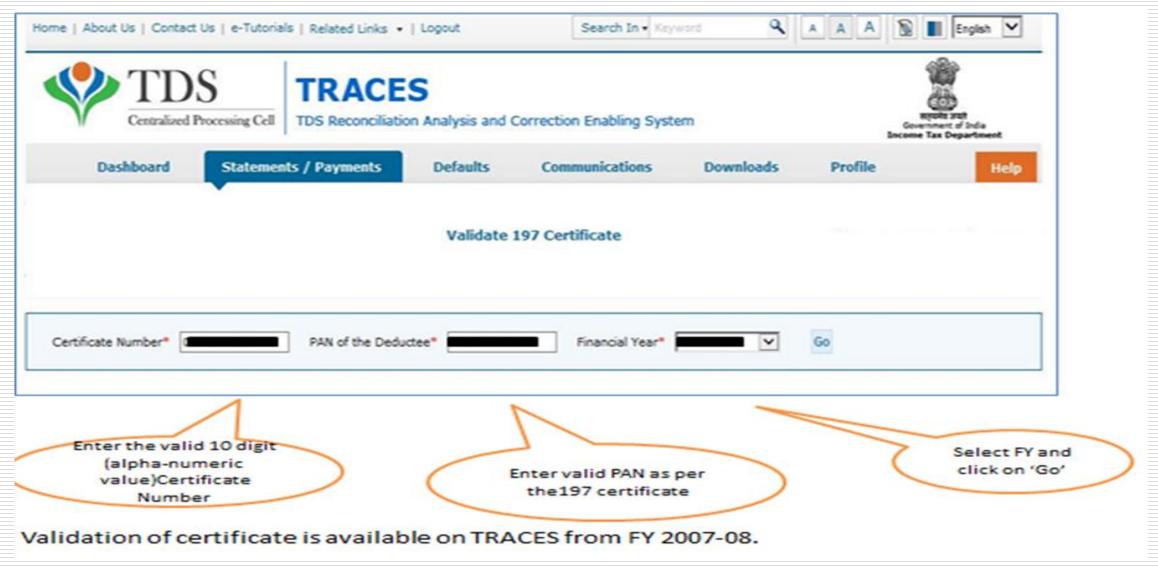




Step 2: Click on "Statements/Payments" the second tab and select "197 Certificate Validation".



Step 3: Enter 10 digit certificate number, PAN of the deductee and select "Financial Year".



It will display all the details of Certificate. Number, Financial year, Valid period, TDS rate, Section code, Amount consumed etc.



□ NON DEDUCTION OF TAX AT SOURCE - SEC 197A

- □ Tax payers seeking non-deduction of tax from certain incomes are required to file a self-declaration in Form 15G or Form 15H as per the provisions of Section 197A of the Act.
- ☐ The manner of filing such declarations and the particulars have been laid down in Rule 29C of the Income-tax Rules, 1962 ('the Rules').
- ☐ II. Issue for consideration relating to Form 15/ Form 15H
- □ Various representations have been received by the CBDT seeking clarification on the issue as to whether a depositor should submit only one declaration in respect of the income each year before each person responsible for making the payment (i.e. deductor) or Form 15G/Form 15H has to be submitted each and every time the payment is due to be received from the deductor.

- ☐ III. Clarification by CBDT relating to Form 15/ Form 15H
- □ Para 5 of Circular No. 351, dated 26-11-1982 issued by the Central Board of Direct Taxes (CBDT) provides that it will be sufficient if only one declaration is made in respect of the income each year before each person responsible for making the payment.
- □ Hence, where payments are to be made by the same person more than once in a year, the declaration in the relevant Form may be furnished before the first payment in a year becomes due.

Notification No. 6/2017, dated 30-05-2017 has settled all disputed issues, it is clarified by the board that:-

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- ☐ CBDT via Notification No. 6/2017, dated 30-05-2017 has settled all disputed issues, it is clarified by the board that:-
- □ 1) New Form 15G/15H has to be filed by the taxpayers if his income for each year changes.
- Only one declaration is to be made in respect of the income each year before each deductor.
- 3) If the estimated total income changes and new investments are being made then taxpayers are required to provide particulars of same in the new Form 15G/15H.
- □ 4) While filing New Form 15G/15H, taxpayer's needs to provide total number of earlier declarations along with aggregate amount of income for which such Form 15G/15H have been filed.

- ☐ IV. What is Form 15H?
- ☐ As per section 197A (1C), to be made by an individual who is of the age of 60 years or more claiming certain receipts without deduction of tax.
- Estimated tax for the previous assessment year should be nil.
- ☐ You need to submit form 15H to banks if interest from one branch of a bank exceeds 10000/- in a year.
- ☐ This form should be submitted to all the deductors to whom you advanced a loan. For example you have deposit in three SBI bank branches Rs.100000 each. You must submit the Form 15H to each branch.
- Submit this form before the first receipt of your interest. It is not mandatory but it will avoid the TDS deduction. In case of the delay, the bank may deduct the TDS and issue TDS certificate at the end of the quarter.
- ☐ You need to submit for 15H if interest on loans, advances, debentures, bonds or say interest income other than interest on bank deposits exceeds Rs.5000/-.

- □ V. What is Form 15G?
- Declaration u/s 197A (1A), to be made by an individual or a person (not being a company or a firm) claiming certain receipts without deduction of tax of tax.
- ☐ Form 15G can be submitted by Individual who is below the age of 60 years and by Hindu Undivided family.
- ☐ The points applicable for 15H are applicable to the Form 15G as well, except that the Form 15H is applicable only for the senior citizens.
- Form 15G should be submitted before the first receipt of interest on fixed deposits.

- □ VI. Difference between form 15G and Form 15H:-
- ❖ 1. Form 15G can be submitted by an individual below the Age of 60 Years while form 15H can be submitted by senior citizens i.e. individual's above the age of 60 years.
- 2. Form 15G can be submitted by Hindu Undivided families but form 15H can be submitted only by Individual above the age of 60 years.
- ❖ 3. Form 15G CAN NOT BE filed by any person whose income from interest on securities/interest other than "interest on securities"/units/amounts referred to in clause (a) of sub-section (2) of section 80CCA exceeds maximum amount not chargeable to tax.

- □ VII. Conclusion: Situations to submit Form 15G/15H
- □ To understand the several situation, let's take an example that Mr. A has maintaining one fixed deposit account (FD) with a bank and receiving interest income of more than Rs. 10,000. The following are some practical situation which suggests submission of Form 15G/Form 15H.
- □ Situation 1: Bank is crediting interest income to taxpayer account on maturity of FD.
- ☐ Ideally, the Form 15G/ Form 15H should be submitted by Mr. A at the beginning of the year to avoid a situation of tax deduction at source. However, he can submit the Form at any time before maturity of FD.

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- Situation 2: Bank is crediting interest income to Mr. A account on quarterly basis.
- Form 15G or Form 15H should be submitted by Mr. A at any time before the end of 1st quarter in which such interest is credited by bank. For the remaining quarters, he is not required to submit Form 15G/ Form 15H again.
- Situation 3: During the financial year, Mr. A has opened a new fixed deposit account with another bank.
- ❖ In this case, since Mr. A will receive interest income from two different bank (i.e. deductor), he is required to submit Form 15G/ Form 15H to another the bank separately in order to avoid deduction of tax at source from another bank.

- Situation 4: During the financial year, Mr. A has opened a new fixed deposit account but with same bank, interest is being credited on quarterly basis.
- ❖ In this case, since a new investment has been made by Mr. A in form of a new fixed deposit, he has to submit a new Form 15G/15H to the same bank declaring particulars of change in estimated total income along with detail of his old investment and declaration.

- □ Situation 5: While filing Form 15G/15H to bank, Mr. A has mentioned only interest income as his estimated total income. However during the financial year, he let out his house property and started earning rental income.
- In this case, Mr. A is required to submit new Form 15G/15H to bank though he has not made any new investment with same bank. As per notification (Supra), new Form 15G/15H is to be filed in every situation where the estimated total income of taxpayers changes. Since, Mr. A has let out his house property and earning rental income, he is required to furnish new Form 15G/15H to bank declaring particulars of his rental income along with detail of his old investment.

Section 198 - Tax Deducted at Source shall be deemed to be income received

- All sums deducted in accordance with the foregoing provisions of this Chapter shall, for the purpose of computing the income of an assessee, be deemed to be income received:
- □ Provided that the sum being the tax paid, under sub-section (1A) of section 192 for the purpose of computing the income of an assessee, shall not be deemed to be income received:
- □ [Provided further that the sum deducted in accordance with the provisions of section 194N for the purpose of computing the income of an assessee, shall not be deemed to be income received.

Section 198 - Tax Deducted at Source shall be deemed to be income received

- ☐ Tax deducted at source shall be deemed to be income received. Accordingly, it shall be considered for the purpose of computing the income of assessee.
- ♣ E.g. Mr. C received interest of ₹ 54,000/- after deduction of ₹ 6,000/as TDS. The income of Mr. C will be ₹ 60,000/- i.e including the portion of TDS.
- However in the following two cases, Tax deducted will not form part of income-
- TDS contributed by the employer on non-monetary perquisites provided to employee u/s 192(1A).
- TDS deducted by banks, post offices, cooperative banks u/s 194N

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Provisions under Rule 37BA

- ☐ According to section 199 of income tax act the credit of the TDS so deducted shall be given as per Rule 37BA.
- □ According to following clauses of rules 37BA, credit shall be given in the given proportion: –
- (i) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.
- (ii) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

TDS/TCS Statement > Online Filing

- □ Should I file copies of certificate for no deduction or concessional deduction of tax along with the e-TDS/TCS return?
- No, you need not file certificates for no deduction or concessional deduction of TDS alongwith the e-TDS/TCS return. This is not required in case of any quarterly statements.
- What value is to be provided in Annexure II of 24Q, Q4 statement when the landlord does not have PAN and the Annual rent payment exceeds ₹ 1,00,000?
- □ Deductor is required to select any of the below values under PAN field (in case of non-availability of PAN) and file your statement.
- 1. Payment made to Government organization (Central/State only):

 This applicable when landlords are Government organizations (i.e. Consultant. Reached at nswain2008@ymail.com

Q&A

