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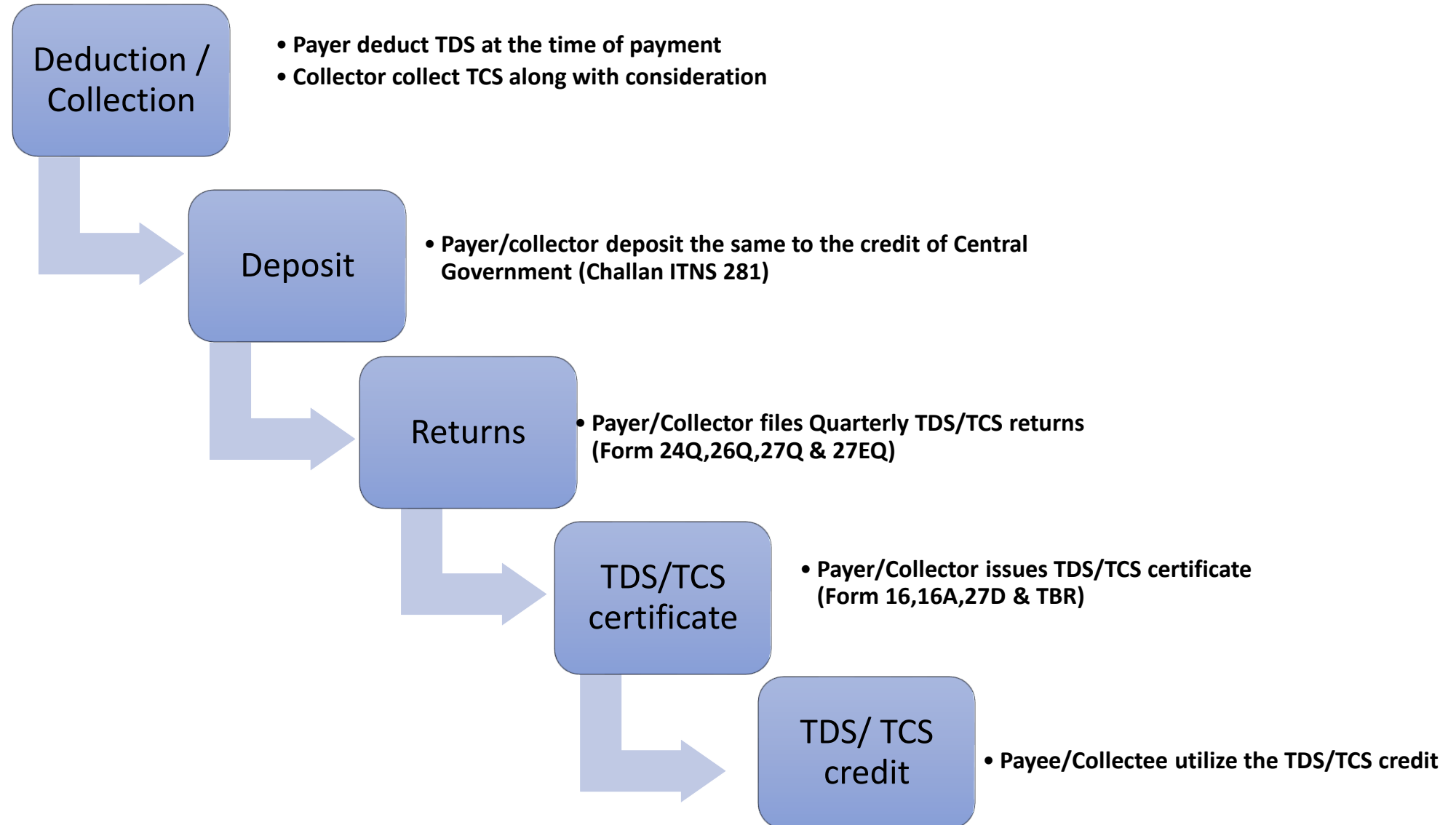
**TDS / TCS Compliance under Income Tax Act 1961**

# What is TDS/TCS

- It is a way of collecting the Income Tax in advance
- Introduced on the principal of “ Pay as you earn”
- Any payment covered under TDS/TCS provisions shall be paid after deducting TDS/collected along with TCS at a prescribed rate.
- Onus of compliance is on payer (in case of TDS) or collector (In case of TCS) not on the actual tax payer.
- Government uses it as a tool to curb tax evasion.
- Levied vide Sec.4(2) read with Chapter XVII-B(TDS) Chapter XVII-BB (TCS)



# TDS/TCS Nutshell



# TDS/TCS Major Sections

Sl No	Section	Nature	Threshold	Rate	Remarks
1.	Sec 192	Salary	Slab Rates	Slab Rates	-
2.	Sec 192A	Premature withdrawal from PF	50,000	10%	-
3.	Sec 194	Dividend	5,000	10%	-
4.	Sec 194A	Interest (Other than securities)	5,000	10%	-
5.	Sec 194C	Payment to Contractors	Single Payment – 30,000 Aggregate – 1,00,000	1% 2%	Individual / HUF Others
6.	Sec 194H	Commission	15,000	5%	
7.	Sec 194I	Rent	2,40,000	2% 10%	P&M L&B, F&F
8.	Sec 194IA#	Transfer of Immovable property	50,00,000	1%	26QB & Form 16B

# TDS/TCS Major Sections

Sl No	Section	Nature	Threshold	Rate	Remarks
9.	Sec 194J	<ul style="list-style-type: none"> <li>Fee for Technical Services</li> <li>Operation of call Centre</li> </ul>	30,000	2%	-
		<ul style="list-style-type: none"> <li>Royalty in nature of sale consi.</li> <li>Distribution/exhibition of films</li> <li>Fee for Professional Services</li> <li>Director remuneration/fee</li> </ul>	30,000	10%	-
10.	Sec 194Q	TDS on Purchase of goods	50,00,000*	0.1%	-
11.	<b>Sec 194R</b>	<b>TDS on Benefit/Perquisite</b>	<b>20,000</b>	<b>10%</b>	<b>01-07-22</b>
12.	Sec 195	Payment to Non Residents	-	Rates in force	Dealt separately
13.	Sec 206C(1)	TCS on scrap	-	1%	-
14.	Sec 206C (H)	TCS on sale of goods	50,00,000*	0.1%	-

(\* ) TDS/TCS will be applicable only on amount in excess of Rs.50,00,000/-

# Special TDS rates

Section	Sec 206AA(TDS)/Sec206CC(TCS)	Sec 206AB(TDS)/206CCA(TCS)
Applicability	In case of Non Furnishing of PAN	In Case of specified persons who <ul style="list-style-type: none"> <li>- Not filed ITR of previous <b>one</b> year</li> <li>- Aggregate TDS/TCS credit &gt; 50,000</li> </ul>
Rate of TDS	Higher of <ul style="list-style-type: none"> <li>- Rate specified</li> <li>- 20% in case of TDS</li> <li>- 5% in case of 194Q/TCS on Scrap</li> <li>- 1% in case of TCS on sales</li> </ul>	Higher of <ul style="list-style-type: none"> <li>- Double the Rate specified</li> <li>- 20%(TDS)/5%(TCS)</li> </ul>
In case LDC	LDC not applicable	LDC not applicable
15G/ 15H	Not applicable	Not applicable
Exception	In case of Non Resident on satisfaction of following (Rule 37BC) <ul style="list-style-type: none"> <li>- Long term bonds u/s 194LC</li> <li>- Interest/Royalty/FTS/Dividend/CG u/s 195</li> <li>- Name, Contact, Email, TIN, TRC &amp; Address submitted</li> </ul>	In case of Non Resident who does not have PE in India. In case person not required to file ITR and notified by central government in official gazette

# TDS/TCS Due Dates

Sl No	Activity	Form	Frequency	Due Dates
1.	Deposit of TDS	ITNS 281	Monthly	<b>For Apr to Feb</b> – 7 <sup>th</sup> day of next Month <b>For March</b> – 30 <sup>th</sup> April
2.	Deposit of TCS	ITNS 281	Monthly	<b>For Apr to Mar</b> – 7 <sup>th</sup> day of next Month
3.	TDS Return Filing	24Q – Salary 26Q – Non - Salary 27Q – Non - Resident	Quarterly	<b>For Q1</b> – 31 July <b>For Q2</b> – 31 Oct <b>For Q3</b> – 31 Jan <b>For Q4</b> – 31 May
4.	TCS Return Filing	27EQ – TCS	Quarterly	<b>For Q1</b> – 15 July <b>For Q2</b> – 15 Oct <b>For Q3</b> – 15 Jan <b>For Q4</b> – 15 May
5.	TDS Certificate	Form 16	Annually	15 June
6.	TDS Certificate	Form 16A/TBR	Quarterly	15 days TDS Return due date
7.	TCS Certificate	Form 27D	Quarterly	15 days TDS Return due date
8.	TDS Certificate	Form 26QB & Form 16B	Each	30 Days from end of month

# TDS/TCS – When not required

Sl No	Section	Description	Rate
1.	Sec 196	Any Sum payable to <ul style="list-style-type: none"><li>- The Government, RBI, Mutual Fund</li><li>- Corporation under Central Act whose Income is exempt (Circular No 18/2017 Dt 29.05.2017)</li></ul>	Nil
2.	Sec 197/206C(9)	Application to Assessing Officer in Form 13	Nil/Lower Rate
3.	Sec 197A(1A)	Self Declaration in Form 15G	Nil
4.	Sec 197A(1C)	Self Declaration in Form 15H by senior Citizen	Nil
5.	Circular 18/2017	Payment made to <a href="#">specified entities</a> whose income is exempt unconditionally u/s 10 and not required to file ROI u/s 139	Nil
6.	Sec 206C(1A)	Declaration in Form 27C that used for manufacturing/power generation (Not Trading)	Nil
7.	<a href="#">Notification 21/2012</a>	software acquired under section 194J	Nil
8.	Circular 35/2016	Lumpsum Lease premium/One time Upfront lease charges (Not adjusted against periodic Rent)	Nil TDS u/s 194I



# Consequences for Non deduction



as per section 40(a)(ia),

- > any sum paid to resident would attract 30% disallowance
- > Any sum paid outside India or to Non Resident which is chargeable to tax in India would attract 100% disallowance



As per Section 201

- > If fails to deduct and Deposit @1% for every month or part of the month
- > If fails to deposit after deducting @1.5% for every month or part of the month



As per Section 271C

- > Penalty of an amount equal to tax not deducted or paid could be imposed



Section 40(a)(ia) refers to the nature of the default and the consequence of the default.

The default is a failure to deduct the tax at source under Chapter XVII-B or after deduction the failure to pay over the same to the Government account.

The term "payable" only indicates the type or nature of the payments by the assesseees to the persons/payees referred to in section 40(a)(ia), such as, contractors. ... The consequences under section 40(a)(ia) would only operate on account of failure to deduct tax where the tax is liable to be deducted under the provisions of the Act and in particular Chapter XVII-B thereof.

It is in that sense that the term "payable" has been used. The term "payable" is descriptive of the payments which attract the liability to deduct tax at source. It does not categorize defaults on the basis of when the payments are made to the payees of such amounts which attract the liability to deduct tax at source."

## Some of the interesting rulings

- *. In the case of Merilyn Shipping & Transports v. Addl. CIT [2012] 20 taxmann.com 244 (Visakhapatnam) it was held by Special Bench of ITAT, Vishakhapatnam, that the provisions of section 40(a)(ia) of the Act would apply only to the amount which remained payable at the end of the relevant financial year and could not be invoked to disallow the amount which had actually been paid during the previous year without deduction of tax at source. The order of the Special Bench has since been put under interim suspension by the Andhra Pradesh High Court*

- *The Hon'ble Calcutta High Court and Hon'ble Gujarat High Court in the case of Commissioner of Income-tax, Kolkata-XI v. Crescent Exports Syndicate [2013] 33 taxmann.com 250 (Calcutta) and Commissioner of Income-tax-IV v. Sikandarkhan N Tunvar [2013] 33 taxmann.com 133 (Gujarat) respectively, have held that section 40(a)(ia) of the Act would cover not only the amounts which are payable at the end of the previous year but also which are payable at any time during the year,*
- *The Hon'ble High Courts have further held that the intention of the legislation was to disallow certain types of expense, subject to provisions of Chapter XVII-B which at payable at any time during the year but no tax was deducted at source or if deducted was not paid within the stipulated time. There is no such condition that amount should remain payable at the end of the year*

- *The Hon'ble Allahabad High Court in CIT v. Vector Shipping Service (P.) Ltd. [2013] 38 taxmann.com 77 (Allahabad) has affirmed the decision of the Special Bench in Merilyn Shipping that for disallowance under section 40(a)(ia) of the Act, the amount should be payable and not which has been paid during the year. However, the decisions of the Hon'ble Gujarat and Calcutta High Courts (supra) were not brought to the attention of the Hon'ble Allahabad High Court.*

# TDS u/s 195 – Other Sums paid to Non Resident

## Sec 195

### Chargeability:

1. Paid to Non Resident/ Foreign Company
2. Interest / Other Income Chargeable to Tax in India
3. Credit or Payment which ever is earlier
4. TDS at the rates in force or DTAA Rate which ever is Beneficial
5. Any sum other than Salary
6. Deductor Can be Resident or Non Resident

### Lower/Nil Deduction:

1. Deductor Can apply for LDC u/s 195(2) (Form 15E)
2. Non Resident/Foreign Company can apply for LDC u/s 195(3) (Form 15D)

### Furnishing of Information:

1. Irrespective of whether TDS is deducted or not, Form 15CA and / or Form 15CB is to be furnished. Refer rule 37BB

# Discussion on any questions

