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CERTIFICATE COURSE ON TDS

Today's Content – Consequences of failure to deduct TDS/TCS

I. Why Penal provisions in Laws

The need for penal provisions in Indian laws arises from the necessity to maintain order, ensure justice, deter misconduct, and uphold societal and governmental integrity. Without penalties, laws would lack enforceability, and violations would go unchecked, undermining the very fabric of governance and civil society.



II. Penal Provisions for TDS Non-Compliance under the Income Tax Act, 1961

Tax Deducted at Source (TDS) is an essential mechanism under the Indian Income Tax Act to ensure timely tax collection at the source of income. Non-compliance with TDS provisions attracts penalties, interest, and prosecution under the Act. Below are the key penal provisions:

1. Non-Deduction or Short Deduction of TDS (Section 201(1))

- **Applicability:** If a person fails to deduct TDS or deducts less than the required amount.
- **Penalty:**
 - The defaulter is deemed an **assessee-in-default** and is liable to pay an amount equal to the TDS not deducted.
 - However, if the deductee has paid the tax and filed a return, the deductor may avoid being treated as **an assessee-in-default**, subject to filing Form 26A by a Chartered Accountant.

2. Interest for Non-Deduction or Late Deduction (Section 201(1A))

- **Applicability:** If TDS is not deducted or deducted late.
- **Interest Rate:**
 - **1% per month** or part thereof from the date on which TDS was deductible until the actual deduction.

3. Late Payment of TDS (Section 201(1A))

- **Applicability:** If TDS deducted is not deposited with the government within the prescribed time.
- **Interest Rate:**
 - **1.5% per month** or part thereof from the date of deduction to the date of deposit.

4. Late Filing of TDS Return (Section 234E)

- **Applicability:** If TDS returns (Form 24Q, 26Q, etc.) are not filed within the due date.
- **Penalty:**
 - ₹200 per day for each day of delay, subject to the total amount of TDS deducted.

5. Filing Incorrect TDS Statement (Section 271H)

- **Applicability:** If the TDS statement is inaccurate, incomplete, or filed after the prescribed time.
- **Penalty:**
 - Minimum: ₹10,000
 - Maximum: ₹1,00,000
- **Exceptions:** No penalty if:
 - Delay is due to reasonable cause.
 - The TDS is deposited with interest, and the return is filed before the expiry of one **month** from the due date.

6. Failure to Issue TDS Certificates (Section 272A(2)(g))

- **Applicability:** If the deductor fails to issue Form 16 (for salaried employees) or Form 16A (for non-salaried cases) within the prescribed time.
- **Penalty:**
 - ₹100 per day for each certificate not issued, subject to the total amount of TDS deducted.

7. Prosecution for Wilful Failure to Deduct/Pay TDS (Section 276B)

- **Applicability:** For willful failure to deduct TDS or deposit TDS with the government.
- **Penalty:**

- **Punishment:** Rigorous imprisonment ranging around 3 month to 7 years along with a fine.

8. Disallowance of Expenses for Non-Deduction or Late Deduction (Section 40(a)(ia))

- **Applicability:** If TDS is not deducted or deposited within the due date for filing the income tax return.
- **Penalty:**
 - The corresponding expenditure is **disallowed** as a deduction while computing the income under the head **Profits and Gains from Business or Profession**.
 - If TDS is deducted and deposited in the subsequent year, the expense can be claimed in that year.

Extract of Section 40(a)(ia) of the Income Tax Act,1961 – “Section 40(a)(ia) (ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid :

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the 38[resident] payee referred to in the said proviso.

9. Penalty for Non-Furnishing of PAN by Deductee (Section 206AA)

- **Applicability:** If the deductee fails to provide a valid PAN to the deductor.
- **Impact:**

- TDS is deducted at a higher rate: **20% or the prescribed rate**, whichever is higher.

10. Other Relevant Provisions

- **Section 271C:**
 - **Applicability:** Failure to deduct TDS or deposit TDS.
 - **Penalty:** Equal to the amount of TDS not deducted or not paid.
- **Section 271CA:**
 - **Applicability:** Failure to collect tax at source (TCS).
 - **Penalty:** Equal to the amount of tax not collected.

Summary Table of Penal Provisions

| Nature of Default | Relevant Section | Penalty/Interest |
|-------------------------------------|--------------------|----------------------------------|
| Non-deduction/short deduction | Section 201(1) | Amount of TDS not deducted |
| Late deduction | Section 201(1A) | 1% per month |
| Late payment | Section 201(1A) | 1.5% per month |
| Late filing of TDS return | Section 234E | ₹200/day |
| Incorrect TDS statement | Section 271H | ₹10,000 to ₹1,00,000 |
| Failure to issue TDS certificate | Section 272A(2)(g) | ₹100/day |
| Wilful non-compliance (prosecution) | Section 276B | 3 months to 7 years imprisonment |
| Disallowance of expense | Section 40(a)(ia) | Disallowance of expenditure |
| Non-furnishing of PAN | Section 206AA | Higher TDS rate (20% or more) |

Key Takeaways

1. Timely deduction and deposit of TDS is critical to avoid penalties and interest.
2. Ensure accurate filing of TDS returns and issue of TDS certificates within prescribed deadlines.
3. Maintain proper records of TDS transactions to respond to any notices or audits.
4. Use reconciliation tools to match Form 26AS and TDS returns to avoid mismatches.

III. Consequences of Failure to Collect Tax at Source (TCS) under the Income Tax Act, 1961

Tax Collected at Source (TCS) is a mechanism where a seller collects tax from the buyer at the time of specified transactions. Failure to collect or remit TCS has significant consequences under the Income Tax Act, 1961. Below is an in-depth analysis:

1. Failure to Collect TCS (Section 206C)

If a person responsible for collecting TCS fails to do so, they are considered an **assessee-in-default** under the Income Tax Act. This attracts:

- **Liability to Pay:** The collector is liable to pay the amount of TCS not collected or short-collected, along with interest.
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2. Interest on Non-Collection or Late Collection (Section 206C(7)(a))

- **Applicability:** If TCS is not collected or collected late.
 - **Interest Rate:**
 - **1% per month** or part thereof, from the date on which TCS was required to be collected until the date of collection.
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3. Non-Payment of TCS to the Government (Section 206C(7)(b))

- **Applicability:** If TCS collected is not deposited with the government within the prescribed time.
 - **Interest Rate:**
 - **1.5 % per month** or part thereof, from the date of collection to the date of deposit.
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4. Penalty for Failure to Collect or Pay TCS (Section 271CA)

- **Applicability:** When a person fails to collect or pay TCS as required under the Act.
 - **Penalty:** Equal to the amount of TCS that was not collected or not paid.
 - **Imposition Authority:** Joint Commissioner of Income Tax (JCIT).
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5. Prosecution for Wilful Failure to Collect/Pay TCS (Section 276BB)

- **Applicability:** If a person willfully fails to collect or deposit TCS to the government.
 - **Punishment:**
 - Rigorous imprisonment of a minimum of **3 months**, which may extend to **7 years**, along with a fine.
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6. Disallowance of Expense for Buyer (Section 40(a)(ia))

- **Applicability:**
 - If a buyer fails to pay the TCS amount to the seller, the corresponding expenditure may not be allowed as a deduction while computing taxable income.
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7. Late Filing of TCS Return (Section 234E)

- **Applicability:** For failure to file TCS returns (Form 27EQ) within the prescribed due dates.
 - **Penalty:**
 - **₹200 per day** for each day of delay, subject to the total TCS amount.
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8. Filing Incorrect TCS Statement (Section 271H)

- **Applicability:** If the TCS return is inaccurate, incomplete, or filed after the prescribed time.
 - **Penalty:**
 - Minimum: ₹10,000
 - Maximum: ₹1,00,000
 - **Exceptions:**
 - No penalty if TCS is paid with interest and the correct statement is filed before the expiry of one year from the due date.
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9. Higher TCS Rates for Non-Furnishing of PAN (Section 206CC)

- **Applicability:** If the buyer fails to furnish a valid PAN.
- **Impact:**
 - TCS is collected at **twice the applicable rate** or **5%**, whichever is higher.

Summary of Consequences

| Nature of Default | Section | Consequences |
|-------------------------------------|--------------------|---|
| Non-collection of TCS | Section 206C | Liability to pay the TCS amount not collected |
| Late collection of TCS | Section 206C(7)(a) | Interest at 1% per month |
| Non-payment of TCS to government | Section 206C(7)(b) | Interest at 1.5 % per month |
| Penalty for failure to collect/pay | Section 271CA | Equal to the TCS amount |
| Wilful non-compliance (prosecution) | Section 276BB | Imprisonment of 3 to 7 years + fine |
| Late filing of TCS return | Section 234E | ₹200/day |
| Incorrect TCS statement | Section 271H | ₹10,000 to ₹1,00,000 |
| Higher rate for missing PAN | Section 206CC | TCS at higher rate or 5% |

Preventive Measures

- Set Up Automated Systems:** Use software to track TCS collection and filing deadlines.
 - Timely Compliance:** Ensure TCS is collected, deposited, and reported within the stipulated timelines.
 - Verify Buyer Details:** Obtain PAN from buyers to avoid higher TCS rates.
 - Reconcile Statements:** Regularly reconcile TCS collected with Form 26AS and filed returns to avoid mismatches.
 - Train Staff:** Conduct regular training for staff handling TCS compliance.
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Conclusion

Failure to comply with TCS provisions leads to significant financial, legal, and reputational consequences. Timely and accurate compliance ensures smoother business operations and avoids unnecessary penalties or litigation.

Few Important Rulings

The Supreme Court of India has adjudicated several significant cases concerning Tax Deducted at Source (TDS) under the Income Tax Act, 1961. Notable judgments include:

1. **Palam Gas Service v. Commissioner of Income Tax (2017):**

- **Issue:** Interpretation of the term "payable" in Section 40(a)(ia) regarding disallowance of expenses for non-deduction of TDS.
- **Ruling:** The Court held that the term "payable" includes amounts that are "paid" during the year. Therefore, expenses that have been paid without deducting TDS are subject to disallowance under Section 40(a)(ia).

2. **Commissioner of Income Tax v. M/s. Acer India Pvt. Ltd. (2024):**

- **Issue:** Applicability of TDS under Section 194-H on payments received by distributors from customers.
- **Ruling:** The Supreme Court upheld that TDS does not apply to income from payments received by distributors from customers, dismissing the Special Leave Petition filed by the Revenue.

3. **Commissioner of Income Tax v. Vodafone India (2024):**

- **Issue:** Obligation of Vodafone India to deduct TDS on payments made to non-resident telecom operators.
- **Ruling:** The Supreme Court ruled that Vodafone India is not obligated to deduct TDS on such payments, aligning with its earlier judgment in Engineering Analysis Centre of Excellence Private Limited v. Commissioner of Income Tax.

4. Christian Nuns and Priests' Salary Taxation Case (2024):

- **Issue:** Applicability of TDS on salaries received by nuns and priests working in aided educational institutions.
- **Ruling:** The Supreme Court dismissed appeals challenging the application of TDS on their salaries, stating that the law is common for everyone and does not provide exemptions based on religious positions.

These judgments underscore the Supreme Court's role in interpreting TDS provisions, ensuring compliance, and clarifying ambiguities within the Income Tax Act.

