



Rawani & Co.
Chartered Accountants



CONSEQUENCES OF DEFAULT

21/01/2017

Compiled by CA Avinash Rawani



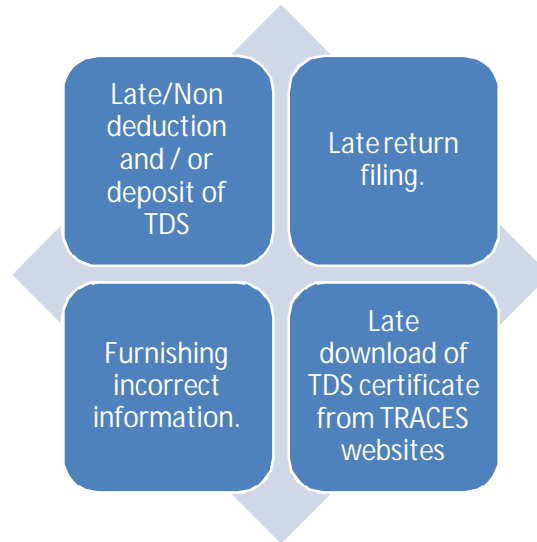
- The material contained in the ensuing slides is for general information, compilation is from various websites, views of the experts and the views of the speaker compiled purely for general discussion at the seminar and it should not be construed and binding either on the part of the Speaker or the Forum. It is not intended to be legal advice or opinion on any particular matter. Since the features of the website are dynamic in nature, it is advised in your own interest to refer to Government publications including the Direct Tax Laws and Rules before arriving to any final conclusion. Participants are requested to refer to the Act, Laws, Rules and decisions of the various courts of law from time to time depending on a particular case to case as may be applicable to them or to their client.



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Why Defaults Happen



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Categories of Defaults :

SUBSTANTIVE :

- Deduction of tax at source :
 - Failure to deduct tax at source
 - Delay in the deduction of whole or part amount of tax
- Payment of tax deducted at source :
 - Failure to deposit the whole or part of TDS (non-deposit)
 - Delay in the payment of whole or part amount of TDS (short deposit or late deposit)

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Types of TDS Defaults :

PROCEDURAL :

III. Failure to furnish or delay in furnishing the prescribed statements u/s 200(3)

- The provisions of quarterly statements of TDS have been introduced in the statute vide section 200(3) w.e.f. 01/04/2005.
- Every person responsible for deducting tax is required to file quarterly statements of TDS for the quarters ending on 30th June, 30th September, 31st December, and 31st March in each Financial Year.

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Types of TDS Defaults :

Section 200(3) contd..

The due dates as per Rule 31A for furnishing the statements are as follows :

Sr.No.	Date of Quarter ending of the Financial Year	Due Date for Office of Govt.	Due Date for any other person
1.	30 th June	31 st July	31 st July
2.	30 th September	31 st October	31 st October
3.	30 th December	31 st January	31 st January
4.	31 st March	15 th May	31 st May

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Types of TDS Defaults:

IV. Failure to issue TDS certificate u/s 203

- Issues a certificate in regard to salary
- Issues a certificate in regard to other payers.

Rule 31

The certificate of deduction of tax at source by the employer on behalf of the employee shall be in –

- Form no. 16, if the deduction or payment is u/s 192
- Form no. 16A, if the deduction is under any other provision of chapter XVII-B

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Types of TDS Defaults :

Section 203 contd...

The Certificate u/s 203 shall be furnished within due dates as specified in Rule 31 which are as follows :

Sr.No.	Form No.	Periodicity	Due Date
1.	16	Annual	By 31 st day of May of the FY immediately following the FY in which the income was paid & tax was deducted
2.	16A	Quarterly	Within 15 days from the due date for furnishing the statement of TDS under Rule 31A

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Consequences of TDS Defaults

➤ **Consequences on failure to comply with TDS/TCS provisions under the Income-tax Act, 1961 are as follows :**

- Non allowance of expenditure u/s 40(a)(i) / 40(a)(ia).
- Being treated as an assessee in default u/s 201
- Simple interest payable u/s 201(1A) on account of failure to deduct or pay tax.
- Penalty payable when assessee is in default in payment of tax u/s 221.
- Assessee liable to pay fee u/s 234E for delay in furnishing statement.
- Penalty u/s 271C for failure to deduct tax at source.

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Consequences of TDS Defaults

- Penalty u/s 271CA for failure to collect tax at source
- Penalty u/s 271H for failure to furnish the statements of tax deducted at source.
- Penalty for failure to furnish a certificate as required by section 203 or 206C.

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Consequences of TDS Defaults

A. Non allowance of expenditure u/s 40(a)(ia)

- Failure to deduct tax on interest, commission, brokerage, rent, royalty or professional fees etc.
- Having deducted, failure to pay the tax deducted within the dates prescribed or before the due date of filing the return of income u/s 139(1)
- Results in disallowance of expenditure

Saving:

- If tax is deducted & paid in the subsequent year, or paid after the end of the previous year but after due date of return u/s 139(1) then expenditure is deductible in that year.
- If established that assessee is not an assessee in default u/s 201- No disallowance.

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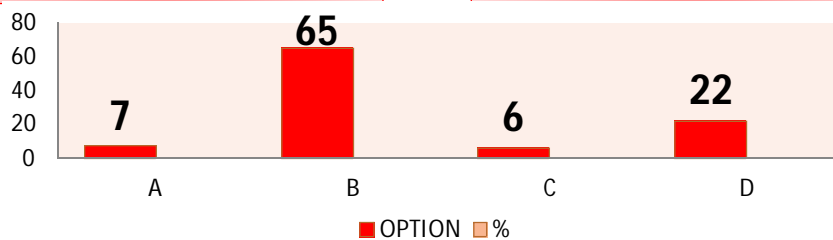
How do we react to Show Cause Notice (SCN) from TDS ?

A. Treat it like any other Notice.

B. SCN is outcome of 'system' trouble.

C. SCN is a mischief by Assessing Officer

D. No need to bother, once the dues have been paid.



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Deductor's Response to Show-Cause Notice?



Response is very poor: In about 20→25% cases

Photocopy of Return/ Challans are enclosed.

No attention paid to the direction in SCN

Person who attends, knows nothing about TDS

Generally, system is blamed.....

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Default details

- Download of default - Generated in Excel format from TDS-CPC site
- Facility available for registered TANs
- **Default details contains:**
 - List of **SHORT DEDUCTION** records
 - List of **SHORT PAYMENT** records
 - List of **LATE PAYMENT** records

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NOTICE OF THE WORK

Sr.No.	Type of Default	Default Amount (₹)	Reported as 'Interest / Others' Claimed in the Statement (₹)	Payable (₹)
1	Short Payment	0.00	0.00	0.00
2	Short Deduction	0.00	0.00	0.00
3	Interest on Payments Default u/s 201(1A)			
3(a)	Interest on Short Payment	0.00	0.00	0.00
3(b)	Interest on Late Payment	367.50	0.00	367.50
3(c)	Additional Late Payment interest against the processing of latest correction	0.00	0.00	0.00
4	Interest on Deduction Default u/s 201(1A)			
4(a)	Interest on Short Deduction	0.00	0.00	0.00
4(b)	Interest on Late Deduction	0.00	0.00	0.00
4(c)	Additional Late Deduction interest against the processing of latest correction	0.00	0.00	0.00
5	Late Filing Fee u/s 234E			
5(a)	Late Filing Levy	0.00	0.00	0.00
5(b)	Additional Late Filing levy against the processing of latest correction	0.00	0.00	0.00
6	Interest u/s 220(2)	15.00	0.00	15.00
Total Payable (₹)				382.50
Net Payable (Rounded-Off) (₹)				380.00

[View Help for Default Summary Details](#)

Summary of PAN Errors

Deductees Without PAN	Deductees With Invalid PAN
0	0

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SHORT PAYMENT REASONS

Short Payment - Reason for Short Payment default:

- Challan / Transfer Voucher details (CIN / BIN, Amount and/or TAN), Mismatch of OLTAS / G-OLTAS data with statement

Details As Per	BSR Code / 24-G Receipt Number	Date of Deposit / Transfer Voucher Date	Challan Serial Number / DDO Sr. No.	CIN / BIN Amount (₹)	TAN
OLTAS/G-OLTAS	1234567	012220133	00001	10000.00	AAAA12345
Statement	7654321	02122012	00003	20000.00	AAAA12345

- Insufficient Challan / Transfer Voucher balance (Claimed amount in the statement against the CIN / BIN > balance OLTAS for a CIN / BIN). E.g.,

Details As Per	BSR Code / 24-G Receipt Number	Date of Deposit / Transfer Voucher Date	Challan Serial Number / DDO Sr. No.	CIN / BIN Amount (₹)	Claimed Amount / Available Amount (₹)	TAN
OLTAS/G-OLTAS	1234567	22-Jun-2013	00001	10000.00	7,000 (Available Balance)	AAAA12345
Statement	7654321	02-Dec-2012	00003	20000.00	10,000 (Claimed)	AAAA12345



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Notice from TDS Department- Not to Ignore

- For Interest on delay remittance of TDS, pay the same after verification and file Revised Return.. Such payment should be under the category of Tax on Regular Assessment..
- For short deduction, verify the contents and file revise return accordingly;
- Send reply to the Notice of the Assessing Officer with a copy of the receipt of filing Revised Return.

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Defaults... Whether Legal

- It is stated that the defaults generated and displayed on the TDS-CPC website is deemed to be the NOD;
- If the errors are not rectifiable by filing e-Revised TDS Return, then to ensure that the necessary correspondence be done with the TDS Assessing Officer/TDS-CPC to avoid penalties;

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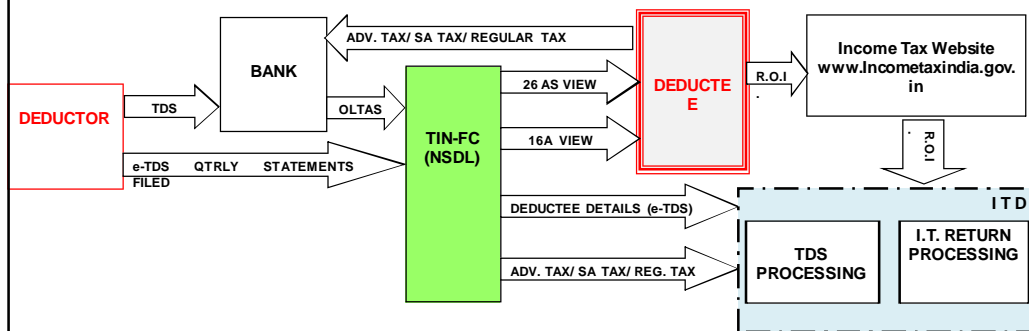
DEVELOPMENT OF STANDARD OPERATING PROCEDURES

- Matching the unconsumed challan.
- Top Deductors paying less/no tax with respect to previous financial years.
- Resolvable/Collectible TDS Demand.
- G-OLTAS reconciliation.
- Corporate connect for TDS compliance

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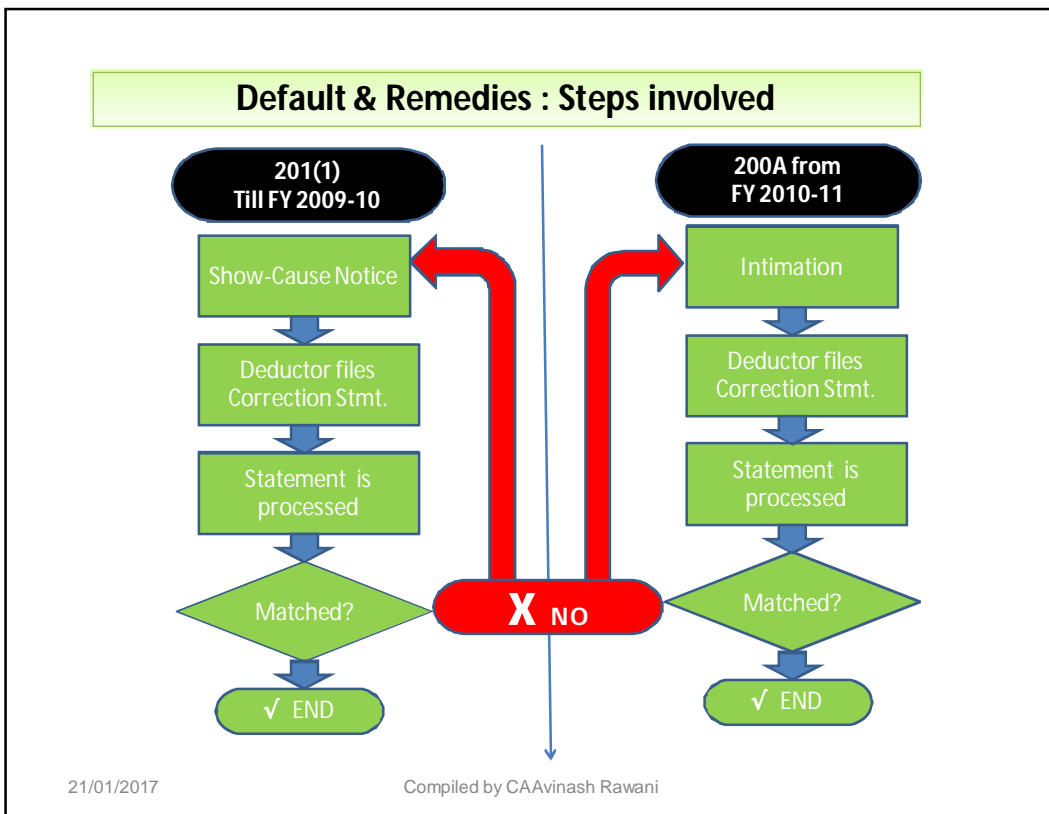
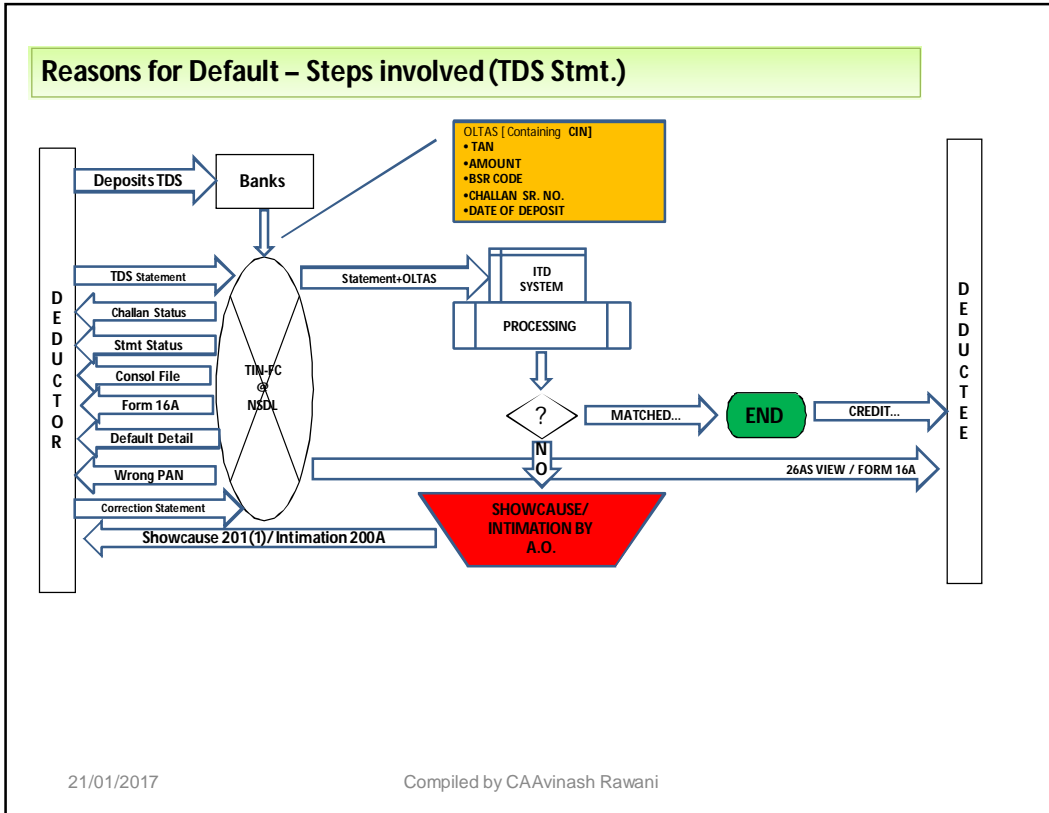
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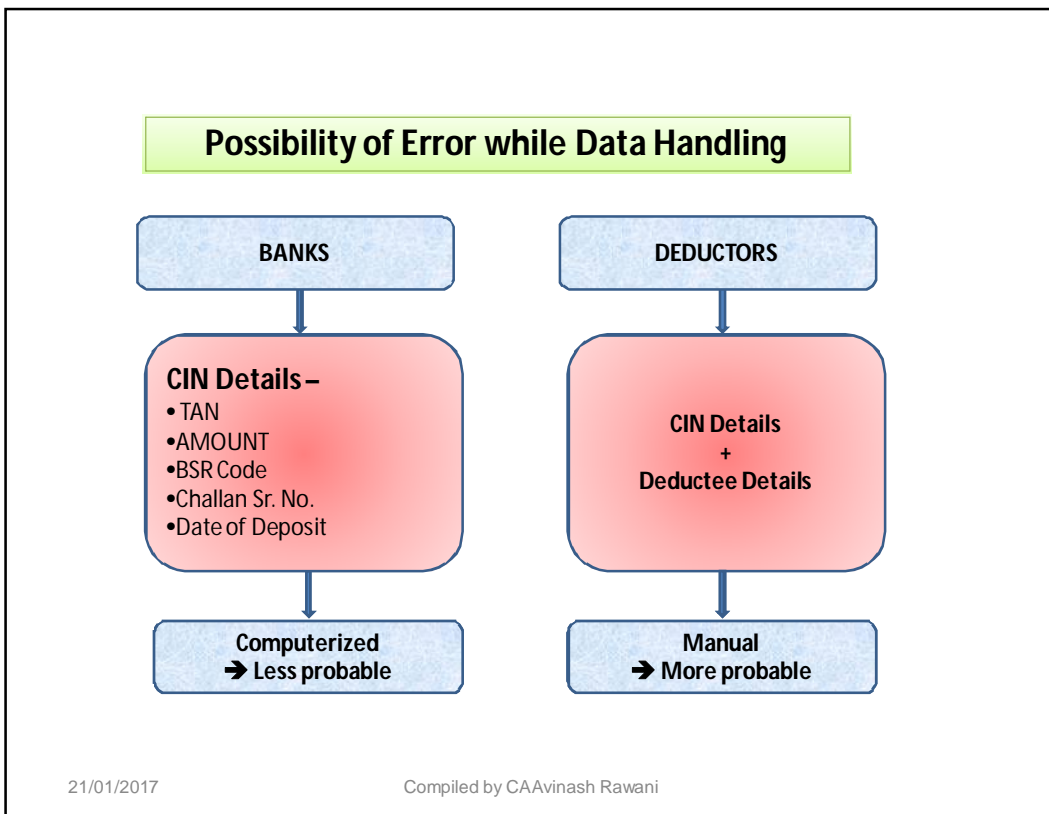
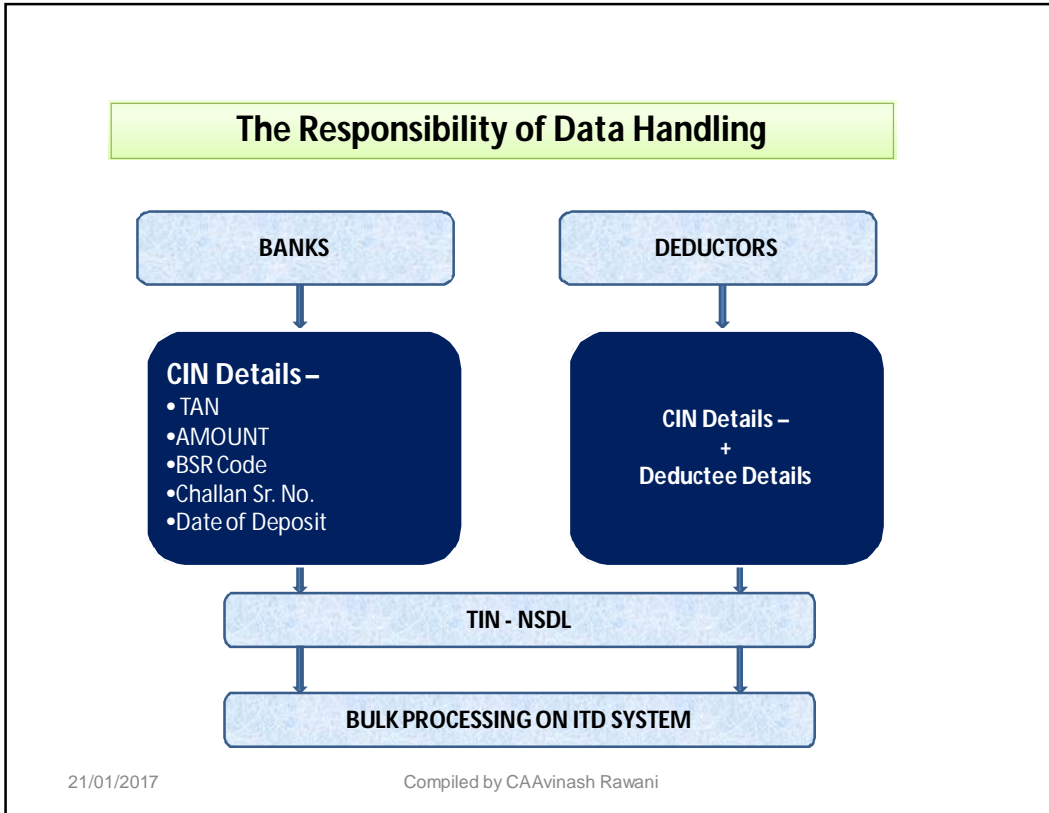
Reasons for Default – Macro-Structure



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Possibility of Error while Data Handling

BANKS (10%) [Assigning Equal Weightage to Each Variables]

- TAN
- AMOUNT
- BSR Code
- Challan Sr. No.
- Date of Deposit

TAN → Manual : Bank/Assessee

Amount → Computerized/Matched

BSR Code → Computerized

Challan Sr. No. → Computerized

Date → Computerized

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Possibility of Error while Data Handling

Deductor (90%)

- CIN Info-Manual
TAN
AMOUNT
BSR Code
Challan Sr. No.
Date of Deposit
- Deductee Details-
PAN
Section
Amount
Date of Deduction
Date of Deposit

Some Common Errors

Challan Splitting

Challan Combining

Wrong TAN/PAN data

Wrong Amount

Wrong Challan Sr. No.

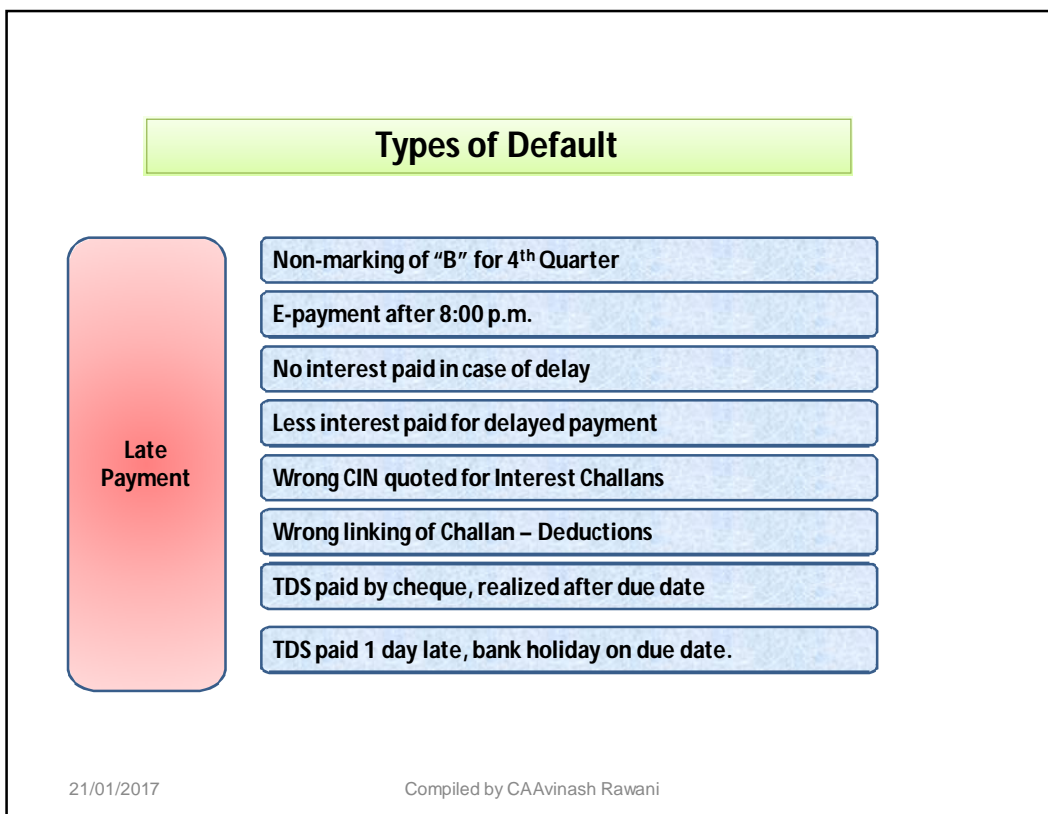
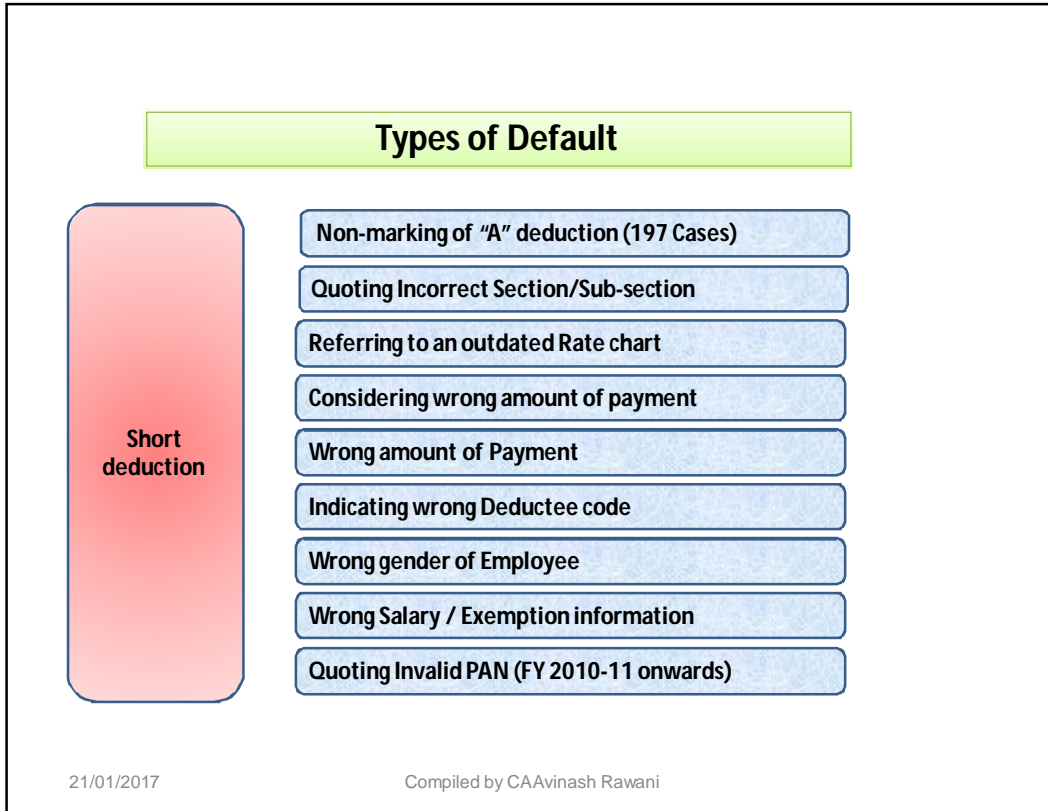
Wrong Date

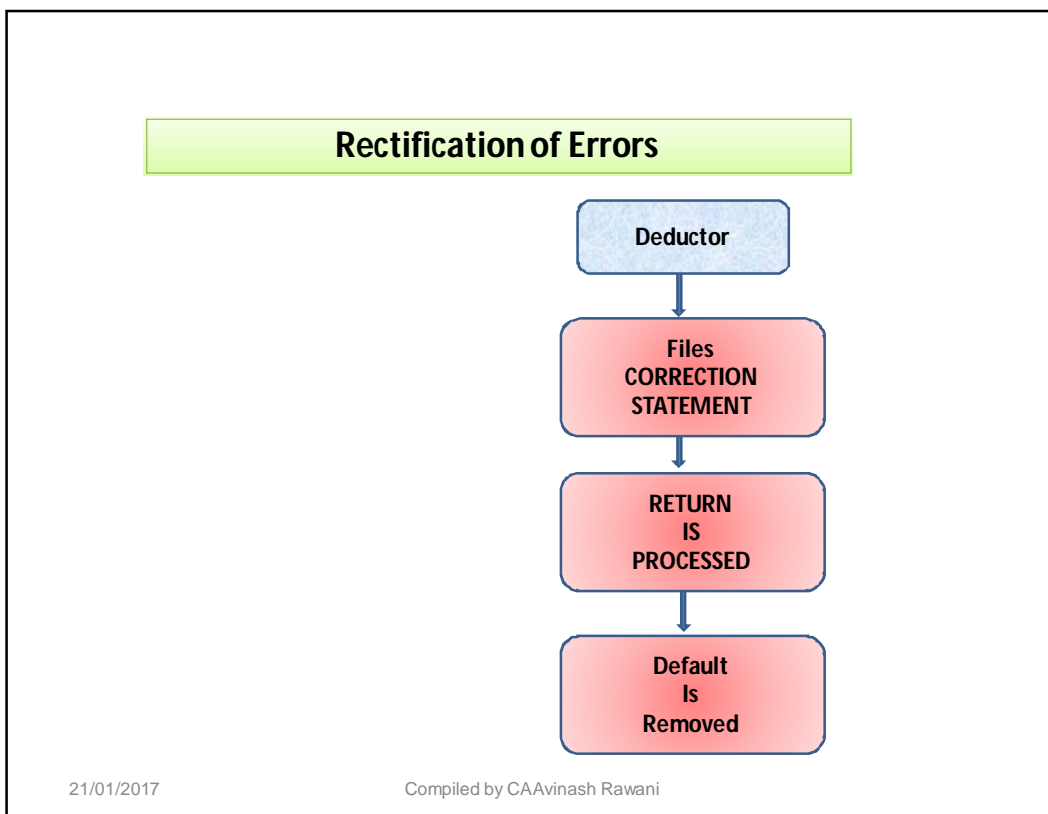
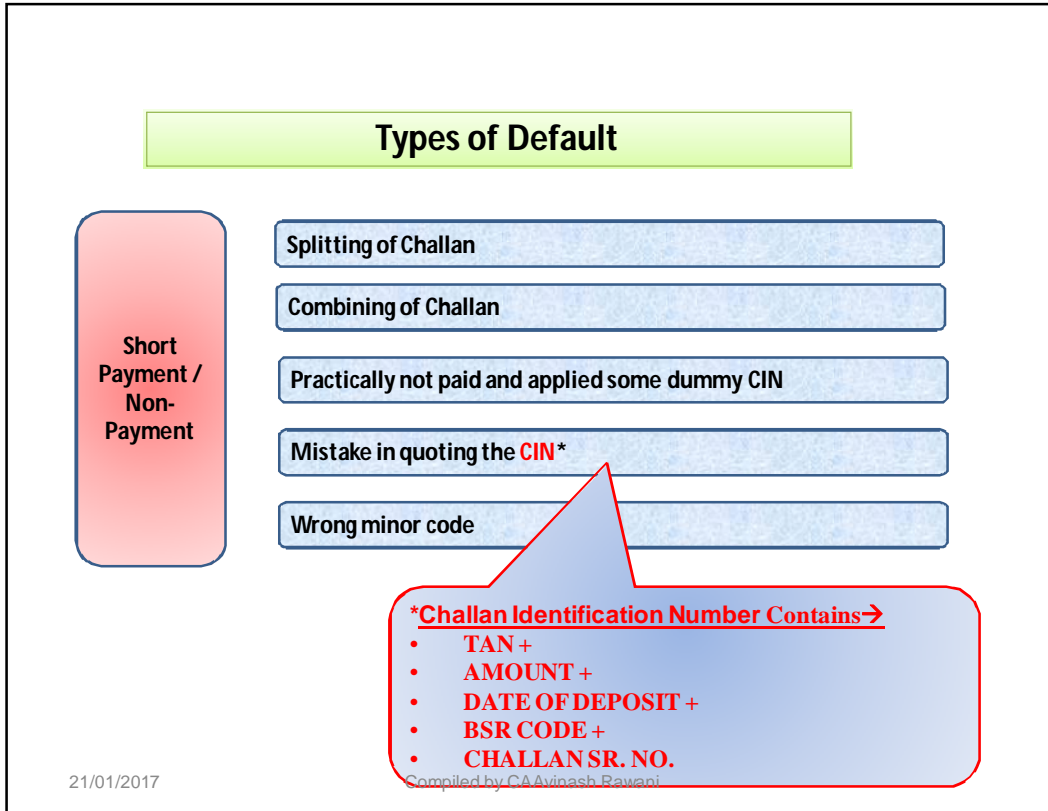
Incorrect/Invalid Lower Rate Certificate

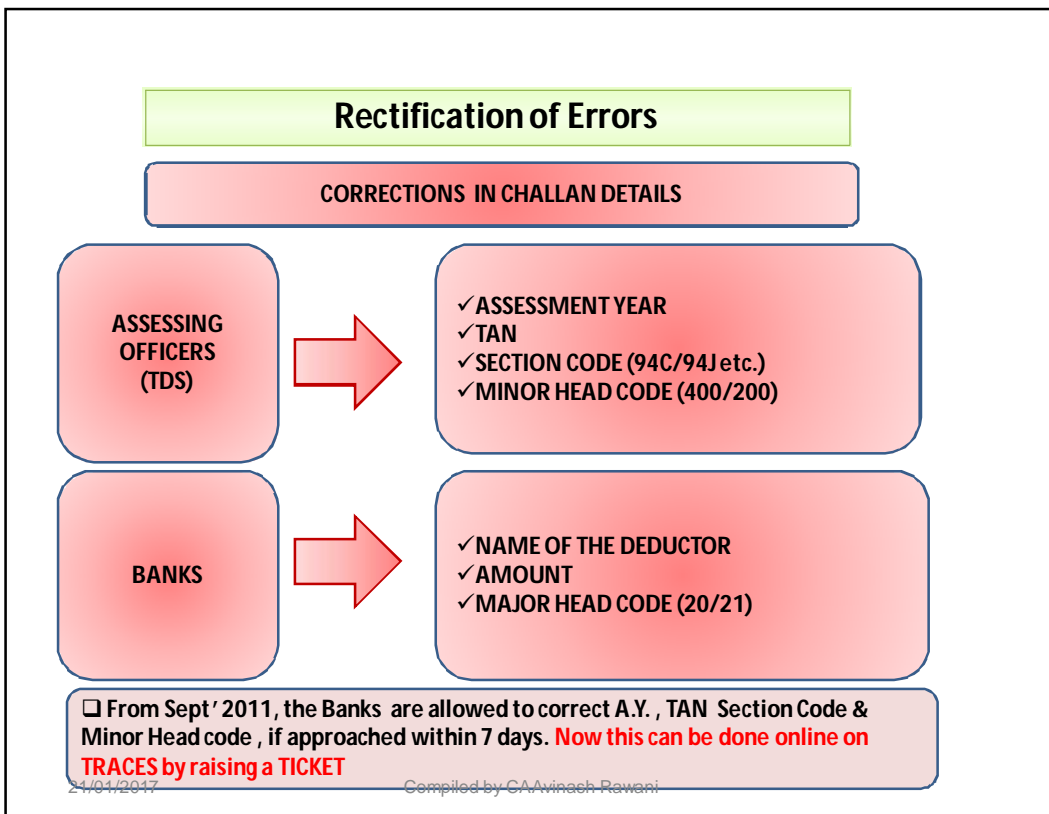
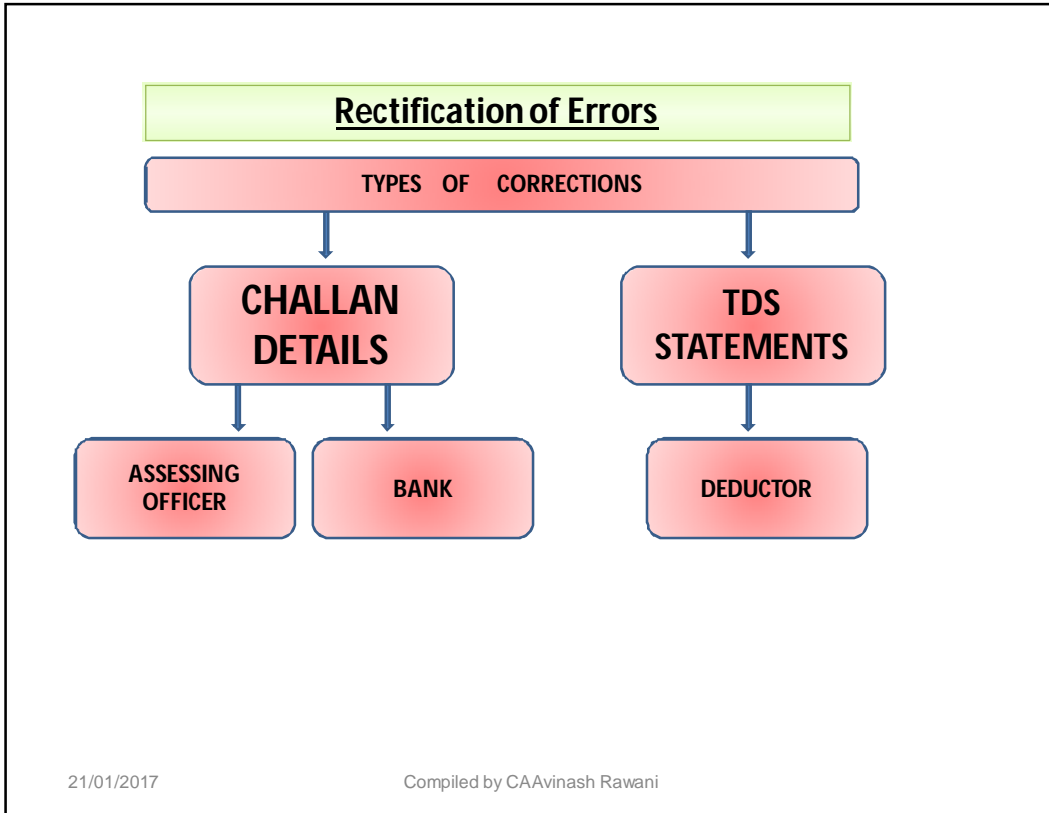
Non-Marking → "A"/ "P"/ "B"/ "C" etc.

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From 01st Sept. 2011, the Banks are allowed to correct Errors in Physical Challan as under

Correction Reqcd.	Time-limit from Challan Deposit date
TAN/PAN	Within 7 days
Assessment Year	Within 7 days
Amount	Within 7 days
Other fields (Major Head, Minor Head, Nature of payment)	Within 3 months

The time window for correction by the bank is 7 days from the date of receipt of correction request from the tax-payer.

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Reply to Online Communication From TDSpc

The screenshot displays the TDS TRACES portal interface. At the top, there is a navigation bar with links for Home, About Us, Contact Us, e-Tutorials, Related Links, and Logout. A search bar is also present. The main header includes the TDS logo (Centralized Processing Cell) and the TRACES logo (TDS Reconciliation Analysis and Correction Enabling System). The Government of India logo and the Income Tax Department name are also visible.

The main navigation menu includes Dashboard, Statements / Payments, Defaults, **Communications**, Downloads, and Profile. The 'Communications' menu is expanded, showing options: Inbox, Request for Resolution, Resolution Tracking, Declaration for Paperless Intimation, and Notices from Assessing Officer. The 'Request for Resolution' option is circled in red.

Below the navigation menu, there is a 'Request Category' dropdown menu with a 'Go' button. The dropdown list includes: --Select--, --Select--, Statement Status, Statement Rejection Reasons, Form 16 / 16A, Justification Report, Conso File, TAN-PAN Master, PAN Verification, Online Corrections, Defaults / Demand, Intimation Send, Form 26AS, Refund of Challan, KYC, Demand waive off, Extension of time against Demand Notice, Change in Communication Details, Correction Statement filed for the initiation s, Amount paid against the demand notice, and Late Filing Fee Waive off.

The page also shows a 'Welcome' message, a 'Login Date: 18-Dec-2014, 0' indicator, and a 'Done' status at the bottom left.

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Rectification of Errors

Points to be remember while depositing TDS/TCS

- Select correct minor head code (200) while making TDS/TCS deposits
- Select correct minor head code (400) while making regular TDS/TCS payments arising out of Order u/s. 201(1)/201(1A)/271C or 272A(2)(k) etc.
- Ensure due diligence in quoting TAN, section code and assessment year while making TDS/TCS deposits
- For deducting TDS/TCS refer to latest chart/rules for TDS/TCS rates
- On due date deposit tax before 20.00 hours (i.e. 8:00 p.m.) to avoid interest for late payment.

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Rectification of Errors: Consolidated TDS/TCS File

- Available to registered TANs at TIN
- **Mandatory from June 2010-11** to prepare correction return with consolidated TDS/TCS file generated each time.
- Available on online request and successful verification
- Consolidated file provided by TIN includes
 - all the updates done vide correction statements (accepted at TIN central system) filed by deductor/ collector
- Consolidated TDS/TCS file is
 - emailed at email ID in TAN account
 - available for instant download
- eTutorial on TAN registration and Consolidated file request on TIN website

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TDS / TCS – Good Practice

- Insist for PAN of deductee / employee, with a copy of **PAN CARD**
- **Verify PAN of deductee / employee** before quoting in TDS/TCS return
- **Report all transactions** where tax is deducted/collected
- In case **PAN of the deductee / employee is not available**;
 - deduct tax at higher rate
 - report such transactions in the TDS/TCS return with flag 'C' indicating tax deducted at higher rate
 - File correction statement to update deductee / employee PAN if provided subsequently
- Deduct tax as per the latest prescribed rates and correctly report the same in the TDS/TCS statement

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Consequences of TDS Defaults

- Issues :
 1. Will short deduction result in disallowance of expenditure?
 2. What is the position in regard to sums deducted and paid during the year but beyond the time as prescribed in chapter XVII B?
 3. What is the position in regard to the provisions where payees have been identified? Will there be a difference if the payees have not been identified?
 4. What is the meaning of the term "deduction"?

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Consequences of TDS Defaults

B. Tax deductor deemed to be an assessee in default u/s 201

- If an assessee fails to deduct tax at source or having deducted fails to pay, then such person shall be deemed to be an assessee in default.
- Simple interest u/s 201(1A) at the rate of 1% or 1.5% shall be payable who does not deduct or after deducting fails to pay the tax.
- Interest to be paid from the date on which such tax was deducted to the date on which such tax is actually paid.
- Form 26A to be obtained from the Practising Chartered Accountant in the specified format for allowance for expenses. (As per Finance Act, 2012 effective 1.4.2012)

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Consequences of TDS Defaults

Section 201 (contd..) Saving

- As per the Proviso inserted by Finance Act, 2012--
 - any person who fails to deduct tax, but
 - is not deemed to be an assessee in default in respect of such tax provided if the resident payee—
 - a. Has furnished return of income u/s 139;
 - b. has taken into account such sum for computation of income;
 - c. Has paid the tax due on income
 - d. A certificate to that effect is issued by his "accountant"

Issues :

- Is the insertion of the proviso retrospective?
- What is the position in case of a return of loss by the payee?
- In case of such a return of loss by the payee is the assessee still to be treated as an assessee in default?

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Consequences of TDS Defaults

C. Penalty payable when tax in default u/s 221

- Penalty u/s 221 is payable when an assessee is in default or is deemed to be in default in making the payment of tax and fails to pay the tax.
- The Assessing Officer may direct an amount of penalty payable.
- The total amount of penalty shall not exceed the amount of tax in arrears.
- The assessee shall be given a reasonable opportunity of being heard.
- No penalty shall be levied where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons.

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Consequences of TDS Defaults

C. Fee for default in furnishing statements u/s 234E

- Fee payable for failure to deliver a statement within the time prescribed in section 200(3) or the proviso to sub-section (3) of section 206C.
- A sum of rupees two hundred shall be payable for every day during which the failure continues.
- The amount of fee shall not exceed the amount of tax deductible or collectible, as the case may be.
- The amount of fee shall be paid before delivering or causing to be delivered a statement as per section 200(3) or the proviso to sub-section (3) of section 206C.

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Consequences of TDS Defaults

- The provisions of this section shall apply to a statement which is to be delivered for TDS or TCS, on or after the 1st day of July, 2012.

Issues :

- Is the payment of "Fee" mandatory?
- Is this payment for default in the nature of "Fee" as is understood or will it partake the character of a Penalty ?

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Consequences of TDS Defaults

c. Penalty for failure to deduct tax at source u/s 271C

- Failure to deduct the whole or any part of the tax—
 - As required under the provisions of Chapter XVIIIB, or
 - As required under section 115-O(2) or
 - As per second proviso to section 194B
- Penalty of the sum equal to the amount of tax which was required to be deducted or paid shall be payable.
- Any penalty imposable shall be imposed by the Joint Commissioner.
- Issue : Can a penalty be levied under both the sections, i.e., section 221 & section 271C ?

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Consequences of TDS Defaults

C. Penalty for failure to collect tax at source u/s 271CA

- Failure to collect the whole or any part of the tax under the provisions of Chapter XVIIBB.
- Penalty of the sum equal to the amount of tax which was failed to be collected shall be payable .
- Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

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Consequences of TDS Defaults

G. Penalty for failure to furnish the statements u/s 271H :

- A person shall be liable to pay penalty, if—
 - He fails to deliver a statement within the time prescribed in section 200(3) or the proviso to sub-section (3) of section 206C or;
 - Furnishes incorrect information in the statement which is required to be delivered
- The penalty payable shall be a sum which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

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Consequences of TDS Defaults

- Penalty shall not be payable u/s Sec.271H(3) if the quarterly statements for TDS or TCS were delivered before the expiry of a period of one year from the time prescribed.
- The provisions of Sec.271H are applicable in respect of the quarterly returns filed on or after 1st day of July 2012.

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Consequences of TDS Defaults

H. Penalty u/s 272A(2)(g) for failure to furnish a certificate as required by section 203 or 206C :

If any person fails –

- to furnish a certificate as required by section 203 or 206C,
- he shall pay by way of penalty, be liable to pay a sum of Rs.100 for every day during which the failure continues.

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Consequences of TDS Defaults

- i. Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B (Prosecution u/s 276B) :
 - Failure to pay to the credit of the Central Government, -
 - (a) the tax deducted at source as required by or under the provisions of Chapter XVII B ; or
 - (b) the tax payable by him under sub-section (2) of section 115-O ; or as per second proviso to section 194B,
 - Punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

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Consequences of TDS Defaults

i. Failure to pay the tax collected at source (Prosecution u/s 276BB) :

- Failure to pay to the credit of the Central Government, the tax collected by him as required under the provisions of section 206C
- Punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

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Compounding of offences

- Power to compound offences u/s 279(2)
 - Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General.
- Compounding of interest at the discretion of the authority, based on the category and nature of demand.
- Compounding according to the guidelines issued by the CBDT from time to time.
 - Prosecution initiated under IPC cannot be compounded;
 - Classification of Application under various categories of offences as per Section

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In case of No deduction return is to be filed.

- answer is **NO**.
- The filing of a NIL statement is not mandatory at present but it may be enforced in future.
- However, in case of Form 24Q4, if there is no deduction, then also you are required to E-file it.
- In case of receipt of letter from the Department, file the related reply.

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Non-Filing Reasons can be given

Dashboard **Statements / Payments** Defaults Communications Downloads

Welcome You have logged in on /

Declaration for Non - Filing

Provide details below to add the statement details for non - filing

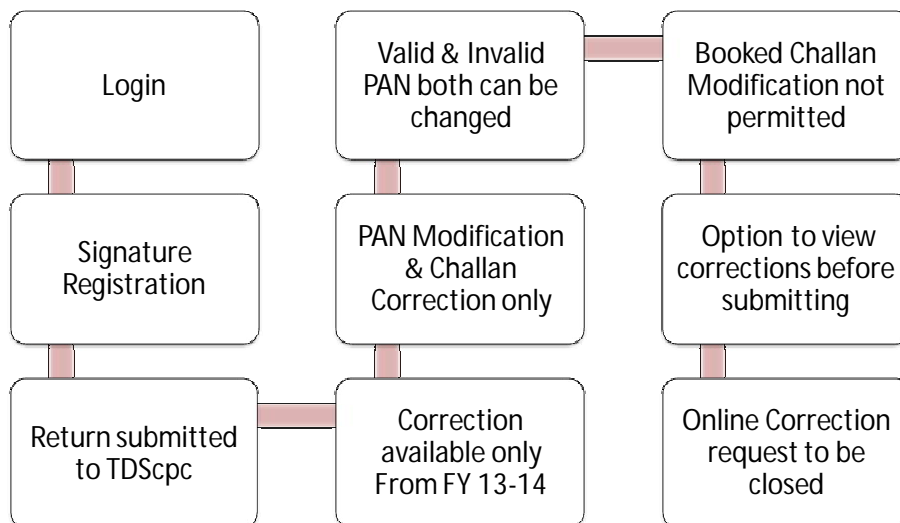
Financial Year* 2013-14 Quarter* Q1 Q2 Q3 Q4 Form Type* 24Q 26Q 27Q 27EQ

Reason* --Select--
 --Select--
 Not Liable to deduct
 No Payment made / C
 Temporarily Business
 Permanently Business
 Payment Below Thre
 Any Other Reason

Add Statement Details

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ONLINE CORRECTION SYSTEM AT GLANCE



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TDS Assessment procedure Notified

- CP of STDS Scheme notified on 15/01/2013;
- The guidelines are as per normal assessment proceedings;
- Notices to come by way of e-mail only;
- Monitoring through e-mail and communication only and no personal interference on the part of the Department or Assessee

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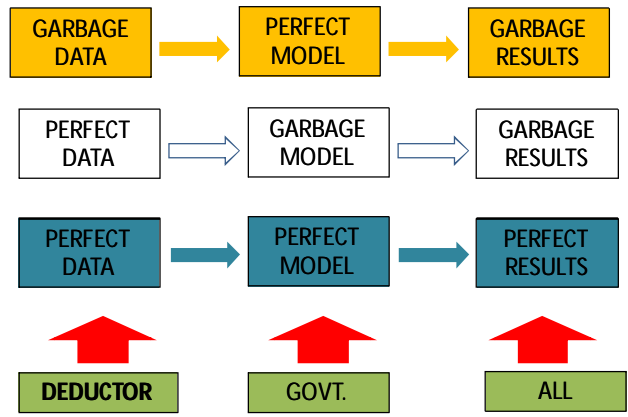
Finance Act 2012 Amendments

- Tax Residency Certificate made mandatory for application for lower or non deduction of tax by the non residents (Section 195)

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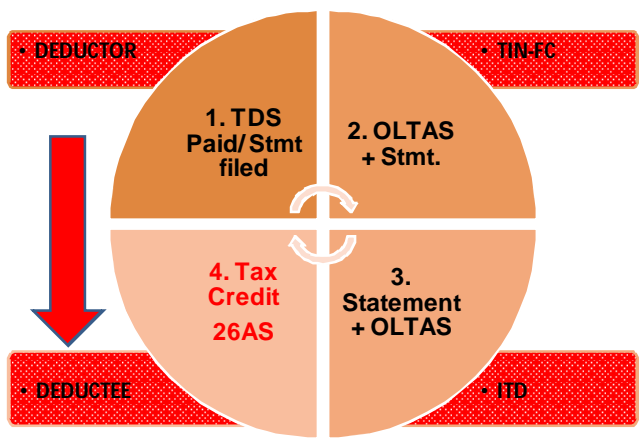
In Nutshell.....Garbage In → Garbage Out



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The Ultimate Advantage



The purpose of life is just not to be happy alone. It is to be useful, to be honorable, to be compassionate, to have it make some difference that you have lived and lived well.

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Forgiveness

The TDS Returns should be filed in such a way that it should not make

our **Life TeDious**



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