TDS Compliance

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Introduction

The provisions of TDS (Tax Deducted at Source) and TCS (Tax Collected at Source) are Governed by **Chapter XVII** (**Section 190 to 206CCA)** of the Income Tax Act, 1961 ("the Act").

TDS/ TCS is one kind of advance tax from payee point of view. Payee will get tax credit for the same.

TDS/ TCS is a mechanism built up to trace taxpayers in the Country and collection of tax in smooth manner.

Payer is under an obligation to comply with TDS provisions.

When payer is responsible to deduct TDS

- Any person making specified payments mentioned under the Income Tax Act are required to deduct TDS at the time of making such specified payment/ booking of an invoice. But no TDS has to be deducted if the person making the payment is an individual or HUF whose books are not required to be audited.
- An individual or HUF is required deduct TDS when his books of accounts are required to be audited u/s. 44AB (i.e. Tax Audit) of the Act.

Applicability of Tax Audit

Section	Particulars	Turnover
44AB(a)	Carrying on Business	Exceeds Rs. 1 Crore (Exceeds Rs. 5 Crores in case, turnover of sales and amount of expenditure in cash does not exceed 5% of such sales and expenditure)
44AB(b)	Carrying on Profession	Rs. 50 Lacs
44AB(c)	Carrying Business u/s. 44AE, 44BB, 44BBB	If assessee claims that his income is lower than deemed profit
44AB(d)	Carrying Profession u/s. 44ADA	If assessee claims that his income is lower than deemed profit
44AB(e)	Carrying on Business u/s. 44AD	If assessee's income exceeds the maximum amount which is not chargeable to income tax

Requirement of obtaining TAN by Payer

- Every assessee, who is responsible to deduct TDS should apply for TAN.
- The company should **quote correct TAN** at the time of each and every payment, else it will show that the company has not paid TDS for whatever it has deducted during respective period.
- The company should quote correct TAN at the time filing of it's TDS return.

Requirement of obtaining PAN from payee

- The payer should obtain PAN from each vendor.
- The payer should obtain PAN of the employee at the time of joining.
- Photocopy of PAN card attested by respective vendor or employee to be kept at company record.
- Correct PAN needs to be reported in TDS return. Wrong reporting may attract penal consequences.
- In absence of PAN, TDS needs to be deducted @ 20% and again same needs to be reported in respective TDS return.
- In absence of PAN, payee will not get TDS credit since Form 16/16A will not get generated from TRACES site (Transaction Based Report is possible). But there will be challenge in claiming credit.

Invoice format

The vendor invoice should have following details:

- Complete name and address of the company/ firm,
- PAN of the vendor
- GST Number of vendor and firm
- Tax Invoice needs to be mentioned on the invoice. The same document can not be Proforma, Quotation etc.
- Invoice should have visible date.
- If vendor is under an obligation to issue **e-invoice** (as per GST Act), then company should obtain such e-invoice.
- Invoice should be **signed and stamped** by Vendor.
- It is advisable to have Goods Received Note (GRN) and Purchase Order (PO) attached to invoice and such other important details/ documents.

Deduction of TDS

- TDS should be deducted at correct rate (refer provisions to Finance Act).
- Rate of TDS needs to be analyzed on each instance, if required.
- There may be a possibility that one vendor may provide professional as well as contract services (i.e., covered under **two separate sections** of the Act).
- TDS required to be deducted at the time of invoice booking or payment whichever is earlier. In case of default, interest needs to be paid.
- Threshold limit per annum for TDS deduction needs to be considered/ analyzed at the time of first transaction of the year.
- In case of **reimbursement transaction**, it should be raised separately along with supporting. It other words, it should not be included in main service invoice.
- TDS should not be deducted on GST as per Circular issued by Tax Authority.
- TDS is applicable on **provision amount** also. Due consideration to be given even though Suspense account is credited.

Lower/ Nil deduction of TDS u/s. 197/ 197A

- Deduct the TDS as per the rate specified in the lower deduction certificate issued by Income Tax Authority.
 - Certificate u/s. 197 is issued for lower deduction of TDS
 - Certificate u/s.197A is issued for nil deduction of TDS.
- Consider rate of TDS, limit prescribed for payment for lower deduction, period granted for lower deduction, TDS section and such other aspects.
- Deduct TDS at lower rate as per certificate only when lower deduction certificate ('LDC') is received from the vendor, else deduct TDS at specified rate only.

Income covered u/s. 197 of the Act

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 193 Interest on securities
- Section 194 Dividends
- Section 194A Interest other than interest on securities
- Section 194C Contractors income
- Section 194D Insurance commission
- Section 194G Commission/remuneration/prize on lottery tickets
- Section 194H Commission or brokerage
- Section 194-I Rent
- Section 194J Fee for Professional or technical services
- Section 195 Income of non residents

Please refer Section 197/197A for detailed information.

Documents to be submitted with Form 13

- Signed Form 13
- Copies of return of income along with enclosures and acknowledgment for previous 3 financial years
- Copies of assessment orders for previous 3 financial years
- In case of assessee having business or profession income, copies of **financial statement** along with audit report if any for previous 3 financial years
- Projected profit and loss account for the current financial year
- Computation of income statement for previous 3 financial years and estimated computation for the current financial year
- Copy of PAN card
- Tax Deduction Account Number of all parties responsible for paying you
- E-TDS return acknowledgment for previous 2 financial years
- Estimated income during financial year
- Any other documents depending on nature of income
- TDS default earlier

Format of Section 197 Certificate



Form 15G/ 15H

Form	Details
15G	Resident Individual or HUF or trust or any other assessee but not a company or a firm with age less than 60 years can submit the said form along with necessary details to the banker requesting for non deduction of TDS on interest on Time Deposits.
15H	Resident Individual or HUF or trust or any other assessee but not a company or a firm with age more than 60 years can submit the said form along with necessary details to the banker requesting for non deduction of TDS on interest on Time Deposits.

Due date of payment of TDS/ TCS

- TDS is required to be paid to the credit of Central Government on monthly basis.
- TDS payment needs to be done on or before 7th day of succeeding month
 - e.g., TDS need to be paid on or before 7th June 2021 for whatever TDS/TCS deducted/ collected during of May 2021.
- For calculating interest liability for late payment of TDS, only **Bank Tender date** (i.e., clearance date) appearing on payment challan is considered and not the date when the payment is initiated by the company.
- If there is a holiday on due date i.e., 7th day, then payment must be done before the due date.
- The due date for invoice booking during March is 30th April.

Software license purchase

- TDS is applicable on software license purchased even though it is capitalized
- Some times there are declaration received from the vendor that it is second sale and TDS is not applicable.
- In such case, TDS is not applicable provided **signed declaration** and Income Tax **Circular** is given by the vendor.

TDS on Salary

- PAN card copy to be obtained from each employee
- Declaration/ Proof of Aadhar authentication by employee
- Investment proofs 80C, 80D, etc. (TDS on provisional basis allowed for first few months of respective financial year).
- Housing loan interest certificate
- Declaration from co-owner of house property
- Other income to be taxed
- Income from earlier employer to be taxed
- Declaration from employees about submission of correct information/ documents
- Employee can select of option of either **New Tax Regime or Old Tax Regime**. Option of selection can be provided to every employee by providing Tax Sheet to make the decision easy.

TDS on Domestic payments (other than salary)

- Vendor wise list of goods purchased
- Vendor wise list for services availed
- Detailed list of software purchased
- Details of LDC
- Photocopies of PAN Cards and PAN card list
- Aadhar authentication

TDS on non-resident

- Following documents/ information required from non-resident vendor to determine tax rate every year:
- (1) Tax residency certificate ('TRC')of country of residence of non-resident vendor,
- (2) PAN issued by Indian Income Tax Department,
- (3) No PE declaration from vendor that they do not have Permanent Establishment (PE) in India,
- (4) Signed and stamped Form 10F,
- (5) Nature of services to be provided by vendor,
- (6) Some further information may be required apart from above.
- In the absence of any of above document, TDS is applicable at higher rate
- In case of PAN not available cases, vendor will get Transaction Based Report ('TBC').
- TDS has to be deducted based on SBI TT buying rate.
- Compliance with Form No.15CA, 15CB and other documents.

Determination of TDS rate on foreign remittances

- Non-resident Indians will either be taxed under the Income Tax Act or under the Double Tax Avoidance Agreement ('DTAA') for their income that is earned through sources such as royalty, dividends, interest, fees, etc.
- Section 115A r.w.s. 195 of the Act needs to be analyzed for rate of tax and nature of remittances as per the Income Tax Act.
- Relevant Article of respective DTAA need to analyze.
- The rate of TDS will be applied which is more beneficial to the payee (i.e., rate of TDS, lower of Act or DTAA).

Grossing up

- Grossing up under section 195A, it can be seen that the income shall be increased to such amount as would after deduction of tax thereto at the rate in force for the financial year in which such income is payable, be equal to the net amount payable under such agreement or arrangement.
- Grossing up clause is required to be mentioned in the agreement for tax purpose and accounting purpose.

Consequences of failure to deduct or failure to pay or late payment of TDS

Section	Default	Consequences
40(a)(i)	any sum (other than salary) payable outside India or to a non-resident on which TDS not deducted or TDS deducted but not paid before due date of ROI	Such payment is not allowed as deduction. The same will be allowed in subsequent year if TDS is paid to Government.
40(a)(ia)	any sum payable to a resident , which is subject to deduction of tax at source on which TDS not TDS deducted or deducted but not paid before due date of ROI	30% of such payment is not allowed as deduction. The same will be allowed in subsequent year if TDS is paid to Government.

Interest on TDS u/s. 201 of the Act

- In case of delayed payment of TDS, interest is payable as under:
- (1) If TDS is deducted and not paid to credit of Central Government, interest @ 1.50% per month shall apply (part of the month is considered as full month only).
- (2) If TDS is **not deducted and not paid** to credit of Central Government, interest @ 1 % per month shall apply (part of the month is considered as full month only).
- Interest payment needs to be done along with TDS payment.

Levy of Penalty u/s.271C & Prosecution u/s.276B of the Act

Levy of Penalty u/s. 271C

Penalty of an amount equal to tax not deducted/paid could be imposed under section 271C. Penalty shall be charged under section 221 if deductor fails to deduct and pay tax to the credit of Central Government. The penalty shall be levied to the extent the Assessing Officer directs; however, the total amount of penalty shall not exceed the amount of tax in arrears.

Prosecution u/s. 276B

Further, section 276B lays down that if a person fails to pay to the credit of the Central Government within the prescribed time, as above, the tax deducted at source by him, he shall be punishable with rigorous imprisonment ('RI') for a term which shall be between 3 months and 7 years, along with fine.

Payment challan

- TDS payment is done using Challan No. ITNS 281.
- TDS payment can be done online.
- There are different challans used for making the payment of Corporate and Non- Corporate deductees.
 - i.e. (0020) Company deductees (0021) Non-company deductees.
- Correct TAN of the company needs to be mentioned.
- Correct Assessment Year ('A.Y.') needs to be mentioned (else there will be demand).
- In case of regular TDS payment, (200) TDS payable by taxpayer needs to be mentioned. (400 to be used in case of demand from Department)
- Correct nature of payment/ Sections needs to be mentioned viz. 94C, 94J and so on.

Forms for TDS returns

Return type	Form
Salary	Form 24Q
Other than salary (domestic payment)	Form 26Q
Other than salary (non-resident)	Form 27Q
TCS	Form 27EQ

Due date for filing of TDS returns

Quarter ending	Due date for filing of TDS returns	Due date for filing of TCS returns
30 th June	31 st July	15 th July
30 th September	31st October	15 th October
31st December	31st January	15 th January
31st March	31 st May	15 th May

Consequences of late filing of TDS/ TCS returns

- A person who fails to file the TDS/TCS return or does not file the TDS/TCS return by the due dates prescribed in this regard has to pay late filing fees as provided under section 234E and apart from late filing fees he shall be liable to pay penalty under section 271H.
- As per section 234E, where a person fails to file the TDS/TCS return on or before the due date prescribed in this regard, then he shall be liable to pay, by way of fee, a sum of **Rs. 200 for every day** during which the failure continues. The amount of late fees shall not exceed the amount of TDS. It should be noted that Rs. 200 per day is not penalty but it is a late filing fee.
- As per section 271H, where a person fails to file the statement of tax deducted/collect at source i.e., TDS/TCS return on or before the due dates prescribed in this regard, then assessing officer may direct such person to pay penalty under section 271H. Minimum penalty can be levied of Rs. 10,000 which can go upto Rs. 1,00,000. Penalty under section 271H will be in addition to late filing fees prescribed under section 234E.

TDS/ TCS certificates

Form	Certificate of	Due date
Form 16	TDS on salary payment	31st May
Form 16A	TDS on non-salary payments	15 days from due date of filing return
Form 16B	TDS on sale of property (Form 26QB)	30 days from end of month in which tax deducted
Form 16C	TDS on rent (Form 26QC)	30 days from end of month in which tax deducted
Form 27D	TCS	15 days from due date of filing return

Brief content of Form 16 /16A

- Name/ Address/ TAN of deductor
- Name/ Address/ PAN of deductee or taxpayer
- Certificate Number
- Summary of payments made, and TDS deducted
 This will be helpful in doing TDS reconciliation
- Details of TDS paid to Government
- Form is digitally signed.

Some Penalty provisions of TDS/TCS

Section	Nature of default	Penalty
271C	Failure to deduct TDS or failure to pay TDS	Amount of tax not deducted or not paid as the case may be
271H	Failure to submit the TDS return	Minimum penalty Rs.10,000 Maximum penalty Rs.1,00,000
272BB	Failure to obtain TAN, failure to quote TAN, false quoting of TAN,	A sum of Rs.10,000
276B	Failure to pay TDS	RI for a term which shall not be less than 3 months & may extend to 7 years and with fine
276BB	Failure to pay TCS	RI for a term which shall not be less than 3 months & may extend to 7 years and with fine

Note: The assessee is given a reasonable opportunity of being heard in penalty cases.

Some recent changes in TDS provisions

- TDS on Dividend
- TDS on Goods
- TDS on non-filer of ITR
- Aadhar authentication
- Equalization Levy ('EL')
- Section 194M: TDS on certain payments
- Section 194 N: TDS on cash withdrawal
- Section 194 IA: TDS on transfer of immovable property

TDS on Dividend

- TDS on dividend payment is applicable w.e.f. 1st April 2020
- Rate of TDS is 10% as under
 - Section 194 Resident shareholders on shares
 - Section 194K Resident shareholders on Equity Mutual

Funds

- Section 195 Non-resident
- Basic exemption is Rs.5,000

TDS on Goods

TDS on purchase of goods: A buyer of goods (whose turnover exceeds Rs. 10 Cr. in preceding year) is liable to deduct TDS at the rate of 0.1% on consideration payable to a seller, if aggregate of payment/ credit during the year exceeds Rs. 50 lakhs. The proposed amendment is not applicable to transaction otherwise covered under any other TDS/ TCS provisions, except where the transaction is covered under section 206C(1H) i.e. TCS.

TDS on non filers of ITR

New sections 206AB and 206CCA - TDS/TCS in case of non-tax return filers: The Finance Act 2021 has introduced penal TDS provisions in case of non-tax return filers payee. Section 206AB provides for TDS rate higher of (i) double the normally applicable TDS rate or (ii) twice the rate in force or (iii) 5%. If the deductee/ payee has not filed his return of income for preceding two years and the total TDS/ TCS in his case is more than Rs.50,000 in such preceding years. In case provisions of section 206AA are also applicable, then TDS shall be deducted at a rate higher under proposed section 206AB or existing section 206AA (i.e. 20%). It is also provided that these provisions shall not be applicable in respect of a payee being a non-resident who does not have a permanent establishment ('PE') in India. Similarly, in the context of TCS, it is proposed to introduce section 206CCA with similar provisions where the penal TCS rate is capped at 5%.

Aadhar authentication

- Vide Finance Act 2017 a new Section 139AA was introduced in the Income-tax Act, 1961 ('the Act') wherein it was made obligatory for every person eligible to obtain Aadhaar number to quote (tax return and application for PAN form) and intimate such number to the Indian tax authorities. Earlier, Central Board of Direct Taxes ("CBDT") has notified new Rule 114AAA to provide that the PAN of a person shall become inoperative if one fails to intimate his Aadhaar number u/s 139AA(2) by 30th June 2021; However, where such person intimates his Aadhaar number after 30th June 2021 his PAN shall become operative again from the date of intimation of Aadhaar number.
- One important aspect is that though the term 'inoperative' is not explicitly defined, it has been mentioned in the Rule that failing to link Aadhaar to PAN would be deemed that such person has not furnished, intimated or quoted the permanent account number and shall be liable for all the consequences under the Act. Thus, from a withholding perspective in absence of linking PAN to Aadhaar the provisions of section 206AA of the Act would possibility be triggered and, in such instances.

Equalization Levy

- Equalization Levy ('EL') is applicable from 1st April 2020
- EL to be levied on consideration received or receivable by "e-commerce operator" from "e-commerce supply or services" provided or facilitated to "specified persons"
- E Commerce operator, means a Non-Resident ('NR') who owns, operates or manages digital or ecommerce facility or platform for the online sale of goods or online provision of services or both.

 EL shall not apply in the following cases:
 NR e-commerce operator who has a PE in India and such supply or services is effectively connected with such PE. PE includes only fixed place PE.
 Sales/ Turnover/ Gross receipts of NR ecommerce operator from such ecommerce supplies or services does not exceed INR 2 crores during the relevant tax year

 It is already covered by the existing EL on online advertisement and related services

- Rate of tax is 2% on amount of consideration received/ receivable
- The Non-resident E-commerce operator himself is obligated to pay the EL to the government

Section 194M

- Individual/ HUF (other than those required to deduct tax u/s.194C/ 194H/ 194J), paying to a resident any amount in the nature of contract charges/ professional fees/ commission are required to deduct TDS in case he pays a sum in excess of INR 50 Lakhs during the year.
- TDS rate is **5**%
- TAN is not required
- This provision is effective from 1st September 2019
- This amount can be for Business or Personal use also

Section 194N

- A banking company/ Co-operative society engaged in the business of banking/ Post office is required to deduct TDS @ 2% if it pays a sum in excess of INR 1 Crore during the financial year to any person from one or more accounts maintained by payee.
- The amendment is made to discourage cash payments and promote digital economy.
- The limit of cash withdrwal of Rs.1 Crore is for per bank or post office
- The amendment is effective from 1st September 2019.

Section 194 IA

- Any person being transferee, paying any consideration for transfer of immovable property (other than agricultural land) will have to deduct TDS @ 1% at the time of payment of such sum to the transferor.
- TDS has to be deducted at the time of each transfer.
- All chares in the nature of society membership fees, maintenance fees, all types of infrastructural charges incidental to transfer of immovable property shall form part of consideration.

TDS disclosure in Tax Audit Report

Tax Audit Report Clause	Reporting		
21(a)	Details of interest and penalty paid		
21(b)	Details of amount inadmissible u/s.40(a) and u/s. 40(ia) of the Act.		
34(a)	The firm has to provide TAN wise TDS/ TCS deducted/ collected information. Section wise/ Nature of payment details such as total amount paid, Taxable amount, TDS/ TCS paid to Government.		
34(b)	Details of TDS and TCS returns submitted		
34(c)	Details of interest on TDS/ TCS paid		
Note 1 : Please refer Form of Tax Audit Report for more details.			

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Note 2: Computation of Total Income is prepared based on Tax Audit Report.

TRACES record

- The assessee should create log in credentials on TRACES site to monitor its TDS/ TCS compliance
- TRACES site can be used for :-
 - (1) Processing of TDS/TCS returns,
 - (2) Clearing of defaults,
 - (3) View & download Form 26AS,
 - (4) View Challan status,
 - (5) Checking of various tax statement online,
 - (6) Submit of TDS refund statement online,
 - (7) Download Consolidated file, Justification report etc.

TDS rate chart for F.Y.2021-22 (relevant to A.Y.2022-23)

Section	For payment of	Threshold limit (INR) p.a.	TDS rate%
192	Salary income	Income tax slab	Slab rates (based on Old / New Tax Regime)
194A	Interest other than on securities by banks/ Post office	40,000 For senior citizen 50,000	10%
194D	Payment of insurance commission (Form 15G/ 15H can be submitted)	15,000	For individual 5% For companies 10%
194H	Commission or Brokerage	15,000	5%
1941	Rent of Land, Building or Furniture	2,40,000	10%
1941	Rent of Plant & Machinery	2,40,000	2%
194J	Fees for Professional/Technical Services	30,000	2% or 10%
194C	Contractor	Single contract 30,000/ During F.Y. 1,00,000	1% or 2%

Note 1: In absence of PAN, TDS rate would be 20% for all sections

Note 2 : There are various payment types apart from above on which TDS is applicable. Please refer detailed chart on Income Tax site.

Note 3: There is no threshold limit for TDS u/s.195.

TCS

- Tax collected at source (TCS) is the tax payable by a seller which he collects from the buyer at the time of sale. Section 206C of the Income-tax act governs the goods on which the seller must collect tax from the purchasers.
- TCS rate chart is give on next slide
- The seller deposits the TCS amount in Challan 281 within 7 days from the last day of the month in which the tax was collected.
- Every tax collector must submit quarterly TCS return i.e in Form 27EQ in respect of the tax collected by him in a particular quarter.
- Form 27D is the certificate of TCS.

TCS Rates

Type of Goods	Rate
Liquor of alcoholic nature, made for consumption by humans	1%
Timber wood under a forest leased	2.50%
Tendu leaves	5%
Timber wood by any other mode than forest leased	2.50%
A forest produce other than Tendu leaves and timber	2.50%
Scrap	1%
Minerals like lignite, coal and iron ore	1%
Bullion that exceeds over Rs. 2 lakhs/ Jewellery that exceeds over Rs. 5 lakhs	1%
Purchase of Motor vehicle exceeding Rs. 10 Lakhs	1%
Parking lot, Toll Plaza and Mining and Quarrying	2%

TDS/ TCS assessments

- Scrutiny assessment u/s.143(3) of the Act: Information can be sought during the course of scrutiny assessment.
- Verification of Form 15CA: Detailed scrutiny can be done by issuing proceeding notice u/s.133 (6) of the Act.
- Verification of Compliance of TDS provisions of the Act.

Q & A

Note: Please refer Income Tax Act and Income Tax Rules for detailed information.

THANK YOU!

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