

## **Importance of TDS in Total Direct Tax Collection**

The tax deduction at source (TDS) currently accounts for about 55 per cent of the overall direct tax collections from across India . for instance, currently the all India collection of direct taxes stands at over Rs 2.82 lakh crore out of which TDS accounts for Rs 1.54 lakh crore which is as of today is 55 per cent of total collections.

### **What prompts survey?**

The news like this prompts department to conduct survey:

#### ***Mumbai fails to meet TDS collection by 3-4 per cent in FY13***

*The **TDS** (tax deducted at source) collection in 2012-13 rose by 10 per cent to Rs 63,000 crore, which is 3-4 per cent lower than the projected growth due to tepid economic conditions.*

*"The total TDS collection from the **Mumbai** region rose 10 per cent to Rs 63,000 crore over the previous fiscal according to the provisional figures," I-T Commissioner (TDS) V K Pandey told reporters on the sideline of an event organised by the industry lobby Indian Merchants Chamber .*

### **What does the term SURVEY mean?**

The term SURVEY has not been defined in the Income-tax Act, 1961. Section 133A, though discusses power of survey, the term Survey has not been defined in section 133A. Generally, action u/s. 133A can be called Survey.

**Survey means** , general view casting of eyes or mind over something, inspection or investigation of the condition, amount etc; of something, account given of result of this etc.

### **What is the purpose of survey?**

The purpose of survey is to inspect the books of account, to check and verify cash, stock or other valuable articles found at the place of survey, for ascertaining the correctness of the same, to impound relevant books of account or documents to prevent destruction or misappropriation of evidence found in the survey.

### **What is the object of survey under the Act?**

The objective behind conducting survey is to (a) make a surprise visit to the place of business or profession (b) personally inspect such books of account, other documents as may be required or available (c) facilitate verification of cash, stocks or other valuable articles and (d) impound if relevant and necessary.

### **TDS defaults**

Failure to deduct the whole or part of the Tax at source (non-deduction, short deduction or delay in deduction)

1. Failure to deposit whole or part of the TDS (non-deposit, short deposit or late deposit)
2. Failure to apply for TAN within the prescribed time limit or failure to quote TAN on allotment as required under section 203A.
3. Failure to furnish, in due time, TDS returns or TDS certificates or to deliver or cause to be delivered a copy of declaration in form no. 15H/15G/27C/copy of quarterly statement.
4. Failure to mention the PAN of the deductee in all quarterly statements as well as in all certificates furnished.

### **Consequences of Defaults**

The following chart indicates the nature of default and its consequences which range from penal interest, penalty to prosecution:

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<b>Default/ Failure</b>	<b>Under section</b>	<b>Nature of demand</b>	<b>Quantum of demand/penalty</b>
Failure to deduct tax at source	201(1)	Tax demand	Equal to tax amount deductible but not deducted
	201(1A)	Interest	@1% p.m. of tax deductible
	271C	Penalty	Equal to amount of tax deductible but not deducted
Failure to deposit tax deducted at source	201(1)	Tax demand	Equal to tax amount not deposited
	201(1A)	Interest	@1% p.m. of tax not deposited
	276B	Prosecution	Rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years and with fine.
Failure to apply for tax deduction account number (TAN) u/sec. 203A	272BB	Penalty	Rs. 10000/-
Failure to furnish prescribed statements u/sec. 200(3)	272A(2)(k)	Penalty	Rs. 100 for every day during which the failure continues shall be levied subject to the maximum of TDS amount.
Failure to deliver copy of declaration u/sec. 197A	272A(2)(f)	Penalty	Rs. 100 for every day during which the failure continues shall be levied subject to the maximum of TDS amount.
Failure to issue TDS Certificate u/sec. 203	272A(2)(g)	Penalty	Rs. 100 for every day during which the failure continues shall be levied subject to the maximum of TDS amount.
Failure to furnish statement of perquisite or profit in lieu of salary u/sec. 192(2C)	272A(2)(i)	Penalty	Rs. 100 for every day during which the failure continues shall be levied subject to the maximum of TDS amount.
Failure to mention PAN of the deductee in the TDS statements and certificates	272B	Penalty	Rs. 10000/-
<b>Failure to file quarterly statements (inserted w.e.f 01/07/2012)</b>	<b>271H</b>	<b>Penalty</b>	<b>Not Less than Rs.10,000/- but may extend to Rs.1,00,000/-</b>

In addition to the above, there are **other** consequences in certain cases, as enumerated below;

- Disallowance of specified expenditure (while computing the income of the deductor) if TDS is not deducted from the payment. (Section 40a(ia)).
- Where the tax has not been paid after its deduction it shall be charge on the asset of the defaulter to recover the amount of TDS. (section 201(2)).

### **Some Examples which may invite TDS surveys & inspections.**

- Payment of commission by cooperative banks to agents/daily deposit collectors
- Annual Maintenance Charges paid by the big Corporate/Banks Govt. Offices etc to the service providers for maintenance of computer systems which include hardware as well as software maintenance. TDS is to be generally made on such payments
- Payments made by companies operating Star Hotels to the owners of buildings in which such hotels are run.
- Payments made for hiring of vehicles, hiring of aircrafts, helicopters on time charter basis on which tax is generally deducted Las 194C as against 194I claiming it as contract for carriage of passengers.
- Payments made for hiring of tugs/launches by the port operation for guiding ships for anchorage on which tax is generally deducted u/s 194C as against 194I.
- Demurrage paid on goods to be loaded on the ship or unloaded there from which is not penalty but is in the nature of payment for warehousing charges and, hence, tax is to be deducted on the same u/s 194I.
- TCS on sale of timber in High Sea,
- Salary payments to doctors u/s 192 camouflaged as payment for professional services u/s 194J in corporate hospitals.
- Payment of lease rentals in respect of transmission towers used by cellular phone operators.
- TCS on sale of timber by traders where the purpose is further trade and not end use.
- Payment of interest in respect of loansifunds taken from NSFCs and sister concern/companies by firms and companies.
- Payment of hire charges in transport/travel agency business.
- Payments made on acquiring satellite rights/TV rights on films u/s 194 J.
- Payment made towards hiring a plan/machinery/equipment u/s 194 I.
- Payments towards hiring of windows of showroom for displaying their products uis 194 I.
- Payments of commission by the trading merchants to the credit card companies.
- Payment by shopkeeper to mall owners camouflaged as profit sharing between them to avoid TD S u/s 194 I.
- Payment of rent by big business houses/airlines on the booking of hotel room for long duration.
- Payment made to authors, printing press, artists, models etc by book/ magazines publishers.
- Payments such as hiring of earth moving machinery like cranes, storing machines. dumpers, tracks etc.
- Payments made for hiring out of tine equipment (sound, light etc) studios and allied services by film producers of tele serial makers.
- Payments made in huge amounts by municipal corporations for carrying out various contract work by them.
- Payments made by big sari houses/garment house/jewelers to models who display their products at fabulous considerations as also to professional photographers dress designers, artists etc,

- Payments made by public libraries/universities, colleges, museums archives and such institutions to pest control companies for such treatment.
- Payments made by big business houses, small owners to security service agency.
- Payments made by big builders to township planners, hand scrapers, architects and technical consultants etc.
- Payments made to players, coaches, managers, fitness experts etc. by sport bodies,
- Payments made on hiring out of vehicle platform for mounting big hoardings, cutouts, hire scenes for advertising of the products services by big companies, such vehicles are parked at some conspicuous place at roadside.
- Payments made by large business house to land scrapers, gardening contractors on development and maintenance of green sites / road dividers for putting up their company's advertisement material.
- Payments made to studio owners for shooting purposes including use of floors, locations, equipment, settings etc,
- Payments made to Jr. Artists Association for providing junior artists.
- Payments made towards film processing, graphic designs, special effects etc.,
- Distribution rights taken by top artists in lieu of remuneration, which amounts to 'royalty' (exploitation of exhibition rights).
- Commission payments retained by the distributor's as a part of the producer-distributor agreement in the nature of constructive payments).
- Payments made to outside labs for specialized diagnostic services such as D.N.A. printing, immunological assay,
- Constructive payments Reimbursement of expenses.
- Franchisee Payments & Non – compete fee & fees for exclusivity rights:
- Payment on landing and parking charges rent for space used for cargo handling, work of cargo handling, navigation charges and other similar charges to the airport authorities by the airlines.
- Payment of Royalty to Author, Artists, Musicians etc.
- Payment of hire charges for machinery and equipments, especially in the construction sector.
- Payments in the nature of lucky dip, festival bonanza where the prizes are distributed by way of lottery among the eligible customers.
- Transfer of funds between group companies / firms is taking place and these payments fall within the purview of section 2 (22)(e) (deemed dividend). Tax needs to be deducted at source u/s 194, as this dividend is not covered under the provisions of dividend distribution tax .
- Payments made by clubs for construction of buildings of swimming pools and maintenance of the same,
- Payments of lease rentals / hire charges for machinery & equipments, especially between sister concerns of group companies,
- Payment by Multi – National companies and National companies on the lease rentals paid for their retail outlets (194 I).
- Payments made by State Government Departments for computer training and pre-examination training conducted by them for its personnel and for the public.
- Payment of compensation and additional compensation on acquisition of land, but tax not deducted U.S.' 194LA.
- Payment of interest by Electricity companies on the deposits made by subscribers.

- It is noticed in the case of some public sector banks that while the TDS is deducted from interest on fixed deposits annually, the interest is being calculated Monthly / Quarterly. and transferred to interest payable. It should be seen that the TDS is accounted on the basis of interest calculation.
- Payments of rent by splitting the lease agreement into two or more agreements for lease of the building, lease of the furniture and fixture, agreement for maintenance, etc.
- Payment of port/ inter-connectivity charges by mobile-telephone service providers to other telephone companies.
- Payment of interest on belated payment of compensation under Motor Vehicles Act,
- Accrued interest on term deposits/ cumulative deposits not maturing during the year.
- Commission paid by cellular companies to sellers of starter packs and recharge coupons for cell phones.
- Commission paid by airline companies to travel agents.
- Payment of salaries camouflaged as payments under professional contracts.
- Payment by banks for taking professional services for recovery of bad debts, loan-processing, credit- verification, etc.
- Contracts given by Municipal Bodies for installation of streetlights, etc.
- Payment of Airing Charges to TV channels for broadcast of programmes,
- Perquisites on account of concessional loans given by companies, especially PSUs, to their employees.
- TCS under section 206 on sale of liquor to excise contractors TCS on the sale of liquor by wholesalers to the retailers.
- Payment of Usance Interest in the ship-breaking business.
- Payment of interest on term deposits maintained by banks as margin money/ collateral for issue of bank guarantees, NOCs, etc.
- Payment of charges for Internet Services, VAT Charges, Bandwidth Charges, etc.
- Payment of fees by hospitals and medical institutes to consultant doctors.
- Payment of Upfront Commission to banks/ financial institutions for availing financial assistance.
- Distribution of service charges collected by hotels from the customers amongst the employees.
- TDS compliance by multi-national companies in respect of salary and allowances paid to expatriate employees,
- TDS compliance by entities whose income is exempt from tax.
- TDS compliance by Municipal Corporations and State Public Works Departments (P.W.D.?),
- TDS compliance by large Government Departments like Indian Armed Forces, Indian Railways, Department of Posts, etc in respect of TDS on payment for various contracts for works and for professional or technical services given out by them.
- TDS on contracts lease or license for parking lot and toll plaza and to sale of scrap. Large sellers of scrap like railways, steel plants, iron foundries, ship-breaking units, etc to be identified and the compliance of TCS on sale of scrap need to be verified.
- Common issues relating to companies having branches in various parts of the country to be taken up at the head office level so that directions are issued by the head office to all the branches for proper TDS compliance. Some illustrative common issues in respect of certain large companies are?
- TDS on value of perquisite on account of rent-free accommodation by SBI group of banks, BSNL and LIC as determined under rule 3(1) and not as per "Standard Rent".
- TDS matters relating to companies outsourcing large part of their operations.
- Payment of post-sale incentives by companies to dealers/ distributors.

- Payment of interest by Chit Fund companies to their members/ subscribers.
- Contracts between cinema theatres or multiplexes and the film distributors for supply of prints of movies on collections-sharing basis.

(Source: Taxguru.com)

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