

TDS / TCS PROVISIONS

PRE PAID TAXES

Tax on total income of a person is charged on an annual basis. The tax determined as per the provisions of the Incometax Act is paid/collected as

- 1] TDS
- 2] TCS
- 3] Advance tax and
- 4] Self assessment tax

Advantages of TDS

- TDS is based on the principle of 'pay as and when you earn'. TDS is a win-win scenario for both the taxpayers and the government. Tax is deducted when making payments through cash, credit or cheque, which is then deposited with the central agencies.
- Responsibility sharing for deductor and tax collection agencies.
- Prevents tax evasion.
- Widens the tax collection base.
- Steady source of revenue for the government.
- Easier for a deductee as tax gets automatically collected and deposited to the credit of the central government.

Advantages of TDS

- TDS collections during financial year 2015-16 was Rs.3,25,000 crore, which works to nearly 40% to the gross Direct tax collections.
- According to Action Plan for 2016-17, the CBDT states that TDS is a non-obtrusive but powerful instrument to prevent tax evasion as well as expand the tax net.
- TDS minimises tax avoidance by the taxpayer, as their transactions are being reported to the Department by third person.
- The strategy to augment revenue through TDS is to be a mix of enforcement, capacity building and leveraging of information that is now available with the Department through the Central Processing Centre for TDS.
- The Department is also conducting meetings with various stakeholders for creating awareness on remittance of tax deducted and also filing e-TDS returns correctly and in time.

TAX DEDUCTED AT SOURCES

[The entire chapter may be classified as below]

TDS ON SALARIES
SECTION 192

TDS ON OTHER INCOMES
SECTION 193 TO 194LD

DEDUCTIONS IN RESPECT OF PAYMENT TO
NON-RESIDENTS
SECTION 194E, 195, 196A TO 196D

PERSONS RESPONSIBLE TO DEDUCT TAX

CENTRAL/STATE GOVERNMENT	DRAWING AND DISBURSING OFFICER(DDO)
PRIVATE/PUBLIC COMPANIES	PRINCIPAL OFFICER (Secretary, Manager, Treasurer or agent of the company)
FIRMS	PARTNERS
HUF	KARTHA
PROPRIETORSHIP	PROPRIETOR
TRUST	MANAGING TRUSTEES

Duties of deductor

- **Deduct tax from the specified payments at the time specified in the relevant provisions.**
- **The deduction is to be made at the time of payment or credit to the recipient's account or transfer to any other account by whatever name called, whichever is earlier.**

Remit Tax

- The tax deducted must be remitted to government account before the due date specified [S 200, rule 30].

Due Date for Remittance of Tax Deducted at Source	
Where the deduction is by or on behalf of the Government	on the same day
In other cases	
(a) If the account of the deductee is credited on the last day of the accounting year	On or before 30 th April of subsequent financial year
(b) other cases	within 7 days from the last day of the month of deduction
c) The TDS AO, with approval of JCIT, permit quarterly remittance of TDS	By 7 th of next month of each quarter; by 30 th April of last quarter

Obtain TAN

- **Tax Deduction and Collection Account Number - S 203A.**
- **Apply through TIN-FC or online in Form 49B within one month from the end of the month of deducting or collecting the tax.**

Responsibilities of a Deductor

- **Obtain TAN**
- **Deduct/Collect Tax**
- **Remit Tax**
- **Issue TDS/TCS Certificate**
- **File e-TDS/TCS Returns**
- **Quote TAN and PAN**

File e-TDS/TCS Returns

- **Quarterly, through TIN-Facilitation Centres.**

For quarter ending

30th June 30th Sep. 31st Dec. 31st Mar.

Due Date

31st July 31st Oct 31st Jan 30th May of
the following FY.

Forms for e-TDS returns

- **Form 24Q - For salary deductions**
- **Form 26Q - In other cases**

Form for e-TCS returns

- **Form 27EQ**

Quote TAN and PAN

- The deductor is required to quote his TAN and PAN and the deductee's PAN in every certificate, challan, statements and returns.
- There are penalties for not quoting TAN or PAN [S 272B and 272BB].

TDS credit could be verified from **TRACES**
(TDS Reconciliation, Analysis and
Correction Enabling System).

It is set to make viewing TDS status online
easy for both tax payers (Form 26AS) and
correcting TDS certificates for tax
deductors.

TDS Rates for FY 2016-17 (AY 2017-18) w.e.f. 01-06-2016

Section	For Payment of	On Payments Exceeding	Individual / HUF
			TDS Rate (%)
192	Salary Income	Income Tax Slab	Slab rates (If no PAN, TDS @ 30%)
192 A	EPF - Premature withdrawal	Rs 50,000	If no Pan, TDS @ 20%
193	Interest on Securites	Rs. 10,000	10%
193	Interest on Debentures	Rs 5,000	10%
194	Dividend (Dividend other than listed companies)	NA	10%
194 A	Interest other than on securities by banks / post office	Rs. 10,000	10%
194 A	Interest other than on securities by others	Rs. 5,000	10%
194 B	Winnings from Lotteries / Puzzle / Game	Rs. 10,000	30%
194 BB	Winnings from Horse Race	Rs. 10,000	30%
194 D	Payment of Insurance Commission	Rs. 15,000	5%
194DA	Payment in respect of Life Insurance Policy	Rs 1,00,000	1%
194 EE	Payment of NSS Deposits	Rs 2,500	10%
194 G	Commission on Sale of Lottery tickets	Rs 15,000	5%
194 H	Commission or Brokerage	Rs 15,000	5%
194 I	Rent of Land, Building or Furniture	Rs. 1,80,000	10%
	Rent of Plant & Machinery	Rs. 1,80,000	2%
194 IA	Transfer of Immovable Property , other than Agricultural land	Rs. 50 lakh	1%
194 L B	Interest from Infrastructure Bond	NA	5%

NA - Not Applicable

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TDS ON SALARIES (SECTION 192)

Deductor	All person who are employers
Payee	Employees having salary income
Rate of tax	As specified in Part III of IT Act
Exemption	Rs.250000 / Rs.300000 / Rs.500000
Time of deduction	At the time of payment
Time for deposit	In case on behalf of govt. on the same day In case of others within a week
TDS CERTIFICATE	IN FORM 16 / IN FORM 16AA
Quarterly TDS Returns	<div> 1st Quarter 31st July 2nd Quarter 31st Oct. </div> <div> 3rd Quarter 31st January 4th Quarter 30th May </div>

When to deduct tax - discretion of deductee?

The Income tax is required to be calculated on the basis of prevailing rates, subject to the provisions related to requirement to furnish PAN as per sec.206AA of the Act, and **shall be deducted at the time of each payment.**

*Sec.192(1): Any person responsible for paying an income chargeable under the head 'Salaries' **shall, at the time of payment,** deduct Income-tax on the amount payable at the **average rate of income tax** computed on the basis of the rates in force for the financial year in which the payment_ is made, **on the estimated income of the assessee under this head for the financial year.***

NEW PROCEDURE

With effect from 1st June, 2016 to claim income tax deductions employee need to submit new Form 12BB the DDO. This is going to be the new standard form for salaried tax payers to claim tax deduction.

It is also been made mandatory to submit documentary evidence of investments / expenditures.

Powers to DDO u/s 192(2D)

- Finance Act 2015 inserted section 192(2D), which provides that person responsible for paying (DDOs) shall obtain from the assessee evidence or proof or particulars of the prescribed claim (including claim for set off of loss) in the form and manner as may be prescribed.
- Prescribed Form – [12BB](#) – Rule 26C

- The details required are:-
- Income Tax Statement
- PAN card
- Documentary evidences of deduction claimed in the IT statement
- Rent Receipts copy if Deduction u/s.10(13A) is claimed.
- PAN of the house owner in case of rent paid is more than Rs.1,00,000/-.
- Provisional Housing Loan Repayment Certificate from the Bank/Institution.
- Deduction u/s.80C – Receipt towards Tuition Fees, LIC, GPF, PPF etc.
- Deduction u/s.80D – Receipt towards Health Insurance ***subject to payment by any mode other than cash.***
- Any other evidences relating to other deductions.

TDS ON OTHER INCOMES

TDS from Interest on Securities Sec. 193

Deductor	Company in which public is substantially interested
Payee	Any person who receives interest
Rate of tax	10% in respect of all assessees
Exemption	<p>Not exceeding Rs.10,000/- NSC, National Defence Bonds, National Dev. Bonds, etc.</p> <p>Payments made to LIC, GIC.</p> <p>Not exceeding Rs.5,000 on interest payable on any debenture issued by a Public Ltd Co if:</p> <p>i. Payee is a resident indl / HUF</p> <p>ii. Interest is paid by the Co by A/c payee Cheque</p>
Time for deduction	At the time of credit or payment which ever is earlier
Time for deposit	Within one week from the day of credit/payment
Certificate of TDS	FORM 16A

TDS ON DIVIDEND INCOME SECTION 194

Deductor	The principal officer of an Indian company or company which has made arrangements for the declaration/payment of dividend in India. (Presently covers deemed dividend)
Payee	Any person being resident
Rate of tax	10%
Exemption	Dividend not exceeding Rs.2500/- and paid by Account payee cheque. Dividend to LIC/GIC Dividend referred in Sec.115-O (domestic Co)
Time for deduction	Before distribution/payment
Time for deposit	Within a week of deduction
Certificate of TDS	FORM 16A

TDS on interest other than interest on securities – Sec. 194A

Deductor	Assesseees other than Individual/HUF whose accounts are subject to 44AB
Payee	Any resident in India
Rate of Tax	10% + SC + EC
Exemption	Interest credited or paid doesnot exceed Rs.10,000/- Where the deductor is a Bank,coop society carrying on Banking business,post office Other cases Rs 5000/-
Time of deduction	At the time of credit or payment whichever is earlier
Time of deposit	On behalf of Govt. on the same day Other cases within a week from the end of relevant month
TDS Certificate	FORM 16A

TDS from winnings from lottery, Crossword puzzle, card game
Sec.194B

Deductor	Any person paying the sum by way of winning from lottery, crossword puzzles, etc.
Payee	All assesseees
Rate of TDS	30% + SC + EC
Exemption	If payment does not exceed Rs.10,000/-
Time for deduction	At the time of payment
Time for deposit	On behalf of Govt. on the same day Other cases within a week
TDS Certificate	FORM 16A

TDS ON WINNING FROM HORSE RACES – SECT. 194BB

Deductor	Any person being a licensed bookmaker
Payee	All assesseees
Rate of TDS	30% + SC + EC
Exemption	If payment does not exceed Rs.10,000/- (Rs.5,000 upto 31.05.2016)
Time for deduction	At the time of payment
Time for deposit	On behalf of Govt. on the same day Other cases within a week
TDS Certificate	FORM 16A

Effect of sec.58(4)

- Sec.58(4): In the case of an assessee having income chargeable under the head 'Income from Other Sources', no deduction in respect of any expenditure or allowance in connection with such income shall be allowed under any provisions of this Act in computing the income by way of winning from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature, whatsoever;
- **Provided** that nothing contained in this subsection shall apply in computing the income of an assessee, being the owner of horses maintained by him for running in horse races, from the activity of owning and maintaining such horses.
- Sec.10(3), allowing Rs.5000 deduction on casual income (Rs.2500 in respect of winning from horse race) is omitted w.e.f. A.Y.2003-04

TDS FROM PAYMENT TO CONTRACTORS – SEC.194C

Deductor	Indl. / HUF subject to tax audit under section 44AB* All others, viz., Govt, local authority, company etc.
Payee	Any person resident in India
Rate of TDS	1% + SC + EC for individuals and HUF 2% + SC + EC for Others
Exemption	If payment does not exceed Rs.30000 and the aggregate does not exceed 100000 (75000 upto 31.5.16) <u>Payment to contractors by individual/HUF for their personal purposes.</u>
Time for deduction	At the time of payment or credit whichever is earlier.
Time for deposit	On behalf of Govt. on the same day Other cases within a week
TDS Certificate	FORM 16A

KEY POINTS U/S 194C

- No TDS for payments to freight contractors, if such contractor owns ten or less goods carriages and furnishes a declaration to that effect alongwith his PAN to the deductor.
- Contract does not include manufacturing or supplying a product according to the requirement or specification of a customer by using materials purchased from a person, other than such customer.
 - ✓ *If purchased from the customer, then TDS on the invoice value excluding the value of material, if such value is mentioned separately in the invoice, otherwise on the whole of the invoice value.*

TDS ON INSURANCE COMMISSION SEC. 194D

Deductor	Insurance Companies
Payee	Any person resident in India
Rate of TDS	5% + EC (10% upto 31.5.2016)
Exemption	If payment does not exceed Rs.15000 (Rs.20000 upto 31.5.2016) 15G/15H applicable wef1/6/17.
Time for deduction	At the time of payment or credit whichever is earlier.
Time for deposit	On behalf of Govt. on the same day Other cases within a week
TDS Certificate	FORM 16A

TDS from Commission on sale of lottery tickets – Sec. 194G

Deductor	Stockist, distributor, etc. of lottery tickets
Payee	Any person who is buying and selling lottery tickets
Rate of TDS	5% + SC + EC (10% upto 31.5.2016)
Exemption	If payment does not exceed Rs.15000 (Rs.1000 upto 31.5.2016)
Time for deduction	At the time of payment or credit whichever is earlier
Time for deposit	On behalf of Govt. on the same day Other cases within a week
TDS Certificate	FORM 16A

TDS from Commission or brokerage

Sec. 194H

Deductor	Any person incl indl / HUF who are subject to tax audit under section 44AB
Payee	Any person resident in India
Rate of TDS	5 % + SC + EC (earlier it was 10% from 1.6.2002 to 31.5.2016; 5% prior to 1.6.2002))
Exemption	If payment does not exceed Rs.15000 (5000 upto 31.5.2016)
Time for deduction	At the time of payment or credit whichever is earlier
Time for deposit	On behalf of Govt. on the same day Other cases within a week
TDS Certificate	FORM 16A

TDS from Rent – Sec. 194I

Deductor	Any person including Indl/HUF who are subject to tax audit under section 44AB
Payee	Any person resident in India
Rate of TDS	2% for machinery/plant/equipment 10% for land/building/furniture/fittings.
Exemption	If payment does not exceed Rs.180000 If the payee is Government or local authority (Panchayat, Municipality, Cantonment Board etc.) S.194IB for IND/HUF-non 44AB entities if monthly rent exceeds Rs.50000/-WEF 1/6/17 @ 5%.To deduct on the last month of the PY/LAST MONTH OF TENANCY.
Time for deduction	At the time of payment or credit whichever is earlier
Time for deposit	On behalf of Govt. on the same day 7 days from the end of relevant month
TDS Certificate	FORM 16A

TDS on transfer of immovable property – 194IA

- Any person (transferee) responsible for paying to a **resident** transferor any consideration (Rs.50 lakhs & above) for transfer of immovable property (other than agricultural land as defined in sec.2(14)), required to deduct TDS @ 1%.
- Liability arises at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.
- Any sum deducted u/s 194IA shall be remitted to Govt A/c within 30 days from the end of the month of deduction and shall be accompanied by the challan cum statement in Form 26QB.
- If seller is NRI, then purchaser should deduct TDS through TAN.

TDS on fees for Professional/ Technical Services – Sec. 194J

- Fees paid to:
- Professional or Technical service
- Royalty
- Non-compete fees – sec.28(va).
- Any remuneration or fees or commission other than those on which tax is deductible u/s 192 to a Director of a company (W.e.f. 1.7.2012).

TDS on fees for Professional/ Technical Services – Sec. 194J

Deductor	Any person incl indl / HUF who are subject to tax audit under section 44AB
Payee	Any person resident in India
Rate of TDS	<u>10 %</u> + SC + EC (5% UPTO 31.5.2007)
Exemption	If payment does not exceed <u>Rs.30000</u> <u>Fees paid by individual/HUF for their personal purpose</u> <u>If Recieipient is in call centre business only TDS @</u> <u>2%wef 1/6/17</u>
Time for deduction	At the time of payment or credit whichever is earlier
Time for deposit	On behalf of Govt. on the same day Other cases within a week
TDS Certificate	FORM 16A

TDS on Compensation on acquisition of immovable properties – Sec.194LA

Deductor	Any person
Payee	Any person resident in India
Particulars	Compensation for compulsory acquisition of immovable property (Other than agricultural land).
Rate of TDS	<u>10%</u>
Exemption	If payment does not exceed <u>Rs.250000</u>
Time for deduction	At the time of payment or credit whichever is earlier
Time for deposit	On behalf of Govt. on the same day Other cases within a week
TDS Certificate	FORM 16A

Amendment to Sec.194LA

Vide Budget 2017, sec.194LA amended (w.e.f. 1.4.2017) to the effect that if acquisition made under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (RFCTLARR Act) 2013, no TDS – since Corresponding receipts also not taxable.

Payments to non residents - 195

Any person paying to a non-resident or to a foreign company towards

- ☐ Interest (not being interest referred in sec.194LB, 194LC or 194LD)
 - ☐ Or Any other sum chargeable under the provisions of this Act – Refer sec.9 (not being income chargeable under the head 'Salaries')
- to deduct income tax at the rates in force.

Details of remittance to be provided to RBI in form 15CA and 15CB
Revised rules are effective 1st April 2016.

The significant changes are as follows –

Form 15CA and 15CB will be NOT be required to be furnished by an individual for remittance which do not requiring RBI approval

List of payments of specified nature mentioned in Rule 37 BB which do not require submission of Forms 15CA and 15CB has been expanded from 28 to 33 including payments for imports.

Form No. 15CB will only be required for payments made to non-residents which are taxable and the payment exceeds Rs. 5 lakh.

CERTIFICATE u/s 197

The Assessing Officer can issue a NIL/lower deduction certificate if he is satisfied that the Total Income justifies the same.

The application is to be filed in the prescribed form.

The certificate is issued as per Rules prescribed by the BOARD.

Non-deduction of TDS

- If the depositor do not have a taxable income, they have to file a declaration in Form 15G/15H to the Bank in duplicate.
- Form 15G: The depositors below the age of 60 Years
- Form 15H: The depositors above the age of 60 years.
- For filing of Form 15G/15H, the depositor should have PAN.
- *Companies and Firms are not eligible to file Form 15G/15H.*
- *With effect from 1.6.2016, rental receipts u/s 194I are also covered. From 1.4.2017, insurance commission u/s 194D is also covered.*

Form No.15G – not to be accepted

- The **payer shall not accept the declaration** where the **aggregate** of the **amount of income** credited or paid or likely to be credited or paid exceeds the maximum amount which **is not chargeable to tax**.
- For deciding the eligibility, the payer is required to verify the aggregate amount of incomes reported by the declarant in relevant columns of Form No.15G.

Form No.15G – not to be accepted

- The declaration shall be invalid if the declarant fails to furnish his valid Permanent Account Number (PAN).
- If PAN is invalid or not belong to the deductee or not furnished, TDS to be made at Higher of the following rates :-
 - The rate prescribed in the Act.
 - At the rate in force i.e. rate mentioned in Finance Act
 - At the rate of 20%
- Person making a false statement in the declaration is liable to prosecution and on conviction be punishable with Rigorous Imprisonment.

TAX COLLECTED AT SOURCES

Section 206C

Deductor	Every Person being a seller Every person granting a lease/license
Payee	The buyer
Time for Collection	At the time of receipt or at the time debiting the account
Time for deposit	Within a week
TCS Certificate	Form 27D
TCS Return (Form 27EQ)	Next month end of every quarter; by 30 th May for last quarter.

Exemption

- No tax to be collected, where the buyer produces form 27C and verified in the prescribed manner stating that the produce is used to:
 - Manufacture
 - Process
 - Produce
- an articles or things and not for Trading.

ANNEXURE I

SPECIFIED GOODS	RATE OF TCS
Alcoholic liquor for human consumption	1%
Tendu leaves	5%
Timber obtained under forest lease	2.5%
Timber obtained under any other mode	2.5%
Any other forest produce not being timber or tendu leaves	2.5%
Scrap	1%
Minerals, being coal or lignite or iron ore (From 1.7.2012)	1%
<u>License for</u> i) Parking lot	2%
ii) Toll Plaza	2%
iii) Mining and quarrying (excluding mineral oil – petroleum & natural gas)	2%

NEW TCS PROVISIONS

PARTICULARS	RATE OF TCS
By Finance Act 2012 – W.e.f 1.7.2012	
Every person being a seller of bullion of jewellery – to collect TCS from buyer	1%
Conditions : <u>Receipt in cash</u> For bullion exceeding Rs.2 lakh For jewellery exceeding Rs.5 lakh	
By Finance Act 2016 – W.e.f 1.6.2016	
Any cash sales – for goods (other than bullion or jewellery) or services exceeding Rs.2 lakh	1%
On sale of motor vehicle – value exceeding Rs.10 lakhs – Cash or any mode	1%

Amendment to TCS Provision (Vide Budget 2017)

- **Section 206C(1F)** provides that the seller who receives consideration for sale of a motor vehicle exceeding Rs.10 lakhs shall collect one percent of the sale consideration as tax from the buyer.
- **W.E.F 1.4.2017**, Sec.206C amended to exempt Central / State government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State, local authority as defined in explanation to clause (20) of sec.10, a public sector company which is engaged in the business of carrying passengers, from the applicability of provisions of sec.206C(1F)

Higher rate of TDS / TCS if Deductee does not provide PAN

- **Sec.206AA:** TDS to be effected @ 20% if deductee does not provide PAN.
- Where e-TDS Return filed without quoting PAN of deductee, system computes TDS @ 20% and raises short deduction demand.
- **Sec.206CC:** Vide Budget 2017, new provision inserted, which provides for collection of TCS @ 5%, if buyer/lessee/collectee does not provide PAN to the seller/lessor/collector – Effective from 01.04.2017.

Section 201(1) and 201(1A)

- **Sec 201(1)**

Any person who was required to deduct Tax and Remit has failed will be held as a Defaulter.

- **Sec 201(1A)**

Interest @1.5% for every month(or a part) for such default is chargeable as Interest.

Section 201(1) and 201(1A)

- As per first proviso to sec.201, w.e.f. 1.7.2012, the deductor shall not be deemed to be in default if the payee.
 - Has furnished his Return of income u/s 139
 - Has taken into account such sum for computing income in such return of income and
 - Has paid the tax due on the income declared by him in such return of income and
 - The person furnished a certificate to this effect from any accountant in Form 26A (Rule 31ACB)

[The Supreme Court, in the case of Hindustan Coco-cola Beverages, held that the above amendment is applicable to earlier years also]

However, vide third proviso, interest u/s 201(1) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by payee.

PENALTY AND PROSUECUTIONS

271C	Failure to deduct tax	Amount of tax not deducted
271CA	Failure to collect tax	Amount of tax not collected
276B	Failure to remit the deducted tax	Minimum 3 months & Maximum 7 years RI
276BB	Failure to remit the tax collected u/s 206C	Minimum 3 months & Maximum 7 years RI

Penalty for late filing of TDS return

- **Interest (Sec 234E) [W.e.f. 1.7.2012]:** Deductor will be liable to pay way of fee Rs.200 per day from the next day of due date till the failure to file e-TDS Return continues. However penalty should not exceed the amount of TDS for which statement was required to be filed.
- Sec.200A deals with processing of Statements of TDS. W.e.f. 1.6.2015, clause (c) of sec.200A modified to the effect that interest u/s 234E can be levied (by CPC) while processing e-TDS return u/s 200A.
- Now, various Tribunals have held that for e-TDS returns filed from 1.7.2012 to 31.5.2015, interest u/s 234E cannot be charged while processing the e-TDS Returns u/s 200A.
- In a recent decision, the ITAT, Chennai, in the case of G. Indhirani v. DCIT dated 16.07.2015, held that for the period from 1.7.2012 to 31.5.2015, interest u/s 234E cannot be levied while processing the Return u/s 200A. However, for this period, **the A.O could pass a separate order u/s 234E levying fee for delay in filing the statement u/s 200(3).**

Penalty for late filing of TDS return

Penalty (Sec 271H): Assessing officer may direct a person who fails to file the statement of TDS within due date to pay penalty minimum of Rs.10,000 which may extended to Rs.1,00,000.

Penalty under this section is in addition to the fee u/s 234E.

This section will also cover the cases of incorrect filing of TDS return.

No penalty under section 271H will be levied in case of delay in filing the TDS/TCS return if following conditions are satisfied:

The tax deducted/collected at source is paid to the credit of the Government.

Late filing fees and interest (if any) is paid to the credit of the Government.

The TDS/TCD return is filed before the expiry of a period of one year from the due date specified in this behalf.

Disallowance u/s Sec: 40(a)

40(a)(i): - Any interest, royalty or fees for technical services payable to a non-resident on which tax is deductible but not deducted or after deduction has not been remitted to Govt A/c on or before the due dates specified u/s 139(1) [Prior to 1.4.2015, to be remitted within due date specified u/s 200(1) – 31st May]

40(a)(ia): - **Vide Fin Act (No.2) 2014 – W.e.f. 1.4.2015**

- 30% of any sum payable to a resident on which tax is deductible but not deducted or after deduction has not been remitted to Govt A/c on or before the due dates specified u/s 139(1).
- [Prior to 1.4.2015, TDS on interest, Professional and Technical, Royalty fees, contractors, Commission/Brokerage and Rent – From A.Y.2005-06 onwards-100% disallowance]
- Disallowance u/s.40(a) (ia) extended to income chargeable under IFOS wef AY 18-19. eg.if TDS not resorted to on int payments to a pvt lender, the said int can't be claimed as deduction from the int

LEGAL INTERPRETATIONS

- A) Allahabad High Court, in the case of Vector Shipping Services – 357 ITR 642, held that only amounts payable as at the end of the relevant previous year to be disallowed u/s 40(a)(ia).
- CBDT, vide Circular No.10/2013 dated 16.12.2013 clarified that sec.40(a)(ia) to cover not only amount which are payable as on 31st March of previous year but also amounts which are payable at any time during the year.
 - However, Department's SLP against Allahabad High Court (cited above) is dismissed by Supreme Court *in limine*.
- B) Vide Fin Act 2012 – W.e.f. A.Y.2013-14, where assessee is not deemed to be an assessee in default under the first proviso to sec.201(1), then no disallowance u/s 40(a)(ia).
- The Kerala HC, in the case of Thomas George Muthoot, held in favour of Department that this second proviso is only prospective – applicable for A.Y.2013-14.

THANK YOU

