

Tax deducted at source (TDS) and Tax collection at source (TCS), as the very names imply aim at collection of revenue at the very source of income. It is essentially an indirect method of collecting tax which combines the concepts of “pay as you earn” and “collect as it is being earned”. Its significance to the government lies in the fact that it prepones the collection of tax, ensures a regular source of revenue, provides for a greater reach and wider base for tax.

At the same time, to the taxpayer, it distributes the incidence of tax and provides for a simple and convenient mode of payment.

### **TDS – Three Dee System**

Deduct : As per provisions of Chapter VII – B

- Ascertain of TDS liabilities as per provisions of Chapter XVII-B

Deposit : Within due dates

- TDS payment within due date

Declare : By filing TDS statements

### **Concept of TDS**

The concept of TDS was introduced with an aim to collect tax from the very source of income. As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income-tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS or TDS certificate issued by the deductor.

### **TDS Deductor**

Is the one who deducts a specified amount as TDS from the amount which is to be given to the receiver/payee/deductee. Deductor is also referred as Payer (because he/she deposits this part of tax to the government on payee's behalf)

### **TDS Deductee**

Is the one whose money is deducted and deposited on his/her behalf to the government by the Deductor. Deductee is also commonly referred as Payee.

The concept of TDS requires that the person on whom responsibility has been cast, is to deduct tax at the appropriate rates, from payments of specific nature which are being made to a specified recipient. The deducted sum is required to be deposited to the credit of the Central Government. The recipient from whose income, tax has been deducted at source, gets the credit of the amount deducted in his personal assessment on the basis of the certificate issued by the deductor.

### **TDS is also known as withholding tax**

TDS is similar to the "Pay as you Earn" Scheme. It is known as withholding of Tax in many other countries.

### **Objectives of Tax Deducted at Source [TDS]**

There are various objectives of introducing the TDS provision under the Act. One is also to make sure that tax payment is not avoided by unscrupulous income-tax assesseees and the government receives its actual share of taxes.

The basic objectives of introducing tax deducted at source provision under the Act are as follows:—

- (i) Tax is collected prior to receiving income.
- (ii) It helps to prevent tax evasion.
- (iii) Improved cash-flow for the government.  
Government requires funds throughout the year. The provision of tax deducted at source helps the government to get funds throughout the year and run the government smoothly.
- (iv) As TDS deductions take place throughout the financial year, it is an effective mode of revenue inflow to the government.
- (v) It widens the tax collection base.
- (vi) It is a way to share the responsibility of tax collection between government and Deductors.
- (vii) To enable the salaried people to pay the tax as they earn every month. This helps the salaried persons in paying the tax in easy installments and avoids the burden of a lump sum payment.
- (viii) To check that tax payment is not avoided by unscrupulous income-tax assesseees.

### **Advantages**

- (1) The intent of the law is more conveniently fulfilled since the tax flow should parallel income flow more closely than without TDS;
- (2) Since tax is collected prior to receiving income, compliance is improved and enforcement costs are reduced;
- (3) Because of improved cash-flow, government's day-to-day borrowing needs are eased;

- (4) Among those within the TDS net, the tax burden is shared more equitably;  
and
- (5) Since tax collection responsibility.

### **Nature of TDS obligation**

- Primary liability to pay tax is on recipient
- TDS is tentative deduction subject to final assessment
- TDS is substitutionary or vicarious liability
- TDS provisions are complimentary in nature
- Enables the discharge of the primary liability
- Section 202 – Recovery of tax by TDS is without prejudice to any other mode of recovery

### **Duties and rights of the person liable to deduct/collect tax at source**

Following are the basic duties and rights of the person who is liable to deduct tax at source:—

#### **(A) Duties of the person liable to deduct/collect tax at source**

Following are the basic duties of the person who is liable to deduct tax at source:—

##### ***(i) Obtain Tax Deduction Account Number or Tax Collection Account Number (as the case may be)***

He shall obtain Tax Deduction Account Number or Tax Collection Account Number (as the case may be) and quote the same in all the documents pertaining to TDS/TCS.

##### ***(ii) Deduct the Tax at source at the applicable rate and deposit in Government Account [Section 200]***

Every person responsible for deducting tax at source shall at the time of payment or credit of income, whichever is earlier, verify whether the payment being made is to be subject to deduction of tax at source. If it is so, he must deduct such tax as per the prescribed rates. Further he is required to deposit such tax deducted in the Central Government Account within the prescribed time as specified in Rule 30.

##### ***(iii) Issue the TDS/TCS certificate to the payee in respect of tax deducted/collected by him (by the due date specified in this regard)***

Such person is required to issue a certificate of tax deducted/collected at source under section 203 to the person from whose income the TDS has been deducted/collected, in the prescribed proforma i.e., Form No. 16A within prescribed time.

##### ***(iv) File prescribed Return/Quarterly Statements by the due date specified in this regard***

A return of TDS is a comprehensive statement containing details of payments made and taxes deducted thereon along with other

prescribed details. For deductions made prior to 01.04.2005 earlier every deductor was required as per the provisions of Section 206 (read with Rules 36A and 37) to prepare and deliver an annual return, of tax deducted/collected at source. However, with effect from 01.04.2005, there is no requirement to file annual returns and instead Quarterly statements of TDS are to be submitted in Form 26Q by the deductors.

(v) Use challan no. 281 for depositing TDS amount

ITNS 281 – This Challan is used for depositing Tax Deducted at Source (TDS) or Tax Collected at Source (TCS).

### **(B) Rights of the person liable to deduct/collect tax at source**

Following are the basic rights of the person who is liable to deduct tax at source:—

#### **(i) Credit of TDS**

If tax has been deducted at source under sections 192, 194A, 194B, 194BB, 194C, 194D, 194E, 194EE, 194F, 194G, 194H, 194-I, 194J, 194K, 194M, 194-O, 195, 196A, 196B, 196C and 194D, the person from whose income (payment) the tax has been deducted i.e., payee or assessee shall not be asked upon to pay the tax himself to the extent tax has been deducted (Section 205). Moreover, under section 199, such tax deducted at source shall be treated as payment of tax on behalf of the payee (assessee).

#### **(ii) TDS Certificate**

Under section 203, payee (taxpayer) is entitled to obtain a certificate from the payer (tax deductor) in Form 16A specifying the amount of tax deducted and other prescribed particulars. This has been discussed in detail earlier.

#### **(iii) Annual Information Statement**

Annual Information Statement replaced Form 26AS with effect from 01.06.2020. It provides details of financial transactions of taxpayers in an all-inclusive manner.

## **Scheme of Tax Deduction**

The obligation to deduct/collect tax at source is upon the person responsible for paying the income/amount which is subject to TDS. Therefore such person i.e., the payer is required to follow the procedure for deducting/collecting tax at source mentioned as under:—

Step – 1	The payer has to apply for tax deduction account number (TAN) in Form No. 49B.
Step – 2	He is to deduct tax from the income/payment mentioned in various sections i.e., sections 192 to 196D.
Step – 3	The amount so deducted/collected should be deposited within the requisite stipulated time to the credit of Central Government.

Step – 4	The payer should prepare TDS Return statements for every quarter and file the same with the authority designated by the Income- Tax Department (NSDL in this case) in such form and verified in such manner as may be prescribed.
Step – 5	Lastly, the payee should be issued certificate of tax deduction/ collection at source within the specified date. The TDS certificate to be downloaded from tax portal.

### **TDS only applicable above at threshold level**

TDS on specified transactions is deducted only when the value of payment is above the specified threshold level. No TDS will be deducted if the value does not cross the specified level. Different threshold levels are specified in the Income Tax Act for different payments such as salaries, interest received etc.

### **No deduction of tax if payee is not identifiable**

It was held that the identification of the person, from whose account tax is to be deducted, is a prerequisite to make the provisions of Chapter XVII-B workable. Therefore, assessee shall not be required to deduct tax at the time of creating provision for expenses if identity of payees could not be ascertained.— [*Apollo Tyres Ltd. v. DCIT (2017) 78 taxmann.com 195 (ITAT Tribunal)*]

### **Excess deduction of TDS is refundable only by department**

Where tax has been deducted at source, whether rightly or wrongly and has been deposited with the Government, no claim for refund lies against the payer. Such claim for refund can be made only from the department.—

[*Management of ITC v. Presiding Officer, Labour Court (2000) 244 ITR 731 (Pat)*]

### **Persons exempt from TDS**

Tax is not required to be deducted at source where the amount is payable to:

- The Government
- The Reserve Bank of India
- A Corporation established under Central Acts, whose income is exempt from tax
- Mutual Fund specified under section 10(23D)

### **CBDT Circular No. 18/2017, dated 29.05.2017**

**Subject: Requirement of tax deduction at source in case of entities whose income is exempted under Section 10 of the Income-tax Act, 1961 – Exemption thereof**

The Central Board of Direct Taxes (the Board) had earlier issued Circular No. 4/2002, dated 16.07.2002 and Circular No. 7/2015, dated 23.04.2015 which laid down that in case of such entities, whose income is unconditionally exempt under Section 10 of the Income-tax Act (the Act) and who are also statutorily

not required to file return of income as per Section 139 of the Act, there would be no requirement for tax deduction at source (TDS) from the payments made to them since their income is anyway exempted from tax under the Act. The issue of whether exemption from TDS can be extended to more entities on these principles and whether the exemption is needed to be withdrawn in respect of some of the exempted entities was examined by the Board.

1. Examination of the eligibility of entities for exemption from TDS on the principle of unconditional exemption and no requirement to file return revealed that Circulars No. 4/2002 and 7/2015 are required to be updated to make the following changes:
  - ◆ Entities that meet both the above mentioned conditions but are not mentioned in the aforesaid Circulars need to be included in the list of exempted entities.
  - ◆ Entities that are mentioned in Circular No. 4/2002 but their exemption from income-tax has since been withdrawn need to be removed from the list of exempted entities.
  - ◆ Entities that are mentioned in Circular No. 4/2002 but because of subsequent amendment they are now required to mandatorily file their returns of income under section 139 need to be removed from the list of exempted entities.
2. In view of the above, a revised list of entities exempted from TDS has been drawn by adding entities in the first category listed above to the entities mentioned in Circular No. 4/2002 and Circular No. 7/2015 and removing entities in second and third categories from the list of existing entities eligible for exemption from TDS.
3. Accordingly, it has been decided that in case of below mentioned funds or authorities or Boards or bodies, by whatever name called, referred to in section 10 of the Income-tax Act, whose income is unconditionally exempt under that section and who are also statutorily not required to file return of income as per section 139 of the Income-tax Act, there would be no requirement for tax deduction at source, since their income is anyway exempt under the Income-tax Act –
  - (i) “local authority”, as referred to in the *Explanation* to clause (20);
  - (ii) Regimental Fund or Non-public Fund established by the armed forces of the Union referred to in clause (23AA);
  - (iii) Fund by whatever name called, set up by the Life Insurance Corporation of India on or after 1st August, 1996, or by any other insurer referred to in clause (23AAB);
  - (iv) Authority (whether known as the Khadi and Village Industries Board or by any other name) referred to in clause (23BB);
  - (v) Body or authority referred to in clause (23BBA);
  - (vi) SAARC Fund for Regional Projects set up by Colombo Declaration referred to in clause (23BBC);

- (vii) Insurance Regulatory and Development Authority referred to in clause (23BBE);
  - (viii) Central Electricity Regulatory Commission referred to in clause (23BBG);
  - (ix) Prasar Bharati referred to in clause (23BBH);
  - (x) Prime Minister's National Relief Fund referred to in sub-clause (i), Prime Minister's Fund (Promotion of Folk Art) referred to in sub-clause (ii), Prime Minister's Aid to Students Fund referred to in sub-clause (iii), National Foundation for Communal Harmony referred to in sub-clause (iiia), Swachh Bharat Kosh referred to in sub-clause (iiiaa), Clean Ganga Fund referred to in sub-clause (iiiaaa) of clause (23C);
  - (xi) Provident fund to which the Provident Funds Act, 1925 (19 of 1925) referred to in sub-clause (i), recognized provident fund referred to in sub-clause (ii), approved superannuation funds referred to in sub-clause (iii), approved gratuity fund referred to in sub-clause (iv) and funds referred to in sub-clause (v) of clause (25);
  - (xii) Employees' State Insurance Fund referred to in clause (25A);
  - (xiii) Agricultural Produce Marketing Committee referred to in clause (26AAB);
  - (xiv) Corporation, body, institution or association established for promoting interests of members of Scheduled Castes or Scheduled Tribes or backward classes referred to in clause (26B);
  - (xv) Corporation established for promoting interests of members of a minority community referred to in clause (26BB);
  - (xvi) Corporation established for welfare and economic upliftment of ex-servicemen referred to in clause (26BBB);
  - (xvii) New Pension System Trust referred to in clause (44).
4. This circular supersedes earlier Circulars on this issue e.g. Circular No. 4/2002, dated 16.07.2002 and Circular No. 7/2015, dated 23.04.2015 with effect from the date of issue of this Circular.

### **Deduction to be made under one section only**

In some cases persons responsible for deducting tax at source are deducting such tax by applying more than one provisions for the same payment. In particular, it has been pointed out that the sums paid for carrying out work of advertising are being subjected to deduction of tax at source under section 194C as payment for work contract as also under section 194J as payments of fees for professional services.

The Board has clarified that each section, regarding TDS under Chapter XVII, deals with a particular kind of payment to the exclusion of all other sections in this Chapter. Thus, payment of any sum shall be liable for deduction of tax only

under one section. Therefore, a payment is liable for tax deduction only under one section. [*Board's Circular No. 720, dated 30.08.1995*]

**Board's Circular No. 720, dated 30.08.1995**

**Subject :** *Payment of any sum shall be liable for deduction of tax only under one section*

It has been brought to the notice of the Board that in some cases persons responsible for deducting tax at source are deducting such tax by applying more than one provision for the same payment. In particular, it has been pointed out that the sums paid for carrying out work of advertising are being subjected to deduction of tax at source under section 194C as payment for work contract as also under section 194J as payments of fees for professional services.

2. It is hereby clarified that each section, regarding TDS under Chapter XVII, deals with a particular kind of payment to the exclusion of all other sections in this Chapter. Thus, payment of any sum shall be liable for deduction of tax only under one section. Therefore, a payment is liable for tax deduction only under one section.

**Assessee had no legal right to compel CBDT to give clarifications on any TDS issue**

Assessee by way of instant writ petition pleaded before High Court to direct the Central Board of Direct Taxes (CBDT) to issue direction that sale of shrink-wrapped-packaged software on CD/DVD was sale of goods and was not to be subjected to tax deduction at source under section 194J/194C by its customers. The Bombay High Court held that the prayer was in the nature of mandamus to the CBDT to deal with and dispose of the Petitioner's application that it was not liable to suffer any tax deduction at source by its customers. Before any such directions could be issued, the Petitioner had to establish his legal rights to such a relief and a legal duty on the other party (to whom directions/mandamus was sought) to perform/do what was sought by the Petitioner.

In the instant case, the obligation to deduct tax at source was on the Petitioner's customers under section 194C/194J. The non-deduction of tax by the Petitioner's customers would visit it with consequences under section 201 of the Act. Therefore, in such a case, the legal right if any was of the customer who was required to deduct tax at source. In any case, there was no legal right in the Petitioner and/or its customers to compel the CBDT to give a ruling on the issue of tax deduction at source.

It is clear in terms of section 119(1) of the Act, there is no duty cast upon the CBDT to issue clarification and decide the matters which would be essentially in the realm of adjudication before the authorities under the Act.

The CBDT was also to be barred from issuing of instruction in respect of the Petitioner's application by virtue of the proviso (a) to section 119(1) of the Act. Therefore, the instant writ was to be dismissed. – [*Quick Heal Technologies Ltd. v. Union of India* (2020) 114 taxmann.com 315 (Bom.)]



**Income Tax Act's sections dealing with Deduction of tax at source**

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191	Direct payment
192	Salary
192A	Payment of accumulated balance due to an employee
193	Interest on securities
194	Dividends
194A	Interest other than "Interest on securities"
194B	Winnings from lottery or crossword puzzle
194BB	Winning from horse race
194C	Payments to contractors
194D	Insurance commission
194DA	Payment in respect of life insurance policy
194E	Payments to non-resident sportsmen or sports associations
194EE	Payments in respect of deposits under National Savings Scheme, etc.
194F	Payments on account of repurchase of units by Mutual Funds or Unit Trust of India
194G	Commission, etc., on the sale of lottery tickets
194H	Commission or brokerage
194I	Rent
194IA	Payment on transfer of certain immovable property other than agricultural land
194IB	Payment of rent by certain individuals or Hindu undivided family
194IC	Payment under specified agreement
194J	Fees for professional or technical services
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206C	Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.
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30	Time and mode of payment to Government account of tax deducted at source or tax paid under sub-section (1A) of section 192
30A	Credit for tax deducted at source to a person other than the shareholder in certain circumstances [Omitted by the IT (Twenty-fourth Amdt.) Rules, 2003, with effect from 1.10.2003]
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Rule	Contents
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37BC	Relaxation from deduction of tax at higher rate under section 206AA

## TDS Collection status

(Rs. in crore)

Financial year	TDS	%age of aggregate	Advance Tax	Self-assessment Tax	Regular assessment Tax	Other receipts	Total Gross Direct tax Receipts
2001-02	32672	39.97	34094	5479	9492	4094	85831
2002-03	36568	35.54	49158	6414	10745	2184	105069
2003-04	42955	33.68	58713	9852	16015	3150	130685
2004-05	43972	29.30	90034	10043	6006	10406	160461
2005-06	58606	32.66	87084	11618	22112	7875	187294
2006-07	70689	29.93	121227	13825	30396	20495	256632
2007-08	105047	33.77	158673	21375	25970	43792	354858
2008-09	128230	39.61	143332	30779	21337	49237	372915
2009-10	145736	37.85	173417	32507	33274	50229	435163
2010-11	168669	36.36	212538	36887	51838	43966	513898
2011-12	198679	37.53	251526	27648	51512	50134	579499
2012-13	210654	35.80	275794	39470	62418	48596	636932
2013-14	248547	37.78	292522	44123	72528	63884	721604
2014-15	259106	36.09	326525	52050	80189	81589	799459
2015-16	315131	39.05	356601	66417	68737	57834	864720
2016-17	343134	38.45	406769	68160	74138	120200	1012401
2016-17	343134	38.45	406769	68160	74138	120200	1012401
2017-18	412768	38.38	461967	101873	98785	79043	1154436

**Note :** Gross Tax receipts without reducing refunds.