

Session - VIII

Overview of TDS & TCS

8th Annual Workshop
on Direct Taxes

3rd June 2023



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CHARTERED ACCOUNTANTS

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It is suggested that to avoid any doubt the user should cross check the correctness of text, contents and the law with the original documents and to dispel confusion should seek professional help/opinion.



DISCLAIMER

- Nov 1998 batch Chartered Accountant.
- Commerce Graduate from Punjab University.
- Certificates in Indirect taxes, DISA, Valuation, and Blockchain from ICAI.
- Actively pursuing certifications in Ind-AS and Social Audit.
- Member of Taxation Audit Quality Review Board (TAQRB) and special invitee to Tender Monitoring Directorate of ICAI.
- Elected member of Executive Committee of Sales Tax Bar Association (STBA).
- Passionate about the innovative use of technology in the professional sphere.
- YouTuber, leveraging the power of digital platforms to share his knowledge and insights with fellow professionals.
- He may be contacted at deepakVcard.daksm.com



Background



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“Collect taxes like honeybees, which collects honey without hurting the flower”

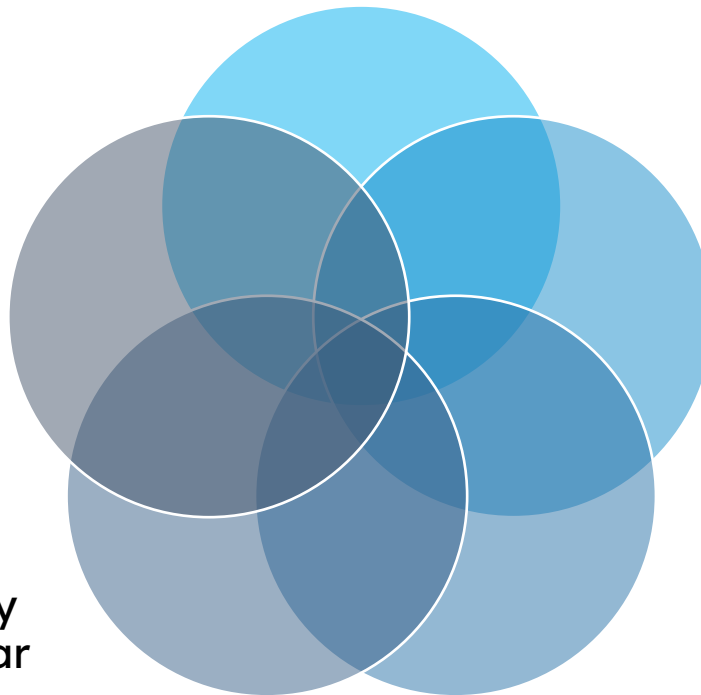
Ancient Text

Background, history and introduction to TDS/TCS

TDS was introduced way back in 1963 for payment of interest on certain specific securities. Now TDS is supposed to be deducted under 41 heads.

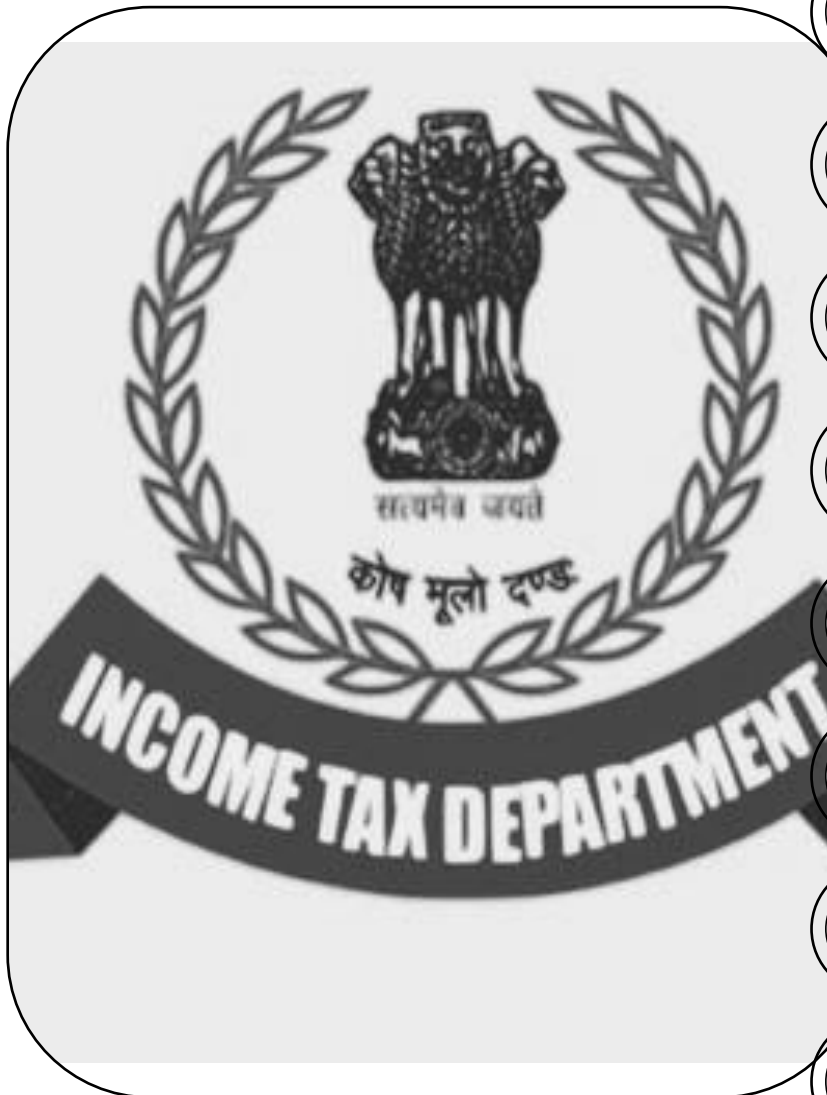
TDS/TCS prevents avoidance of tax by manipulating the accounts later – Since TDS/TCS leaves a trail of transaction {*United Breweries Ltd. (1995)(Kar)*}

TDS ensures early and round the year payment to the Govt. treasury.



Provisions of TDS casts onerous responsibility on the deductor – To deduct & deposit tax, file returns and issue certificates

TDS/TCS constitute close to 45~50% of govt's direct tax collection.



- 1 Quick and efficient collection of taxes
- 2 Tax is deducted or Collected at the point of origination of income
- 3 Round the year collection of taxes
- 4 41 sections of TDS for various incomes / payments
- 5 12 types of receipts deals with TCS
- 6 TDS is deducted & remitted by the payer to the Government , on behalf of the payee
- 7 Similarly TCS is collected and remitted by seller
- 8 Deductee/Collectee can claim credit in his/her/its ITR



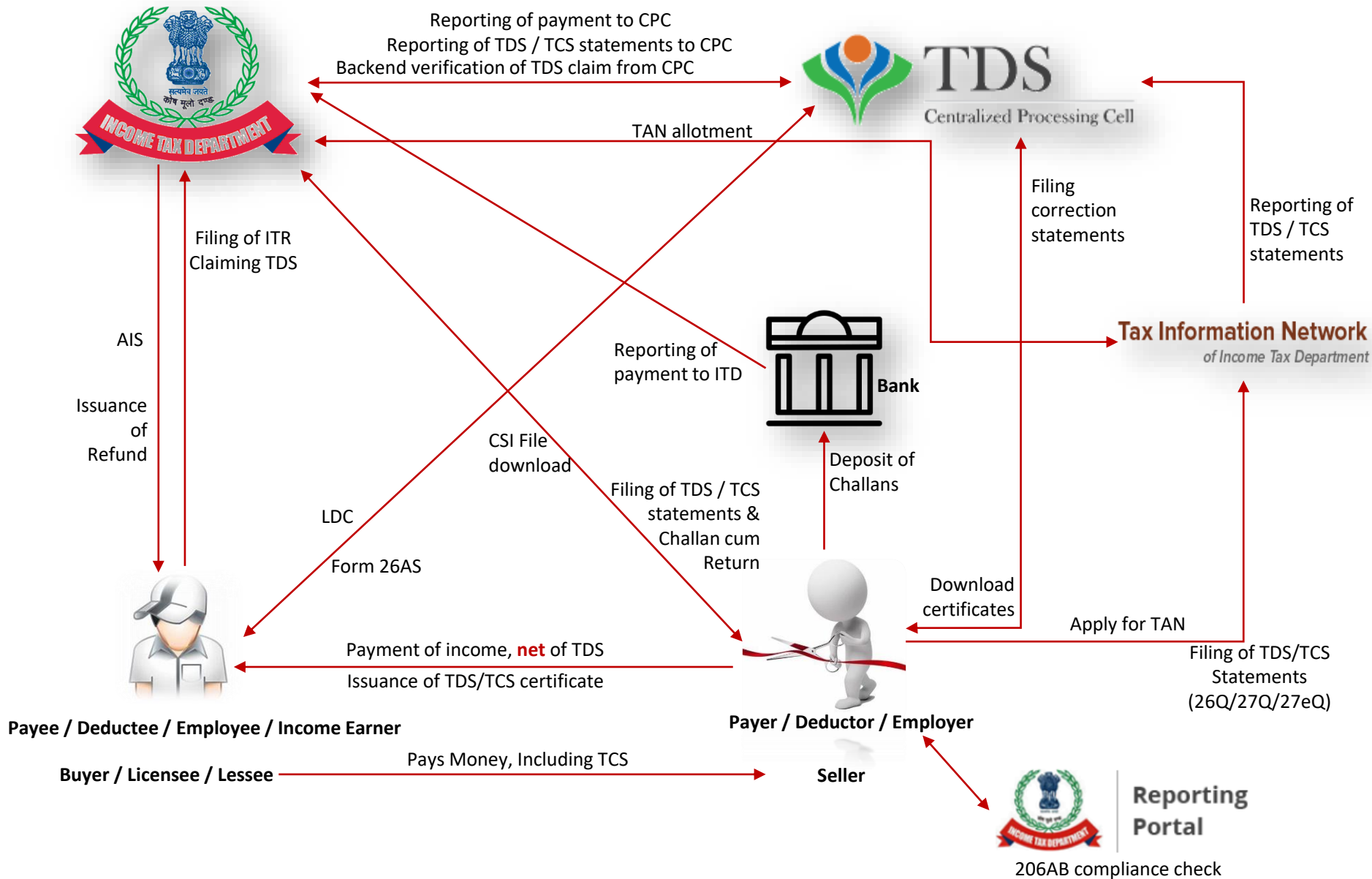
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TDS eco-system

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TDS/TCS Eco-system (new)



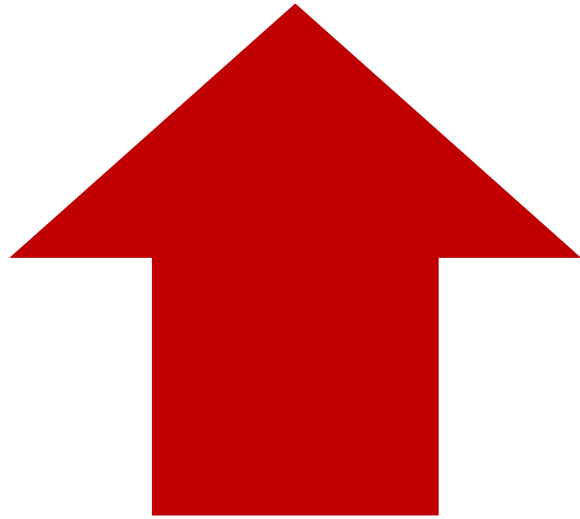
190 & 191



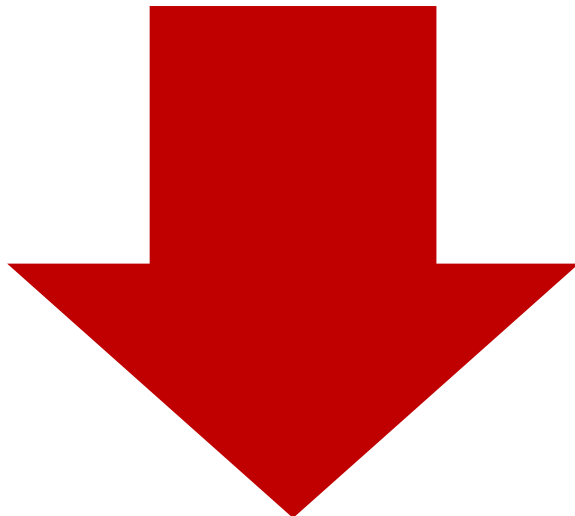
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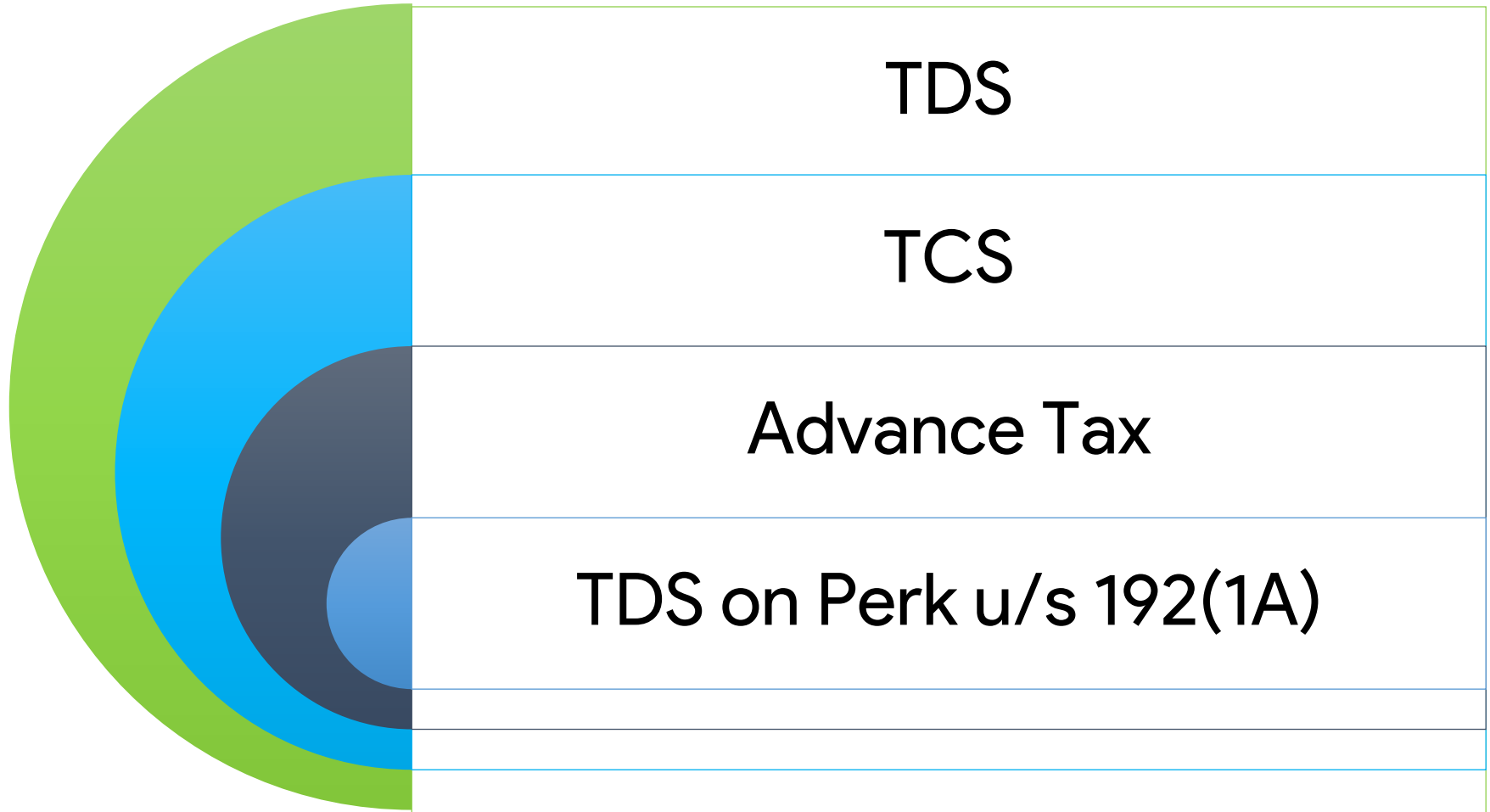
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4 creates
charge



190 prescribes
mode of
collection of tax



- TDS / TCS is one of the modes/mechanism for collection of tax.
- Liability of payer/collector for TDS/TCS is separate from tax liability of payee. Both are shielded from each other.
- If TDS/TCS may not get attracted for any reasons or is not collected / deducted, the tax liability of sum in the hands of the payee is not affected, and he is still liable to pay tax on his/its income by other modes.
- 191(2) deals with payment of TDS on ESOP offered by start-up companies

Explanation to 191

Triggering Event	Who shall be treated as assessee in default in case of TDS
fails to deduct TDS	A person who is responsible for deduction of tax or principal officer of company E.g., Proprietor, Partner, Trustee, MD, CEO etc.
After deducting TDS fails to pay or does not pay, whole or any part of the tax, as required under the income tax act.	

☞ Not only deductor, even where assessee/payee is responsible for payment of tax directly and he does not deposit such tax, he shall also be treated as assessee in default.

☞ Please also read 218, 220 for assessee in default

Aggarwal Chambers of Commerce (1959) (SC):

- *Persons responsible for deduction of tax are not concerned with the ultimate results of assessments (assessment of payee).*
- *Even if the taxes so deducted are refundable to the deductee/payees in their own assessments, that can not be defence for non-deduction.*

Hindustan Coca-Cola Beverages (P) Ltd. (2007) (SC):

- Where the payee has offered the income on which tax was required to be deducted, *which has not been deducted*, and;
- Payee has paid the taxes due thereon, then
- No recovery of tax can be done from payer.

Tata Chemicals Ltd. (1999) 68 ITD 205 (Mum):

- After the assessment order in the case of the payee has been made, the person who was to deduct TDS would not be liable to pay the tax and it shall be payable by that assessee (the payee).

- As a consequence, s.201 was amended
- Now on submission of from 26A/27BA from a practising CA, deductor is absolved as “*assessee in default*”
- He remains liable to pay only interest @1% from the date on which tax was deductible till date of filing of ITR by payee.

For the purpose of TDS –

- any income payable in foreign currency,
- the rate of exchange for the calculation
- of the value in rupees of such income payable
- to an assessee outside India
- shall be the TT buying rate of such currency
- as on the date on which
- the tax is required to be deducted at source

“TT buying rate”: The rate or rates of exchange adopted by the SBI for buying such currency where such currency is made available to that bank through a telegraphic transfer.

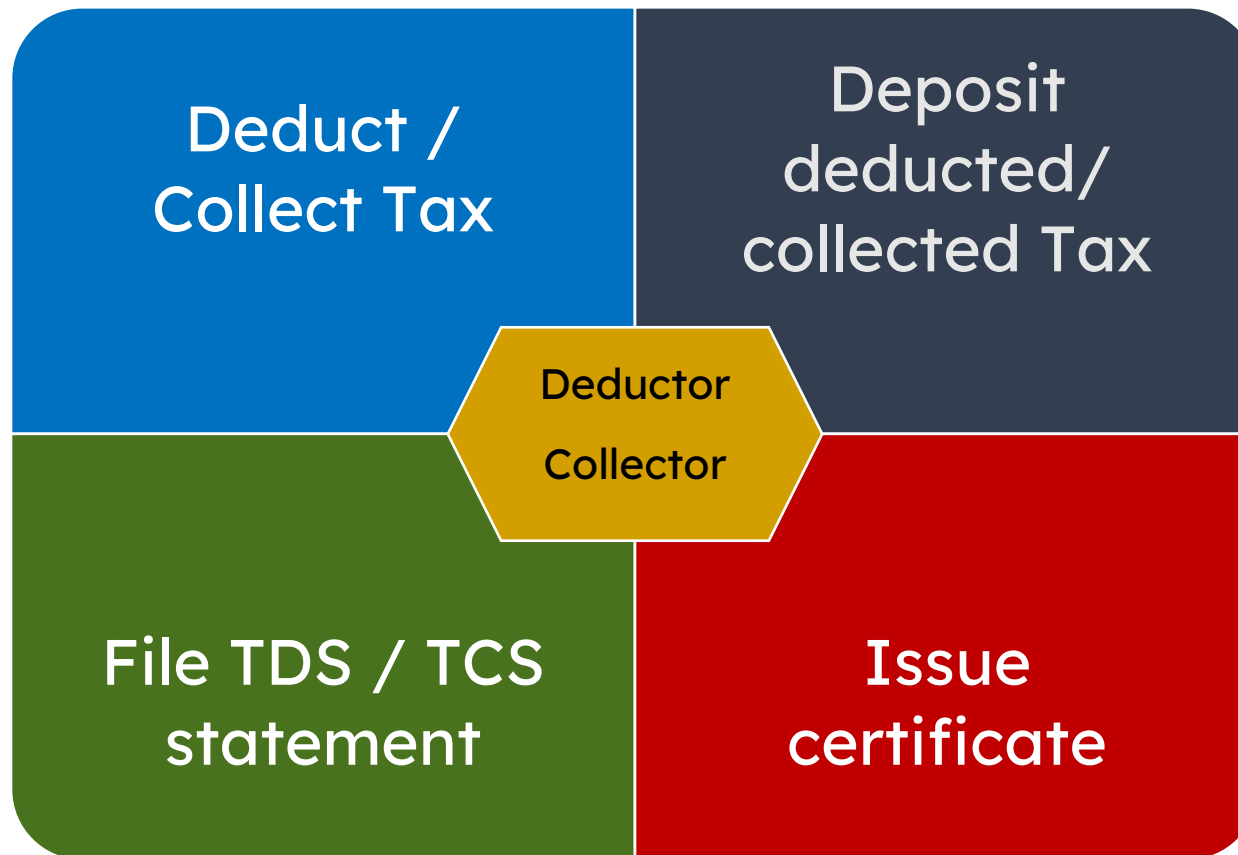


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Duties of Deductor/ Collector

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- A deductor/collector has to obtain Tax Deduction and Collection Account number, also called as TAN. An organisation can have multiple TAN based on locations.
- In certain situations, compliance is to be done based on PAN instead of TAN



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Incomes/payments subject to TDS

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- Salary

192

- Payment of accumulated balance due to an employee

192A

- Interest on securities

193

- Dividends

194

- Interest other than interest on securities

194A

- Winnings from lotteries or crossword puzzles

194B

- Winning from online games

194BA

- Winnings from horse races

194BB

- Payments to contractors and sub-contractors

194C

- Insurance Commission

194D

- Payment in respect of Life Insurance Policies

194DA

- Payment to non-resident sportsmen or sports association

194E

- Payment in respect of NSC

194EE

- Payments in respect Of repurchase of units of mutual Funds or UTI

194F

- Commission on sale of lottery tickets

194G

- Commission or brokerage

194H

- Rent

194I

- Payments for certain immovable properties

194IA

- Payments of rent by individuals and HUF

194IB

- Payments under specified agreement (JDA)

194IC

- Fees for professional or technical services

194J

- Income in respect of units

194K

- Payment of compensation on acquisition of certain immovable property

194LA

- Interest from infrastructure debt fund

194LB

- Income from units of a business trust

194LBA

- Income in respect of units of investment fund

194LBB

- Income in respect of units of investment in securitisation fund

194LBC

- Income by way of interest from Indian company

194LC

- Payment of certain interest to FII / QFI

194LD

- Payment of certain sum by certain Individuals and HUFs

194M

- Payment of certain sum by certain amounts in cash

194N

- Payment of certain sum by e-commerce operator to e-commerce participant

194O

- Deduction of tax in case of specified senior citizen

194P

- Payment of certain sum for purchase of goods

194Q

- Deduction of tax on benefit or perquisite in respect of business or profession

194R

- Payment on transfer of virtual digital asset

194S

- Payment to non-residents

195

- Income in respect of units of Non-residents

196A

- Income from units of offshore fund

196B

- Income from Foreign Currency bonds/Global Depository Receipts

196C

- Income of FII from Securities

196D



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Receipts subject to TCS

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Sl#		Nature of receipts
1.	206C(1)	Sale of -
		- Tendu Leaves
		- Timber obtained under a forest lease
		- Timber obtained by any other mode
		- Any forest produce not being timber/ tendu leaves
		- Scrap
		- Minerals, being coal or lignite or iron ore
2.	206C(1C)	Granting of license, lease etc. of
		- Parking Lot
		- Toll Plaza
		- Mining and quarrying
3.	206C(1F)	Sale of Motor Vehicle above 10 lakhs
4.	206C(IG)	Outward foreign remittances
5.	206C(1H)	Sale of any other goods

Compliance calendar



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Due dates to deposit TDS/TCS

Type of TDS/TCS	Due dates for April ~ February	Due dates for March
<ul style="list-style-type: none">• 194-IA: Sale of property• 194-IB: Rent• 194M: Payment for any contractual work or professional services• 194S: Payment on transfer of virtual digital assets	30 th day of next month in which tax is required to be deducted	
TDS (other than above) i.e. 192, 193, 194, 194C, 194D, 194H, 194I, 194F, 194G, 194Q, 195 etc	7 th day of next month (e.g., 7 th May for TDS of April)	30 th April
TCS	7 th of next month	

👉 Challan no. ITNS-281 is used to pay TAN based TDS or TCS

Challan cum Monthly Statements – PAN Based

Statement Number	Due date
Sale of property u/s 194-IA : Form 26QB & Rent u/s 194-IB: Form 26QC & Payment of any contractual work or professional services u/s 194M: Form 26QD & Payment on transfer of virtual digital assets u/s 194S: Form 26QD	30 th day of next month in which tax is required to be deducted

Quarterly Statements – TAN Based

Statement Number	Statement Q1-Q3	Q4
24Q, 26Q & 27Q	Within 1 month from the end of relevant quarter	2 months after the end of 4 th Quarter i.e. 31 st May
27EQ (TCS)	Within 15 th days of relevant quarter (E.g., 15 th July for Apr~Jun Quarter)	

Due dates of TDS certificates

Statement	TDS Certificate Number	Due date to issue certificate (Event based)
Form 26QB	Form 16B	15 days after due date of filing TDS statement cum Challan
Form 26QC	Form 16C	
Form 26QD	Form 16D	
Form 26QE	Form 16E	
Statement	TDS Certificate Number	Due date to issue certificate (Qtrly)
26Q	Form 16A	15 days after due date of TDS / TCS statement
27Q	Form 16A	
Form 26QE	Form 27D	
Statement	TDS Certificate Number	Due date to issue certificate (Annually)
24Q	Form 16	15 th June immediately after FY ends (E.g., 15 th June 2023 for FY 2022-23)

👉 All certificates to be obtained from TRACES (tdscpc.gov.in)



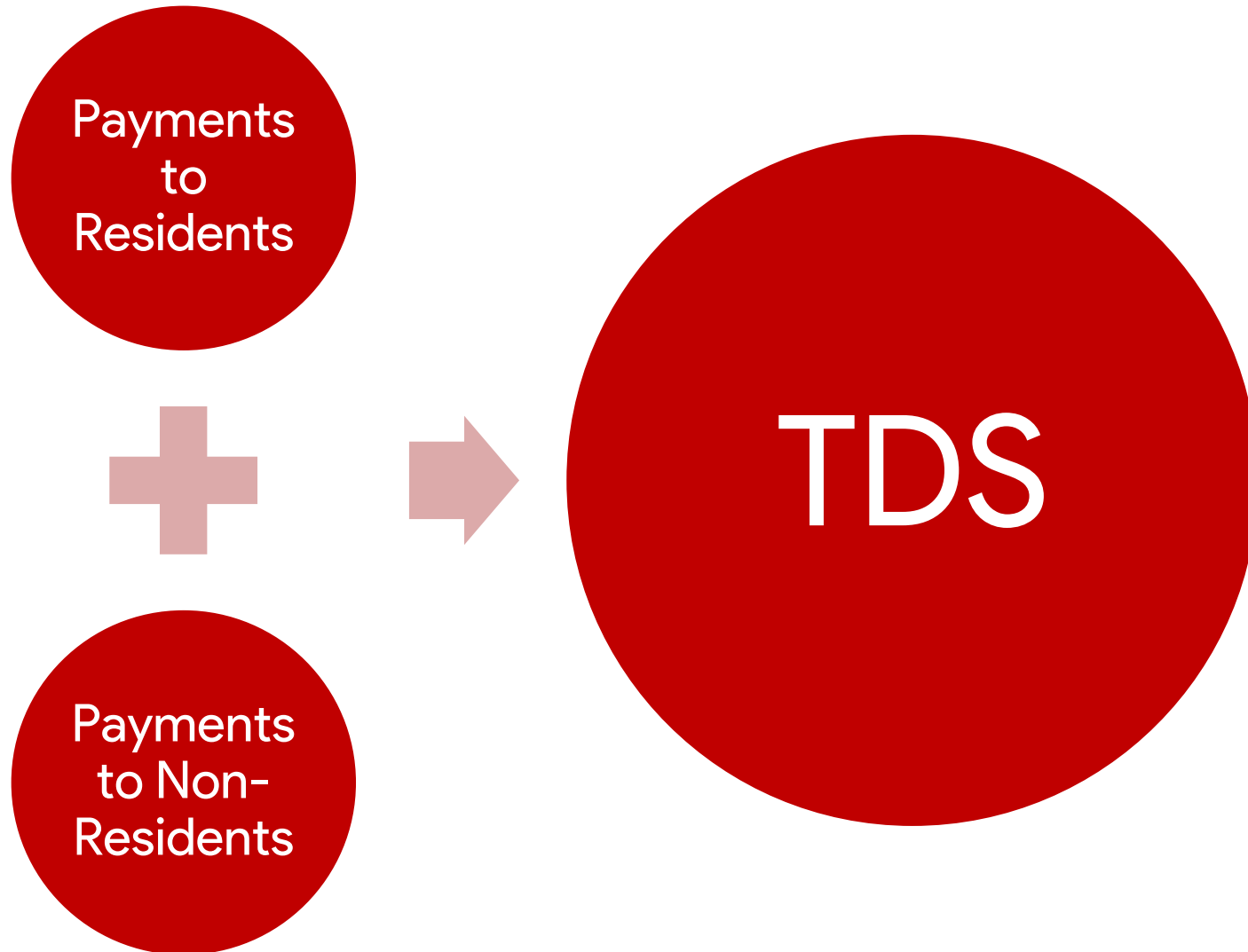
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Other aspects of TDS

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**Is every payer
required to deduct /
collect TDS?**



Payments to residents - General Principles

Types of payments	Individuals and HUFs	Other than Individuals and HUFs
Salary u/s 192, Lottery (194G)	Yes	Yes
Rent (194-IB), Other Payments (194M)	Yes	NA
Sale of Properties (194-IB)	Yes	Yes
Other payments	Yes, if turnover criteria ² is met ¹	Yes

1. Certain s may be specific to certain types of persons. E.g. Sec-194 which is exclusive to Companies or 194P, which is specific to Banks
2. Turnover criteria is based on last year's turnover. Business: 100 Lac, Profession: 50 Lacs. For 194Q, turnover criteria is 10 crore.
3. In nutshell, each has its own requirement on applicability and could be ridden with exceptions and conditions

Who is responsible for TCS?

Sl#		Nature of receipts	Responsibility to collect
1.	206C(1)	Sale of – Tendu Leaves, Timber obtained under a forest lease, Timber obtained by any other mode, Any forest produce not being timber/ tendu leaves, Scrap & Minerals, being coal or lignite or iron ore	Individuals and HUFs: Based on Turnover Criteria ¹ Others: Applicable w/o TO criteria Also applicable to Government
2.	206C(1F)	Sale of Motor Vehicle > 10 lakhs	
3.	206C(1C)	Granting of license, lease etc. of Parking Lot, Toll Plaza & Mining and quarrying	Any person who grants such license
4.	206C(1G)	Outward foreign remittances	Any AD Any Seller of Tour Package
5.	206C(1H)	Sale of any other goods	Any person whose sales > 10 cr last year.

1. Turnover criteria is based on last year's turnover. Business: 100 Lac, Profession: 50 Lacs.
2. For 206C(1H), TO criteria is 10 cr.

Is TDS a business function?

Various provisions of TDS is applicable to persons not engaged in business

Nature of payment	Relevant
Salaries	192
Sale of Properties > 50L	194-IA
Rent > 50K per month	194-IB
Payment for Commission, Professional, Contractual payments > 50L	194-M
Virtual Digital Asset	194-S
Payments to Non-residents	195



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Guiding principles related to deduction / collection of taxes

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- TDS/TCS is a procedural law
- Under substantive provisions, law as applicable on April 1st is applicable
- But for TDS/TCS, law as in force on the date of event is relevant, or when liability to deduct/collect has triggered.

**At what point of
time tax is required
to be withheld?**

Basic principle to deduct TDS:

Payment or credit, whichever is earlier

(as and when amount is payable)

(Refer Bhoomi Construction [30 Taxmann.com 335])

Exceptions:

192 – *At the time of payment*

194-IB – *At the time of credit of rent in March every year or last month of tenancy*

Salary payments Form 24Q	Payment to residents Form 26Q	Payment to Non-residents Form 27Q
<ul style="list-style-type: none"> • Deducted based on date of payment. • Salary once accrued in India is taxable both in the hands of resident or non-resident equally. • There is no fixed rate of withholding tax (<i>aka TDS on salary</i>) • TDS on salary involves annual (true up) compliance 	<ul style="list-style-type: none"> • Deducted based on payment / credit whichever is earlier • Only resident payments are covered (<i>other than salary</i>) • Fixed Rate of TDS • Concept of AO's lower deduction certificate • 15G/ 15H • There is no annual compliance involved 	<ul style="list-style-type: none"> • Deducted based on payment / credit whichever is earlier • Only non-resident payments are covered (<i>other than salary</i>) • Variable Rate of TDS • Concept of AO's LDC • Concept of DTAA • No annual compliance involved

**There should be
some basic
exemption limit?**

Thresholds

- Various s have various kinds of thresholds and exemptions
- Certain s have no thresholds & are applicable even on payment of Single Rupee – E.g. 195.
- Threshold examples –

	Threshold		Threshold
194	5,000	194I	2,40,000
194A	5,000/ 40,000 / 50,000	194I-A	50,00,000
194C	30,000 / 1,00,000	194I-B	50,000 p.m.
194H	15,000	194M	50,00,000
194J	30,000	195	Nil

☞ Unless otherwise specified, thresholds generally are per financial year basis and qua payee.

Circular no. 18/2017 dt. 29th May 2017 -

- Entities whose income is unconditionally exempt u/s 10 and
- who are also statutorily not required to file ITR u/s 139

there would be no requirement for TDS from the payments made to them since their income is anyway exempted from tax under the 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 (23AA B);
- 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 (it), Prime Minister's Aid to Students Fund referred to in sub-clause (iii), National Foundation for Communal Harmony referred to in sub-clause (ilia), Swachh Bharat Kosh referred to in sub-clause (iiiiaa), Clean Ganga Fund referred to in sub-clause (iiiiaaa) 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 r Scheduled Tribes or backward classes referred to in clause (26B13);
- xv. Corporation established for promoting interests of members of a minority community referred to in clause (26B13);
- xvi. Corporation established for welfare and economic upliftment of ex-servicemen referred to in clause (20BBB);
- xvii. New Pension System Trust referred to in clause (44).

**What are the rates
and its exceptions?**

Rates for TDS/TCS are either prescribed within the provision of relevant itself

OR

Look @ Finance Act *(for the relevant financial year)*

- *First Schedule*

- *Part II*

E.g., Rates applicable to salary are not prescribed within 192 but you need to look into Finance Act.

TDS ready reckoner link

<https://www.incometaxindia.gov.in/Pages/i-am/tax-deductor.aspx?k=Tax%20Deduction>

Circular No. 23/2017 dated 19th July, 2017 -

- Wherever in terms of the agreement or contract between the payer and the payee,
- the component of 'GST on services' comprised in the amount payable to a resident
- is indicated separately
- TDS to be deducted excluding GST

- These are over- ruling s
- **Minimum rate of TDS:** 20%, or regular rate of TDS, whichever is higher, in case of non-availability of PAN
- **Minimum rate of TCS:** Twice of regular rate or 5%, whichever is higher, in case of non-availability of PAN
- 206AA is equally applicable on residents and non-residents payments (*exception for certain payments*)

(1) In the case of a non-resident, not being a company, or a foreign company (hereafter referred to as 'deductee') and not having permanent account number the provisions of 206AA shall not apply in respect of **payments in the nature of interest, royalty, fees for technical services, dividend and payments on transfer of any capital asset**, if the deductee furnishes the details and the documents specified in sub-rule (2) to the deductor.

(2) The deductee referred to in sub-rule (1), shall in respect of payments specified therein, furnish the following details and documents to the deductor, namely:—

- i. name, e-mail id, contact number;
- ii. address in the country or specified territory outside India of which the deductee is a resident;
- iii. a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate; {TRC}
- iv. Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

(3) The provisions of 206AA shall not apply in respect of payments made to a person being a non-resident, not being a company, or a foreign company if the provisions of 139A do not apply to such person on account of rule 114AAB.

- **Applicable Rates: Higher of**
 - 2x of Rates in force
 - 2x of Rates as per relevant section/provision
 - 5%
 - **Condition 1:**
 - Non filing of return u/s 139 for immediately preceding assessment year (AY).
 - Due date u/s 139(1) must have expired for such AY.
 - **Condition 2:**
 - Aggregate TDS/TCS > 50K (*qua deductee*) for such AY.
- ☞ Not applicable to NRs, who does not have PE in India
- ☞ Not applicable to 192, 192A, 194B, 194BA, 194BB, 194-IA, 194-IB, 194LBC, 194M & 194N

2x of Normal Rate
OR
5%

206AB (1)
Higher
of two

 Normal Rate
OR
20% (or 5%)

206AA
Higher
of two

206AB
(2)
Higher
of two

- “Compliance Check for Section 206AB & 206CCA” functionality enables tax deductors/collectors to verify if a person is a “Specified Person” as defined in Section 206AB & 206CCA.
- This functionality is available to the Principal Officers of the registered TAN at the home page of Reporting Portal (After Login) (the “Insight Portal”)
- A single PAN or multiple PANs can be verified.
- If a person is a ‘non-specified person’ as on the date of search, he shall be treated “non-specified person for rest of the FY”

Compliance Check for 206AB & 206CCA

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Reporting
al

Form Type	Compliance Check (Tax Deductor & C
ITDREIN	Select ITDREIN
Proceed	



Welcome DEEPAK BHOLUSARIA, Principal Officer



Compliance Check for Section 206AB & 206CCA

1

Compliance Check for Section 206AB & 206CCA

PAN Search

Bulk Search



PAN *	AEKPB0205L	2
Captcha Code	3 5 9 3 3	
Enter Captcha Code *	ENTER	3
Search		4

Search Result of PAN : AEKPB0205L on 29-05-2023 (Financial Year 2023-24)



Name	PAN Allotment Date	PAN-Aadhaar Link Status	Specified Person u/s 206AB & 206CCA
DXXXXX BXXXXXXXXA	09-10-2000	Linked	No

My ultimate tax liability is less than tax to be deducted, then?

Lower Deduction Certificate

Form 15G & 15H

Section 197 & 197A

SI#		Conditions	What deductee can do?
1.	197	Where tax on income of deductee is less than TDS to be deducted u/s 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBA, 194LBB, 194LBC, 194M, 194-O and 195	<ul style="list-style-type: none"> Such deductee may apply to TDS AO in form 13 and obtain a certificate of lower deduction or non-deduction (the “LDC”) Deductor shall be bound to deduct tax in accordance with such LDC. <p>☞ LDC are issued on FY year basis, for a specified sum.</p>
2.	197A (1)	If total income of deductee is going to be Nil including Dividend income (194K) and Interest on NSS (194EE)	<ul style="list-style-type: none"> Such deductee may furnish form 15G to deductor, requesting him not to deduct tax under such sections
3.	197A (1A)	If total income of deductee is going to be Nil, after inclusion of income/payment u/s 192A or 193 or 194A or 194D or 194DA or 194-I or 194K	<ul style="list-style-type: none"> ☞ Not applicable if aggregate of such payments > basic exemption limit ☞ Not applicable to firms and companies

Sl#		Conditions	What deductee can do?
4.	197A (1C)	<ul style="list-style-type: none"> Individual Resident Senior Citizen Earning payment u/s 192A or 193 or 194 or 194A or 194D or 194DA or 194EE or 194-I or 194K His estimated total income is going to be Nil 	<ul style="list-style-type: none"> Such senior citizen deductee may furnish form 15H to deductor, requesting him not to deduct tax under such sections.

- ➡ Each such form 15G and 15H is allotted an electronic unique identification number (UIN) by deductor as per rule 29C(3)
- ➡ As per section 197A(2), deductor is also responsible to furnish such form 15G and 15H electronically every quarter on e-filing portal.
- ➡ Payments made u/s 197A to be reported in form 26Q , tagged with respective e-UIN
- ➡ Payments made against LDC, to be reported in form 26Q tagged with respective e-LDC number



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Consequence of non-compliance

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Nature of non-compliance	Consequence	How much?
Late filing / Non –Filing of TDS/TCS return	Late Fee	Rs. 200 per day (maximum to amount of Tax collected/deducted) u/s 234E
Late deduction of TDS / TCS	Interest	1.00 % per month or part thereof u/s 201(1A)(i)
Late Deposit of TDS / TCS	Interest	1.50 % per month or part thereof u/s 201(1A)(ii)
Non-deduction	Disallowance	30% or 100% u/s 40(a), as the case may be
Non-deposit after deduction	Disallowance	30% or 100% u/s 40(a), as the case may be

☞ **All disallowances are curable, i.e. disallowances are reversed in the year of deduction or deposit of tax**

Nature of non-compliance		How much?
Late filing / Non -Filing of TDS/TCS return	271H	Rs. 10K ~ Rs. 1 lac ⇒ <i>No penalty if TDS/TCS return filed within 1 year from the due date, along with late fee and interest</i>
Non-deduction of TDS / TCS	271C 271CA	100% of TDS / TCS not deducted
Non-furnishing of TDS/TCS certificate	272A	Rs. 100 per day

Nature of non-compliance		Punishment / Jail time
Non-deposit / late deposit of TDS / TCS	276B 276C	Min: 3 months Max: 7 years (Fine may also be imposed by courts)

276B	276BB
<p>If a person fails to pay to the credit of the Central Government,—</p> <p>(a) the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or</p> <p>(b) the tax payable by him, as required by or under—</p> <p style="padding-left: 40px;">(i) sub-section (2) of section 115-O; or</p> <p style="padding-left: 40px;">(ii) the proviso to section 194B,</p> <p>he shall be 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.</p>	<p>If a person fails to pay to the credit of the Central Government –</p> <p>the tax collected by him as required under the provisions of section 206C,</p> <p>he shall be 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.</p>

Issue	Judgement
Can prosecution be launched if penalty proceedings not launched?	<p><i>“It is true that the Act Provides for imposition of penalty for nonpayment of tax. That however, does not take away the power to prosecute accused persons if an offence has been committed by them....”</i></p> <p>Good News Channel Pvt Ltd vs A.K.Subramanian Madras High Court</p> <p><i>“Non initiation of penalty does not lead to a presumption that prosecution cannot be initiated.”</i></p> <p>Universal Supply Corporation v. State of Rajasthan (1994) 206 ITR 222 (Raj) (HC)</p>
Interest deposited in full for late payment	<p><i>“The scope and purport of interest/penalty proceedings and prosecution under the Income-tax Act are separate and independent. The existence or the absence of the one or the other is no bar to any one of them”</i></p> <p>Universal Supply Corporation v. State of Rajasthan (1994) 206 ITR 222 (Raj)</p> <p><i>“simply charging of interest by the Department under <u>Section 201(1A)</u> of the Act, for the delay in the payment of the amount to the Central Government, does not obliterate the prosecution”</i></p>

Issue	Judgement
Penalty initiated and dropped	<p>Penalty initiated and dropped after considering the reply on merits - Prosecution proceedings may have to be quashed: A.Y. Prabakar (Karta) v. ACIT (2003) 262 ITR 287(Mad.) (HC) (288)</p> <p>The Supreme Court, in Uttam Chand v. ITO (1982) 133 ITR 909 (SC), while dealing with prosecution proceedings u/s. 277, held that the finding given by the Appellate Tribunal is binding on the criminal courts. Therefore, when there is a finding of the Appellate Tribunal leading to the conclusion that there is no prima facie case against the assessee for concealment, then that finding would be binding on the court and the court will have to acquit or discharge the assessee.</p> <p>In K. C. Builder v. ACIT (2004) 265 ITR 562 (SC), the court held that when the penalty is cancelled, the prosecution for an offence u/s 276C for wilful evasion of tax cannot be proceeded with thereafter.</p>

Issue	Judgement
Appeal pending Prosecution launched	<p>In P. Jayappan v. ITO (1984) 149 ITR 696 (SC), the court held that the two types of proceedings could run simultaneously and that one need not wait for the other. However, a wholesome rule will have to be adopted in matters of this nature where courts have taken the view that when the conclusions arrived at by the Appellate Authorities have a relevance and bearing upon the conclusions to be reached in the case necessarily one authority will have to await the outcome of the other authority.</p> <p>In Kalluri Krishan Pushkar v Dy. CIT(2016) 236 Taxman 27 (AP& T) (HC), the court held that, existence of other mode of recovery cannot act as a bar to the initiation of prosecution proceedings.</p> <p>Hon'ble Madras High Court in the case of, Mohammed I. Unjawala vs. CIT [(1995) 213 ITR 190 (Mad.)] held that Criminal Court is bound to accept the findings of Tribunal on questions of fact more so when such findings are in favour of assessee.</p>

Compounding guidelines

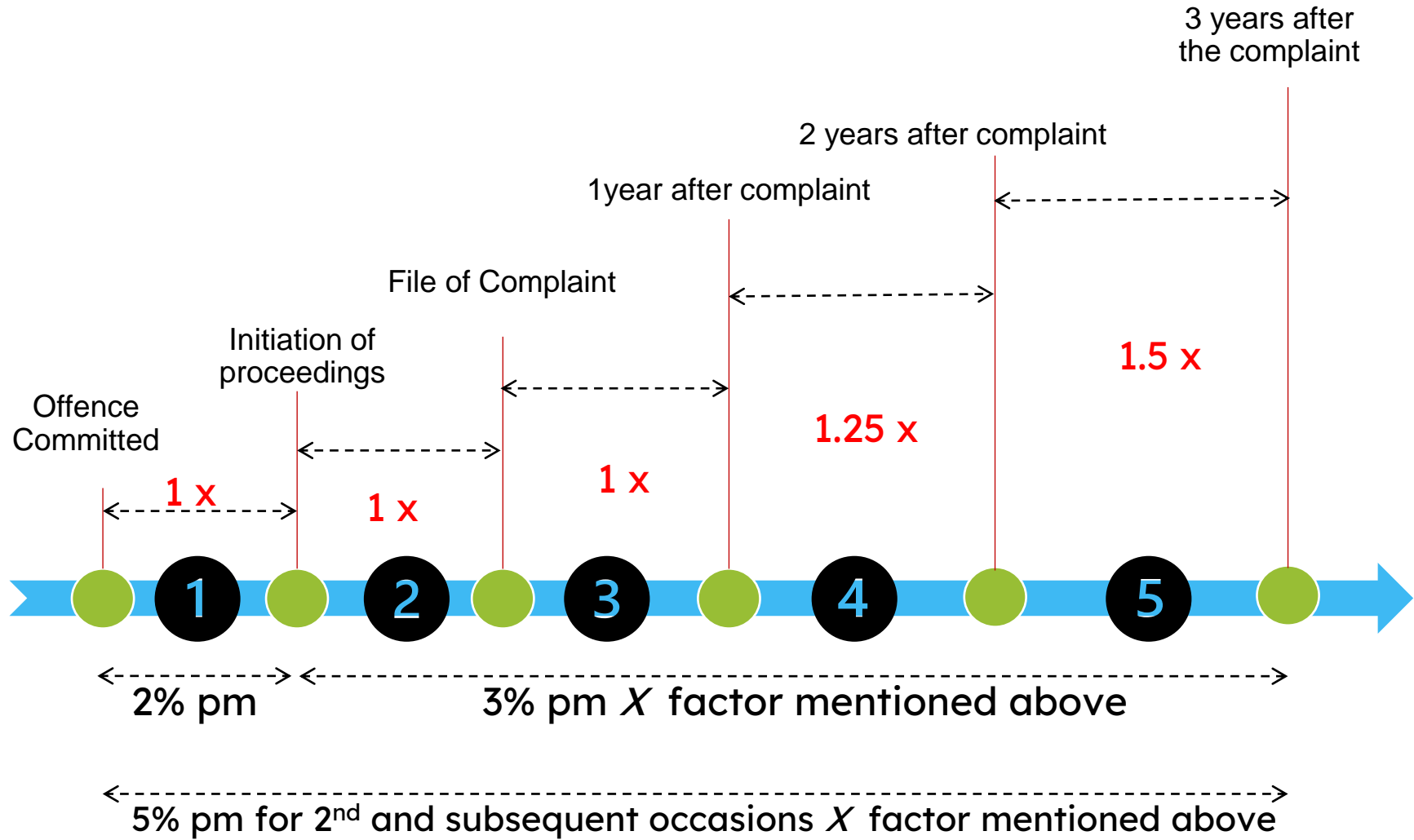


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Compounding fee – 2022 guidelines



👉 Prosecution establishment expenses, Litigation expense are extra on top of compounding fee

**Thanks for your
time!**



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