

Date: 2<sup>nd</sup> August, 2021

To,

**Shri Jagannath Bidyadhar Mohapatra**

Chairman,

Central Board of Direct Taxes,

North Block,

Delhi – 110 001

**Respected Sir,**

**Sub: Request for rationalisation of Income-tax law to enable the taxpayers following mercantile system of accounting to claim credit for taxes deducted by customers in subsequent years**

The Chamber of Tax Consultants, established in 1926, is one of the oldest non-profit organizations of tax practitioners, having Advocates, Chartered Accountants and Tax Practitioners as its members. Members are spread across the entire country. Many senior tax professionals who regularly appear before the Hon. Supreme Court, High Courts and the Income-tax Appellate Tribunal are its Past Presidents. The Chamber has been making regular representations before various government agencies.

The Chamber regularly takes up initiatives to act as a bridge between stakeholders and concerned regulatory bodies in order to convey genuine grievances and help in resolving the same with a view to effective implementation of the laws.

We have a request for rationalisation of Income-tax law, related to credits of TDS, to enable the taxpayers following mercantile system of accounting to claim credit for taxes deducted by deductors in subsequent years.

## **1. Background and issue involved**

Several taxpayers (both resident as well as non-resident) who follow mercantile system of accounting recognize their income and offer it to tax on accrual basis. In several instances, where invoices are raised by the taxpayer in a particular year (say Year 1) but taxes are deducted on these invoices by the customers and deposited into the government treasury in

Year 2 (for several reasons and often not even know to the income recipient, the taxes deducted on such invoices appear in the Form 26AS of the taxpayer in Year 2.

Given the above mismatch, the taxpayer does not get credit for the taxes in Year 1 (withheld and deposited by its customers in Year 2) since the same does not appear in Form 26AS of Year 1.

In this regard, we would like to bring to your kind attention the provisions of Section 199 of the Income-tax Act, 1961 and Rule 37BA of the Income-tax Rules, 1962 which are reproduced below:

***"Credit for tax deducted.***

199. (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government **shall be treated as a payment of tax on behalf of the person from whose income the deduction was made**, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(2) .....

(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given."

***Credit for tax deducted at source for the purposes of section 199***

***Rule 37BA***

(1) .....

(2) .....

(3) (i) Credit for tax deducted at source and paid to the Central Government, ***shall be given for the assessment year for which such income is assessable.***

*(ii) Where tax has been deducted at source and paid to the Central Government **and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.***

Based on a perusal of the above provisions, it emerges that TDS credit can be claimed by taxpayers in the year in which the corresponding income is assessable to tax by the taxpayer. However, when taxpayers claim the credit in Year 1 (i.e. the year in which income is offered to tax), credit is not granted by the Central Processing Centre while processing the tax return (as the TDS details do not appear in Form 26AS of Year 1).

Having regard to the above, the taxpayer is neither able to claim the credit of the taxes in Year 1 (as the credit of the taxes does not appear in Form 26AS of Year 1), nor the same can it be claimed in Year 2 (considering the provisions of Section 199 of the Act read with Rule 37BA as the income has not been offered to tax in that year.).

Further, there is no provision under the Income-tax Return (ITR) form which allows carryback of TDS credit in Year 1 (while there is express provision to carry forward the TDS credit to subsequent years).

The above is a very common and genuine issue being faced by most of the taxpayers following mercantile system of accounting vis-à-vis claim of TDS credit. The inability of a tax processing system to allow a credit which is due as per law results in incorrect demands raised causing unnecessary anguish to taxpayers.

In view of the above background, and considering the genuine hardship faced by the taxpayers (both resident as well as non-resident) in claiming the TDS/TCS credit, we request your Honour to kindly issue circular in the said context allowing the TDS / TCS credit by way of rectification of intimation or order by CPC / assessing officer.

We look forward for your kind consideration to the genuine request.

Yours Sincerely,



President  
Ketan Vajani

Hon. Jt. Secretaries  
Neha Gada | Mehul Sheth

Vice President  
Parag Ved

Treasurer  
Vijay Bhatt

Imm. Past President  
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## For THE CHAMBER OF TAX CONSULTANTS

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President

Sd/-

Mahendra Sanghvi  
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Apurva Shah  
Co- Chairman