

Basics of Income Tax

TDS/ TCS, Returns & Filing of 15CA and 15CB

Concept of Previous Year & Assessment year

- Section 2(9) defines Assessment year. “The period of 12 Months starting from 1st April every year.” So 1st April to 31st March every year is the assessment year. The year in which tax is paid.
- Section 2(34) r.w.s. Section 3 defines Previous year. “ The financial year immediately preceding the Assessment year.” So you earn your income in a previous year 1st April to 31st March and pay your taxes in the next 1st April to 31st March(Assessment year)[There is a proviso to section 3]
- The tax is to be levied qua the previous year and assessment year.

Income tax Act and Finance Act

- The Income tax Act does not provide the rate of taxes. The Act provides only the method of computation of income and the Finance Act provides the rate of taxes.
- Section 4 of the Income tax is the charging section. This is the link between the Income tax Act and the Finance Act.
- The concept of Previous Year and Assessment Year would indicate that the payment of taxes by the assessee would be delayed by a year if all were to pay taxes with the return of income. We therefore have the concept of TDS and Advance tax.

Basics of TDS-Section 4

- **Charge of income-tax.**
- **4. (1)** Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person :[Proviso not being discussed]
- **(2)** In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

What is TDS?

- TDS is one of the modes of collection of taxes, by which a certain percentage of amounts are deducted by a person at the time of making/crediting certain specific nature of payment to the other person and deducted amount is remitted to the Government account.
 - aims at collection of revenue at the very source of income;
 - an indirect method of collecting tax;
 - combines the concepts of
 - ✓ pay as you earn and
 - ✓ collect as it is being earned.

Finance Act 2018

- The Income Tax Act does not provide for the rates of the taxes.
- The rates of Income Tax are provided under Finance Act, the first Schedule Part I provides the rates of taxes.
- The first schedule Part II provides for rates of TDS to be deducted on certain cases.

Chapter XVII-B TDS

- Income tax Act is divided in to 23 chapters and chapter XVII B provides for the provisions of deduction of TDS Section 192 to 196D
- The Section 197 and 197A provide for lower tax deduction or non deduction of TDS- will address it in later slides
- The section 198 to 206B are administrative section which provide for the procedure for payment of the tax deducted, filling of returns or consequence of non filling and interest on amount not paid.-Will address it in an later slide.

Chapter XVIIBB. Collection at source

- The Chapter is introduced from 1-6-1988. The chapter provides that person selling goods of certain nature like alcoholic liquor, forest production, scrap, etc. will collect with the sales price an amount which is to be paid to the government.
- Section 206C to 206CC provide for the collection, payment and the filling of a statement for the amounts so collected. (Limited applicability and hence will be dealt in a summary manner.

PAN Nos- 206AA and 206CC

- It is paramount to understand that the tax deducted by an assessee can be passed on to the other assessee only if the statement/ return is filed and the TDS deducted is shown against the payees's PAN NO.
- The above section therefore provides that in case the person who's tax is deducted under the chapter does not provide the PAN NO then the payer is required to deduct tax at the rate higher of the following
 - Rate provided under the relevant provisions of the Act
 - At the rate or rates in force
 - At the rate of 20% (the above creates problems for payment to NR when they don't have PAN NO.

PAN Nos- 206CC

- Similar to the provisions of the section 206AA the person collecting the tax will have to collect the PAN NO of the sales party and if the PAN NO is not provided then the collection will have to be made **at the higher** of the below amounts
 - At twice the rate specified in the relevant provisions of this Act.
 - At the rate of five percent.

TAN NOS.-203A

- Each person who is required to deduct and pay tax under Chapter XVII B are required to take a TAN NO. The same is to be quoted in the challans and the TDS certificate issued by the payer to the payee.
- The application for the said number needs to be made in form 49B
- No TAN NO required for payment of Tax under section 194-IA (tax deduction on purchase of property above Rs 50,00,000/-). And 194-IB Payment of rent above Rs 50000 per month or part of a month by specified individual and HUF as they are not required to take TAN nos under section 203A .

Payment liable to TDS as per Ch-XVIIIB

1. Salary (Sec.192)
2. Interest on Securities (Sec.193)

3. Dividends (Sec.194) not applicable to dividend under 115O
4. Interest other than Interest on Securities (Sec.194A)
5. Winnings from Lotteries or crossword puzzles (Sec.194B)
6. Winnings from Horse Races (Sec.194BB)
7. Payments to Contractors and Sub-contractors (Sec.194C)
8. Insurance Commission (Sec.194D)
9. Payment to Non-resident sportsmen or sports association (Sec.194E)
10. Payment in respect of NSC (Sec. 194EE)

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Payment liable to TDS as per Ch-XVIIIB

11. Payments in respect of Repurchase of units of Mutual Funds or UTI (Sec.194F)
12. Commission on Sale of Lottery Tickets (Sec.194G)

13. Commission or Brokerage (Sec.194H)
14. Rent (Sec.194I)
15. TDS on transfer of Immovable property (Sec. 194IA)
16. Payment of rent by certain Individuals and HUF (Sec. 194IB)
17. Fees for Professional or Technical Services (Sec.194J)
18. Payment of Compensation on acquisition of certain immovable property (Sec.194LA)
19. Other Sums (Sec.195)
20. Long term capital gain (Sec.196B)
21. Income or Long term capital gain from Foreign Currency bonds/Global Depository Receipts (Sec.196C)
22. Income of Foreign Institutional Investors from Securities (Sec.196D)

When deduction is to be made.

- The sections provide for deduction to be made at the earliest point of time either credit or at the time of payment whichever is earlier. The mode of payment can be either in cash or account payee cheque or demand draft or any other mode.
- The credit to any “suspense account” or “payable account” or any other account is also covered as credit of the amount where the party is ascertainable. Such credit will be deemed to be credit of such income to the account of the payee.

Salary –S 192

- Any person liable to pay salary(income which is taxable under the head salary) is required to deduct TDS at average rate of income. TDS is to be deducted only if the salary above rupees 2,50,000/-.
- Employer needs to do the calculation of tax for each employee after taking from him details of investments made by him/her under chapter VI A (80C, 80D, etc)or housing loan interest paid. (Rule 26A)(form 12BB)
- The employer is required to collect a declaration from the employees in the beginning of the year for investments made by him. If the employee is employed in two jobs, then the employee to inform the subsequent employer about his income from previous employer. (Rule 26A)(form 12B)
- The employee if has any other income or loss under the head income from HP then he may inform the person responsible for deduction of tax in prescribed form. (Rule 26B)

Rate of taxes for Individuals-Salary

Slabs (Rupees)	Individuals below 60 years (TAX RATE-%)	Individual between 60 to 80 years* (TAX RATE-%)	Individuals above 80 years(TAX RATE-%)
Upto 2,50,000/-	NIL	NIL	NIL
250,001/- to 5,00,000/- *300,001/- to 5,00,000/-	5	5	NIL
5,00,001/- to 10,00,000/-	20	20	20
Above 10,00,000/-	30	30	30

Salary 192

- Employer may opt to make payment of taxes on perquisites of non monetary nature. (S.192(1A)). However the said tax paid cannot be claimed as expense.
- Employer will provide a statement giving details of perquisites and Profit in Lieu of salary. (192(2C)-Form 12BA)
- Arrears of salary-where the employee receives arrears of salary and is eligible for deduction under section 89(1) then he will file form 10E with the employer for the relief under the section.
- Payment by trustees of amount from recognized provident fund will be subjected to tax as per schedule IV part A rule 10.

192A-Accumulated Balance due to employees & 193-Int on securities

- 192A-Where the trustees of Employees Provident fund (framed under section 5 of the Emp. Provident Funds and Misc. Provident fund Act 1952) pay accumulated balance to the employee they are required to deduct 10% (provided no deduction will be made if the amount is less than 50000/-) (No PAN-rate MMR)
- .193-Any person responsible for paying to a resident any income by way of interest on securities shall deduct income tax at the rates in force on the amount of interest payable. There is a long list under the proviso which provides that no tax will be deducted. The list is self explanatory and one needs to look at it before deducting taxes.

194A-Interest other than Interest on securities.

Part I

- Applicability:- The section applies to all persons resident (other than Individuals and HUF's who are not covered by audit under section 44AB) **who pay interest** other income by way of interest on securities.
- They are to deduct income tax at the rates in force from such payment.
- Exemptions:-Sub Section 3 provides that no deduction will be required to be made if the payment is being made by a banking company or a cooperative society carrying business of banking and the amount of payment is less than Rs 10000/- (50000/- for senior citizens) in any other case if the payment is less than Rs 5000/-.

194A-Interest other than Interest on securities.

Part II

- Any amount paid to any banking company, cooperative bank, Financial corporation established under the central or state act, LIC, UTI, Insurance Company, any other body notified by the government. (**does not include a NBFC so any payment for a car loan or business loan from a NBFC, TDS is to be deducted by the assessee**)
- Any interest paid by a cooperative society (other than a cooperative bank) to its members or to other cooperative society.
- No deduction is required to be made when payment is to be made to a partner by the Partnership firm for interest on capital.
- Interest paid by a Bank on deposits other than time deposits (saving bank interest)

194A-Interest other than Interest on securities.

Part III

- Any amount credited as interest on the compensation amount awarded by the Motor Vehicle Claims Tribunal(MVCT). However on payment the TDS is deductible if the interest payment is more than 50000/- [controversy with regard to interest paid by MVCT, Allahabad, Himachal Pradesh and Punjab and Haryana HC have held interest is not income and no TDS is deductible and Patna and Madras HC have taken a contrary view, matter is admitted by SC, BCA Journal page 51 June issue)
- Income which is paid or payable by Infrastructure Capital company /fund, Public sector company or bank on zero coupon bond.
- Income by way of interest paid to a trust under section 10(23FC) Business trust.

S 194B- Winning from lottery or crossword & 194BB Winning from horse race.

- Any person responsible for paying to any person any income by way of winning from lottery, crossword puzzle or card game or other game of any sort and the amount is more than Rs 10000 then he is required to deduct TDS at rates in force.(30%)
- Any person, being a bookmaker or a person to whom a license has been granted by the Government under any law for the time being in force for horse racing in any race course or for arranging for wagering or betting in any race course and responsible for payment shall deduct TDS at rates in force.(30%)

194C- Payments to Contractors-Part I

- Applicability:- The section applies to any person making payment for carrying out any work (including supply of labor for carrying out any work) in pursuance of a contract between the contractor and a specified person. (The definition of specified person excludes Individual and HUF who do not need to get its books of accounts audited under section 44AB.)
- Deduct an amount equal to –
 - One percent where the amount is being credited or paid to an individual or HUF
 - Two percent where the amount is being paid to person other than Individual & HUF

194C- Payments to Contractors-Part II

Work-Explanation-(iv)

- "work" shall include—
- (a) advertising;
- (b) broadcasting and telecasting including production of programs for such broadcasting or telecasting;
- (c) carriage of goods or passengers by any mode of transport other than by railways;
- (d) catering;
- **(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer,**
 - but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

194C- Payments to Contractors-Part III

Exemptions

- Individual & HUF will not be liable to deduct tax under the section if the payment is for exclusive personal purpose. 194C(4).
- No deduction is required if the payment is for an amount which is less than Rs 30000/-. Further if the aggregate payment to a person is less than Rs 100000/- no deduction is required if individual bill is less than Rs 30,000/-
- No deduction is to be made for payment to goods carriage operator if he provides his pan no. and a declaration that he has less than 10 trucks.

194D-Insurance Commission & 194DA-Payment in respect of LIC Policy

- 194D-Any person responsible for paying to a resident any income by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business(above Rs 15000), deduct income-tax thereon at the rates in force(5%).
- 194DA-Any person responsible for paying to a resident any sum under a life insurance policy, including the sum allocated by way of bonus on such policy(Above Rs 100,000/-), other than the amount not includible in the total income under clause (10D) of section 10, shall, at the time of payment thereof, deduct income-tax thereon at the rate of [one] per cent

Section	Particulars
194EE- Payment of NSC deposits	Any person responsible for payment of amount referred to in 80CCA(2)(a) will deduct therefrom 10%
194F- Repurchase of Units of Mutual fund and UTI units	The person responsible for paying to any person any amount referred to in sub-section (2) of section 80CCB shall, at the time of payment thereof, deduct income-tax thereon at the rate of twenty per cent.
194G- Commission on sale of lottery ticket.	Any person who is responsible for any person, who is or has been stocking, distributing, purchasing or selling lottery tickets, any income by way of commission, remuneration or prize (amount exceeding [fifteen] thousand rupees)

194H-Commission or Brokerage

- Applicability:- The section applies to all persons resident (other than Individuals and HUF's who are not covered by audit under section 44AB) who pay commission or brokerage (above Rs 15000/-) other income by way of insurance commission u/s 194D.
- Deduct Income tax at the rate of 5%.
- "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

Issues in Commission payment

- Commission for online payment:- PCIT vs Make My Trip Pvt Ltd. 100 CCH 237 Bom HC (Amount retained by bank for providing banking services from payment received online was not commission and not liable to TDS.
- Similarly Credit card commission from vendors not liable to TDS Pr.CIT vs Hotel Leela Venture Ltd 307 CTR 466 (Bom)
- Bank Guarantee Commission :- CIT(TDS) vs Larsan & Turbo Ltd. *though categorized as "bank guarantee commission" was not strictly speaking payment of commission since there was no principal to agent relationship between payer and payee—So-called bank guarantee commission was not in nature of commission paid to an agent*

194I-Rent-Part-I

- Applicability:- The section applies to all persons resident (other than Individuals and HUF's who are not covered by audit under section 44AB) who pay Rent (above Rs 180,000/-)
- Deduct income tax thereon at the rate of
 - 2% for the use of Machinery or plant or equipment
 - 10% use of land or building (including factory building or land appurtenant to a building or furniture or fittings).
- Exemption for payment to Business trust under section 10(23FCA)

194I-Rent-Part-II

- "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—
- (a) land; or
- (b) building (including factory building); or
- (c) land appurtenant to a building (including factory building); or
- (d) machinery; or
- (e) plant; or
- (f) equipment; or
- (g) furniture; or
- (h) fittings,
- whether or not any or all of the above are owned by the payee;

194J-Fees for professional and Technical services. Part I

- Applicability:- The section applies to all persons resident (other than Individuals and HUF's who are not covered by audit under section 44AB) who is responsible for paying to a resident any sum (above Rs 30000/-) by way of—
 - (a) fees for professional services, or
 - (b) fees for technical services, or
 - (ba) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or
 - (c) royalty, or
 - (d) any sum referred to in clause (va) of section 28,
- Shall deduct an amount equal to **ten per cent** of such sum as income-tax on income comprised therein :(exemption is provided for payment by individual and HUF for exclusive personal purpose.

194J-Fees for professional and Technical services.

Part II

- (a) "professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section;
- (b) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (vii) of sub-section (1) of section 9;
- (ba) "royalty" shall have the same meaning as in *Explanation 2* to clause (vi) of sub-section (1) of section 9;

Fees For Technical Services-Issues

- CBDT's letter circular no. 715 dated 08.08.1995 dealing with question no.29 as to whether a maintenance contract including supply of spares would be covered u/s.194C of the Act would be covered u/s.194C or 194J of the Act. The Board's answer thereto clarified such a contract including supply of shares would come u/s.194C of the Act. It further declared that such a contract would attract Section 194J of the Act if it involved technical services being rendered by the recipient.

Fees For Technical Services-Issues-II

❑ **S. 194J applies to payments made to non-professionals such as hospitals by TPA(Third party Administrators)**

• It has been decided by Delhi High Court that though a hospital by itself, being an artificial entity, is not a medical professional yet it provides medical services by engaging the services of doctors and qualified medical professionals. These are services rendered in the course of the carrying on of the medical profession. S. 194J applies to payments made to non-professionals such as hospitals. It was decided in the case Dedicated Health Care Services TPA vs. ACIT. SLP pending in SC.

• **Services of Doctors in Hospital:-CIT vs Asian Heart Institute and Research Center P Ltd 262 Taxman 395** *Thus, relationship between hospital and doctors could not be treated as one of employer-employee relationships—Earnings of doctors would be dependent upon patients that doctors would attract—Revenue's appeal dismissed.*

194-IA-Purchase of Immovable property

- Any person being a transferee(purchaser)responsible for paying to a resident for transfer of any immovable property(other than agriculture land) shall at the time of payment, deduct and amount equal to one percent of such sum as income tax thereon.
- No deduction is required if the consideration for the transfer of the immovable property is less than Rs 50,00,000/-
- The provisions of section 203A to take a TAN NO is not required to be taken. A single form 26QB giving all details online. (Within 30 days of payment)(Form 16B to be issued to the seller.
- "immovable property" means any land (other than agricultural land) or any building or part of a building.

194-IB Payment of rent by certain Individuals & HUF

- **Applicability:-** Any person, being an individual or a Hindu undivided family (other than those referred to in the second proviso to section 194-I), responsible for paying to a resident any income by way of **rent** exceeding **fifty thousand** rupees for a month or part of a month during the year
- shall deduct an amount equal to five per cent of such income as income-tax thereon.
- The tax will be deducted from the last month of the previous year or the last month of the tenancy. (Form 26QC to be filed within 30days)(Issue form 16C)
- If the tax is to be deducted at the rate as given in 206AA and the last month rent is not enough then the TDS will be restricted to the last month rent.

194-IC –Payment under specified Agreement

- 45(5A) Section deals with Development Agreement between the developer and the land lord and the taxability of the consideration received by an individual or an HUF to be done in the year of receipt of CC.
- **194-IC.** Notwithstanding anything contained in section 194-IA, any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under the agreement referred to in sub-section (5A) of section 45, shall at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to **ten per cent of such sum as income-tax thereon.]**

194LA-Payment of compensation on Compulsory acquisition

- Any person responsible for paying to a resident any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property.
- deduct an amount equal to **ten per cent of** such sum as income-tax thereon:
- Exemption from any deduction if:-
 - Amount is less than 2,50,000/-
 - where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

194 misc sections

<u>SECTION</u>	<u>Who has the need to deduct TDS</u>	<u>Rate</u>
194LB	.Any person who makes payment of interest [which is payable by an infrastructure debt fund, as per section 10(47)] to a non-resident (not a company/ foreign company) is required to deduct tax at source.	5%
194LBA	Any person who makes payment of income [as per section 115UA] which is payable by a business trust to its unit holder is required to deduct tax at source. Such unit holder can be-	
	RESIDENT	10%
	NON-RESIDENT(not a company/ foreign company)	5%

194LBB	Any person who gives an income (as referred u/s 115UB) to a unitholder in respect of units held in an investment trust has to deduct tax under this section.	
	RESIDENT	10%
	NON-RESIDENT(not a company/ foreign company)	At the rates in force
194LBC	Any person who gives income to an investor with respect to investment in securitization trust is required to deduct tax under this section.	
	RESIDENT INDIVIDUAL/HUF	25%
	ANY OTHER PERSON	30%
	NON-RESIDENT(not a company/ foreign company)	At the rates in force
194LC	If an Indian company or a business trust pays income by way of interest to non-resident (not being a company) or foreign company, has to deduct TDS under this section.The Interest must be in respect of money borrowed in foreign currency from source outside India or business trust from a source outside India by the way of issue of rupee-denominated bond before 1st July 2020	5%
194LD	If any person pays to FII (Foreign Institutional Investor) or QFB (Qualified Foreign Investor) income by way of interest has to deduct tax at source.Interest must be in respect of investment made by the payee in a rupee-denominated bond of Indian Company or government	5%

S 195 Payment to Non-Resident

IMPORTANCE

- ❖ Increase in cross border transactions
- ❖ Increase in vigilance by revenue authorities
- ❖ Professional diligence by CA's
- ❖ Multi dimensional approach – Income Tax Act, 1961 as well as understanding of various DTAA's to determine taxability
- ❖ Knowledge of FEMA and GST under reverse charge mechanism on imports of services
- ❖ Gateway for International Tax

OBJECTIVE

CIRCULAR NO 152 DATED 27/11/1974

- Tax to be collected at the earliest
- No difficulty at the time of assessment
- Difficulty in recovery from non residents due to lack of assets and presence in India
- Especially in case of payment of Royalty and Fees for Technical Services

SECTION 5

5(2) -Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—

- ❖ (a) is received or is deemed to be received in India in such year by or on behalf of such person ; or
- ❖ (b) accrues or arises or is **deemed to accrue or arise** to him in India during such year.”
- ❖ “Accruing” and “Arising” not defined under the Act
- ❖ Increased reliance is placed on deeming provisions of Section 9(1)

OVERVIEW - 195

Sub sections	Particulars
195(1)	Any person making payment to Non Resident is required to with hold tax if such sum is chargeable to tax in India
195(2)	Lower or Nil rate Tax Deduction Certificate – Application by Payer
195(3)	Lower or Nil rate Tax Deduction Certificate – Application by Payee – Section and rules suggest payment without deduction
195(4)	Validity of Certificate u/s 195(3)
195(5)	Power of CBDT to notify rules relating to grant of certificate u/s195(3)
195(6)	Power to notify rules for furnishing of information
195(7)	Board to notify certain persons or transactions for lower or nil tax deduction

Applicability of section 195:

❖ Subsection (1) – Tax to be deducted

- by the **person responsible** for making payment
- When payments are made to
 - Non residents other than companies
 - to foreign companies
- Payment should be in the nature of
 - Interest (other than interest on which TDS is applicable u/s. 194LB, 194LC and 194LD)
 - Any **other sum chargeable under the provisions of this act** but other than salaries
- Tax should be deducted
 - At the time of credit of such amount or
 - Payment thereof by way of cash/cheque/draft/any other mode
- Tax to be deducted at **the rates in force**

Applicability of section 195:

❖ Certain relief given in certain cases

- in the case of interest payable by the Government or a public sector bank within the meaning of clause (23D) of section 10 or a public financial institution within the meaning of that clause, deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode
- no such deduction shall be made in respect of any dividends referred to in **section 115-O**

Applicability of section 195:

❖ Explanations - 2

- The obligations and the compliances shall have to be made by all persons, **resident or non-resident, whether or not** the non-resident person has-
 - (i) a residence or place of business or business connection in India; or
 - (ii) any other presence in any manner whatsoever in India.

Applicability of section 195:

- ❖ All types of payments including personal payments by individual
- ❖ No threshold, starts from Re. 1/-
- ❖ Any income chargeable to tax
- ❖ All types of persons/entities covered
- ❖ No applicability of tax audit as required for certain regular payments to residents in case of individuals and HUF
- ❖ Multi dimensional approach – Income Tax Act, 1961 as well as understanding of various DTAA required, FEMA and GST

LOWER TDS – APPLICATION BY PAYER

- Person making the payment can apply to AO for lower or nil deduction as the case may be and the AO has to pass appropriate order to this effect – S. 195(2)
- No form prescribed

LOWER TDS – APPLICATION BY PAYEE

- The recipient of such income can also apply to AO to receive income **without deduction of tax** and the AO has to pass appropriate order to this effect – S. 195(3) - read with rule 29B and forms 15C and 15D
- The certificate granted in S. 195(3) shall remain in force till the expiry of the period mentioned in the certificate or till the cancellation by the AO of the same
- Board has to powers to make rules for application and granting of certificate S. 195(3)

LOWER TDS – APPLICATION BY PAYEE

Rule 29B

- person entitled to receive any interest, or other sum, on which income-tax has to be deducted under section 195(1)
- Application to receive payment **without** TDS
- By Banking Company in Form 15C
- By others in Form-15D
- Subject to conditions in sub rule 2

LOWER TDS – APPLICATION BY PAYEE

Conditions specified in sub rule 2

- Regularly assessed to income tax and duly filed all returns till date
- Not in default or deemed default in respect of any tax, interest, penalty, fine or any other sum
- For person other than banking company:
 - Business presence in India of more than 5 years
 - Assets in excess of Rs.50 lakhs
- An application for a fresh certificate may be made, if required, after the expiry of the period of validity of the earlier certificate, or within three months before the expiry thereof

PROCEDURES AND COMPLIANCES

Rule 37BB – Furnishing of Information

- The assessee is required to submit the form 15CA online
- *(i) the information in Part A of Form No.15CA, if the amount of payment or the aggregate of such payments, as the case may be, made during the financial year does not exceed five lakh rupees;*
- *(ii) for payments other than the payments referred in clause (i), the information,—
in Part B of Form No.15CA after obtaining a (i) certificate from the Assessing Officer under section 197 or (ii) an order from the Assessing Officer under sub-section (2) or sub-section (3) of section 195
in part C of Form No. 15CA after obtaining a certificate in form 15CB from a Accountant.*
- *(iii) The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum which is not chargeable under the provisions of the Act, shall furnish the information in Part D of Form No.15CA*

PROCEDURES AND COMPLIANCES

Rule 37BB – Furnishing of Information

Print of Form 15CA to be submitted to the Authorised Dealer

International Transaction Payment Chargeable to Tax

Information to be furnished electronically digitally signed

Fill Form 15CA

< Rs.5,00,000/-
Part - A

> Rs. 5,00,000/-

Part B after obtaining certificate u/s 195(2) or 195(3) or 197

> 5,00,000/-

Part C after obtaining certificate in Form 15CB from an Accountant

FORM 15CA

International Transaction Payment not Chargeable to Tax Fill part D of Form 15CA

FORM 15CB

Exemption from filling 15CA or 15CB

In case of specified transactions the said information need not be given :

- the remittance is made by an individual and it does not require prior approval of Reserve Bank of India as per the provisions of section 5 of the Foreign Exchange Management Act, 1999 (42 of 1999) read with Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000; or
- the remittance is of the nature specified in column (3) of the specified list

FEMA

Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000

Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India.

- Private visits to any country (except Nepal and Bhutan).
- Gift or donation.
- Going abroad for employment.
- Emigration.
- Maintenance of close relatives abroad.
- Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
- Expenses in connection with medical treatment abroad.
- Studies abroad.
- Any other current account transaction

SPECIFIED LIST

Sl. No.	Purpose code as per RBI	Nature of payment
(1)	(2)	(3)
1	S0001	Indian investment abroad - in equity capital (shares)
2	S0002	Indian investment abroad - in debt securities
3	S0003	Indian investment abroad - in branches and wholly owned subsidiaries
4	S0004	Indian investment abroad - in subsidiaries and associates
5	S0005	Indian investment abroad - in real estate
6	S0011	Loans extended to Non-Residents
7	S0101	Advance payment against imports
8	S0102	Payment towards imports - settlement of invoice
9	S0103	Imports by diplomatic missions
10	S0104	Intermediary trade

SPECIFIED LIST

11	S0190	Imports below Rs.5,00,000 - (For use by ECD offices)
12	SO202	Payment for operating expenses of Indian shipping companies operating abroad
13	SO208	Operating expenses of Indian Airlines companies operating abroad
14	S0212	Booking of passages abroad - Airlines companies
15	S0301	Remittance towards business travel
16	S0302	Travel under basic travel quota (BTQ)
17	S0303	Travel for pilgrimage
18	S0304	Travel for medical treatment
19	S0305	Travel for education (including fees, hostel expenses etc.)
20	S0401	Postal services
21	S0501	Construction of projects abroad by Indian companies including import of goods at project site

SPECIFIED LIST

22	S0602	Freight insurance - relating to import and export of goods
23	S1011	Payments for maintenance of offices abroad
24	S1201	Maintenance of Indian embassies abroad
25	S1202	Remittances by foreign embassies in India
26	S1301	Remittance by non-residents towards family maintenance and savings
27	S1302	Remittance towards personal gifts and donations
28	S1303	Remittance towards donations to religious and charitable institutions abroad
29	S1304	Remittance towards grants and donations to other Governments and charitable institutions established by the Governments
30	S1305	Contributions or donations by the Government to international institutions
31	S1306	Remittance towards payment or refund of taxes
32	S1501	Refunds or rebates or reduction in invoice value on account of exports
33	S1503	Payments by residents for international bidding.

FORM 15CB - CERTIFICATION AND ISSUES

- Ascertainment of Income/nature of remittance
- Determination of rate of deduction of Tax
- Examine the nature of transactions properly for determining the character of income on the basis of agreement, contract or other relevant document
- Determination of taxability under the Act
- Whether any relief claimed under the relevant DTAA
- Obtain Tax Residency Certificate - Section 90 read with rule 21AB

FORM 15CB - CERTIFICATION AND ISSUES

- In case of income in the nature of Royalty, Fees for Technical services, interest or dividend – whether the same is connected to permanent establishment in India or otherwise
- In case of business income whether the same is taxable in India and basis of arriving at the rate of deduction
- Whether the recipient has a permanent establishment in India
- In case of Capital gains, whether long term or short term and basis of taxability

DOCUMENTATION BY CA

- Agreement and Invoices;
- Payment details
- Correspondences
- Technical Advice
- Proof of services being rendered in case of Group Company transactions
- E-mails etc regarding pricing in case of Group Company transactions – TP Policy of group is any.
- Remitting bank details
- Rate of conversion of foreign currency
- Tax Residency Certificate

DOCUMENTATION BY CA

- Declaration/Certificate from payee for :–
 - no PE,
 - tax residency,
 - beneficial owner,
 - treaty entitlement, etc; and
 - Indemnification from payee
 - Proposed period of stay (for e.g. for purpose of IPS)
- Appropriate MR to be taken from Payer also

REQUIREMENT FOR AVAILING BENEFIT OF DTAA

- Tax Residency Certificate (TRC) required under section 90(4) of 90A(4)
- If TRC contains all the details required under rule 21AB(1) form 10F is not required from the payee.
- Resident Indians can apply for similar TRC in form 10FA
- TRC to be issued in Form 10FB

PARTICULARS REQUIRED UNDER TRC/FORM 10F

- Name of the assessee;
- Status (individual, company, firm etc.) of the assessee;
- Nationality (in case of individual);
- Country or specified territory of incorporation or registration (in case of others);
- Assessee's tax identification number in the country or specified territory of residence or in case no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory;
- Residential status for the purposes of tax;
- Period for which the certificate is applicable; and
- Address of the applicant for the period for which the certificate is applicable;

Sec 206...Tax collected at source

SR NO.	NATURE OF GOODS	PERCENTAGE
1.	Alcoholic liquor for human consumption	1%
2.	Tendu leaves	5%
3.	Timber obtained under a forest lease	2.5%
4.	Timber obtained by any mode other than under a forest lease	2.5%
5.	Any other forest produce not being timber or tendu leaves	2.5%
6.	Scrap	1%
7.	Minerals, being coal or lignite or iron ore	1%

SR.NO.	NATURE OF CONTRACT OR LICENSE OR LEASE,ETC.	PERCENTAGE
1.	Parking lot	2%
2.	Toll Plaza	2%
3.	Mining and quarrying	2%

Every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding 10 lakh rupees, shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 1% of the sale consideration as income tax

Sec 200-Duty of person deducting tax

Any person deducting any sum in accordance with the fore-going provisions shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.
(Rule 30)

The person responsible for deducting TDS will pay the TDS to the government on or before the **7th day** from the end of the month in which the TDS is deducted.

The person responsible for deducting and payment of TDS may pay the to the government on or before **30th day of April** where the income or amount is credited or paid in the month of March.

In case of deduction of tax for property purchase under section 194-IA the sum deducted shall be paid to the credit of central government within the period of 30 days from the end of the month in which the deduction is made in form 26QB.

Sec 200-Duty of person deducting tax

- Any person deducting any sum in accordance with the foregoing provisions, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:
- The person who fails to submit the above statement within the prescribed time will be liable to pay a fee of Rs 200/- per day besides all other consequences of penalty and prosecution.(234E)

S203: ISSUANCE OF TDS CERTIFICATE

Particulars	TDS on Salary	TDS on Non- Salary
Form	Form no 16	Form no 16A
Periodicity	Annual	Quarterly
Due date upto which TDS certificates should be issued	31 st may of following relevant FY	15 days from due date of Furnishing Return. <ul style="list-style-type: none">• 30th July• 30th October• 30th January• 30th May

No direct demand of tax deducted-S.205

- Letter F. No. 275/29/2014 IT- (B) dated 01/06/2015: Provides that as per section 199 of the Act credit of TDS is given to the person only if it is paid to the central government Account.
- However as per section 205 of the Act the Assessee shall not be called upon to pay the tax to the extent tax has been deducted from his income where the tax is deductible at source under provisions of Chapter XVII. Thus the Act puts a bar on direct demand against the assessee in such cases and the demand on account of tax credit mismatch can not be enforced coercively. [check Court on its Own Motion vs CIT Writ 2659/2012 dated 14th March 2013. Delhi HC]-CBDT instruction dated 8-7-2013 05/2013 asking AO to allow credit after following due process.

Due dates for filing of Quarterly Statements

Form No	Particulars	Due date for Government	Due date for Non Government
24Q	Quarterly return of TDS from <i>Salaries</i>	July 31 st	July 31 st
26Q	Quarterly return of TDS in respect of all payments other than Salaries	October 31 st January 31 st	October 31 st January 31 st
27Q	Quarterly return in respect of payments made to Non resident	May 31 st	May 31 st
27EQ	Quarterly Return of TCS	July 15 th , October 15 th , January 15 th , May 15 th	

Sec 197A- No deduction to be made

- Under the provisions of **section 197A**, if any person responsible for paying income of the nature referred to in section 192A(PF) ,193 (Int on sec.), 194A (Interest), 194-I (Rent),194D (Ins.Comm),194DA –(LIC policy payment) Receives form 15G or 15H then no deduction to be made.
- Then such assessee can furnish a self-declaration in **Form 15G** in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil.
- In the case of a senior citizen (exceeding 60 years of age), they can give a self-declaration in **Form 15H** in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil.

LOWER OR NIL TDS U/S 197

197(1)

- Lower or nil rate of deduction on the basis of justification
- sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194I, 194J, 194K, 194LA , 194LBB, 194LBC **and 195**

197(2)

- AO to issue Certificate to deduct TDS at nil or at lower rate
- Powers to cancel such certificate

197(3)

- Powers to CBDT to frame rules
- Rule 28, 28AA, 28AB, 29 and 37G. Form 13

RULES REFERENCE TO S.197

RULES	PARTICULARS
28	Application to be made in Form 13 electronically under digital signature or through electronic verification code
28AA	Issue of Certificate subject to justification of lower or nil deduction on the basis of existing and estimated tax liability – other than dividend and other than person specified in Rule 28AB
28AB	Application by Charitable institutions or scientific research association, news agency, association or institution, fund or trust or university or other educational institution or any hospital or other medical institution or trade union referred to in sub-section (4C) of section 139
29	Certificate of no deduction of tax or deduction at lower rates from dividends
37G	Application for certificate for collection of tax at lower rates under sub-section (9) of section 206C

ESTIMATED TAX LIABILITY

Rule 28AA

- tax payable on estimated income of the previous year relevant to the assessment year;
- tax payable on the assessed or returned ²[or estimated income, as the case may be, of last four] previous years;
- existing liability under the Income-tax Act, 1961 and Wealth-tax Act, 1957
- advance tax payment ³[tax deducted at source and tax collected at source for the assessment year relevant to the previous year till the date of making application under sub-rule (1) of rule 28]

OTHER ASPECTS FOR ISSUE OF CERTIFICATE- Rule 28AA

- Valid for the period specified or cancelled by AO
- Certificate to be issued directly to payer under advice to payee/applicant
- If number of deductee/payer are more than 100, certificate to be issued to payee to receive such income or sum after deduction at lower rate

CERTIFICATE IN CASE OF RULE 28AB

- Charitable and other institutions
- Without deduction of tax
- Furnished all the returns as on the date of application
- Approved for the purpose of exemption as on date of application
- An application for a fresh certificate may be made, if the assessee so desires, after the expiry of the period of validity of the earlier certificate

PROCEDURE FOR FILING FORM 13

- Register with TRACES as Tax Payer
- Login in TRACES
- Under the tab “Statements/Forms” select “Request for Form 13” form 13
- Fill in all the details
- Upload all the documents required to be submitted
- Submit Form 13 using digital signature or EVC
- Use “Track request for form 13” for status of application under “Statements/Forms”

ASSIGNMENT OF APPLICATION TO AO

- Application shall be forwarded to AO i.e. to Jurisdictional ITO or DCIT or ACIT based on revenue foregone and city
- Concerned AO to obtain other details required from CPC-ITR, Efiling and ITBA modules

Consequences of non compliance

From 1-7-2012, if the payer has not deducted tax, he shall not be deemed to be an assessee in default in case :

- ✓ The recipient has included such income in the return submitted u/s.139 and has paid tax on such income and
- ✓ The payee submits a certificate to this effect from a chartered accountant (Form No.26A)

If any deductor who is not considered as an assessee in default as per the above provision, interest u/s.201(1A) under clause(1) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income (w.e.f 01.07.2012).

Consequences of non compliance

Section	Nature of default	
201(1A)	Non-deduction of tax at source, either in whole or part. After deduction, non payment of tax, either in whole or part. Non- payment of tax u/s 192(1A).	<ul style="list-style-type: none">• simple interest @ 1% per month from the date on which tax was deductible to the date on which tax is actually deducted• simple interest @1.5% per month from the date on which tax was deducted to the date on which tax is actually paid

Consequences for non compliance

- **Levy of fee u/s 234E (w.e.f. 01.07.2012)**
 - Failure to file TDS/TCS quarterly statements shall be liable for a fee of Rs.200 per day of default and shall not exceed the amount of tax deductible or collectible. The fee shall be paid before delivering the quarterly statements.

Consequences of non compliance

Section	Nature of Default	Penalty
271C	Failure to deduct the whole or any part of tax at source	Sum equal to the amount of tax which was failed to be deducted
271CA	Failure to collect the whole or any part of tax at source (TCS)	Sum equal to the amount of tax which he failed to collect
271H(1)(a)	Failure to submit quarterly return	Penalty of Rs.10,000 to Rs.1,00,000
271H(1)(b)	for furnishing quarterly returns with incorrect information	No penalty shall be levied if the revised returns are filed within a period of one year from the due date.

Consequences of non compliance

Section	Nature of default	Penalty
272B	Failure to comply with provisions of Section 139A for quoting Pan	Rs.10,000
272BB	Failure to obtain TAN	Rs.10,000
272A(2)	<ol style="list-style-type: none">1.Failure to issue TDS certificates2. Failure to deliver declaration in Form 15G/15H3.Failure to file quarterly statements (only till 30-06-2012)	Rs.100 for every day during which the failure continues but the penalty shall not exceed the amount of tax Deductible

Consequences of non compliance

Section	Nature of Default	Prosecution
276B	Failure to pay Tax Deducted at Source	Punishable with rigorous imprisonment for minimum 3 months , maximum 7 years and with fine
276BB	Failure to pay Tax Collected at Source (TCS)	Punishable with rigorous imprisonment for minimum 3 months , maximum 7 years and with fine