



The Chamber of Tax Consultants

Mumbai | Delhi

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7th August, 2018

To,
The Principal Chief Commissioner of Income tax
Aayakar Bhavan,
Mumbai.

Respected Sir,

The Chamber of Tax Consultants (CTC), Mumbai was established in 1926. CTC is one of the oldest (about 92 years) voluntary non-profit making organizations in Mumbai formed with the object of educating and updating its members on Tax and other Laws. It has a robust membership strength of about 4000 professionals, comprising Advocates, Chartered Accountants and Tax Practitioners.

Listed below are the issues encountered by assesses and deductors related to applications made u/s 197 for lower or NIL deduction of Tax for which we request corrective action to ensure timely processing of applications and correct rate of tax to be deducted (not higher):

Applications made u/s 197 by Charitable Trusts

A Charitable Trust that has invested its corpus into interest bearing securities and has receipts in excess of the minimum amount exempt from tax therefore cannot issue form 15G, hence makes an annual application seeking Nil deduction of TDS on interest received. The Application is required to contain complete details of the investments investee wise and a projection of expenditure for the year head wise.

1. The process should be simplified –instead of asking for a **projection of expenditure** head wise at the beginning of the year, a Trust with a track

record of spending its income should be issued the certificate with a necessary undertaking given that at least 85% will be spent on objects of the

trust. An application is generally done in April and the return for the year ended in March is not filed nor are books of accounts ready at the time when application is made. While processing the application for year ended March 2019, the track record for years ended March 2017, 2016 and earlier years may be considered.

2. Providing specific **details of investments** is complicated – as a trust may have maturity / redemptions during the year and new investments cannot be pre identified– hence a certificate may be issued of upto a particular amount invested in a particular organization under a particular PAN. (e.g. Nil TDS for interest of upto Rs. 10 lakhs from sums invested in HDFC limited under PAN XXXTX1234X).
3. The **time frame** for issue of the certificate may be monitored and speeded – The receipt of Income of a trust starts paid out from April itself. Money blocked in TDS to that extent is not available for spending on objects of the trust which disturbs the cash flow of the Trust. An application should be permitted to be made in March itself for the ensuing year and certificate to be issued before the end of April.

For 197 Applications related to International Taxation

1. International tax divisions are issuing **NIL deduction** certificates **without alphanumeric numbers** – and we are informed that for the number to be allotted there must be a TDS of at least 0.01%. This makes the certificate not capable of being used. Necessary system based changes may be done to enable issue of NIL certificates.
2. **Reinsurers** not having a Permanent Establishment in India are not receiving NIL TDS Certificates.
3. There is no **consistency in rates** for similar types of payments for different payees.
4. For continuing contracts that span across years, even though there is no change in facts or the law, the same matter is enquired into in every annual application. A certificate once issued must be valid for that contract on an

annual auto renewal basis unless withdrawn. Alternately, for a continuing contract, an application should be permitted to be made in March so that on similar facts with no change in law the same can be issued before the end of April.

5. There is considerable **time taken** to issue 197 certificates in the international tax Range.

General

1. The entire process may kindly be automated to ensure transparency and ease and increase the speed of processing.
2. **Standardization of requirements** is recommended for different categories – this would make it administratively easier and bring certainty to the process.
3. Where a certificate has been issued for an **earlier year on similar facts consistency** should be adopted unless there is a change in the legal position. This will ensure certainty and predictability in administration. An auto renewal mechanism as suggested above may be adopted.
4. For certificates which are in the nature of **renewals** only, the applicant be permitted to mark them as so and these can be processed on a **fast track** basis – by allotting them a separate series of application number. This will ensure quicker processing of routine certificates and will reduce pendency.
5. The **time lines** need to be shortened to make the process more useful to Applicants.
6. Before issue of the certificate, an enquiry is being made for outstanding **TDS and Income Tax payments**. However often there are cases where the demand is in dispute and/or has been stayed. The recovery of such demands ought not to be insisted upon. A mechanism similar to that u/s 245 should be brought in- if the assessee has filed an objection to the demands and produces evidence of such filing then the certificate u/s 197 should be issued.

7. Where certificates are to be issued at a rate higher than that applied for, the **reasons** for the same may kindly be informed and the applicant be given an opportunity to make submissions before issue of the final certificate.
8. When an order u/s 195 is **litigated** and an order is passed in favour by the ITAT, effect cannot be given to these as the online procedure for the same is not widely known. The same may kindly be communicated to TDS officers.

We trust that necessary instructions will be issued to ensure a more seamless experience in the Application and processing of applications u/s 197 / 195 – for which stake holders would be immensely grateful.

Thanking you in anticipation,

Sincerely,

For The Chamber of Tax Consultants

Hinesh R. Doshi
President

Mahendra B. Sanghvi
Chairman
Law & Representation Committee

Apurva R. Shah
Co-Chairman

CC:

1. Commissioner of Income Tax – I (TDS Charge) Mumbai.