



The Chamber of Tax Consultants

Mumbai | Delhi

Registered Office

3, Rewa Chambers, Gr. Floor, 31, New Marine Lines, Mumbai – 400 020.

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20th April, 2019

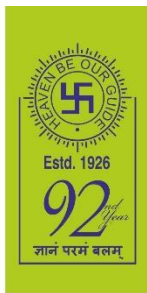
To,
Mr. Pramod Chandra Mody
The Chairman
Central Board of Direct Taxes
North Block
New Delhi 110001.

Respected Sir,

Re: Online procedure for making application for lower deduction certificate u/s 197 electronically

We give brief write up about the Chamber of Tax Consultants (CTC). CTC was established in 1926, is one of the oldest non-profit organizations of tax practitioners of Mumbai, having Advocates, Chartered Accountants and Tax Practitioners as its members. Many senior tax professionals who regularly appear before ITAT, high courts and the Supreme Court are its Past Presidents. We have been making regular representations before various government agencies.

One of the Chamber's objects is to act as a bridge between stakeholders/assessee and concerned regulatory bodies in order to convey, and help in resolving genuine grievances. Today, the Chamber enjoys considerable goodwill and respect not only among Tax Practitioners, Advocates, Solicitors and Chartered Accountants but also among leading Corporate- who also are members of the Chamber. The Chamber also has created a niche with the government and other regulatory agencies, where representations by the Chamber are received with all seriousness.



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The Chamber has always been instrumental in spreading education and also enlightening the citizens of the country in various matters concerning tax laws. The Chamber takes pride to be of help to the government in the nation building process.

Recently CBDT has notified rules and online procedure for making application for lower deduction certificate u/s 197 electronically. The application shall be made online only through TRACES portal (Notification no 74/2018 dated 25/10/2018 and Notification no 08/2018 dated 31/12/2018).

The initiative taken by CBDT is laudable but there are certain constraints or issues which need to be addressed to make said scheme more effective and workable. If the steps are taken to remove the problems then CBDT will have one more feather in its cap towards ease of doing business towards which Government is committed.

Procedure to be Followed for online filing of application under section 197:

The tax-payer/Deductee shall login in to the TRACES website for submission of application in Form 13 electronically, for grant of certificate for deduction of Income-tax (TDS) at any lower rate or no deduction of Income-tax under sub-section (1) of Section 197 /collection of the tax at any lower rate under sub-section (9) of Section 206C of the Income-tax Act, 1961 through TRACES, as per procedure specified. An Assessee must register on TRACES portal (www.tdscpc.gov.in) as “Tax Payer” (Hereinafter all references to registration on TRACES portal shall mean registering as Tax Payer) for downloading form 26AS and verifying TDS certificates issued to the assessee. For generating form



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16B/16C it is mandatory to register on TRACES portal so that form can be issued to deductee.

For registering on TRACES portal certain details like Indian address, Indian mobile number, PAN of authorised person and PAN encrypted DSC are mandatory amongst other details. An OTP is received on the mobile and activation link in the email. Only after the combination of link received in email and OTP received on mobile is matched, assessee can proceed with registration.

After the application for lower deduction certificate is submitted online, the application is then transferred to AO based on the PAN database. Jurisdiction details of AO are not allowed to be entered in the application.

We list herein below some of the issues raised by our members for online making application u/s 197 and request your Honour to address the same

Issues :

1. Change of Jurisdiction without corresponding transfer of PAN:

The application in form 13 will be filed electronically which shall be forwarded to the Concerned TDS Assessing Officer. Many times it happens that jurisdiction of Assessee undergoes a change which requires migration of Permanent Account Number (PAN) to the concerned AO. This generally takes long time as a result, application made under section 197 for lower deduction of Tax or no deduction of tax at source is received by a AO who does not have real time jurisdiction and not by AO having real time jurisdiction. This results in delay in processing application. As a result of this procedural delay, Tax at



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Source would have been deducted by payee thereby making process futile. In such cases system should define jurisdiction and allow him to decide the case.

2. Non Resident not having Permanent Place or Mobile No:

In case of Non Residents who do not have any Permanent address or place of business in India nor they have an mobile number in India and who wish to register themselves on TRACES portal for no deduction or lower deduction of Tax at Source , they cannot do so since they cannot provide the mandatory details as stated above. They are unable to provide certain information while making application. We cite some of the instances wherein a Non Resident is required to register on TRACES portal as follows:

a. Downloading of form 26AS

b. Applying for lower deduction application u/s 197 -

- (i) In case of Foreign companies which may have Permanent Establishment on account deemed supervisory with no fixed place of business , in that case Payer often deducts Tax at Source at maximum marginal rate (MMR) on the entire transaction value, whereas foreign company always insist that the tax rate be determined by AO in order to avoid any future litigation (in case of composite supply of materials and services or any other reason).
- (ii) In case of a Non-resident Indian owning property in India and wanting to sell the property may require certificate for lower deduction of tax (to avail benefit of indexation). The deductor will not be able to register on the TRACES portal since he does not have an Indian mobile number and place of business in India.

3. Filing of more than one application:



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The newly introduced online utility does not support filing of more than one application at a time. As such, taxpayer has to wait for disposal of one application before filing another application. For example, in case four orders u/s 197 are required, it may take 3-4 months for obtaining such orders as second application can only be filed after the disposal of first application.

4. **Query will be posted on the Applicants Login on TRACES portal:**

As per the procedure if the officer requires further clarification or information or documents while processing application u/s 197, the query will be available to the applicant in his / her / its inbox in TRACES portal through the applicant's login.

5. **Tax to be deducted at Source at lower or NIL rate to be decided by the System Functionality:**

The procedure laid down also states that “based on parameters defined in rule 28AA/28AB/37H of the Income Tax Rules, 1962 an estimated rate of tax will be suggested by the system functionality. However, the AO shall be free to arrive at Independent rate based on his/her method of calculation or taking into consideration any other information available with him/her.

System will not consider while arriving at rate the stay granted in case of disputed matter and also disputes which are in appeal which are squarely covered by the decisions of the Higher forums in applicants own case or in any other case. Hence in such cases TDS AO will consider the rate suggested by the system without any application of mind to remain on safer side. As on today also there is practice in the TDS section not to issue NIL certificate more particularly in case of charitable trust. Certificate under section 197 are issued only for lower rate of tax and not for Nil rate of Tax.



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6. **AO to access information from CPC(ITR), E (Filing) and ITBA :**

As per procedure AO shall access information essential for processing the request in respect of the tax payer/deductee as received from CPC(ITR), E-Filing and ITBA. Based on this AO as well as system functionality will determine the rate of tax for which certificate needs to be issued. In many cases it has been seen that there are erroneous demands pending on the CPC portal and these demand despite the rectification application filed have not been cleared. In many cases appeal effects have not been given despite Appeal order has been passed in favour of assessee. As a result wrong demands are reflected and deciding rate of tax at source purely on such demand by system will have adverse affect or delay in issuing such certificate.

7. **Size of the File required to be uploaded;**

Uploading of documents is restricted by file size of 5 MB. As such contacts/documents with higher file size are difficult to upload.

8. **Entries should not be restricted to 50:**

In case of number of entries are more than 50 for application to be made in form 13 for no deduction or lower deduction of Tax at Source online than offline details are required to be submitted.

9. **Application to be signed by principal Officer:**

Presently online form mandatorily requires declaration to be signed by the Principal Officer of the company only whereas this is not a requirement as per the form as prescribed under the Income Tax Rules. Even an Authorized Signatory is entitled to sign the application.

Suggestion:



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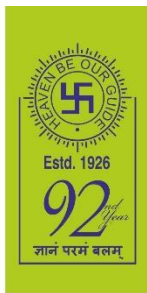
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1. In respect of AO code, the AO code may be auto populated from the tax database but applicant can be given the right to change if the code is incorrect. The Application should then be sent to the AO shown in the evidence filed to ensure speedy processing. Further system should take care for migration of PAN at the same time (maximum a week's time) to the jurisdictional officer.
2. Allow registration to be done based on foreign address since getting a PAN at an overseas address is also possible. Address may be linked to PAN database since login to TRACES portal is PAN based. Once an Applicant keys in status as Non Resident, the other fields should be deactivated:
 - a. Mobile number for non-residents should not be mandatory. The email link should be sufficient for registration – similar to income tax e-filing procedure.
 - b. DSC need not be PAN based. For security reasons the same can be linked to email id – similar to Income tax e-filing portal.
 - c. Authorised person should be allowed to be registered without PAN – as per existing e-filing portal.
3. Applicant can file multiple applications and filing can not be restricted to one at a time. Additional application may be allowed to be filed and only additional information may be required to be submitted.
4. In case of query raised by AO ,apart from posting the same on Login Id of applicant on TRACES, an email and/or SMS also be sent to the applicant seeking more information or clarification.
5. Further while deciding the Tax at Source either at Lower rate or Nil rate , system functionality should also consider the stay granted by Income Tax



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Authorities in case of disputed matter and also disputes which are in appeal which are squarely covered by the decisions of the Higher forums before arriving rate and one should not restrict to rate determined by system functionality in mechanical manner more particularly when it is adversely affecting assessee.

6. Before arriving at rate for deduction of Tax at source u/s 197 , a mechanism should be created in the system to address the rectification application filed by the Assessee for erroneous demand shown on TRACES Portal for which no action has been taken or where appeal effect has not been given by AO in case of demand which has been deleted by higher appeal forum.
7. Filing of online application for nil or lower deduction of tax at source shall not be restricted to 5 MB.
8. Further Filing of Online application should not be restricted to 50 entries and complete atomisation shall be required in that case.
9. For registration of the assessee on TRACES website, details of TDS deducted/ collected or challan details of tax paid by taxpayer is required. Hence in the case of new taxpayers, registration becomes difficult in the absence of satisfaction of these parameters.
10. Allow signing of application by an Authorised Signatory.
11. Allow “Not Applicable” as an option in various fields - with a dialog box that requires an explanation as to why not applicable.
12. The NRI services portal (www.nriservices.tdscpc.gov.in) should be allowed to be accessed by Indian professionals as well since non-residents generally prefer to outsource work to local professional and possibly above issues can be



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resolved on NRI services portal. If needed, an authorisation should be required to be uploaded for the same.

13. In case of charitable Trust whose income are exempt shall be given certificate u/s197 at NIL rate. Certificate shall not be issued for tax at source at lower rate for the sake of safeguarding Department or meeting the budgetary targets. Eligible Trust shall be issued certificate at NIL rate
14. Many times it has been observed that Application is made well in advance but it is processed after 3 months and certificate is issued only for balance period. In that case online application be processed within a period of two months in a time bound manner.

Further certificate shall be granted from the date of application and not from the date of issue of certificate.

We have given our observations and suggestion. Hope suggestion will enable Dept to strengthen its system which will eventually benefit assessee.

We look forward to a better system management which will help in ease of doing business in the country at the same time enables dept to save its time as well as perform better supervisory function.

Thanking you,

Sincerely yours,

For **THE CHAMBER OF TAX CONSULTANTS**

Sd/-

HINESH R. DOSHI
PRESIDENT

Sd/-

MAHENDRA SANGHVI
CHAIRMAN
LAW & REPRESENTATION COMMITTEE

Sd/-

APURVA SHAH
CO-CHAIRMAN