TDS – MODIFIED PROVISIONS

(*Background Material for EIRC Seminar on 23-04-2010*)

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Several important amendments were made in relation to the Provisions for Deduction of Tax at Source (TDS) by the Finance (No.2) Act, 2009 ï some of the amendments had come into effect from 01-04-2009 or/from 01-10-2009 while a few came into effect only from 01-04-2010. By the Finance Bill, 2010(introduced in Parliament on 26-02-2010) some more amendments in the Provisions relating to TDS have been proposed and those amendments, if finally approved by Parliament, would come into effect from 01-07-2010. However, the amendments proposed in respect of the disallowance u/s 40(a)(ia) in relation to defaults in TDS, if approved by Parliament, would be deemed to have come into effect from the Assessment Year 2010-11, i.e., relevant for the Previous Year that had commenced on 01-04-2009.

In this Background Material some of the amendments - both already effected [by the Finance (No.2) Act, 2009] as well as proposed to be effected (by the Finance Bill, 2010) - are being referred to for the purpose of discussions in the Seminar.

1. **Exclusion of Surcharge/Edu. Cess/SHE Cess for the purpose of TDS**

   With effect from 01-04-2009, excepting the cases of (i)a non-resident payee and a foreign company payee and (ii)salaries payable to the employees, only the income-tax at the rates prescribed in the relevant sections of the Income-tax Act and/or in the relevant Finance Act, are to be deducted at source. That means neither the Surcharge (wherever applicable) nor Edu. Cess/SHE Cess, are to be considered for computation of TDS. As already mentioned hereinabove, for payment to a non-resident payee or a foreign company payee, for the purpose of TDS both Surcharge at the applicable rate as well as Edu. Cess/SHE Cess are be considered for computing TDS. Further, for determination of TDS on Salaries, Edu. Cess and SHE Cess are to be taken into consideration.

2. **Payment of Income by way of winnings from lottery/crossword puzzle/card game/any other game of any sort – Section 194B**

   It has been proposed that with effect from 01-07-2010 the maximum amount not attracting TDS would be increased from the existing limit of Rs.5,000 to Rs.10,000.

3. **Payment of Income by way of winnings from any horse race – Section 194BB**

   It has been proposed that with effect from 01-07-2010 the maximum amount not attracting TDS would be increased from the existing limit of Rs.2,500 to Rs.5,000.

4. **Payments to Contractors u/s 194C**

   A. With effect from 01-10-2009 ï

      (a) No separate treatment as regards payment to a sub-contractor since the term ñcontractò would include ñsub-contractò.

(b) Rate of TDS would be @1% where the payee, i.e., the deductee, is an individual or an HUF. In all other cases the rate would be 10%.

(c) In respect of any work involving manufacturing or supplying of a product according to the requirement or specification of a customer by using material purchased from such customer, tax is to be deducted at source ï

(i) On the invoice value excluding the value of material, if such value is mentioned separately in the invoice;

(ii) On the whole of the invoice value if the value of material is not mentioned separately in the invoice.

However, in a case where for manufacturing or supplying a product according to the requirement or specification of a customer, the concerned contractor uses materials purchased from a person other than the relevant customer, such manufacturing or supplying is not be considered as ñworkò requiring deduction of tax at source u/s 194C.

(d) Any payment to be made to a contractor (payee) during the course of business of plying, hiring or leasing goods carriages, there is no requirement of TDS if such contractor (payee) furnishes his PAN to the payer. The meaning of the term ñgoods carriageò is to be found from section 2(14) of the Motor Vehicles Act, 1988. There is a condition attached to the above which requires the concerned payer to furnish in a prescribed form containing certain particulars to the prescribed income-tax authority.

B. Proposed to be made effective from 01-07-2010 :

(a) The existing maximum limit not attracting TDS for a single payment, will be increased from Rs.20,000 to Rs.30,000.

(b) The existing maximum limit not attracting TDS for an aggregate sum of Rs.50,000 will be increased to Rs.75,000.

5. **Payment of Insurance Commission – Section 194D**

It has been proposed that with effect from 01-07-2010 the maximum amount not attracting TDS would be increased from the existing limit of Rs.5,000 to Rs.20,000.

6. **Payment of Commission or Brokerage – Section 194H**

It has been proposed that with effect from 01-07-2010 the maximum amount not attracting TDS would be increased from the existing limit of Rs.2,500 to Rs.5,000.

7. **Payment of Rent – Section 194-I**

A. With effect from 01-10-2009 ï

The rates for TDS are to be determined on the basis of the nature of payments as under :

Rent/Hire Charges paid for use of	Rate of TDS
(a) Machinery or plant or equipment	2%
(b) Land or building or land appurtenant to a building or Furniture or Fittings	10%

B. Proposed to be made effective from 01-07-2010 -
Maximum limit of Rent payable in a year not attracting TDS, would be increased from the existing sum of Rs.1,20,000 to Rs.1,80,000.

8. **Payment of Fees for Professional/Technical Services – Section 194J**

It has been proposed that with effect from 01-07-2010 the maximum amount not attracting TDS would be increased from the existing limit of Rs.20,000 to Rs.30,000.

9. **Interest Payable for TDS Default – Section 201(1A)**

It has been proposed to substitute the existing sub-section (1A) of section 201 with effect from 01-07-2010 whereby the Interest payable for non-deduction of tax and/or non-deposit of deducted tax, would be calculated as under :

(i) Where tax required to be deducted at source was not deducted at source on the date on which such tax was deductible - @1% per month or part of a month on the amount of deductible tax, from the date on which such tax had been required to be deducted, to the date on which the tax was subsequently deducted.

(ii) Where tax had been deducted at source but such deducted tax was not deposited to the credit of the Central Government within the prescribed date ï @1.5% per month or part of a month on the amount of such deducted tax, from the date on which such tax had been deducted, to the date on which the said deducted tax was deposited to the credit of the Central Government.

10. **PAN – Consequence of Non-Furnishing - Section 206AA**

(a) By inserting a new section 206AA it has now been provided with effect from 01-04-2010 that non-furnishing of his PAN by a payee to the payer, will result in deduction of tax at source by the payer from the payments to be made to the concerned payee, at the higher of the following :

(i) At the rate specified in the relevant section;

(ii) At the rate or rates in force (which means the rate or rates of income-tax which will be specified in the Finance Act of the relevant year);

(iii) At the rate of 20%

The above is contained in sub-section (1) of the new section 206AA.

(b) It has also been provided through sub-sections (2) and (3) of the newly inserted section 206AA that non-furnishing of PAN will invalidate declaration that may be made u/s 197A for non-deduction of tax at source.

(c) It has further been provided that unless the PAN of the applicant is mentioned in an application for issuance of certificate for deduction at a lower rate u/s 197, the Assessing Officer shall not grant any such certificate u/s 197.

From the provisions contained in the newly inserted section 206AA it appears that every person who will be required to pay any sum attracting TDS with effect from 01-04-2010, must ensure that PAN of the concerned payee has duly been furnished to him before he makes the relevant payment. As regards Declarations that may be filed in Form No.15G/15H u/s 197A, the Payer must ensure that the PAN of the Declarant is mentioned therein. Any failure on the part of the payer as regards obtaining of the correct PAN of the concerned payee or ensuring the mentioning thereof in Form No.15G/15H furnished by the concerned payee, may result in subsequent treatment of the payer as an ñassessee in defaultò for short deduction of tax at source. In such a case the concerned payer, over and above the liability to pay the relevant Tax along with Interest and Penalty, shall further suffer by way of the disallowance of the relevant expenses u/s 40(a)(ia) or any applicable similar provision.

11. **Issuance of TDS Certificate – Section 203(3)**

The existing sub-section (3) of section 203 provides that on or after 01-04-2010 there would not be any requirement to issue any TDS certificate as regards the tax that has been deducted at source. By the Finance Act, 2010 it has been proposed to omit the above-mentioned sub-section (3) of section 203. That means the requirement of the issuance of TDS Certificate Form No.16/16A would be continued in respect of the taxes that may be deducted at source even on or after 01-04-2010.

12. **Disallowance for TDS Defaults – Section 40(a)(ia)**

As per the existing provisions of section 40(a)(ia) if tax was deducted at source in relation to the specified expenses paid and/or accrued to a Resident, in the month of March of the relevant Previous Year, the disallowance u/s 40(a)(ia) would not be made if the deducted tax would be deposited to the credit of the Central Government within the due date for filing of the Return of Income u/s 139(1) for the relevant assessment year. This means that the above relaxation is not presently available for any deduction of tax made during the period from 1st April to 28th February (in a Leap year up to 29th February) and in those cases the deducted tax has to be deposited to the credit of the Central Government within the relevant Previous Year itself for avoiding disallowance u/s 40(a)(ia) in the relevant assessment year.

It has now been proposed in the Finance Bill, 2010, by way of amendment in section 40(a)(ia), to provide relaxation even for the taxes deducted at source during the first eleven months of a Previous Year, i.e., from April to February. It has now been proposed to make this amendment effective from the Assessment Year 2010-11, i.e., with effect from the Previous Year that commenced on 01-04-2009. As a result, any tax deducted at source during any time of a Previous Year, if deposited to the credit of the Central Government within the due date for filing of the Return of Income for the relevant assessment year u/s 139(1), delay in deposit of such tax would not be considered for any disallowance u/s 40(a)(ia), of the relevant expense in the assessment year relevant for the said Previous Year.

It may be noted here that the above-mentioned relaxation though available for payments to a resident, in relation to any default for TDS in connection with any payment of any sum chargeable to tax under the Income-tax Act, 1961, which is payable outside India or in India a Non-resident, there is no similar relaxation provided in the relevant sections, viz., sub-clauses (i) and (iii) of Clause (a) of section 40.