

T.D.S ON SALARIES



DIRECTORATE OF INCOME TAX
(PR,PP&OL)
INCOME TAX DEPARTMENT
New Delhi - 110 001

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TDS ON SALARIES



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This publication should not be construed as an exhaustive statement of the Law. In case of doubt, reference should always be made to the relevant provisions of the Income Tax Act, 1961, Income Tax Rules, 1962 Wealth Tax Act, 1957 and Wealth Tax Rules, 1957, and, wherever necessary, to Notifications issued from time to time.

PREFACE

The provisions of the Income Tax Act relating to Tax Deduction at Source from Salaries are of immense importance in the context of present scenario when TDS collections account for almost 30% of total collection of Direct Taxes.

The Income Tax Act provides for penalties for defaults in respect of deduction of TDS and deposit thereof into Central Government account. The Law is even more strict in case the TDS has been deducted but not deposited into Government account in the prescribed manner. In such a case, besides penalties, the Law provides even for prosecution. Therefore, the Tax Deductors need to be well conversant with the provisions relating to Tax Deduction at Source. This booklet under the TPI series is an attempt to put forth the various provisions relating to Tax Deduction at Source from Salaries in a lucid but precise manner.

Shri Madhukar Kumar Bhagat, Director (ITJ), CBDT, New Delhi has very painstakingly updated the booklet as per the provisions of the Law as amended upto Finance Act, 2010. I am sure that this updated edition will be widely accepted by the users.

Any suggestions for further improvement of the booklet would be welcome.



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Dated :

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CHAPTER-1

INTRODUCTION

1. The Indian Income Tax Act provides for chargeability of tax on the total income of a person on an annual basis. The quantum of tax determined as per the statutory provisions is payable as :

- a) Advance Tax
- b) Self Assessment Tax
- c) Tax Deducted at Source (TDS)
- d) Tax Collected at Source
- e) Tax on Regular Assessment

Tax deducted at source (TDS), as the very name implies aims at collection of revenue at the very source of income. It is essentially an indirect method of collecting tax which combines the concepts of “pay as you earn” and “collect as it is being earned.” Its significance to the government lies in the fact that it prepones the collection of tax, ensures a regular source of revenue, provides for a greater reach and wider base for tax. At the same time, to the tax payer, it distributes the incidence of tax and provides for a simple and convenient mode of payment.

The concept of TDS requires that the person on whom responsibility has been cast, is to deduct tax at the appropriate rates, from payments of specific nature which are being made to a specified recipient. The deducted sum is required to be deposited to the credit of the Central Government. The recipient from whose income tax has been deducted at source, gets the credit of the amount deducted in his personal assessment on the basis of the certificate issued by the deductor.

While the statute provides for deduction of tax at source on a variety of payments of different nature, in this booklet, an attempt is being made to discuss various provisions relevant only to the salaried class of taxpayers.

CHAPTER-2

OVER VIEW OF THE TDS PROVISIONS

2.1 Introduction :

Section 192 of the I.T.Act, 1961 provides that every person responsible for paying any income which is chargeable under the head 'salary', shall deduct income tax on the estimated income of the assessee under the head salaries. The tax is required to be calculated at the average rate of income tax as computed on the basis of the rates in force. The deduction is to be made at the time of the actual payment. However, no tax is required to be deducted at source, unless the estimated salary income exceeds the maximum amount not chargeable to tax applicable in case of an individual during the relevant financial year. The tax once deducted is required to be deposited in government account and a certificate of deduction of tax at source (also referred as Form No.16) is to be issued to the employee. This certificate is to be furnished by the employee with his income tax return after which he gets the credit of the TDS in his personal income tax assessment. Finally, the employer/deductor is required to prepare and file quarterly statements in form No.24Q with the Income-tax Department.

2.2 Who is to deduct tax

The statute requires deduction of tax at source from the income under the head salary. As such the existence of "employer-employee" relationship is the "sine-qua-non" for taxing a particular receipt under the head salaries. Such a relationship is said to exist when the employee not only works under the direct control and supervision of his employer but also is subject to the right of the employer to control the manner in which he carries out the instructions. Thus the law essentially requires the deduction of tax when;

- (a) Payment is made by the employer to the employee.
- (b) The payment is in the nature of salary and
- (c) The income under the head salaries is above the maximum amount not chargeable to tax.

For the various categories of employers, the persons responsible for making payment under the head salaries and for deduction of tax are as below:

In the case of,

- | | | |
|--|---|---|
| 1. Central/State Government/P.S.U | - | The designated drawing & disbursing officers. |
| 2. Private & Public Companies | - | The company itself as also the principal officer thereof. |
| 3. Firm | - | The managing partners/partner of the firm. |
| 4. HUF | - | Karta of the HUF |
| 5. Proprietorship concern | - | The proprietor of the said concern. |
| 6. ¹Trusts | - | Managing trustees thereof. |

In case of a company, it is to be noted, that though the company may designate an officer /employee to make payments on the behalf

¹As per sub section 4 of Sec 192, the trustees of a recognised provident fund are required to deduct tax at source at the time of making payment of the accumulated balance due to an employee. The TDS is to be made in a case where sub-rule(1) of rule 9 of part - A of Fourth Schedule of the Act applies and the deduction is to be made as per rule 10 of part A of Fourth Schedule.

of the company, still the statutory responsibility to deduct tax at source rests with the company and its principal officer thereof. In respect of companies, the I.T.Act Section 2(35) has specified principal officer to mean:

- (a) Secretary, Treasurer, Manager or agent of the company.
- (b) Any person connected with the management or administration of the company or upon whom the assessing officer has served the notice of his intention to treat him as a principal officer.

2.3 TDS on simultaneous employment with more than one employer or on change of employment

Sub-Section 2 of Section 192 provides that where a person is simultaneously employed with more than one employer, he may furnish the particulars of salary payments and TDS to the employer of his choice. Similarly, on change of employment the particulars of salary and TDS of earlier employment may be furnished to the subsequent employer. These particulars are to be furnished in Form 12 B in accordance with Rule 26A of the I.T.Rules. The employer on receipt of such information is required to take into account the particulars of salary and TDS and then deduct tax at source considering the aggregate salary from all sources.

2.4 When is tax to be deducted

Section 192 casts the responsibility on the employer, of tax deduction at source, at the time of actual payment of salary to the employee. Unlike the provisions of TDS, pertaining to payments other than salary where the obligation to deduct tax arises at the time of credit or payment, which ever is earlier, the *responsibility to deduct tax from salaries arises only at the time of payment*. Thus, when advance salary and arrears of salary has been paid, the employer has to take the same into account while computing the tax deductible.

2.5 Rate of deduction of tax

As per Section 192, the employer is required to deduct tax at source on the amount payable at the *average rate* of income tax. This is to be computed on the basis of *rates in force* for the financial year in which payment is made.

The Finance Act of each financial year specifies the rates in force for deduction of tax at source. For F.Y.2010-2011 rate of TDS is specified in Part-3, Schedule of Finance Act 2010. The same is as follows :-

I In case of individual & HUF (other than II and III below) :-

(i) Where the total income does not exceed Rs.1,60,000/-.	Nil
(ii) Where the total income exceeds Rs.1,60,000/- but does not exceed Rs.5,00,000/-.	10% of the amount in excess of Rs.1,60,000/-.
(iii) Where the total income exceeds Rs.5,00,000/- but does not exceed Rs.8,00,000/-.	Rs.34,000/- + 20% of the amount by which total income exceeds Rs.5,00,000/-.
(iv) Where the total income exceeds Rs.8,00,000/-.	Rs.94,000/- + 30% of the amount by which total income exceeds Rs.8,00,000/-.

II In case of individual being a woman resident in India and below 65 years at any time during the previous year :-

(i) Where the total income does not exceed Rs.1,90,000/-.	Nil
(ii) Where total income exceeds Rs.1,90,000/- but does not exceed Rs.5,00,000/-.	10% of the amount by which the total income exceeds Rs.1,90,000/-.

(iii) Where the total income exceeds Rs.5,00,000/- but does not exceed Rs.8,00,000/-.	Rs.31,000/- + 20% of the amount by which total income exceeds Rs.5,00,000/-.
(iv) Where the total income exceeds Rs.8,00,000/-.	Rs.91,000/- + 30% of the amount by which the total income exceeds Rs.8,00,000/-.

III In case of an individual resident who is of the age of 65 years or more at any time during the previous year :-

(i) Where the total income does not exceed Rs.2,40,000/-	Nil
(ii) Where the total income exceeds Rs.2,40,000/- but does not exceed Rs.5,00,000/-	10% of the amount by which the total income exceeds Rs.2,40,000/-
(iii) Where the total income exceeds Rs.5,00,000/- but does not exceed Rs.8,00,000/-	Rs.26,000/- + 20% of the amount by which the total income exceeds Rs.5,00,000/-
(iv) Where the total income exceeds Rs.8,00,000/-	Rs.86,000/- + 30% of the amount by which the total income exceeds Rs.8,00,000/-

2.5.1 Surcharge and cess on tax

The amount of income tax computed as per rates specified above is to be reduced by the amount of rebate of income tax calculated under chapter VIII A of the I.T. Act 1961 (in case of individuals, HUF, AOP & BOI). The income tax so arrived at is to be increased by a surcharge calculated at the rate of 10% on such income tax. Uptill the Finance Act 2008 surcharge was levied only when the total income exceeded Rs. 10,00,00/-. *However no surcharge is to be levied as per the Finance Act, 2010 in case*

of individuals HUF, AOP & BOI even where the total income exceeded Rs.10,00,000/-.

The amount of income tax (as increased by surcharge, if any), shall be further increased by an Education and higher Education Cess of 3% on the income tax and surcharge, which is payable by Resident as well as Non-Resident assesseees. The deduction of tax at source is then to be made after also taking into account the Cess on tax so calculated.

2.5.2 Average rate of deduction

The statute enjoins the employer to compute the tax liability of the employee on the basis of the rates in force and to deduct the tax at the average rate computed on the basis of the same. Thus, the employer is required to compute at the beginning of the financial year, the total salary income payable to an employee during the financial year. Further, the employer should also take into account any other income as reported by the employee. After considering the incomes exempt, deductions and relief, the tax liability of the employee should be determined on the basis of the rates in force for the financial year. **Every month, 1/12 of this net tax liability as computed above is required to be deducted.**

2.5.3 Payment of tax by employer on non monetary perquisite

W.e.f. 1.6.2002 the employer has an option to pay the tax on the non monetary perquisite given to the employee. Sections 192(1A) & 192 (1B) of the Income Tax Act, enable the employer at his option, to make payment of the entire tax or a part of the tax due on non monetary perquisites. The tax payable is to be determined at the average rate of the income tax computed on the basis of rates in force and the payment will have to be made when such tax was otherwise deductible, i.e. at the time of payment of income

chargeable under the head salaries, to the employee. Further, the tax so paid shall be deemed to be the TDS made from the salary of the employee. However as per proviso to section 198, this tax paid will not be deemed to be income of the employee.

2.5.4 Revision of estimate of tax liability

As per Sub-Section 3 of Section 192 a deductor can make adjustments for any excess or shortfall in the deduction of tax already made during the financial year, in the subsequent deductions. For instance, in the case where payment of advance salary, arrears of salary, or increase of salary, commission, bonus, etc. has taken place, the tax liability of the employee will increase. Deduction of tax at source is accordingly required to be increased. Similarly, if the employee makes certain investments which qualify for deduction or rebate and furnishes the required proof which reduces the tax liability, then the employer can accordingly reduce the quantum of TDS.

2.5.5 Deduction at a lower rate or non-deduction of tax

Section 197 enables a tax payer to make an application to his Assessing Officer for deduction of tax at a lower rate or non deduction of tax. The application has to be made in Form No.13 (vide Rule 28(1)). If the Assessing Officer is satisfied that the total income of a tax payer justifies the deduction of income tax at any lower rate or no deduction of income tax, he may issue a certificate in Form No. 15AA (relevant Rule 28AA) providing for deduction of tax at lower rate or no deduction of tax.

The certificate is valid only for the assessment year as specified therein. On expiry of the validity period, a fresh application may be made. A certificate is issued directly to the person responsible for deducting tax/DDO with a copy to the applicant. In absence of

such a certificate from the employee, the employer should deduct income tax on salary payable at normal rates (Circular No.147 dt.28-10-1974).

2.5.6 TDS where the salary paid is net of tax

Where the employee enters into an agreement or an arrangement as per which the tax chargeable on the income is borne by the employer then for the purpose of deduction of tax, the income is to be increased to such an amount as would, after deduction of tax thereon be equal to the net amount payable as per the agreement or arrangement (Section 195A). However, this provision is not applicable where the employer has made payment of tax on non-monetary perquisites as provided in section 192(1A).

2.5.7 Refund of TDS

In case of excess deduction of tax at source, claim of refund of such excess TDS can be made by the deductor. The excess amount is refundable as per procedure laid down for refund of TDS vide Circular No.285 dt.21-10-1980.

The difference between the actual payment made by the deductor and the tax deducted at source or deductible, whichever is more will be treated as the excess payment made. This amount is to be first adjusted against any existing tax liability under any of the Direct Tax Acts. After meeting such liability, the balance amount is to be refunded.

2.6 Deposit of tax in Government account

As per Section 200 of the IT Act, the person responsible for deducting tax from payment made to an employee is also required to deposit the tax so deducted in Government account within the prescribed time and in the manner prescribed vide Rule 30. *Vide I.T. 6th Amendment Rules 2010 (notification dt. 31/5/2010 the*

Rule 30 has been amended and the following is now provided for deductions made w.e.f. 1.4.2010 :

2.6.1 Time limit for deposit

1. *Where deduction is made by or on behalf of the Government, without the production of challan, the payment has to be made on the day of tax deduction itself.*
2. *In other cases of deduction by the Government vide a challan, the payment has to be made within seven days (7 days) of the last day of the month in which the deduction is made or income-tax is due under section 192(1A).*
3. *In case of a deductor other than Government, the payment is to be made before 30th day of April where income or amount is credited or paid in the month of March.*
4. *In other cases of deduction by non-government deductors, payment has to be made within seven days from the end of month in which deduction is made or Income-tax is due under sub-section 1-A of Sec. 192.*
5. *However, vide Rule 30(B), the Assessing Officer can, in special cases with the prior approval of joint Commissioner of Income Tax, allow payment of TDS quarterly, i.e. by 7th of July for the quarter ending 30th of June, by 7th of October for the quarter ending 30th September, by 7th of January for the quarter ending 30th of December and by 30th of April for the quarter ending 31st of March.*

2.6.2 Place of deposit of tax

Tax has to be deposited to the credit of the Central Government in any of the branches of RBI, SBI or any authorised bank. The payment can be made either in cheque or cash or draft drawn on local banks. In case of payment made by cheque, the date of

encashment of the cheque will be the date of payment of tax (Circular No.141 dt.23-7-1974).

It has been clarified vide circular No.306 dt.19-6-1961 that payment of tax deducted at source should be made at the place where the DDO/the person responsible for TDS is required to file annual/periodical statement of TDS.

2.6.3 Challan of Payment

Where a deduction is made by or on behalf of the Government, the amount is to be credited in the manner specified above without the use of challan (See Rule 30). In case of other deductors, the deposition of TDS is to be made vide challan No.ITNS 281. The deductor must ensure that the details like employer's name and address, PAN, TAN, the Assessing Officer having jurisdiction, the amount of tax and surcharge and cess, the date of payment, the salary from which TDS has been done and the tax which is being paid, are correctly filled. Where TDS is credited to Government account through book adjustments, care should be taken by the DDOs to ensure that the correct amount of income tax is reflected therein.

For deductions made after 1.4.2010 the I.T. 6th Amendment rules 2010 (notification dt. 31/5/2010) provide the following (Rule 30(4)).

- 1. In case of deduction by the office of a Government without the production of challan, the pay and Accounts officer or the Treasury officer or the cheque Drawing and Disbursing officer, to whom the deductor reports the deduction and who is responsible for crediting the sum to the Central Government, is required to;*
 - (a) Submit a statement in form 24G within ten day from the end of the month, in respect of the tax deducted*

and reported to him for that month. This statement is to be furnished to an agency authorized by DGIT (Systems).

- (b) Such agency will generate a number called Book Identification Number in respect of tax deducted and credited. This number is to be intimated to the respective deductors by the PAO/DDO/Treasury officers.*
- 2. For the aforesaid purpose the responsibility of specifying the procedures format, and standard for ensuring secure capture and a transmission of data and for day to day administration will be of DGIT (Systems).*
- 3. Where tax has been deposited accompanied by an Income-tax challan the amount tax deducted or collected shall be deposited to the credit of the Central Government by remitting it within the time specified in above (Rule 30).*

2.6.4 Electronic payment of taxes

An optional scheme of electronic payment of taxes for income-tax was introduced in 2004. However with a view to expand the scope of electronic payment of taxes, the scheme of electronic payment of taxes has been made mandatory (vide notification No. 34/2008 dt. 13.3.2008 of CBDT) for the following categories of tax-payers (referred in rule 125(1)).

- (i) All corporate assesseees;*
- (ii) All assesseees (other than company) to whom provisions of section 44AB of the Income Tax Act are applicable.*

2. The scheme of mandatory electronic payment of taxes for income-tax payers is to be made applicable from 1st April, 2008 and

shall also be applicable to payment of taxes to Government account where tax has been deducted at source.

3. The Income-tax (6th Amendment Rules) 2010 (Notification dt. 31/5/2010 provides that for category of assessee as mentioned above who are compulsorily to make electronic payment of TDS; such payment is to be remitted into R.B.I., S.B.I. or any authorized bank accompanied by an electronic Income-tax challan. The electronic remittance can be made :

- (a) By internet banking facility of RBI, SBI or the authorized Bank.*
- (b) By Debit Card.*

However for payments deducted prior to 1/4/2010 the provisions of rule prior to this amendment will apply.

2.7 Issue of T.D.S. Certificate

2.7.1 Every person deducting tax at source is required as per Section 203 to furnish a certificate to the payee to the effect that tax has been deducted along with certain other particulars. This certificate is usually called the TDS certificate. Even the banks deducting tax at the time of payment of pension are required to issue such certificates. In case of employees receiving salary income including pension, the certificate has to be issued in form No.16. The certificate is to be issued in the deductor's own stationery. However, there is no obligation to issue TDS certificate in case of tax at source is not deducted /deductible by virtue of claims of exemptions/ deductions.

- ***Vide Income-tax (6th Amendment) Rules 2010, a new Form No. 16 has been notified which will be applicable for tax deductions after 1/4/2010 (refer Annexure-1 of this book for new form).***

- *The deductor is also to provide relevant information of tax deduction and deposition vide book entry or challan vide Annexure A and Annexure B of this new form 16.*
- *Besides the deductor is also required to specify the following in Form No. 16*
 - (a) *Valid Permanent account number (PAN) of the deductee;*
 - (b) *valid tax deduction and collection account number (TAN) of the deductor;*
 - (c) (i) *book identification number or numbers where deposit of tax deducted is without production of challan in case of an office of the Government;*
Challan identification number or numbers in case of payment through bank.
 - (d) (i) *receipt number of the relevant quarterly statement of tax deducted at source which is furnished in accordance with the provisions of rule 31A;*
 - (ii) *receipt numbers of all the relevant quarterly statements in case the statement referred to in clause(i) is for tax deducted at source from income chargeable under the head "Salaries".*

2.7.2 Time limit for issue of TDS certificate

Subsequent to the Income-tax(6th amendment) for deduction made after 1/4/2010, such a certificate is now to be issued by 31st May of the Financial Year(F.Y.) immediately following the F.Y. in which income was paid and tax deducted. For deductions made prior to 1/4/2010 the Form 16 was to be issued by the 30th of April.

In case of employment by more than one employer, Form 16 pertaining to the respective period of employment may be issued by each employer or the employee may his option report the income and deduction to the last employer and Form 16 may be issued by the last employer.

2.7.3 Statement of deduction of tax-Form 26AS

As per section 203AA the prescribed income-tax authority or the person authorized by the such authority (as referred in section 200(3)) is required to deliver to the person from whose income the tax has tax has been deducted/paid a statement of deduction of tax in the prescribed form. Such statement as per rule 31AB is to be furnished in form no 26AS by the 31st July following the Financial Year during which the taxes were deducted/paid (also refer Notification no. 928 E dt. 30.6.2005 of CBDT)

2.7.4 Furnishing of details of perquisites and profits in lieu of salary

As per section 192(2C) every person responsible for paying any income chargeable under the head salaries, shall furnish to the employee a statement giving correct and complete particulars of perquisites or profits in lieu of salary, provided to him and the value thereof in :- [Relevant rule 264 (2)(b)]

- (a) Relevant columns provided in Form No. 16, if the amount of salary paid or payable to the employee is not more than one lakh and fifty thousand rupees, or
- (b) In Form No. 12BA :- if the amount of salary paid or payable to the employee is more than one lakh and fifty thousand rupees (as per notification no. S.O. 1062 dt. 04.10.2002 proforma for Form 12BA has been provided).

Where the employer has paid any tax on non-monetary perquisite on behalf of the employee as provided in section 192(1A), then he must furnish to the employee concerned a certificate to the effect that tax has been paid to the Central Government and specify the amount so paid, the rate at which tax has been paid and other particulars in the amended Form 16.

2.7.5 Issue of duplicate certificate

Where the original TDS certificate is lost, the employee can approach the employer for issue of a duplicate TDS certificate. The employer may issue a duplicate certificate on a plain paper giving the necessary details as contained in Form No. 16 (Relevant Rule-31(4)). However such a certificate has to be certified as duplicate by the deductor. Further the assessing officer before giving credit of the tax on basis of duplicate certificate is required to get payment certified from the assessing officer concerned and also obtain an indemnity bond from the assessee employee.

2.7.6 Credit of the tax where TDS is by book adjustments

In case of deduction of tax at source by any department of the Central Government, payment of the same to the credit of the Income Tax Department by means of book adjustments is permitted. In such a case, in the certificate of TDS (Form No. 16) issued to the employee the DDO must specify that credit of TDS has been afforded to the Income tax department by book adjustment and also the date of such book adjustment. Where the aforesaid details have been given in TDS certificate, the assessing officer should accept them and give credit of the TDS in the personal assessment of the employee. In such cases, the TDS certificate should not be rejected by the assessing officer if they do not contain details like Challan No. or date of payment in Government account. However, the assessing officer is free to verify the genuineness of such

certificate by corresponding with the DDO's of Central Government department. The DDOs are bound to offer facility of examination of their payment to Central Government (Circular No. 749 dt. 27-12-1996).

In case of credit of tax by book adjustments, for tax deductions made after 1/4/2010, the provision as incorporated vide I.T. (6th Amendment) Rules notification dt. 31/5/2010 will be applicable, these are;

- *The office of the Government is to give credit to the Central Government on the same day where tax is paid without production of challan/by book adjustment (Rule 30(1)).*
- *The Pay and Accounts offices/DDO/Treasury officer who is crediting the sum to Central Government is to submit a statement in form 24G (Rule 31(4) (a)).*
- *The PAO/DDO/Treasury officer is also to intimate Book Identification Number to each of Deductors (Rule 31(4)(b)).*
- *Along with Form 16 details of Tax deducted and deposited by Book entry in respect of the employee has to be provided in Annexure A.*

2.7.7 Issue of TDS certificates by way of digital signatures

As per circular No. 2/2007 dt. 21.5.2007, the deductors may at their option, in respect of the tax to be deducted at source from income chargeable under the head Salaries, use their digital signatures to authenticate the certificates of deduction of tax at source in form No.16. However the deductors will have to ensure the following;

- (a) that TDS certificates in Form No. 16 bearing digital signatures have a control No. with log to be maintained by the employer (deductor).
- (b) the deductor is to ensure that its TAN, PAN of the employee, Book Identification Number/Challan Identification No. are correctly mentioned in such Form No. 16 issued with digital signatures.
- (c) that once the certificates are digitally signed, the contents of the certificates are not amenable to change by anyone.

The income-tax authorities are required treat such certificate with digital signatures as a certificate issued in accordance with rule 31 of the income-tax Rules, 1962. (Circular No. 2/2007, dated 21.5.2007).

RETURN/STATEMENTS OF T.D.S.

2.8 Return of TDS

A return of TDS is a comprehensive statement containing details of salary paid and taxes deducted thereon from the employees along with other prescribed details. Earlier, every deductor, *for deductions made prior to 01.04.2005* was required as per the provisions of Section 206 (read with Rule 36A and 37) to prepare and deliver an annual return of tax deducted at source in form no. 24. Such a return was to be prepared and signed by the following - (a) the DDO or the prescribed officer in case of a government office; (b) the principal officer in the case of every company; (c) the managing partner/ partners in the case of a firm; (d) managing trustee in the case of trust; (e) Karta in the case of HUF; (f) prescribed person in the case of a local authority/public body/association. **However w.e.f. 01.04.2006 there is no requirement to file annual returns and instead Quarterly**

statements of T.D.S. are to be submitted in form 24Q by the deductors specified above. The quarterly statement of the last quarter in form 24Q as amended by notification no. 119 dated 12.05.2006, S.O. 704(E), shall be treated as annual return of T.D.S.

2.8.1 Quarterly statement of TDS

As per sec.200(3), every person responsible for deducting tax, is required to file statements of TDS for such period and in such form as may be prescribed. Further it is to be delivered to the specified Income-tax authority within a prescribed time.

As per Rule 31A(1) such statements have to be furnished quarterly i.e for the quarter ending on 30th June, 30th September, 31st December & 31st March in each financial year which is to be delivered to the prescribed Income-tax authority [Director General of Income tax (System)] or the persons authorized by such authority [M/s National Securities Depositories Ltd. (NSDL)].

This statement is to be filed in Form No.-24Q (relevant rule 31A). It must be furnished on or before the 15th July, the 15th October and the 15th January in respect of the first three quarters of the financial year and on or before the 15th June following the last quarter of the financial year (also refer Notification no. 928(E) dt. 30.6.2005 of CBDT). *However vide I.T. (6th Amendment Rules, 2010) the date of filing of statement for last quarter has been changed to 15th of May immediately following the financial year.*

With respect to the quarterly statements of TDS, the following points are noteworthy : -

- Every deductor is required to file the quarterly statement of TDS in form No. 24Q for each quarter as per the dates specified above.

- The statement may be furnished in any of the following manners namely :
 - (a) Paper form
 - (b) Electronically in accordance with procedures, formats and standards specified under rule 31(A)(5) along with verification of the statement in form 27A.
- In case of the following :
 - (a) Every Government deductor
 - (b) Corporate deductor
 - (c) The deductor is a person required to get his accounts audited under sec. 44 AB in the immediately preceding financial year or
 - (d) The number of deductee's records in a statement for any quarter of the financial year is twenty or more; such quarterly statements are to be delivered electronically on computer media (3.5" 1.44 MB floppy diskette or CD-Rom of 650 MB capacity). The statement in computer media is to be prepared as per data structure provided by the e-filing Administrator (DGIT Systems) designated by the Board for purposes of e-TDS Scheme : 2003. Further, a declaration in Form 27A is also to be submitted in paper format. Quarterly statements are also to be filed by such deductors in electronic format with the e-TDS Intermediary at any of the TIN Facilitation Centres, particulars of which are available at www.incometaxindia.gov.in and at <http://tin.nsdl.com>.
- A person other than a deductor specified above may at his option deliver the quarterly statements electronically in

computer media as provided above. However, it is not mandatory for it to do so.

- The quarterly statements are to be furnished in accordance with the provisions of rule 37A and rule 37B.
- It is mandatory for the deductor to quote the following in quarterly statements
 - (a) TAN
 - (b) PAN of the deductor
 - (c) PAN of all the deductees
 - (d) Particulars of tax paid to the Central Government including Book Identification Number or Challan Identification Number as the case may be.

However where the deduction has been made by or on behalf of the Government, PAN shall not be required to be quoted in the quarterly statement.

- For a statement of tax deducted at source to be furnished for TDS done before 1/4/2010, the provisions of Rule 31A and 37A before their amendment (by I.T. 6th Amendment Rules 2010), will be applicable.

2.8.2 Processing of statements of Tax deducted at

source: The Finance (No.2) Act of 2009 has introduced a new section 200A which provides for processing of the statements of tax deducted at source which have been furnished by the deductor. Such processing has to be done by the Income-tax Department in the manner specified and it is to compute any arithmetical error, incorrect claim in the statements, payment of interests, sum payable by or refundable to the deductor. An intimation of such processing is to be sent on or before the expiry

of on one year from the end of financial year in which the statement is filed.

The relevant provisions of section 200A as follows;

- (1) Where a statement of tax deduction at source has been made by a person deducting any sum (hereafter referred in this section as deductor) under section 200, such statement shall be processed in the following manner, namely -*
 - (a) The sums deductible under this Chapter shall be computed after making the following adjustments, namely:-*
 - (i) any arithmetical error in the statement; or*
 - (ii) an incorrect claim, apparent from any information in the statement;*
 - (b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statements;*
 - (c) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of amount computed under clause(b) against any amount paid under section 200 and section 201, any amount paid otherwise by way of tax or interest;*
 - (d) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause(c); and*
 - (e) the amount of refund due to the deductor in pursuance of the determination under clause(c) shall be granted to the deductor;*

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation- For the purpose of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement-

- (i) of an item, which is inconsistent with another entry of the same or some other item in such statement;*
 - (ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.*
- (2) For the purpose of processing of statements under sub-section(1) the Board may make a scheme for centralized processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section.*

TAX DEDUCTION AND COLLECTION ACCOUNT NUMBER

2.9 Introduction: T.A.N. or tax deduction and collection account number is a unique number allotted to the deductor collector of tax at source for the purpose of identification of every deductor.

2.9.1 Who shall apply for TAN: Every person deducting tax at source is required as per Section 203(A) to apply to the assessing officer for allotment of TAN. The application has to be made in duplicate in form 49B (Rule 114A). Such application has to be either furnished to the Assessing Officer (AO) specifically assigned the function of allotment of TAN by the CCIT/CIT or

in any other case to the AO having jurisdiction to assess the applicant.

2.9.2 Responsibility to quote TAN: Section 203(A)(2) casts a statutory responsibility on the deductor to quote TAN in the following places once it has been allotted :-

- (i) **In all challans** for the payment of any sum in accordance with the provisions of Section 200
- (ii) **In all certificates** issued pertaining to deduction of tax in accordance with the provisions of Section 203
- (iii) **In all statements** submitted in accordance with the provisions of sub section (3) of section 200 (quarterly statements).
- (iv) **In all returns** filed pertaining to deduction of tax at source in accordance with the provisions of Section 206.
- (v) **In all other** documents pertaining to such transactions as may be prescribed in the interest of revenue.

2.9.3 QUOTING OF PAN BY EMPLOYER/ DEDUCTOR - The deductor of tax at source is required as per section 139A(5B) to quote the PAN of the person from whose income TDS has been done in ;

- (a) Statement furnished u/s 192(2C) (statement of particulars of profit in lieu of salary)
- (b) Certificate furnished u/s 203 (TDS Certificate)
- (c) Return of TDS prepared & delivered u/s 206.
- (d) Quarterly statements submitted in accordance with the provisions of sub section (3) of section 200 (quarterly statements)

It is pertinent to note that for quarter ending 30.9.2007 and thereafter form No. 24Q with less than 90% of correct PAN

data will not be accepted and penal consequences under the I.T. Act will follow (circular No. 8/2007 dated 15/12/2007). **Further this limit has been enhanced to 95% for and from the quarter ending 31.3.2008.**

2.9.4 Requirement to furnish Permanent Account Number.

The Finance Act, 2010 has introduced sec. 206AA(w.e.f. 1/4/2010) requiring **the deductee to quote his PAN, failing which, tax at a higher rate shall be deducted.** It provides the following :

- (1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or amount, on which tax is deductible under Chapter XVIIB(hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax(hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely-*
 - (i) at the rate specified in the relevant provision of this Act; or*
 - (ii) at the rate or rates in force; or*
 - (iii) at the rate of twenty per cent.*
- (2) No declaration under sub-section (1A) or sub-section (1C) of section 197A shall be valid unless the person furnishes his Permanent Account Number in such declaration.*
- (3) In case any declaration becomes invalid under sub-section (2), the deductor shall deduct the tax at source in accordance with provisions of sub-section(1).*

- (4) *No certificate under section 197 shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.*
- (5) *The deductee shall furnish his Permanent Account Number to the deductor and both shall indicate the same in all the correspondence, bills vouchers and other documents which are sent to each other.*
- (6) *Where the Permanent Account Number provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his Permanent Account Number to the deductor and the provisions of sub-section(1) shall apply accordingly.*

CHAPTER-3

INCOME UNDER THE HEAD SALARY

3.1 Introduction: The statute enjoins every employer to estimate the liability of tax deductible at source and to deduct tax at an average rate. For this the employer is required to determine the salary payable to the employee and accordingly compute the tax liability. The employer must estimate this tax liability at the very beginning of the financial year in accordance with the following sequence of steps:

- (1) The employer should first compute the gross salary payable to the employee during the year taking into account any salary received/receivable by the employee from any other employer/former employer.
- (2) The gross salary is to be reduced by those payments which are exempt from taxation.
- (3) Deductions u/s 16 are to be reduced from the above amount to arrive at the net salary payable.
- (4) Income chargeable under any other head as reported by the employee is to be added and accordingly the gross total income(GTI) is to be computed.
- (5) Deduction under Chapter VI-A for which the employee is eligible is to be reduced from gross total income and thus the total income is to be computed.
- (6) On the basis of the rates in force, the tax liability on the total income of the employee is to be computed.
- (7) The tax liability so computed is to be increased by the surcharge payable (if any) and education cess payable at prescribed rate, to arrive at the total tax payable.

- (8) 1/12th of this total tax payable is to be deducted every month by the employer.

3.2.1 What is “salary”- Salary is said to be the remuneration received by or accruing to an individual for service rendered as a result of an express or implied contract. The statute, gives an inclusive but not exhaustive definition of salary. As per sec. 17(1), salary includes therein (i) Wages (ii) Annuity or pension (iii) Gratuity (iv) fees, commission, perquisites or profits in lieu of salary (v) Advance salary (vi) Receipt from provident fund (vii) Contribution of employer to a recognised provident fund in excess of prescribed limit (viii) Leave encashment (ix) compensation as a result of variation of service contract etc. (x) Government contribution to a pension scheme.

3.2.2 Exceptions to salary income: The existence of an ‘employer-employee’ relationship is a must for a payment to be taxed under the head salaries. Accordingly, the following classes of payments do not fall under the purview of the head ‘salary’

- (i) **Salary received by a partner from his partnership firm carrying on business** - This income is taxable under the head “profits and gains of business and profession”.
- (ii) **Salary received by a person as MP or MLA-** This income is taxable under the head “income from other sources”. However, the salary received by a person as a Minister of Central Government/State Government is chargeable under the head salaries.
- (iii) **Family pension that is pension received by the members of the family of an employee subsequent to his death** - This is taxable under the head “income from other sources”. However the pension received by an employee from his former employer is taxable under the head salaries.

3.3 Valuation of Perquisites: The taxable value of perquisites in the hands of the employee is normally taken to be its cost to the employer. However, there are specific rules for valuation of certain perquisites laid down in Rule 3 of the I.T. Rules, which have been revised vide I.T. (thirteenth Amendment) Rules 2009 w.e.f. 1/4/2010 (vide notification 2/2009 dt. 12/1/2010- F. No.142/25/2009- SO(TPL)). Rule 3 now provides that the value of perquisite provided by the employer directly to the assessee(employee) or to any member of his household by reason of his employment is to be determined in accordance of the sub rules which are briefly given below.

3.3.1 Valuation of residential accommodation provided by the employer (Rule 3(1)):-

- (a) **Union or State Government Employees** - The value of perquisite is the license fee as determined by the Central or the State Government as reduced by the rent actually paid by the employee.
- (b) **Non-Govt. Employees-**
- (a) Where the accommodation is owned by the employer the perquisite is
- (i) 15% of salary in cities having population exceeding 25 lakhs as per 2001 census ;
 - (ii) 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census ;
 - (iii) 7.5% of salary in other areas.

Or

- (b) Where the accommodation is taken on lease by the employer the perquisite is the actual amount of lease

rental paid or payable by the employer or 15% of salary which ever is lower, as reduced by the rent if any actually paid by the employee.

- (c) **Value of Furnished Accommodation** - The value would be the value of unfurnished accommodation as computed above increased by 10% per annum of the cost of furniture (including T.V./radio/refrigerator/AC/other gadgets). In case such furniture is hired from a third party, the value of unfurnished accommodation would be increased by the hire charges paid/payable by the employer. However, any payment recovered from the employee towards the above would be reduced from this amount.
- (d) **Value of hotel accommodation provided by the employer**- The value of perquisite arising out of the above would be 24% of salary of the previous year or the actual charges paid or payable to the hotel, whichever is lower. The above would be reduced by any rent actually paid by the employee. It may be noted that no perquisite would arise if the employee is provided such accommodation on transfer from one place to another for a period of 15 days or less.

3.3.2 Perquisite of motor car provided by the employer Rule 3(2):-

- (i) Where motor car is owned or hired by the employer and is used wholly and exclusively in the performance of official duties, no perquisite arises provided specified documents are maintained.
- (ii) Where the motor car is owned or hired by the employer but used exclusively for private or personal purposes, the perquisite is the actual amount of expenditure incurred by the employer on running and maintenance including remuneration if any paid to the chauffeur.

This is to be increased by an amount representing normal wear and tear of the motor car as reduced by any amount charged from the employee.

- (iii) Where motor car is used partly in performance of duties and partly for private or personal purposes. The perquisite is
 - (a) Rs. 1800 (plus Rs. 900 if chauffeur is provided) if running and maintenance is borne by employer.
 - (b) Rs. 600 (plus Rs. 900 if chauffeur is provided) where running and maintenance for private use is fully met by employee.

The aforesaid amounts will be increased to Rs. 2400 (instead of Rs. 1800 and Rs. 900/-(instead of Rs. 600) where the motor car provided, has cubic capacity of engine exceeding 1.6 litres.

- (iv) Where employee owns a motor car but the actual running and maintenance charges (including remuneration of the chauffeur if any) are met or reimbursed to him by the employer and.
 - (a) where the reimbursement is for use of vehicle for official purpose the perquisite will be nil. However specified documents need to be maintained.
 - (b) Where vehicle is used partly for official and partly for personal purposes, the perquisite is the actual amount of expenditure incurred by the employer as reduced by amount specified in 3.3.2 (iii) above.

3.3.3 Provision of sweeper, gardener, watchman or attendant:- The value of perquisite resulting from provision of a sweeper, a gardener a watchman or a personal attendant shall

be the actual cost to the employer as reduced by the amount paid by the employee in respect of such services. (Cost to the employer in respect of the above will be the salary paid/payable) [Rule 3(3)]

3.3.4 Perquisite arising out of supply of gas, electric energy or water - This shall be determined as the amount paid by the employer to the agency supplying the same. If the supply is from the employer's own resources, the value of the perquisite would be the manufacturing cost per unit incurred by the employer. [Rule 3(4)].

3.3.5 Free/Concessional Educational Facility - Value of the perquisite would be the expenditure incurred by the employer. If the educational institution is maintained & owned by the employer, the value would be nil if the value of the benefit per child is below Rs. 1000/- P.M. or else the reasonable cost of such education in a similar institution in or near the locality [Rule 3(5)].

3.3.6 Free/Concessional journeys provided by an undertaking engaged in carriage of passengers or goods Rule 3(6)- The value of perquisite is the value at which such benefit or such amenity is offered by such employer to the public as reduced by the amount, if any, paid or recovered from the employees for such benefit or amenity. However the aforesaid will not be applicable to employer of an airline or railways.

3.3.7 Value of certain other benefits :-

- (a) **Interest free/concessional loans** - The value of the perquisite shall be the excess of interest payable at the prescribed interest rate over, interest, if any, actually paid by

the employee or any member of his household. The prescribed interest rate would be the rate charged by State Bank of India as on the 1st Day of the relevant Financial Year in respect of loans of the same type and for same purpose advanced by it to general public. Perquisite is to be calculated on the basis of the maximum outstanding monthly balance method. However, loans upto Rs. 20,000/-, loans for medical treatment specified in Rule 3A are exempt, provided the same are not reimbursed under medical insurance.

- (b) **Value of free meals and non alcoholic beverages** - The value of perquisite is the cost to the employer as reduced by the amount paid or recovered from employee. However aforesaid will not apply to free food or food vouchers to used during working however with value not encoding Rs. 50/- per meal.
- (c) **Value of gift or voucher or token** - Perquisite is the sum equal to the amount of such gift. However where the value of such gifts and voucher is below Rs. 5000/- in aggregate during the previous year, the perquisite shall be nil.
- (d) **Credit Card provided by the employer (Rule 3/7(v))** - The perquisite is the amount of expenses incurred (including membership fee annual fee etc. as reduced by the amount recovered from the employee. However the perquisite shall be nil if the expenses on credit card are incurred wholly and exclusively for official purposes, details of which are maintained and employer certifies it to be for official purposes.
- (e) **Club membership provided by the employer** - The perquisite is the amount of expenditure incurred or reimbursed by the employer for the membership/annual/or any expenditure, with reference to club membership as reduced by the amount paid by or recovered from the employee. However the aforesaid will not include the following :

- (i) Initial fee paid for acquiring corporate membership.
- (ii) Where such expenses are incurred wholly and exclusively for the purpose of business, its complete details (including business expediency is maintained) and employer certifies it to be for the purpose of business/official duties.
- (iii) Where facility of use of health club, sports and similar facilities are uniformly provided to all employees.

(f) Use of Assets

- (i) In case the employee is provided by the employer any immovable asset (other than assets already specified in Rule-3 and other than laptop and computers) then the value of the benefit shall be 10% per annum of the actual cost of such asset. In case asset is hired by the employer and then given to the employee then the value of the benefit shall be the rent or charge paid or payable by the employer. However the amount paid by the employee or recovered from him by the employer (towards the cost of the asset or rent will be reduced from this benefit).
- (ii) Transfer of Immovable Asset

If employer transfers to the employee any immovable asset belonging to the employer either directly or indirectly to the employee or member of his household then the value of benefit shall be the actual cost of such asset to the employer. However an amount of 10% of such cost for each completed year of use of asset by the employer shall be reduced as the cost of normal wear and tear. Further the amount paid by or recovered from the employee is a consideration

towards such transfer and shall also be reduced. In case of computers and electronics items the normal wear and tear is to be calculated @ 50% while in the case of motor cars @ 20% by the reducing balance method.

(g) Other benefits

3.3.8 The value of any other benefit or amenity provided by the employer shall be determined on the basis of cost to the employer under an arms' length transaction as reduced by the employee's contribution.

3.3.9 Security or sweat equity share. Employer stock option where any specified security or sweat equity share is provided by the employer to the employee (being an equity share in a company) the value of perquisite, on the date on which the option is exercised by the employee, shall be; the average of the opening and closing price of the share in the listed recognized stock exchange.

Where on the date of exercising of the option the share is listed in more than one stock exchange, then the opening and closing values in the stock exchange recording trading the highest value of that shares trading, will be taken. Further in case no trading in that share takes place on the day of exercise of the option the closing price on the closest date preceding the date of exercise of option shall be taken in case the share is listed in more than one exchange then the value of exchange recording highest transaction shall be taken. In case of a share not listed on a stock exchange the value as determined by a merchant banker on the specified date shall be taken.

EXEMPTIONS FROM SALARY INCOME

3.4.1 Section 10 of the I.T. Act provides for certain categories of payments to be exempt from taxation, either wholly or partly. Such payments are not to be included under the head 'salary' for computing the tax deductible. Some of these are listed below and are discussed in detail in Chapter-5 of this booklet.

- i) **Death cum retirement gratuity or any other gratuity:** Exempt to the extent specified u/s 10(10).
- ii) **Commutation of pension** - Exempt to the extent as provided in sec. 10(10A)
- iii) **Leave encashment** - Exempt to the extent provided in sec. 10(AA).
- iv) **Retrenchment Compensation** - exempt to the extent provided by section 10(10B).
- v) **Compensation on voluntary retirement** - Exempt to the extent provided by sec. 10(10C)
- vi) **Payment from provident fund** - Exempt to the extent provided in sec. 10(11) & sec. 10(12).
- vii) **Payment from approved superannuation fund** - Exempt under section 10(13).
- viii) **Interest income & investments** - As provided u/s 10(15).
- ix) **Exemption of pension/family pension to awardees of PVC, MVC and VC:** Clause (18) of section 10 provides for exemption of any income by way of pension received by an individual or family pension received by any member of

the family of an individual who has been in the service of the Central Government or State Government and has been awarded “Param Vir Chakra” or “Maha Vir Chakra” or “Vir Chakra” or such other gallantry award as may be specifically notified by the Central Government.

3.4.2 Exemption of Allowances: There are various other receipts besides the above given regularly in addition to salary for meeting specific requirements of the employee. These are referred to as allowances, in common parlance and taxability of some of these are discussed here.

(i) **Leave travel concession:-** The value of any travel concession or assistance accrued by or due to an employee from his employer or former employer in connection of his proceeding on leave (a) to any place in India (b) to any place in India on retirement or after termination of service. The amount exempt as prescribed in Rule 2B is the amount actually incurred on performance of travel in India by the shortest route to that place, subject to economy air fare or A.C. Ist class fare. This exemption is available only in respect of two journeys in a block of 4 calendar years.

(ii) **House Rent allowance** - House rent allowance granted to the employee is exempt u/s 10(13A) to the following extent;

Provided expenditure on rent is actually incurred, the amount of exemption granted is the least of

- (1) HRA received
- (2) Rent paid Less 10% of salary
- (3) 40% of salary, (50% in case of Mumbai, Chennai, Kolkata & Delhi). Salary includes bonus + Dearness allowance, where provided by terms of employment.

It has to be noted that only the expenditure actually incurred on payment of rent in respect of residential accommodation occupied by the assessee subject to the limits laid down in rule 2A, qualifies for exemption from income-tax. Thus, house rent allowance granted to an employee who is residing in a house/flat owned by him is not exempt from income-tax. The disbursing authorities should satisfy themselves in this regard by insisting on production of evidence of actual payment of rent before excluding the house rent allowance or any portion thereof from the total income of the employee. Though incurring actual expenditure on payment of rent is a prerequisite for claiming deduction under section 10(13A), it has been decided as an administrative measure that salaried employees drawing house rent allowance upto Rs. 3,000 per month will be exempted from production of rent receipt. It may, however, be noted that this concession is only for the purpose of tax deduction at source, and, in the regular assessment of the employee, the Assessing Officer will be free to make such inquiry as he deems fit for the purpose of satisfying himself that the employee has incurred actual expenditure on payment of rent.

(iii) Allowances exempt u/s 10(14):- Certain allowances given by the employer to the employee are exempt u/s 10(14). W.e.f. 1-7-1995, all these exempt allowance are detailed in Rule 2BB of Income Tax Rules and are briefly given below:

- (i) Allowance granted to meet cost of travel on tour or transfer.
- (ii) Allowance granted on tour or journey in connection with transfer to meet the daily charges incurred by the employee.

- (iii) Allowance granted to meet conveyance expense incurred in performance of duty, provided no free conveyance is provided.
- (iv) Allowance granted to meet expenses incurred on a helper engaged for performance of official duty.
- (v) Academic, research or training allowance granted in educational or research institutions.
- (vi) Uniform purchase or maintenance allowance.
- (vii) Other allowances as prescribed in Rule 2BB(2) for the purpose of Section 10(14)(ii).

3.4.3 Perquisites exempt from Income Tax : Some instances of perquisites exempt from tax are given below :

- I) Provision of medical facilities (proviso to Sec. 17(2): Value of medical treatment in any hospital maintained by the Government or any local authority or by the employer or approved by the Chief Commissioner of Income Tax. Besides, any sum paid by the employer towards medical reimbursement other than as discussed above is exempt upto Rs. 15,000/-.
- II) Perquisites allowed outside India by the Government to a citizen of India for rendering services outside India (Sec. 10(7)).
- III) Rent free official residence provided to a Judge of High Court or Supreme Court or an Officer of Parliament, Union Minister or Leader of Opposition.
- IV) No perquisite shall arise if interest free/concessional loans are made available for medical treatment of specified

diseases in Rule 3A or where the loan is petty not exceeding in the aggregate Rs. 20,000/-.

- V) No perquisite shall arise in relation to expenses on telephones including a mobile phone incurred on behalf of the employee by the employer.

3.5 Deductions from Salary Income: The deductions are allowable from the salary income as specified in Section 16 of the IT Act and are being given below:

3.5.1 Professional/employment tax: As levied by the State Government.

3.5.2 Entertainment allowance: With effect from A.Y. 2002-03, this deduction is admissible only to government employees to the extent of Rs.5,000 or 20% of salary whichever is less.

CHAPTER-4

INCOME OTHER THAN 'SALARIES'

4.1 Introduction: An employee may be in receipt of other income chargeable to tax such as interest income, capital gains, income from house property, etc. In such a case, sub-section 2B of Section 192 enables the employee to furnish particulars of such income and any TDS thereon to the employer/drawing & disbursing officer. This should be furnished in the prescribed Form-12C (read with Rule 26B). However w.e.f.1.10.2003 form 12C has been omitted and the particulars of loss may be furnished in a simple statement which is properly verified by the tax payer in the same manner as in form 12C.

The particulars of income furnished should not be loss under any such head, other than loss under the head “Income from House Property”, for the same financial year. The person responsible for making payments shall take such income and the loss, if any, under the head income from house property into account for the purpose of computing tax deductible u/s 192. It is further provided that except in a case where loss under the head income from house property has been taken into account, this sub-section shall not in any other case have the effect of reducing the tax deductible from income under the head salaries below the amount which would have been deductible if the other income and tax deductible thereon had not been taken into account.

4.2 Loss from House Property

The D.D.O. can take into account any loss from a house property only for working out the amount of total tax to be deducted. While taking into account this loss the D.D.O.

shall ensure that the assessee files a declaration and encloses there with the computation of such loss.

4.3 Computation of loss from House Property

A loss is determinable under the head 'house property' only in a case where such loss is arising on account of payment of interest on borrowed capital, which has been used for acquiring, constructing, repairing or renewing or reconstructing the house property. In case of a let out property the entire amount of such interest is allowable as a deduction from the annual value of house property. However, in the case of a self occupied property or a property unoccupied by owner for reasons of employment, business/profession at another place, such deduction is limited to Rs.30,000/-. Where the property, however, has been **acquired or constructed** with capital borrowed, on or after the 1st day of April 1999 and such acquisition or construction is completed before the 1st day of April 2003, then the amount of deduction allowable is upto Rs. one lakh fifty thousand. The Finance Act, 2002 has provided that w.e.f. 01.04.2003, this higher deduction of Rs.1,50,000/- on account of interest will be available if such loan has been taken after 01.04.99 and the construction or acquisition of the residential unit of such loan has been completed within 3 years from the end of the financial year in which capital was borrowed. Now the assessee is also required to furnish a certificate from the person to whom such interest is payable, specifying the amount of interest payable for the purpose of such acquisition or construction of property, or conversion of whole or any part of the capital borrowed which remains to be repaid as a new loan.

Further the interest on borrowed capital corresponding to the period prior to the previous year in which property has been acquired or constructed is also allowed as deduction in five equal installments, in the year of completion and four immediately succeeding years.

CHAPTER-5

TDS ON PENSION AND RETIREMENT BENEFITS

5.1 What is Pension? Pension is described in Section 60 of the CPC and Section 11 of the Pension Act as a periodical allowance or stipend granted on account of past service, particular merits, etc. It involves three essential features. Firstly, pension is a compensation for the past service, secondly, it owes its relationship to a past employer-employee relationship or master servant relationship. Lastly, it is paid on the basis of earlier relationship of agreement of services as opposed to an agreement for service.

Pension received from a former employer is taxable as salary. As such the relevant provisions of TDS as specified in Section 192 and other relevant provisions are also applicable to pension income and tax is deductible on the same as it is in the case of payment of salary.

5.1.2 TDS on payment of pension through Nationalised Banks: It has been clarified by CBDT vide circular NO. 761 dt. 13/01/98 that in the case of pensioners receiving pension through nationalized banks, provisions of TDS are applicable in the same manner as they apply to the salary income.

From the income being paid as pension the banks are required to allow deductions under chapter VIA.

Similarly relief u/s 89(1) for the arrears of pension received is also to be granted by the banks. Instructions in this regard have been issued by Reserve Bank of India vide R.B.I'S pension

circular (Central Series) No.7/CDR/1992 (Ref No. PGBA. GA:(NBS) No. 60 / GAG4(11CVL)-91/92) DT. 27/4/92.

5.1.3 Issue of TDS certificate to pensioners: All branches of all banks are bound u/s 203 to issue certificate of tax deducted in Form No.16 to the pensioners. This has also been clarified vide CBDT circular No. 761 dt. 13/1/98)5.2.1

5.2.1 TDS on Retirement Benefits

Retirement benefits receivable by an employee is taxable under the head 'salaries' as "profits in lieu of salaries" as provided in section 17(3). As such they attract the provisions of TDS as prescribed in section 192 and other relevant sections. Accordingly, the employer must take them into account and compute the TDS at the time of retirement of an employee. However some of these retirement benefits are exempt from taxation u/s 10 either fully or partly. The details of these exemptions are being given below. The remaining retirement benefits are includible under the head salaries as described earlier and tax is deductible as provided in the preceding chapters.

5.2.2 GRATUITY (Sec 10(10))

- (i) Any death cum retirement gratuity received by Central Government and State Government employees, defence employees and employees in local authority shall be exempt.
- (ii) Any gratuity received by persons covered under the Payment of Gratuity Act, 1972 shall be exempt subject to amount calculated as per sub section (2) & (3) of section (4) of that Act.
- (iii) Any other gratuity shall be subject to following limit:-

- a) For every completed year of service or part thereof, gratuity shall be paid at the rate of fifteen days wages based on the rate of wages last drawn by the concerned employee.
 - b) The amount of gratuity as calculated above shall not exceed Rs. 3,50,000.
- (iv) In case of any other employee, gratuity shall be exempt subject to the following exemptions:-
- a) Exemption shall be limited to half month salary (based on last 10 months average) for each completed year of service or Rs. 3.5 lakhs whichever is less.
 - b) Where the gratuity was received in any one or more earlier previous years also and any exemption was allowed for the same then the exemption to be allowed during the year gets reduced to the extent of exemption already allowed, the over all limit being Rs. 3.5 lakhs.

As per Board's letter F.No. 194/6/73-IT(A-1) Dated 19.06.73 exemption in respect of gratuity is permissible even in cases of termination of employment due to resignation. The taxable portion of gratuity will qualify for relief u/s 89(1).

Gratuity payment to a widow or other legal heirs of any employee who dies in active service shall be exempt from income tax (Circular No. 573 dated 21.08.90).

5.2.3 Commutation of Pension [Sec 10(10A)]

In case of employees of Central & State Government, local authority, defence services and corporations established under Central or State Acts, the entire commuted value of pension is exempt.

In case of any other employee, if the employee receives gratuity, the commuted value of 1/3 of the pension is exempt, otherwise, the commuted value of 1/2 of the pension is exempt.

Judges of S.C. & H.C. shall be entitled to exemption of commuted value upto 1/2 of the pension (Circular No. 623 dt. 6.1.1992)

5.2.4 Leave Encashment [Sec. 10(10AA)]

- (i) Leave Encashment during service is fully taxable in all cases. Relief u/s 89(1) if applicable may be claimed for the same.
- (ii) Payment by way of leave encashment received by Central & State Govt. employees at the time of retirement in respect of the period of earned leave at credit is fully exempt.
- (iii) In case of other employees, the exemption is to be limited to a maximum of 10 months of leave encashment, based on last 10 months average salary. This is further subject to a limit of Rs. 3,00,000 for retirement or superannuation or otherwise after 1.4.98 (Notification SO. 588(E) dt. 31.5.02)
- (iv) Leave salary paid to legal heirs of the deceased employee in respect of privilege leave standing to the credit of such employee at the time of death is not taxable.

For the purpose of Section 10(10AA), the term 'superannuation or otherwise' covers resignation (CIT Vs. R.J. Shahney 159 ITR 160 (Madras)).

5.2.5 Retrenchment Compensation[Sec. 10(10B)]

Retrenchment compensation received by a workman under the industrial Disputes Act, 1947 or any other Act or Rules is exempt subject to following limits :-

- (i) The sum calculated on the basis provided in Section 25 F(b) of the above Act.
- (ii) The above is further subject to an overall limit of Rs. 5,00,000 (Notification No. 10969 F. No. 200/21/97-IT(A-1) dt. 25.6.99).

The limits are not applicable where it is paid under a scheme of Central Government for extending special protection to the workmen.

5.2.6 Compensation on Voluntary Retirement or “GOLDEN HANDSHAKE”

- (i) Payment received by an employee, of the following at the time of voluntary retirement, or termination of service is exempt to the extent of Rs. 5 lakh.
 - a) Public sector company
 - b) Any other company
 - c) Authority established under State, Central or Provincial Act
 - d) Local authority
 - e) Cooperative societies, Universities, IITs and Notified Institutes of Management.
 - f) Any State Government or the Central Government.
- (ii) The Voluntary Retirement Scheme under which the payment is being made must be framed in accordance with the guidelines prescribed in Rule 2BA of Income Tax Rules.
- (iii) Where exemption has been allowed under above section for any assessment year, no exemption shall be allowed in relation to any other assessment year.
- (iv) With effect from 1.4.2010 where any relief has allowed to the assessee u/s. 89, for any A.Y. in respect of any amount

received or receivable, no exemption under this clause shall be allowed to him in relation to such or other Assessment Year.

5.2.7 Payment from Provident Fund: Any payment received from a Statutory Provident Fund, (i.e., to which the Provident Fund Act, 1925 applies) is exempt. Any payment from any other provident fund notified by the Central Government is also exempt. The Public Provident Fund (PPF) established under the PPF Scheme, 1968 has been notified for this purpose. Besides the above, the accumulated balance due and becoming payable to an employee participating in a Recognised Provident Fund is also exempt to the extent provided in Rule 8 of Part A of the Fourth Schedule of the Income tax Act.

5.2.8 Payment from approved Superannuation Fund: Payment from an approved superannuation fund will be exempt provided the payment is made in the circumstances specified in the Section viz., death, retirement and incapacitation.

5.2.9 Deposit scheme for retired Govt./Public Sector Company employees: Section 10(15) of the Income Tax Act incorporates a number of investments, the interest income from which is totally exempt from taxation. These investments may be considered as one of the options for investing various benefits received on retirement. One among them, notified u/s 10(15)(iv)(i), is the 'Deposit scheme for retired govt./public sector company employees'. W.e.f. assessment year 1990-91, the interest on deposits made under this scheme by an employee of Central/State Govt. out of the various retirement benefits received is exempt from income tax. This exemption was subsequently extended to employees of public sector companies from assessment year 1991-92 vide notification No. 2/19/89-NS-II dated 12.12.1990.

CHAPTER-6

DEDUCTIONS UNDER

CHAPTER VI-A

6.1 Introduction : The Income Tax Act provides for allowability of certain deductions from the gross total income of the assessee. These deductions are given in Chapter VIA of the Income Tax Act. For the purpose of TDS, the employer/DDO may allow some of these deductions to the employee on furnishing of the required particulars. The deductions allowable by the DDO/employer are being described below:

6.2 Eligible deductions u/s. 80C as per Section 80C deduction eligible u/s.. 80C (reintroduced w.e.f.-01.04.2006) the following investments/payments are eligible for deduction.

NATURE OF INVESTMENT	REMARKS
Life Insurance Premium	For individual, policy must be in self or spouse's or any child's name. For HUF, it may be on life of any member of HUF.
Sum paid under contract for deferred annuity	For individual, on life of self, spouse or any child
Sum deducted from salary payable to Govt. Servant for securing deferred annuity for self, spouse or child	Payment limited to 20% of salary.
Contribution made under Employee's Provident Fund Scheme to which Provident Funds Act 1925 (19 of 1925 applies)	—

Contribution to PPF	For individual, can be in the name of self/spouse, any child & for HUF, it can be in the name of any member of the family.
Contribution by employee to a Recognised Provident Fund or a superannuation fund	—
Sum deposited in 10 year/15year account of Post Office Saving Bank	—
Subscription to any notified securities/notified deposits scheme.	e.g. NSS
Subscription to any notified savings certificate, Unit Linked Savings certificates.	e.g. NSC VIII issue.
Contribution to Unit Linked Insurance Plan of LIC Mutual Fund	e.g. Dhanrakhsa 1989
Contribution to notified deposit scheme/Pension fund set up by the National Housing Scheme.	—
Certain payments made by way of instalment or part payment of loan taken for purchase/ construction of residential house property.	Condition has been laid that in case the property is transferred before the expiry of 5 years from the end of the financial year in which possession of such property is obtained by him, the aggregate amount of deduction of income so allowed for various years shall be liable to tax in that year.

Contribution to notified annuity Plan of LIC(e.g. Jeevan Dhara) or Units of UTI/notified Mutual Fund.	If in respect of such contribution, deduction u/s 80CCC has been availed of rebate u/s 88 would not be allowable.
Subscription to units of a Mutual Fund notified u/s 10(23D)	—
Subscription to deposit scheme of a public sector company engaged in providing housing finance.	—
Subscription to equity shares/debentures forming part of any approved eligible issue of capital made by a public company or public financial institutions.	—
Tuition fees paid at the time of admission or otherwise to any school, college, university or other educational institution situated within India for the purpose of full time education of any two children.	Available in respect of any two children. Any payment towards any development fees or donation or payment of similar nature will not be eligible.
Term of a fixed deposit in State Bank of India, its subsidiary bank, corresponding new bank (constituted u/s 3 of Banking Companies Act, or any other Bank included in Second schedule to RBI Act, 1939.	The term of the deposit should not be less than five years and should be in accordance a scheme framed and notified by the Central Government (<i>Notification S.O. No. 1220(E), dated 28-7-2006</i>).

Subscription to Bonds issued by NABARD as notified by Central Government.	Applicable w.e.f. 1.4.08 from A.Y. 2008-09.
Payment made into account under the Senior Rules, 2004.	This has been introduced by Finance Act 2008 and shall come into effect from 1.4.2009.
Payment made as five year time deposit in an account under the Post Office time Deposit Rules, 1981.	This has been introduced by Finance Act, 2008 and shall come into effect from 1.4.2009.

6.3 Other deductions

The other allowable deductions are briefly described below :-

SECTION	NATURE OF DEDUCTION	REMARKS
80CCC	Payment of premia for annuity plan of LIC or any other insurer. Deduction is available upto a maximum of Rs.100,000/-	The premium must be deposited to keep in force a contract for an annuity plan of the LIC or any other insurer for receiving pension from the fund.
80CCD	Deposit made by a Central government servant in his pension account to the extent of 10% of his salary.	Where the Central Government makes any contribution to the pension account, deduction of such contribution to the extent of 10% of salary shall be allowed. Further, in any year where any amount is received from the pension account such amount shall be charged to tax as income of that previous year.

80D	Payment of medical insurance premium. Deduction is available upto Rs. 15,000/- for self/family and also upto to Rs. 15,000/- for insurance in respect of parent/parents of the assessee. <i>W.e.f. 1.4.2011 (i.e. for A.Y. 2011-12 & F.Y. 2010-11 onwards). The aforesaid will also include contribution made to the Central Government Health Scheme (not exceeding Rs. 15000/-)</i>	The premium is to be paid by any mode of payment other than cash and the insurance scheme should be framed by the General Insurance Corporation of India and approved by the Central Government or Scheme framed by any other insurer and approved by the Insurance Regulatory and Development Authority. The premium should be paid in respect of health insurance of the assessee or his family members. The Finance Act 2008 has also provided deduction upto Rs, 15,000/- in respect of health insurance premium paid by the assessee towards his parent/parents.
80DD	Deduction of Rs. 50,000 in respect of a) expenditure incurred on medical treatment, (including nursing), training and rehabilitation of a handicapped dependant relative. Further if the dependent is a person with severe disability a deduction of Rs. 1,00,000/- shall be available under this section. b) Payment or deposit to specified scheme for	The handicapped dependant should be a dependant relative suffering a permanent disability (including blindness) or mentally retarded, as certified by a specified physician or psychiatrist. Note : A person with severe disability means a person

	maintenance of dependant handicapped relative.	with 80% or more of one or more disabilities as outlined in Section 56(4) of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act.
80DDB	Deduction of Rs. 40,000 in respect of medical expenditure actually paid. Further, where the expenditure is incurred in respect of assessee or dependent who is a senior citizen a deduction of Rs. 60,000/- or the amount actually paid, whichever is less, will be available.	Expenditure must be actually incurred by resident assessee on himself or dependant relative for medical treatment of specified disease or ailment. The diseases have been specified in Rule 11DD. A certificate in form 10I is to be furnished by the assessee from any Registered Doctor
80E	Deduction in respect of payment in the previous year of interest on loan taken from a financial institution or approved charitable institution for higher education of self or higher education of a relative. Higher education means any course of study pursued after senior secondary examination or its equivalent.	This provision has been introduced to provide relief to students taking loans for higher studies. The payment of the interest thereon will be allowed as deduction over a period of upto 8 years. Further, by Finance Act, 2008 deduction under this section shall be available not only in respect of loan for pursuing higher education by self but also by spouse or children of the assessee or a child where assessee is a legal guardian.

80G	Donations to certain funds, charitable institutions etc.	The various donations specified in Sec.80G are eligible for deduction upto either 100% or 50% with or without restriction as provided in Sec. 80G. (see para 6.4).
80GG	Deduction available is the least of :- (i) Rent paid less 10% of total income (ii) Rs.2000 per month (iii) 25% of total income	1) Assessee or his spouse or minor child should not own residential accommodation at the place of employment 2) He should not be in receipt of house rent allowance. 3) He should not have a self-occupied residential premises in any other place.
80U	Deduction of Rs. 50,000/- to an individual who suffers from a physical disability (including blindness) or mental retardation. Further in case of individuals with severe disability a deduction of Rs.75,000/- is permissible. <i>W.e.f. 1.4.2010/- the amount of Rs. 75,000/- shall be enhanced to Rs. 1,00,000/-</i>	Certificate should be obtained from a Govt. Doctor. The relevant rule is Rule 11D.

It should be noted that the aggregate amount of deduction u/s. 80C, 80CCC and 80CCD should not in any case exceed one Lakh rupees.

6.4 Deduction u/s. 80-G : In respect of Section 80G, no deduction should be allowed by the employer/DDO, from the salary income in respect of any donations made for charitable purposes. The tax relief on such donations as admissible u/s 80G will have to be claimed by the taxpayer in the return of income. However, DDOs, on due verification, may allow donations to the following bodies to the extent of 50% of the contribution:

- a. The Jawaharlal Nehru Memorial Fund,
- b. The Prime Minister's Drought Relief Fund,
- c. The National Children's Fund,
- d. The Indira Gandhi Memorial Trust,
- e. The Rajiv Gandhi Foundation, and to the following bodies to the extent of 100% of the contribution:
 - (1) The National Defence Fund or the Prime Minister's National Relief Fund,
 - (2) The Prime Minister's Armenia Earthquake Relief Fund,
 - (3) The Africa (Public Contributions-India) Fund,
 - (4) The National Foundation for Communal Harmony,
 - (5) The Chief Minister's Earthquake Relief Fund, Maharashtra,
 - (6) The National Blood Transfusion Council,
 - (7) The State Blood Transfusion Council,
 - (8) The Army Central Welfare Fund,
 - (9) The Indian Naval Benevolent Fund,

- (10) The Air Force Central Welfare Fund,
- (11) The Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996,
- (12) The National Illness Assistance Fund,
- (13) The Chief Minister's Relief Fund or Lieutenant Governor's Relief Fund, in respect of any State or Union Territory, as the case may be, subject to certain conditions,
- (14) The University or educational institution of national eminence approved by the prescribed authority,
- (15) The National Sports Fund to be set up by the Central Government,
- (16) The National Cultural Fund set up by the Central Government,
- (17) The Fund for Technology Development and Application set up by the Central Government
- (18) The national trust for welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities.

6.5 Subscription of long term infrastructure bonds : *A new Section 80 CCF has been introduced vide Finance Act, 2010. This provides that for F.Y. 2010-11(A.Y. 2011-12) and onwards a further deduction upto Rs. 20,000/- shall be available, for subscription to long term infrastructure bonds, notified by the Central Government.*

6.6 Allowability of Deduction by the Employer/DDO : The drawing and Disbursing Officers should satisfy themselves about

the actual deposits/subscriptions/payments made by the employees, by calling for such particularly information as they deem necessary before allowing the aforesaid deductions. In case the DDO is not satisfied about the genuineness of the employee's claim regarding any deposit/subscription/payment made by the employee, he should not allow the same, and the employee would be free to claim the deduction/rebate on such amount by filing his return of income and furnishing the necessary proof etc., therewith, to the satisfaction of the Assessing Officer.

6.7 Tax Rebate : The total income of an assessee is determined after deductions from the gross total income are made as discussed in the previous chapter. It is on this total income that the tax payable is computed at the rates in force. The Income Tax Act further provides for rebate from the tax payable as computed above, if certain investments or payments are made. Rebates provided u/s 88 of the Act are distinct and separate from deductions provided in Chapter VIA of the Act. While the latter reduces the gross total income, rebate is a reduction from the tax payable.

It is important to note that no tax rebate u/s 88 shall be available from A.Y. 2006-07 onwards. Similarly, sections 88B and 88C providing special rebates to senior citizens and ladies and section 88D stand omitted w.e.f. 01.04.2006.

6.8 RELIEF UNDER SECTION 89(1)

6.8.1 Relief u/s 89(1) is available to an employee when he receives salary in advance or in arrear or when in one financial year, he receives salary of more than 12 months, or receives 'profit in lieu of salary' covered u/s 17(3). Relief u/s 89(1) is also admissible on family pension, as the same has been allowed by Finance Act 2002 (with retrospective effect from 1/4/96).

6.8.2 W.e.f. 1.6.89, u/s. 89(1) relief can be granted at the time of TDS by employers in the following conditions :

- (1) If the employee is a Government Servant.
- (2) He is employee in a (a) PSU, (b) Company, (c) Cooperative, (d) Local Authority, (e) ²University, (f) Institution or Body.

The employee may furnish to the DDO or the person responsible for making payment such particulars in Form 10E (read with Rule 21AA) which should be duly verified by him. Thereupon the DDO/Person responsible for making payment is required to compute the relief u/s 89(1) on the basis of such particulars and take into account this relief while making tax deduction u/s 192. In case of an employee of category other than the stated above, such relief can only be allowed by the Assessing Officer.

² University means a university established or incorporated by or under state central or provincial act and includes an institution declared u/s 3 of the U.G.C. Act 1956.

CHAPTER-7

PENALTIES AND PROSECUTION

The various provisions of TDS as discussed in the preceding chapters are statutorily required to be strictly complied with. Any default in compliance can attract, levy of interest, penalty and in certain cases initiation of prosecution proceedings. In this chapter a brief discussion of the possible defaults and the consequential proceedings is being done.

7.1 Failure to deduct tax - Where the employer has failed to deduct tax or when short deduction of tax has been done, following statutory provisions are attracted:-

a) Charging of interest u/s 201(1A) - The deductor is treated to be 'assessee in default' in respect of the short deduction/non deduction of tax. Under Section 201(1A) he is liable to pay simple interest @ 1% for every month or part of a month on the amount of tax in arrear from the date on which such tax was deductible to the date on which such tax is actually deducted. Further such interest shall be paid before furnishing the quarterly statement of each quarter.

Charging of interest u/s 201(1A) is mandatory and there is no provision for its waiver.

Procedure for interest calculation : The calculation of interest is to be done as per Rule 119A and is summarized below:

- (i) Where the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be full month and interest shall be so calculated.
- (ii) The amount of tax in respect of which interest is to be calculated is to be rounded off to nearest multiple of Rs. 100 ignoring any fraction of Rs. 100.

b) Penalty u/s 221- The assessee in default is liable to imposition of penalty where the assessing officer is satisfied that the defaulter has failed to deduct tax as required without good and sufficient reason. The quantum of penalty is not to exceed the amount of tax in arrear. Besides, a reasonable opportunity of being heard is to be given to the assessee.

c) Penalty u/s 271C- A penalty equivalent to the amount of tax the deductor has failed to deduct, is leviable u/s 271C. Such penalty is however only leviable by a Joint Commissioner of Income Tax.

7.2 Failure to deposit tax in govt. account after deduction: Where the employee has deducted the tax at source but failed to deposit wholly or partly, the tax so deducted in government account, the following statutory provisions are attracted:-

a) Interest u/s 201(1A)- The deductor is treated as an assessee in default and interest u/s 201(1A) is leviable @ 1.5% for every month or part of the month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid. Further, the tax along with the simple interest u/s 201(1A) becomes a charge upon all the assets of the deductor.

b) Penalty u/s 221- Penalty to the extent of tax not deposited is leviable by the A.O. as discussed earlier.

c) Prosecution proceedings u/s 276 B- Where the deductor has failed to deposit tax deducted at source, in govt. a/c without a reasonable cause then he is punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years and with fine.

7.3 Failure to apply for T.A.N or to quote T.A.N.

Where a person who is responsible to deduct tax at source has failed, without reasonable cause:-

- a) To apply for T.A.N. within prescribed period or
- b) After allotment, failed to quote such TAN in challans for payment of tax or TDS certificate or returns of TDS (as required u/s 206) - then a penalty u/s 272BB of a sum of Rs.10,000 may be imposed by the assessing officer. However a reasonable opportunity of hearing must be given to the employer/deductor.

7.4 Failure to furnish TDS certificate or returns/ statement of tax deduction at source- (penalty u/s.

272A(2)) Where the employer has failed to issue TDS certificate (form 16) within one month of the end of financial year (by 31st of May of the next F.Y. for F.Y. 2010-11 onwards) or has failed to furnish the quarterly statement of tax in form 24Q, within the time prescribed u/s 200(3) (rule 31A), then a penalty of Rs. 100 is leviable for each day during the period for which default continues. The quantum of penalty is not to exceed the tax deductible and it is to be levied only by a Joint Commissioner or Joint D.I.T. after giving the assessee an opportunity of being heard.

7.5 Prosecution u/s 277- Where a person, who is required to furnish statement u/s 200(3) (quarterly statements) makes a false statement in verification or, delivers an account or statement which is false and which the person knows or believes to be false or does not believe to be true, then he is punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years along with fine.

Where the amount of tax, which would have been evaded if the statement or account had been accepted as true, is 1 lakh rupees

or less, then rigorous imprisonment may be from 3 months to three years and with fine.

7.6 The Finance Act, 2008 has introduced amendment in section 201 (w.e.f. 1.6.2002) which clarifies, that in case any employer, or any principal officer of a company;

- (a) does not deduct, or
- (b) does not pay,
- (c) or after so deducting fails to pay the whole or any part of the tax, then such person shall be deemed to be an assessee in default. Further penalty to be charged u/s. 221 shall not be levied by the assessing officer unless he is satisfied that such failure to deduct and pay tax was without good and sufficient reasons.

CHAPTER-8

TDS ON SALARY PAYMENTS TO NON RESIDENTS & EXPATRIATES

8.1 As per Section 192 of the IT Act, any person responsible for paying any amount under the head salaries is required to deduct tax at source at the time of payment. This section unlike some other provisions, does not distinguish between payment of salary, to a resident, non resident or expatriate. Thus all payments which are taxable under the head salaries, are also covered by the provisions of TDS, irrespective of the residential status of the recipient. However, the residential status of an individual is pertinent in determining whether the receipt itself is taxable in India or not. The various categories of residential status and statutory provisions pertaining to taxability of income in India in each case is being discussed below:

8.2 Residential Status: Section 6 of the Indian Income Tax Statute specifies 3 categories, as far as residential status is concerned.

Resident

An individual is said to be resident in India in any previous year if he is in India for at least 182 days in that year or during that year he is in India for a period of at least 60 days and has been in India for at least 365 days during the 4 years preceding that year. However, the period of 60 days referred to above is increased to 182 days in case of Indian citizens who leave India as members of the crew of an Indian Ship

or for Indian citizens or persons of Indian origin who being outside India, come to visit India in any previous year.

Non-Resident

A person who is not a resident in terms of the above provisions is a non-resident.

Resident but not ordinarily (RNOR)

An individual shall be said to be RNOR if he has been a non resident in 9 out of 10 previous years preceding that year or has during the 7 years preceding that year been in India for a period of 729 days or less.

8.3 Scope of Taxation :

Residential Status

Taxability of Income

Resident

All income of the previous year wherever accruing or arising or received by him including incomes deemed to have accrued or arisen.

Non-Resident

All income accruing, arising, to or deemed to have accrued or arisen or received in India.

RNOR

All income accruing or arising or deemed to have accrued or arisen or received in India. Moreover, all income earned outside India will also be included if the same is **derived from a business or profession controlled or set up in India.**

8.4 Expatriates Working in India: In case of a foreign expatriate working in India, the remuneration received by him,

assessable under the head 'Salaries', is deemed to be earned in India if it is payable to him for services rendered in India as provided in Section 9(1)(ii) of the Income Tax Act. The explanation to the aforesaid law clarifies that income in the nature of salaries payable for services rendered in India shall be regarded as income earned in India. Further the income payable for the leave period which is preceded and succeeded by services rendered in India and forms part of the service contract shall also be regarded as income earned in India.

Thus, irrespective of the residential status of the expatriate employee, the amount received by him as salary, for services rendered in India shall be liable to tax in India being income accruing or arising in India, *and also be subject to TDS regardless of the place where the salary is actually received.*

8.5 TDS in case of payment of salary in foreign currency: Where salary is payable in foreign currency, the amount of tax deducted is to be calculated after converting the salary payable into Indian currency at the telegraphic transfer buying rate as adopted by State Bank of India on the date of deduction of tax(Rule 26) read with Section 192(6).

It may be noted that this rule is applicable only for determination of TDS. However, in computing the salary income, the rate of conversion to be applied is the telegraphic transfer buying rate on the last day of month immediately preceding the month in which the salary is due or is paid in advance or arrears(Rule 115).

8.6 Refund of tax where the employee has left India: Where at the time of assessment any refund has become due to a non resident, who was deputed to work in India, has left India without any bank account and his taxes were borne by the employer, then such a refund can be issued to the employer, as taxes were being paid by it. (circular no. 707 dt. 11.7.95).

8.7 Certain exempt incomes and allowance:

- (i) Any allowance or perquisite paid or allowed as such outside India by the Central Government or a State Government to a citizen of India for rendering service outside India, is exempt from Income-tax. The relevant provisions are contained in section 10(7) of the Income Tax Act.
- (ii) In case of individuals who are assigned to duties in India in connection with any cooperative technical assistance programmes and projects, in accordance with an agreement between the Central Government and the Government of a foreign state, their foreign income is exempt from income-tax if they pay any income or social security tax on such income to the foreign state. To qualify for the exemption, such income should not be deemed to have accrued or arisen in India. Further, the terms of the agreement between the two governments must provide for such exemption. The relevant provisions of this exemption are contained in section 10(8) of the Income-tax Act.
- (iii) Income-tax exemption on the aforesaid lines has also been provided on the foreign income of an individual who is assigned to duties in India in connection with any technical assistance programme and project in accordance with an agreement entered into by the Central Government and international organization. The exemption is availability only if the following conditions are satisfied, namely :
 - (a) the individual is an employee of the consultant referred to in section 10(8A) which provides that a consultant means a person engaged by an

international organization in connection with any technical assistance programme in accordance with an agreement between that organization and the Central Government;

- (b) he is either not a citizen of India or being a citizen of India, is not ordinarily resident in India; and
- (c) the contract of service of the individual is approved by the Additional Secretary, Department of Economic Affairs, in the Ministry of Finance, Government of India in concurrence with Member (Income-tax) of the Board.

The relevant provisions of this exemption are contained in Section 10(8B) of the Income-tax Act.

- (iv) The United Nations (Privileges and Immunities) Act, 1947, provides exemption from Income-tax on the salaries and emoluments paid by the United Nations to its officials. Thus, the individuals who are resident in India in any financial year and are in receipt of income by way of salaries and emoluments from the United Nations as officials thereof are exempt from income tax on such income. As the expression "salaries" under the Income-tax Act includes pension also, the pension received from the United Nations by its former officials, is also exempt from income-tax.
- (v) Under section 3 of the United Nations (privileges and Immunities Act, 1947, the Central Government has the power to extend the benefit of the Income-tax exemption to the officers of other international organizations on the lines of such exemption to U.N. officials. The benefit of Income-tax exemption has been extended to the

representatives and officers of the following specialized agencies of the United Nations or other international organizations.

- (vi) The Ministry of External Affairs has also clarified that the United Nations officials and the technical assistance experts may be treated at par. More over, the procedural distinction in the matter of extending privileges between officials and experts on mission has been dispensed with. As a result, experts on mission are also entitled to the same privileges and immunities as are enjoyed by the officials of the United Nations.

CHAPTER-9

e-TDS & QUARTERLY STATEMENTS OF TDS

9.1 Introduction :

e-TDS implies, filing of the TDS return in electronic media as per prescribed data structure in either a floppy or a CD ROM.

The aforesaid requirement is essentially a part of the process of automation of collection, compilation and processing of TDS returns. Preparation of returns in electronic forms or e-TDS will eventually be beneficial to the deductor, by cutting down the return preparation time, reducing the volume of documentation and thereby economizing the compliance cost. At the same time, it will also facilitate the Government in better co-relation of taxes deducted with the taxes finally deposited in the banks and credits of TDS claimed by the deductees.

9.2 Statutory Requirement of Preparation of e-TDS

As per proviso to section 206(2), w.e.f. 01/04/2005, a deductor is required to prepare the return of TDS in electronic form. **The comprehensive scheme of e-TDS has been notified vide Notification No. S.O. 974 (E) dated 26/08/2003. The present statutory provisions mandate the Government and Corporate deductors to file the TDS returns and statements in electronic form with the designated e-TDS Intermediary at any of the TIN facilitation centres.** Further where the deductor is,

- (a) A person required to get his accounts audited u/s. 44 AB in the immediately preceding F.Y. or
- (b) The number of deductee's record in a statement for any quarter of F.Y. is twenty or more.

Then such deductors are also required to furnish the quarterly statements electronically. However, for the other deductors filing of e-TDS is optional.

9.3 e-Administrator, e-Intermediary, TIN Facilitation Centres

For the purpose of administering the scheme of e-TDS, the Central Board of Direct Taxes has appointed Director-General of Income-tax (Systems) as **the e-Filing Administrator**. The e-TDS return is mandatorily to be prepared in data format issued by the **e- Administrator**.

The e>Returns are to be submitted at Centres referred is TIN Facilitation Centres (or TIN FCs) which have been opened by National Security Depository Ltd. (NSDL) which has also been designated as **e-Intermediary**.

9.4 Data Structure of e-TDS, Procedure for filing

The e-TDS return has to be prepared in the data format issued by the e-Filing Administrator. This format/software is available on the website of the Income-tax Department at <http://www.incometaxindia.gov.in> and that of NSDL at <http://www.tin-nsdl.com>.

There is also a validation software which is available along with the data structure. This is required to be used to validate the data structure of the e-TDS return prepared. Each e-TDS return filed should also be accompanied by a control chart which should be in the newly prescribed **form 27 A**. The same has to be duly signed by the deductor and submitted alongwith e-TDS to the e-Intermediary. The following specific points must also be noted in filing of e-TDS returns.

- (a) Reformatted TAN : All deductors required to e-File TDS returns have to quote their reformatted Tax Deduction Account

Number (TAN) in their respective TDS returns. Wherever, reformatted TANs have not been allotted, application in form 49 B should be filed with NSDL for obtaining the same.

- (b) Each e-TDS return file should be in a separate CD or floppy and should not span across multiple floppies. Further, label must be affixed on each CD/floppy mentioning the name of the deductor, his stamp, form number and the period to which the return pertains.
- (c) There should not be any overwriting, striking on form 27 A and if there is, then the same should be ratified by the authorized signatory. Further if any of the controlled totals mentioned in form No. 27 A (control chart) does not match with that in the e-TDS return, then such returns will not be accepted at the TIN Facilitation Centres.
- (d) While filing form no. 24, deductor should furnish physical copies of certificates of no deduction or deduction at a lower rate of TDS, if any, received from the deductees.
- (e) No bank challan, copy of TDS certificate should be furnished alongwith e-TDS return filed.

The e-TDS prepared by the deductor has to be submitted at the TIN Facilitation Centres opened by NSDL which is the e-TDS Intermediary. The addresses of the TIN Facilitation Centres are available at websites of Income-tax Department <http://www.incometaxindia.gov.in> and of NSDL at <http://www.tin-nsdl.com>. It is also to be noted that quarterly TDS returns are also to be filed in Electronic file with e-TDS Intermediary.

9.5 Checklist for Deductor

After preparing the e-TDS return deductor should check the following to ensure that the e-TDS return is complete and is ready for furnishing to TIN-FC :

- e-TDS return is in conformity with the file format notified by ITD.
- Each e-TDS return is furnished in a separate CD/floppy alongwith duly filled and signed Form 27A in physical form.
- Separate Form 27A in physical form is furnished for each e-TDS return.
- Form 27A is duly filled and signed by an authorized signatory.
- Striking and overwriting, if any, on Form 27A are ratified by the person who has signed Form 27A.
- More than one e-TDS return is not furnished in one CD/floppy.
- More than one CD/floppy is not used for furnishing one e-TDS return.
- Label is affixed on CD/floppy containing details of deductor/collector like name of deductor/collector, TAN, Form no. and period to which return pertains.
- e-TDS return is compressed, using Winzip 8.1 or ZipItFast 3.0 compression (or higher version) utility only.
- TAN quoted in e-TDS return and stated on Form 27A is same. Confirm new TAN by using search facility on ITD website .
- Carry copy of TAN allotment letter from ITD or screen print from ITD website as proof of TAN to avoid inconvenience at time of furnishing due to minor variation in way of transcribing the new TAN in e-TDS return.
- In case of government deductors if TAN is not available at the time of furnishing return, application for TAN (Form 49B) should be made along with e-TDS return or copy of acknowledgement of TAN application to be submitted.

- Control totals, TAN and name mentioned in e-TDS return match with those mentioned on Form 27A.
- In case of Form 24, copies of certificates of no deduction of TDS and deduction of TDS at concessional rate, received from deductees are attached.
- e-TDS return has been successfully passed through the FVU.
- CD/floppy furnished is virus free.

9.6 Quarterly Statements of TDS :

The provisions of quarterly statements of TDS have been introduced in the statute vide section 200(3) w.e.f. 01/04/2005. Every person responsible for deducting tax is required to file quarterly statements of TDS for the quarter ending on 30th June, 30th September, 31st December, and 31st March in each Financial Year. This statement is to be prepared in Form No. 24Q (relevant rule 31A) and is to be delivered with prescribed income-tax authority [Director General of Income tax (System)] or the person authorized by such authority on or before the 15th July, the 15th October and the 15th January in respect of the first 3 quarters of the Financial Year and on or before the 15th May following the last quarter of the Financial Year. The date of filing quarterly statement of last quarter has been changed from 15th June to 15th of May vide I.T. (6th amendment) Rule 2010 for F.Y. 2010-11 and onwards.

With respect to the quarterly statements of TDS, the following points are noteworthy : -

- Every deductor is required to file the quarterly statement of TDS in form No. 24Q for each quarter as per the dates specified above.
- In case of the following :
 - (a) Every Government deductor
 - (b) Corporate deductor,

- (c) The deductor is a person required to get his accounts audited under Sec. 44 AB in the immediately preceding financial year or
 - (d) the number of deductee's records in a statement for any quarter of the financial year is twenty or more; the quarterly statements are to be delivered on computer readable media (3.5" 1.44 MB floppy diskette or CD-Rom of 650 MB capacity). The statement in computer readable media is to be prepared as per data structure provided by the e-filing Administrator (DGIT Systems) designated by the Board for purposes of e-TDS Scheme : 2003. Further, a declaration in Form 27A is also to be submitted in paper format.
- A person other than a corporate or government deductor and categories specified above, may at his option deliver the quarterly statements in computer readable media as specified above. However, it is not mandatory for him to do so.
 - The quarterly statements are to be furnished in accordance with the provisions of rule 37A and rule 37B.
 - It is mandatory for the deductor to quote the following in quarterly statements.
 - (a) TAN
 - (b) PAN of the deductor
 - (c) PAN of all the deductees
 - (d) Particulars of tax paid to the Central Government including Book Identification Number or Challan Identification Number as the case may be.

However, where the deduction has been made by or on behalf of the Government, PAN shall not be required to be quoted in the quarterly statement.

- The deductor is also required to furnish the particulars of tax paid to the Central Government in the quarterly statements.

9.7 Frequently Asked Questions

1. What is e-TDS Return?

e-TDS return is a TDS return prepared in form No.24, 26 or 27 or quarterly statements in electronic media as per prescribed data structure in either a floppy or a CD ROM. The floppy or CD ROM prepared should be accompanied by a signed verification in Form No.27A.

2. Who is required to file e-TDS return?

As per Section 206 of Income Tax Act all corporate and government deductors are compulsorily required to file their TDS return on electronic media (i.e. e-TDS returns). Besides those persons requiring to get their accounts audited u/s. 44 AB and those deductors in whose records there are twenty or more deductees are also to submit statements electronically. However, for other Deductors, filing of e-TDS return is optional.

3. Under what provision the e-TDS return should be filed?

An e-TDS return should be filed under Section 206 of the Income Tax Act in accordance with the scheme dated 26.8.03 for electronic filing of TDS returns notified by the CBDT for this purpose. CBDT Circular No.8 dated 19.9.03 may also be referred.

4. What are the forms to be used for filing annual/quarterly TDS/TCS returns?

Following are the returns for TDS and TCS and their periodicity:

Form No.	Particulars	Periodicity
Form 24	Annual return of “Salaries” under Section 206 of Income Tax Act, 1961	Annual
Form 26	Annual return of deduction of tax under Section 206 of Income Tax Act, 1961 in respect of all payments other than “Salaries”	Annual
Form 27	Statement of deduction of tax from interest, dividend or any other sum payable to certain persons	Quarterly
Form 24Q	Quarterly statement for tax deducted at source from “Salaries”	Quarterly
Form 26Q	Quarterly statement of tax deducted at source in respect of all payments other than “Salaries”	Quarterly
Form 27Q	Quarterly statement of deduction of tax from interest, dividend or any other sum payable to non-residents	Quarterly

5. Who is the e-Filing Administrator?

The CBDT has appointed the Director General of Income-tax(Systems) as e- Filing Administrator for the purpose of the Electronic Filing of Returns of Tax Deducted at Source Scheme, 2003.

6. Who is an e-TDS Intermediary?

CBDT has appointed National Securities Depository Ltd., Mumbai as e-TDS Intermediary.

7. How will the e-TDS returns be prepared?

e-TDS return has to be prepared in the data format issued by e-Filing Administrator. This is available on the website of Income-

tax Department i.e. <http://www.incometaxindia.gov.in> and of NSDL at <http://www.tin-nsdl.com>. There is a validation software available along with the data structure which should be used to validate the data structure of the e-TDS return prepared. The e-TDS return should have following features:-

- ▶ Each e-TDS return file (Form 24, 26 or 27) should be in a separate CD/floppy.
- ▶ Each e-TDS return file should be accompanied by a duly filled and signed (by an authorised signatory) Form 27A in physical form.
- ▶ Each e-TDS return file should be in one CD/floppy. It should not span across multiple floppies.
- ▶ In case the size of an e-TDS return file exceeds the capacity of one floppy, it should be furnished on a CD.
- ▶ In case the e-TDS return file is in a compressed form, it should be compressed using Winzip 8.1 or ZipItFast 3.0 compression utility only to ensure quick and smooth acceptance of the file.
- ▶ Label should be affixed on each CD/floppy mentioning name of the deductor, his TAN, Form no. (24, 26 or 27) and period to which the return pertains.
- ▶ There should be not any overwriting / striking on Form 27A. If there is any, then the same should be ratified by an authorised signatory.
- ▶ No bank challan, copy of TDS certificate should be furnished alongwith e-TDS return file.
- ▶ In case of Form 26 and 27, deductor need not furnish physical copies of certificates of no deduction or lower deduction of TDS received from deductees.

- ▶ In case of Form 24 deductor should furnish physical copies of certificates of 'no deduction or deduction of TDS at lower rate', if any, received from deductees.
- ▶ e-TDS return file should contain TAN of the deductor without which the return will not be accepted.
- ▶ CD/floppy should be virus free.

In case any of these requirements are not met the e-TDS return will not be accepted at TIN- FCs.

8. Can more than one e-TDS returns of the same Deductor be prepared in one CD/floppy?

No, separate CD/floppy should be used for each return.

9. Where can the e-TDS return be filed?

e-TDS returns can be filed at any of the TIN-FC opened by the e-TDS Intermediary for this purpose. Addresses of these TIN-FCs are available at the website on <http://www.incometaxindia.gov.in> or at www.tin-nsdl.com.

10. What are the basic details that should be included in the e-TDS return?

Following information must be included in the e-TDS return for successful acceptance. If any of these essential details is missing, the returns will not be accepted at the TIN - Facilitation Centres -

- ▶ Correct Tax deduction Account Number (TAN) of the Deductor is clearly mentioned in Form No.27A as also in the e-TDS return, as required by sub-section (2) of section 203A of the Income-tax Act.
- ▶ The particulars relating to deposit of tax deducted at source in the bank are correctly and properly filled in the table at item No.6 of Form No.24 or item No.4 of Form No.26 or item No.4 of Form No.27 as the case may be.

- ▶ The data structure of the e-TDS return is as per the structure prescribed by the e-Filing Administrator.

The Control Chart in Form 27A is duly filled in all columns and verified and is enclosed in paper form with the e-TDS return on computer media.

- ▶ The Control totals of the amount paid and the tax deducted at source as mentioned at item No.4 of Form No.27A tally with the corresponding totals in the e-TDS return in Form No. 24 or Form No. 26 of Form No.27, as the case may be.

11. What happens if any of the control totals mentioned in Form 27A not match with that in the e-TDS return?

In such a case the e-TDS return will not be accepted at the TIN Facilitation Centre.

12. What happens in a situation where a deductor does not have TAN or has a TAN in old format?

The Deductor will have to file an application in Form 49B at the TIN Facilitation Centre along with application fee(Rs 50/-) for TAN.

13. Whether any charges are to be paid to the e-TDS Intermediary?

The assessee is to pay following charges as upload charges at the time of filing of e-TDS return to M/s NSDL.

Category of e-TDS return	Upload charges
Returns having up to 100 deductees records	Rs.25/-
Returns having 101 to 1000 deductees records	Rs. 150/-
Returns having more than 1000 deductees records	Rs.500/-
Tax as applicable will also be paid by the deductor.	

14. How to find address of the office where e-TDS return can be filed?

Addresses of the TIN FCs are available on www.incometaxindia.gov.in or at www.tin-nsdl.com.

15. What are the due dates for filing quarterly TDS Returns?

The due dates for filing quarterly TDS returns, both electronic and paper are as under:

Quarter	Due Date	Due Date for 27Q
April to June	July 15	14 July
July to September	October 15	14 October
October to December	January 15	14 January
January to March	June 15	14 June

16. e-TDS returns have been made mandatory for Government deductors. How do I know whether I am a Government deductor or not?

All Drawing and Disbursing Officers of Central and State Governments come under the category of government deductors.

17. Whether the particulars of the whole year or of the relevant quarter are to be filled in Annexures I and II and III of Form 24Q?

- ▶ In Annexure I, only the actual figures for the relevant quarter are to be reported.
- ▶ In Annexure II & III estimated/actual particulars for the whole financial year are to be given. However, Annexure II & III are optional in the return for the 1st, 2nd and 3rd quarters but in the quarterly statement for

the last quarter, it is mandatory to furnish Annexure II & III giving actual particulars for the whole financial year.

18. In Form 24Q, should the particulars of even those employees be given whose income is below the threshold limit or in whose case, the income after giving deductions for savings etc. is below the threshold limit?

- ▶ Particulars of only those employees are to be reported from the 1st quarter onwards in Form 24Q in whose case the estimated income for the whole year is above the threshold limit.
- ▶ In case the estimated income for the whole year of an employee after allowing deduction for various savings like PPF, GPF, NSC etc. comes below the taxable limit, his particulars need not be included in Form 24Q.
- ▶ In case due to some reason estimated annual income of an employee exceeds the exemption limit during the course of the year, tax should be deducted in that quarter and his particulars reported in Form 24Q from that quarter onwards.

19. How are the particulars of those employees who are with the employer for a part of the year to be shown in Form 24Q?

- ▶ Where an employee has worked with a deductor for part of the financial year only, the deductor should deduct tax at source from his salary and report the same in the quarterly Form 24Q of the respective quarter(s) up to the date of employment with him. Further, while submitting Form 24Q for the last quarter, the deductor should include particulars of that employee in Annexure II & III irrespective of the fact that the employee was not under his employment on the last day of the year.

- ▶ Similarly, where an employee joins employment with the deductor during the course of the financial year, his TDS particulars should be reported by the current deductor in Form 24Q of the relevant quarter. Further, while submitting Form 24Q for the last quarter, the deductor should include particulars of TDS of such employee for the actual period of employment under him in Annexure II and III.

20. The manner of computing total income has been changed by allowing deduction under section 80C. However, the present form 24Q shows a column for rebate under section 88, 88B, 88C and 88D. How should form 24Q be filled up in absence of a column for section 80C ?

While filling up form 24Q the columns pertaining to sections 88, 88B, 88C and 88D may be left blank. As regards deduction under section 80C, the same can be shown in the column 342 pertaining to "Amount deductible under any other provision of Chapter VI-A".

21. Form 24Q shows a column which requires explanation for lower deduction of tax. How can a DDO assess it? Please clarify.

Certificate for lower deduction or no deduction of tax from salary is given by the Assessing Officer on the basis of an application made by the deductee. In cases where the Assessing Officer has issued such a certificate to an employee, deductor has to only mention whether no tax has been deducted or tax has been deducted at lower rate on the basis of such a certificate.

22. Can I file Form 26Q separately for contractors, professionals, interest etc.?

No. A single Form 26Q with separate annexures for each type of payment has to be filed for all payments made to residents.

23. From which financial year will the Annual Statement under Sec. 203AA (Form No. 26AS) be issued?

The annual statement (Form No 26AS) will be issued for all tax deducted and tax collected at source from F.Y 2008-09 onwards after the expiry of the financial year.

24. How will the PAN wise ledger account be created by the intermediary i.e. NSDL in respect of payment of TDS made by deductors in Banks?

The PAN wise ledger account will be created after matching the information in the TDS/TCS returns filed by the deductor/collector and the details of tax deposited in banks coming through OLTAS.

25. What essential information will be required to be given in the quarterly statement to enable accurate generation of PAN wise ledger account?

The accuracy of PAN wise ledger account will depend on:-

- ▶ Correct quoting of TAN by the deductor.
- ▶ Correct quoting of PAN of deductor.
- ▶ Correct and complete quoting of PAN of deductee.
- ▶ Correct quoting of CIN (challan identification number) wherever payment is made by challan.

26. Will a deductee be able to view his ledger account on TIN website?

Yes.

27. If a deductee finds discrepancy in his PAN ledger account, what is the mechanism available for correction?

The details regarding the help required for filing of eTDS are available on the following two websites:

- ▶ <http://www.incometaxindia.gov.in>
- ▶ <http://www.tin-nsdl.com>

The TIN Facilitation Centers of the NSDL at over 270 cities are also available for all related help in the e filing of the TDS returns.

28. Whether the e-TDS return can be filed online?

Yes, e-TDS return can be filed online under digital signature.

29. Will the Paper TDS data be available online on TIN database?

Yes, the Paper TDS data will also be available in TIN database after the digitalization of the Paper TDS return by the e-intermediary.

30. I do not know the Bank branch code of the branch in which I deposited tax. Can I leave this field blank?

Bank Branch code or BSR code is a 7 digit code allotted to banks by RBI. This is different from the branch code which is used for bank drafts etc. This no. is given in the OLTAS challan or can be obtained from the bank branch or from <http://www.tin-nsdl.com>. It is mandatory to quote BSR code both in challan details and deductee details. Hence, this field cannot be left blank. Government deductors transfer tax by book entry, in which case the BSR code can be left blank.

31. What should I mention in the field “paid by book entry or otherwise” in deduction details?

If payment to the parties (on which TDS has been deducted) has been made actually i.e. by cash, cheque, demand draft or any

other acceptable mode, then “otherwise” has to be mentioned in the specified field. But if payment has not been actually made and merely a provision has been made on the last date of the accounting year, then the option “Paid by Book Entry” has to be selected.

32. What is the “Upload File” in the new File Validation Utility?

Earlier the “Input file” of the File Validation Utility (FVU) had to be filed with TIN FC. Now “Upload File” which has some additional information such as the version no. of FVU has to be filed with TIN FC. This is a file which is generated by the FYU after the return /file prepared by the Return Preparation Utility (RPU) is validated using the FYU.

33. By whom should the control chart Form 27A be signed?

Form 27A is the summary of the TDS return. It has to be signed by the same person who is authorized to sign the TDS return in paper format.

34. What are the Control Totals appearing in the Error / response File generated by validating the text file through File Validation Utility (FVU) of NSDL?

The Control Totals in Error response File are generated only when a valid file is generated. Otherwise, the file shows the kind of errors. The control totals are as under:

- ▶ No. of deductee/party records: In case of Form 24Q, it is equal to the number of employees for which TDS return is being prepared. In case of Form 26/27, it is equal to the total number of records of tax deduction. 10 payments to 1 party would mean 10 deductee records.
- ▶ Amount Paid: This is the Total Amount of all payments made on which tax was deducted. In case of Form 24Q,

it is equal to the Total Taxable Income of all the employees. In case of Form 26/27, Amount Paid is equal to the total of all the amounts on which tax has been deducted at source.

- ▶ Tax Deducted: This is the Total Amount of Tax actually Deducted at source for all payments.
- ▶ Tax deposited: This is the total of all the deposit challans. This is normally the same as Tax Deducted but at times may be different due to interest or other amount.

35. Are the control totals appearing in Form 27A same as that of Error/ response File?

Yes, the control totals in Form 27A and in Error/ response File are same.

36. What if e-TDS return does not contain PANs of all deductees?

In case PANs of some of the deductees are not mentioned in the e-TDS return, the Provisional Receipt will mention the count of missing PANs in the e-TDS return. The details of missing PANs (extent it can be collected from the deductees) may be furnished within seven days of the date of Provisional Receipt to TIN- FC. e-TDS return will be accepted even with missing PANs. However, if PAN of deductees is not given in the TDS return, tax deducted from payment made to him cannot be posted to the statement of TDS to be issued to him u/s 203AA.

37. Is the bank challan number compulsory?

Yes. Challan identification number is necessary for all non government deductors.

38. Will the quarterly paper returns be accepted by the Income tax department?

No. All quarterly paper TDS/TCS returns will be received at TIN-FCs

39. Is PAN mandatory for deductor and employees/ deductees?

PAN of the deductors has to be given by non government deductors. It is essential to quote PAN of all deductees failing which credit of tax deducted will not be given.

CHAPTER-10

IMPORTANT CIRCULARS & NOTIFICATIONS

- (1) **Notification dt. 31.5.2010 - Income-tax(6th Amendment) Rules 2010.** The Income-tax(6th Amendment) Rules 2010 provides for amendment in 30, Rule 31, Rule 31A and Rule 31AA.
- (2) **Circular No. 1/2010 dt. 11.1.2010.** Income tax deduction from salaries u/s. 192 during F.Y. 2009-10.
- (3) **Notification No. 238/2007, dated 30.8.2007 of CBDT;** The scope of mandatory filing of e-TDS returns has been expanded to include certain additional categories of deductors.
- (4) **Circular No. 2/2007 dt. 21.5.2007,** The deductors may at their option, in respect of the tax to be deducted at source from income chargeable under the head Salaries, use their digital signatures to authenticate the certificates of deduction of tax at source in form No. 16.
- (5) **Notification no. 928 E dt. 30.6.2005 of CBDT.** regarding quarterly statements of TDS and amendment in form 16.
- (6) **Notification No. S.O. 974(e)dt. 26.08.03** regarding filing of annual TDS return in electronic form with the e-TDS intermediary .
- (7) **Notification No.1062(E) dt. 04.10.02** regarding amended Form16 & form 12BA.
- (8) **Notification No. 688 dt. 25-9-01 -** Valuation of perquisites as per rule 3 of I.T. Rules (As per Income Tax (22nd amendment) Rules 2001).

- (9) **Circular No. 761 dt. 13-1-98** - Issue of TDS certificate to persons by all branches of banks.
- (10) **Circular No. 749 dt. 27-12-98** - clarification regarding certificate for deduction of tax made by Central Govt. departments who are making payments by book adjustments.
- (11) **Circular No. 719 dt. 22-8-95** - Filing of returns u/s 206 of the I.T.Act 1961, in respect of TDS from salary of employees of a company working at its headquarters or at other branches, clarification regarding.
- (12) **Circular No. 707 dt. 11-7-95** - Refunds due to non-resident employees after their departure from India.
- (13) **Circular No. 701 dt. 23-3-95** - Taxability of allowances received by persons having income under the head 'Salaries'.
- (14) **Circular No. 640 dt. 26-11-92** - Guideline for the purpose of sec. 10(10C) of the Income tax Act. Clarification of the queries regarding.
- (15) **Circular No. 597 dt. 27-3-96** - Issue of TDS certificate and prescribed form thereof, regarding.
- (16) **Notification No. S:o 148(E) dt. 28/2/91** - Details prescribed vide form No. 16.
- (17) **Circular No. 586 dt. 28-2-90** - Members of crew of foreign going Indian ship, liability to income tax in India and deduction of tax at source clarification regarding.
- (18) **Circular No. 306 dt. 19-6-81** - Place of payment of direct tax etc.
- (19) **Circular No. 293 dt. 10-2-86** - Exemption of person from U.N.O.

- (20) Circular No. 292 dt. 5-2-81** - Challan forms for payment of Income tax deducted at source clarification regarding use of 4th counterfoil.
- (21) Circular No. 285 dt. 21-10-80** - Procedure for regulating refund of amounts paid in excess of tax deducted and/or deductible.
- (22) Circular No. 232 dt. 26-11-97** - Filling up of details in challan for payment of TDS.
- (23) Circular No. 147 dt. 28-10-74** - Issue of certificate for non deduction of tax/T.D.S. at lower rate.
- (24) Circular No. 141 dt. 23-7-74** - Regarding payment made by cheque date of encashment will be the date of payment of tax.

ANNEXURE-I**FORM NO. 16****{See rule 31(1)(a)}****PART A****Certificate under section 203 of the Income-tax Act, 1961
for tax deducted at source on Salaries**

Name and address of the Employer		Name and designation of the Employee	
PAN No. of the Deductor	TAN No. of the Deductor	PAN No. of the Employee	
CIT (TDS) Address..... City.....Pin Code.....		Assessment Year	Period
			From To

Summary of tax deducted at source

Quarter	Receipt Numbers of original statement of TDS under sub-section (3) of section 200	Amount of tax deducted in respect of the employee	Amount of tax deposited remitted in respect of the employee
Quarter 1			
Quarter 2			
Quarter 3			
Quarter 4			
Total			

PART B (Refer Note 1)**DETAILS OF SALARY PAID AND ANY OTHER INCOME AND
TAX DEDUCTED**

1. Gross salary			
(a) Salary as per provisions contained in Sec. 17(1)	Rs.		
(b) Value of perquisites u/s 17(2) (as per Form No. 12BB, wherever applicable)	Rs.		

(c) Profits in lieu of salary under section 17(3) (as per Form No. 12BB, wherever applicable)		Rs.	Rs.	Rs.
(d) Total				
2. Less : Allowance to the extent exempt under Section 10				
Allowance	Rs.			
3. Balance (1-2)		Rs.	Rs.	Rs.
4. Deductions :				
(a) Entertainment allowance				
(b) Tax on Employment				
5. Aggregate of 4 (a) and (b)		Rs.	Rs.	Rs.
6. Income chargeable under and head 'Salaries' (3-5)				
7. Add : Any other income reported by the employee				
Income	Rs.			
8. Gross total income (6+7)				Rs.
9. Deductions under Chapter VI-A				
Rs.				
(A) Section 80C, 80CCC and 80 CCD				
		Gross Amount	Deductible Amount	
(a) Section 80C				
(i)	Rs.			
(ii)	Rs.			
(iii)	Rs.			
(iv)	Rs.			
(v)	Rs.			
(vi)	Rs.			
(b) Section 80CCC		Rs.	Rs.	
(c) Section 80 CCD		Rs.	Rs.	

Note: 1. aggregate amount deductible under section 80C shall not exceed one lakh rupees

2. aggregate amount deductible under the three sections i.e. 80C, 80CCC and 80CCD shall not exceed one lakh rupees

B. other sections (e.g. 80E, 80G etc)

Under Chapter VIA

	Gross Amount	Qualifying Amount	Deductible Amount
(i) Section	Rs.	Rs.	Rs.
(ii) Section	Rs.	Rs.	Rs.
(iii) Section	Rs.	Rs.	Rs.
(iv) Section	Rs.	Rs.	Rs.
(v) Section	Rs.	Rs.	Rs.
10. Aggregate of deductible amounts under Chapter VI-A			Rs.
11. Total income (8-10)			Rs.
12. Tax on total income			Rs.
13. Education Cess @ 3% (on tax computed at S.No. 12)			Rs.
14. Tax payable (12+13)			Rs.
15. Less: Relief under section 89 (attach details)			Rs.
16. Tax payable (14-15)			Rs.

Verification

I....., Son/daughter of working in the capacity of (designation) do hereby certify that a sum of Rs. [Rs. (in words)] has been deducted and deposited to the credit of the Central Government. I further certify that the information given above is true, complete and correct and is based on the books of account, documents, TDS statement, TDS deposited and other available records.

*Signature of the person responsible
for deduction of tax*

Place _____

Date _____

Full Name _____

Designation _____

- Notes: 1. If an assessee is employed under more than one employer during the year, each of the employers shall issue Part A of the certificate in Form No. 16 pertaining to the period for which such assessee was employed with each of the employers. Part B may be issued by each of the employers or the last employer at the option of the assessee.
2. Government deductors to enclose Annexure-A if tax is paid without production of an income-tax challan and Annexure-B if tax is paid accompanied by an income-tax challan.
 3. Non-Government deductors to enclose Annexure-B.
 4. The deductor shall furnish the address of the Commissioner of Income-tax (TDS) having jurisdiction as regards TDS statements of the assessee.
 5. This Form shall be applicable only in respect of tax deducted on or after 1st day of April, 2010.

ANNEXURE-A

DETAILS OF TAX DEDUCTED AND DEPOSITED IN THE CENTRAL GOVERNMENT ACCOUNT THROUGH BOOK ENTRY

(The Employer to provide payment wise details of tax deducted and deposited with respect to the employee)

S. No.	Tax Deposited in respect on of the employee (Rs.)	Book identification number (BIN)															
		Receipt numbers of form No. 24G								DDO Sequence Number in the Book Adjustment Mini Statement				Date on which tax deposited (dd/mm/yyyy)			
Total																	

Notes: 1. In the column for TDS, give total amount for TDS, Surcharge (if applicable) and educationcess.

ANNEXURE-B

DETAILS OF TAX DEDUCTED AND DEPOSITED IN THE CENTRAL GOVERNMENT ACCONT THROUGH CHALLAN

(The Employer to provide payment wise details of tax deducted and deposited with respect to the employee)

[illegible]

Notes: 1. In the column for TDS, give total amount for TDS, Surcharge (if applicable) and education cess.

ANNEXURE-II**FORM NO. 12BA****{See rule 26A(2)(b)}**

**Statement showing particulars of perquisites, other
fringe benefits or amenities and profits in lieu of salary
with value thereof**

1.	Name and address of employer			
2.	TAN			
3.	TDS Assessment Range of the employer			
4.	Name, designation and PAN of employee			
5.	Is the employee a director or a person with substantial interest in the company (where the employer is a company)			
6.	Income under the head 'Salaries' of the employee (other than from perquisites)			
7.	Financial Year			
8.	Valuation of perquisites			
Sl. No.	Nature of perquisite (see rule 3)	Value of perquisite as per rules (Rs.)	Amount, if any, recovered from the employee (Rs.)	Amount of perquisite chargeable to tax Col(3)-Col(4) (Rs.)
1.	Accommodation			
2.	Cars/Other automotive			
3.	Sweeper, gardener, watchman or personal attendant			
4.	Gas, electricity, water			

5.	Interest free or concessional loans			
6.	Holiday expenses			
7.	Free or concessional travel			
8.	Free meals			
9.	Free education			
10.	Gifts, vouchers etc.			
11.	Credit card expenses			
12.	Club expenses			
13.	Use of movable assets by employees			
14.	Transfer of assets to employees			
15.	Value of any other benefit/amenity/service/privilege			
16.	Stock options (non-qualified options)			
17.	Other benefits or amenities			
18.	Total value of perquisites			
19.	Total value of profits in lieu of salary as per 17(3)			
9. Details of tax				
(a)	Tax deducted from salary of the employee u/s 192(1)			
(b)	Tax paid by employer on behalf of the employee u/s 192(1A)			
(c)	Total tax paid			
(d)	Date of payment into Government Treasury			

DECLARATION BY EMPLOYER

I _____, son of _____ working as _____ (designation) do hereby declare on behalf of _____ (name of the employer) that the information given above is based on the books of account, documents and other relevant records or information available with us and the details of value of each such perquisite are in accordance with section 17 and rules framed thereunder and that such information is true and correct.

Signature of the person responsible
for deduction of tax

Place _____
Date _____

Full Name _____
Designation _____



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