TAX DEDUCTION AT SOURCE

CHAPTER – XVII

TDS REFERENCER

Sections	Payment Covered	Deductor	Deductee	Exemption	Rate of TDS
192	Salary	Employer	Any employee	Rs. 1,60,000/ Rs. 1,90,000/ Rs. 2,40,000	NTR
193	Interest on securities	Person paying interest on securities	Any ***resident*** security holder	--	10%
194A	Interest other than interest on securities	Any person paying interest other than interest on securities (not being an individual or a HUF whose accounts were not liable to be audited in the immediately preceding P.Y.)	Any ***resident*** person	Rs. 10,000/ Rs. 5,000	10%
194B	Winnings from lotteries/crossword puzzles/card games/ other games	Any person paying winnings from lotteries/crossword puzzles/card games/ other games	Any person	Rs. 5,000 ***(Rs. 10,000 from 01.07.2010)***	30%
194BB	Winnings from horse races	Any person paying income from horse races	Any person	Rs. 2,500 ***(Rs. 5,000 from 01.07.2010)***	30%
194C	Consideration for any work contract	Any person responsible for paying any sum to any resident contractor (not being an individual or a HUF whose accounts were not liable to be audited in the immediately preceding P.Y. ***or not being an individual or HUF making aforesaid payment for services availed for personal purposes***)	Any ***resident*** contractor (contractor includes sub-contractor)	Rs. 20,000 ***(Rs. 30,000 from 01.07.2010)*** at one time or Rs. 50,000 ***(Rs. 75,000 from 01.07.2010)*** in the aggregate	1% for individual/ HUF & 2% for others
194D	Insurance commission	Any person paying insurance commission	Any ***resident*** person	Rs. 5,000 ***(Rs. 20,000 from 01.07.2010)***	10%
194G	Commission on sale of lottery tickets	Any person paying commission on sale of lottery tickets	Any person	Rs. 1,000	10%
194H	Commission or brokerage (not being insurance commission)	Any person paying commission or brokerage (not being an individual or a HUF whose accounts were not liable to be audited in the immediately preceding P.Y.)	Any ***resident*** person	Rs. 2,500 ***(Rs. 5,000 from 01.07.2010)***	10%
194-I	Rent	Any person paying rent (not being an individual or a HUF whose accounts were not liable to be audited in the immediately preceding P.Y.)	Any ***resident*** person	Rs. 1,20,000 ***(Rs. 1,80,000 from 01.07.2010)***	For use of P&M – 2% & For use of other assets – 10%
194J	Fees for professional/ technical services/royalty	Any person paying Fees for professional/technical services/royalty (not being an individual or a HUF whose accounts were not liable to be audited in the immediately preceding P.Y. ***or not being an individual or HUF making aforesaid payment for services availed for personal purposes***)	Any ***resident*** person	Rs. 20,000 ***(Rs. 30,000 from 01.07.2010)***	□0%

Notes :

1. In case of salary TDS is to be deducted at the time of payment of salary.
2. In other cases TDS is to be deducted at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.

Deduction of tax at source from other payments

Tax is required to be deducted in case of following payments also :

Sections	*Payments Covered*
194	*Payment of deemed dividend covered under Section 2(22)(e) to a resident*
194E	*Payment to a NR Sportsman or Sports Association*
194EE	*Payment in respect of deposits under NSS, 1987 to any person*
194F	*Payment on account of repurchase of units of MF or UTI to any person*
194LA	*Payment of compensation to a resident on acquisition of certain immovable property*
195	*Payment of any sum other than salary to NR & Foreign company*

Since above topics are generally not asked in the examinations, discussion about them is not necessary.

Applicability of SC, EC & SHEC for the purposes of Effective rate of TDS

SC is applicable for TDS purposes only when the recipient is a ***foreign company*** and payment/credit subject to TDS exceeds Rs. 1 Crore. In no other case, SC is applicable at the time of deduction of tax at source.

EC & SHEC are applicable for TDS purposes in the case of tax deduction from payment of ***salary*** to a R/NR. EC & SHEC are also applicable in the case of payment or credit of ***any other sum*** to a NR or a foreign company. In no other case, EC & SHEC are applicable for TDS purposes.

Payments/Credits	Category of Person	R/S	SC	EC	SHEC
Salary	Individual	R/NR	Nil	2%	1%
Others	Individual	R	Nil	Nil	Nil
		NR	Nil	2%	1%
	Foreign Co. : Payment ≤ 1 Crore	R/NR	Nil	2%	1%
	: Payment > 1 Crore	R/NR	2.5%	2%	1%
	Others (including domestic company)	R	Nil	Nil	Nil
		NR	Nil	2%	1%

(a) Deduction of tax at source from salaries [Section 192]

- Income-tax is to be deducted on ***estimated income*** of the employee under the head "Salaries" for relevant P.Y.
- No tax is required to be deducted at source unless the ***estimated income*** of the employee under the head "Salaries" exceeds the maximum amount not chargeable to tax.
- The total tax to be deducted, on the estimated income of the employee for the relevant financial year, is divided by the number of months of his employment during that financial year. The amount so arrived at is the monthly deduction of tax at source.

Illustration : The estimated taxable salary of the employee for the financial year 2010-11 is Rs. 4,00,000. Determine the amount of tax to be deducted at source every month by the employer.

Solution :

	Rs.
Tax on Rs. 4,00,000	24,000
Add : Education cess @ 2%	480
	24,480
Add : Secondary and higher education cess @ 1%	240
Estimated tax liability	24,720
Tax to be deducted every month (Tax liability/12)	2,060

- Employer shall have an option to pay tax on behalf of an employee, without making any deduction from his income, on the income in nature of perquisites, which are ***not provided by way of monetary payment***. For the purpose of paying tax, tax shall be determined at the average of income-tax computed on the basis of the rates in force for the financial year, on the income chargeable under the head "salaries" ***including*** the value of non-monetary perquisites **[Section 192(1A)]**.

Illustration : During the P.Y. 2010-11, the income chargeable under the head "Salaries" of an employee of A Ltd. is Rs. 5,76,000 which includes taxable value of perquisite of Rs. 96,000 in respect of rent-free unfurnished house. Determine the amount of tax to be deposited by A Ltd.

	Rs.
Income from salaries (inclusive of perquisite in respect of rent-free unfurnished house)	5,76,000
Tax on Rs. 5,76,000 (including EC and SHEC)	50,676
Average rate of tax (50,676/5,76,000 x 100)	8.80%
Tax payable on Rs. 96,000 (8.80% of Rs. 96,000)	8,448
Amount required to be deposited each month (Rs. 8,448/12)	704

While calculating business income of A Ltd., Rs. 8,448 is not deductible as business expenditure. In the hands of employee Rs. 8,448 is not taxable as salaries.

(b) Deduction of tax at source from interest on securities [Section 193]

No tax is to be deducted at source in respect of the following :

(a) ***any security*** of the Central Government or State Government;

Note : Person responsible for paying to a resident any interest on **8% Savings (Taxable) Bonds, 2003** shall deduct the income-tax if interest payable on such bonds exceeds Rs. 10,000 during a financial year.

(b) any interest payable on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India..

(c) Deduction of tax at source from interest other than interest on securities [Section 194A]

Tax is not deductible where the aggregate amount of interest credited or paid or likely to be credited or paid during the financial year to the account of the payee during the financial year does not exceed Rs. 5,000.

***Note** : With effect from June 1, 2007, the aforesaid limit of Rs. 5,000 has been increased to Rs. 10,000 where the payer is :*

a) a banking company and interest is paid or payable on time deposit; or

b) a co-operative society engaged in carrying on the business of banking and interest is paid or payable on time deposit; or

c) a post office in respect of any scheme framed by the Central Government and notified by it in this behalf. Presently "Senior Citizen Savings Scheme, 2004 has been notified.

In other cases, the threshold limit shall be retained at Rs. 5,000.

(d) Deduction of tax at source from winnings from any lottery or crossword puzzle or card game and other game of any sort [Section 194B]

In a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

Example : X, a resident individual, wins a motor car in a lucky draw held by Y Limited. The market price of the car is Rs. 3,00,000. In this case before giving car to X, Y Limited will recover Rs. 90,000 from X [30% of Rs. 3,00,000 + EC = Nil + SHEC = Nil]. If Y Limited cannot recover the tax as per terms of the draw, then Y Limited shall have to pay TDS itself calculated as under :

$$\text{Gross Winning} = \text{Net Winning x } \frac{100}{100 - \textit{Rate of TDS}}$$

$$= \text{Rs. 3,00,000 x } \frac{100}{100-30} = \text{Rs. 4,28,571/-}$$

Therefore, the tax to be deducted shall be = 4,28,571 x $\frac{30}{100}$ = 1,28,571/-

Y Limited shall deposit Rs. 1,28,571/- as tax and the gross income of X shall be Rs. 4,28,571/-.

(e) Deduction of tax at source from payments to contractors or sub-contractors [Section 194C]

- **Tax is deductible on the entire consideration including Service Tax, if any.**
- **Section 194C(5)** : No deduction shall be made under Section 194C from the amount of any sum credited or paid to the contractor or sub-contractor, if such sum does not exceed Rs. 20,000 **(Rs. 30,000 w.e.f. July 1, 2010)**.

  However, if the ***aggregate*** of the amounts of such sums credited or paid during the financial year exceeds Rs. 50,000 **(Rs. 75,000 w.e.f. July 1, 2010)**, the person responsible for paying such sum shall be liable to deduct income-tax. In other words, the tax will required to be deducted at source where the amount credited or paid to a contractor or sub-contractor exceeds Rs. 20,000 **(Rs. 30,000 w.e.f. July 1, 2010)** at one time or Rs. 50,000 **(Rs. 75,000 w.e.f. July 1, 2010)** in the aggregate during a financial year inspite of the fact that separate contracts are entered into with that person.
- ***Section 194C(6)*** : *No deduction shall be made from any sum credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his Permanent Account Number, to the person paying or crediting such sum.*
- ***Section 194C(7)*** : *The person responsible for paying or crediting any sum to the person referred to in Section 194C(6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.*

(f) Deduction of tax at source from *commission or brokerage* [Section 194H]

- **CBDT Circular No. 619, dated 4-12-1991 : Commission and brokerage retained by the consignee/agent :** A question may arise whether there would be deduction of tax at source under Section 194H where commission or brokerage is retained by the consignee/agent and not remitted to the consignor or principal while remitting the sale consideration. It may be clarified that since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission. Therefore, the consignor/principal will have to deposit the tax deductible on the amount of commission income to the credit of Central Government, within the prescribed time.

- **CBDT Circular No. 6/2003, dated 3-9-2003 : No TDS under Section 194H on Turnover Commission payable by RBI to Agency Banks :** The work of receipt of tax payments and issue of refunds is conducted by banks authorized for such purpose by the RBI. As a compensation for the work so conducted, the Central Government pays to the banks, through RBI, commission termed as "Turnover Commission". The CBDT has decided that tax would not be required to be deducted by RBI on the amount of Turnover Commission paid or credited by it as the Agency Banks (Banks authorized for conducting Government business) are performing the general banking business of the Central and State Government on behalf of RBI.

(g) Deduction of tax at source from income by way of rent [Section 194-I]

- **As per Circular No. 4/2008 dated 28th April, 2008 by the CBDT, the service tax paid by the tenant does not partake the nature of income of the landlord. The landlord only acts as a collecting agency for collection of service tax. Therefore, tax deducted at source under section 194-I would be required to be made on the amount of rent only excluding the amount of service tax.**

- **The benefit of Circular No. 4/2008 dated 28th April, 2008 cannot be extended to Section 194J – Board Letter : F. No. 275/73/2007-IT(B), Dated June 30, 2008, addressed to Bombay Chamber of Commerce & Industry.**

Definition of Charitable Purpose : Section 2(15)

- "Charitable Purpose" includes :
- relief of the poor, education, medical relief,
- preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and
- the ***advancement of any other object of general public utility***

  Provided** that the ***advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

  Provided further that the first proviso* shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year.

OTHER PROVISIONS RELATING TO TDS

No tax deduction from any sum payable to Government, RBI or certain corporations [Section 196]

No deduction of tax shall be made by any person from ***any sum*** payable to :

(a) the Government, or

(b) the Reserve Bank of India, or

(c) a corporation established under a Central Act which is exempt from income-tax on its income, or

(d) a Mutual Fund specified under Section 10(23D),

No deduction to be made in certain cases [Section 197A]

In case of a person (not being a company or a firm) [Section 197A(1A)] :

No tax will be deducted at source under Section 193 (i.e. Interest on securities) and 194A (i.e. Interest other than interest on securities), in case of a person (not being a company or a firm), if such person furnishes to the payer a declaration in writing in duplicate in new **Form No. 15G** to the effect that the tax on his ***estimated total income*** (including such income) will be nil.

Senior citizen can furnish declaration even if such income exceeds the exemption limit [Section 197A(1C) :

No tax will be deducted under Section 193, 194, 194A and 194EE in the case of a senior citizen, if such individual furnishes to the person responsible for paying any income to the payer a declaration in writing in duplicate in new **Form No. 15H** to the effect that the tax on his ***estimated total income*** (including such income) will be nil.

Section 197A(2) :

The person responsible for paying any income of the nature referred to in Section 197(1A) or 197(1C) shall deliver to the CCIT/CIT one copy of the declaration referred to in Section 197(1A) or 197(1C) on or before the seventh day of the month next following the month in which the declaration is furnished to him.

Tax deducted is income received [Section 198]

All sums deducted in accordance with the provisions of Chapter - XVII shall, for the purpose of computing the income of an assessee, be deemed to be income received. In other words, for the purpose of computation of total income of the payee amount actually received (after TDS) plus the amount of TDS will have to be considered. However, the tax paid by the employer under Section 192(1A) on the non-monetary perquisites of the employee shall not be deemed to be income received.

Credit for tax deducted [Section 199]

Any deduction made in accordance with the provisions of Chapter - XVII and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made. Any tax paid by the employer on non-monetary perquisites of the employee to the Central Government shall also be treated as tax paid on behalf of the employee and credit shall be given to such employee for the amount so paid.

Duty of person deducting tax [Section 200]

Section 200(1) :

Any person deducting any sum in accordance with provisions of Chapter - XVII shall pay within the prescribed time, the sum so deducted to the credit of the Central Government.

Section 200(2) :

Any person being an employer, referred to in Section 192(1A) shall pay, within the prescribed time, the tax to the credit of the Central Government.

Rule 30(1) deals with the time limit for deposit of TDS as follows :

Tax Deductor	Time limit of deposit
Government :	
a) TDS U/S 192(2A)	Within one week from the last day of the month in which deduction is made
b) TDS under other Sections	Same day of deduction
Any other person :	
a) TDS U/S 192(2A)	Within one week from the last day of the month in which deduction is made
b) TDS under other Sections :	
➢ If the amount is credited to the account of the payee as on the last date of the accounting year	Within 1 months from the last date of the accounting year (i.e. on or before 30th April)
➢ In any other case	Within one week from the last day of the month in which deduction is made

Special cases where tax deducted at source can be deposited quarterly :

In the following cases, the Assessing Officer may with the prior approval of the Joint Commissioner, allow payment of TDS quarterly as follows :

192 : Salaries 194A : Interest other than interest on securities 194D : Insurance commission 194H : Commission or brokerage	Quarterly on July 7, October 7, January 7 and April 30

Section 200(3) :

Any person deducting any sum in accordance with provisions of Chapter - XVII or, as the case may be, any person being an employer referred to in Section 192(1A) shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare quarterly statements/return for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year and deliver to the prescribed income-tax authority [DGIT (Systems) or any person authorized by him] within such time as may be prescribed.

The following forms for filing quarterly statement/return have been prescribed under Rule 31A :

Payments	Residential Status of Deductee	Return Form*
Salary	Resident/Non-resident	Form No. 24Q
Others	Resident	Form No. 26Q
	Non-resident	Form No. 27Q

These quarterly statements should be delivered to the prescribed income-tax authority on or before 15th July, 15th October, 15th January in respect of the first three quarters of the financial year and on or before the ***15th May*** following the last quarter of the financial year.

Certificate for tax deducted [Rule 31]

The payer of income is suppose to issue a certificate of tax deduction (i.e. TDS certificate) in the following forms as per Rule 31 :

Payments	Form No.
Salary	Form No. 16
Others	Form No. 16A

The time limit for issue of TDS certificate as per Rule 31 :

Payments	Time Limit
Salary	Annually by 31st May of the financial year immediately following the financial year in which the income was paid and tax deducted
Others	Quarterly within 15 days from the due date for furnishing the statement of TDS under Rule 31A

Processing of statements/return of TDS [Section 200A]

Section 200A has been inserted by the Finance (No. 2) Act, 2009, with effect from April 1, 2010, to provide for processing of statements of TDS on computer so that liabilities on account of interest and other defaults in TDS payment are promptly calculated and intimated to the deductor.

The following adjustments can be made during the computerized processing of statements of TDS :

a) Any arithmetical error in the statement; or

b) An incorrect claim, if such incorrect claim is apparent from any information in the statement, for example, in respect of rate of TDS where such rate is not in accordance with the provisions of the Act.

After making adjustments, tax and interest would be calculated and sum payable by the deductor or refund due to the deductor will be determined. An intimation will be sent to the deductor informing him of his tax liability or granting him the refund due within one year from the end of the financial year in which the statement is filed. Further it is provided that the processing of these statements can be undertaken in a centralized processing centre.

Tax Deduction And Collection Account Number [Section 203A]

- Every person, deducting tax or collecting tax in accordance with the provisions of Chapter - XVII, who has not been allotted a Tax Deduction Account Number ***(i.e. TAN)*** or, as the case may be, a Tax Collection Account Number ***(i.e. TCN)***, shall, within one month from the end of the month in which tax is deducted or collected, apply to the Assessing Officer for the allotment of a "Tax Deduction And Collection Account Number" ***(i.e. TDCAN)***.

- Where a TAN/TCN/TDCAN has been allotted to a person, such person shall quote such number :

  (a) in all challans for the payment of TDS/TCS to the Government;

  (b) in all TDS/TCS certificates;

  (c) in all the TDS/TCS Return;

  (d) in all other documents pertaining to such transactions as may be prescribed.

Application for allotment of a tax deduction and collection account number [Rule 114A] :

- An application for the allotment of a TDCAN shall be made in duplicate in ***Form No. 49B***.
- The application in Form No. 49B shall be made :

  (a) in cases where the function of allotment of TDCAN has been assigned by the CCIT/CIT to any particular A.O., to that A.O.;

  (b) in any other case, to the A.O. having jurisdiction to assess the applicant.

Penal provisions relating to tax deduction at source

Section No.	Nature of default	Penalty
271C	Failure to deduct the whole or any part of tax	Sum equal to the amount of tax which the assessee has failed to deduct
272BB	Failure to apply for allotment of TDCAN and failure to quote TDCAN in challans, certificates, quarterly statements and other prescribed documents or to quote a number which is false	Rs. 10,000/-
276B	Failure to pay the tax deducted at source to the credit of Central Government	Rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years and with fine
272A(2)(g)	Failure to issue TDS certificates as required by Section 203	Rs. 100 for every day during which the failure continues but the penalty shall not exceed the amount of tax deducted
272A(2)(k)	Failure to deliver quarterly statements within the time specified in Section 200(3)	Rs. 100 for every day during which the failure continues but the penalty shall not exceed the amount of tax deducted

Note : Where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied.

Requirement to furnish Permanent Account Number (PAN) [Section 206AA]

Section 206AA has been inserted with effect from April 1, 2010. The provisions of section are as under :

- Every person whose receipts are subject to TDS (i.e. the Deductee) shall furnish his PAN to the Deductor. It will be compulsory from 01.04.2010.
- If the Deductee does not furnish PAN to the Deductor, the Deductor will deduct tax at source at higher of the following rates :
  - (a) the rate prescribed in the Income Tax Act, 1961
  - (b) the rate mentioned in the Finance Act
  - (c) at the rate of 20%
- The provision that TDS would be deductible at the above-mentioned rates, will also apply in cases where the Deductee files a declaration under Section 197A in Form No. 15G or 15H but he does not provide his PAN.
- No Certificate of tax deduction at a lower rate or no deduction of income-tax, as the case may be under Section 197 will be granted by the A.O. unless the application in Form No. 13 contains the PAN of the applicant.
- These provisions will also apply to non-residents where tax is deductible on payments or credits made to them.
- To ensure that the Deductor knows about the correct PAN of the Deductee, there is a provision for mandatory quoting of PAN of the Deductee by both the Deductor and Deductee in all correspondences, bills and vouchers exchanged between them.
- In the case of a ***transport operator engaged in the business of plying, hiring and leasing goods carriages***; tax will not be deducted u/s 194C if he furnishes his PAN to the Deductor. If PAN is not furnished, the rate will be 20% from 01.04.2010 onwards.

Assessee in default [Section 191 read with Section 201]

Where a person who is required to deduct tax at source, does not deduct, or after deducting fails to pay, the whole or any part of the tax, as required by the Act, then such person shall be deemed to be an assessee in default in respect of such tax under Section 191 read with section 201(1). He will be liable for payment of tax, interest, penalty and/or prosecution. Besides disallowance under Section 40(a) will be attracted.

Section 201(1A) :

If a person fails to deduct tax at source or after deduction fails to deposit TDS, is liable to pay interest (Such interest shall be paid before furnishing quarterly return) as follows :

Rate of interest upto 30.06.2010 (per month or part)	Rate of interest from 01.07.2010 (per month or part)	Period for which interest is payable
1%	1%	From the date on which tax was deductible to the date on which tax is actually deducted
1%	1.5%	From the date on which tax is actually deducted to the date on which tax is actually paid