Tax Deduction at Source

TDS

MIHIR DOSHI

<u>WHAT IS TDS??</u>

TEDIOUS

In Layman's Language:

- Certain Expenditure
- Paid to Certain Person
- Beyond Certain Limit
- In a specific period is subjected to TDS

Overview of the Presentation

- Scope of TDS provisions
- Rates of TDS
- Due-dates
- Issues
- Consequences of default
- Circulars
- Case laws

Objectives behind TDS

Pay as you Earn

Regular Cash Inflow

Avoid Evasion

Widening of Tax Base

Shift the Responsibility

Chapter XVII
Collection & Recovery of Taxes

A. Chapter XVII contains Machinery provisions in the aid of the substantive provisions of sections **4, 5, 28, 145** laying down the charge of income tax.

B. 4(1) Income Tax shall be charged in respect of the total income of the previous year.
4(2) In respect of Income chargeable u/s 4(1), income tax shall be deducted at source.

C. **Credit for tax deducted u/s 199**
TDS shall be treated as payment of tax on behalf of the person from whose income the deduction was made / owner of security / depositor / property / unit holder/shareholder.

D. Credit shall be given to him for the Assessment Year for which such income is assessable

TDS is only on the payments which are specified **under Chapter XVII B,** hence it is exhaustive in nature.
Therefore only those payments which are covered in the above chapter are liable for deduction of tax at source.

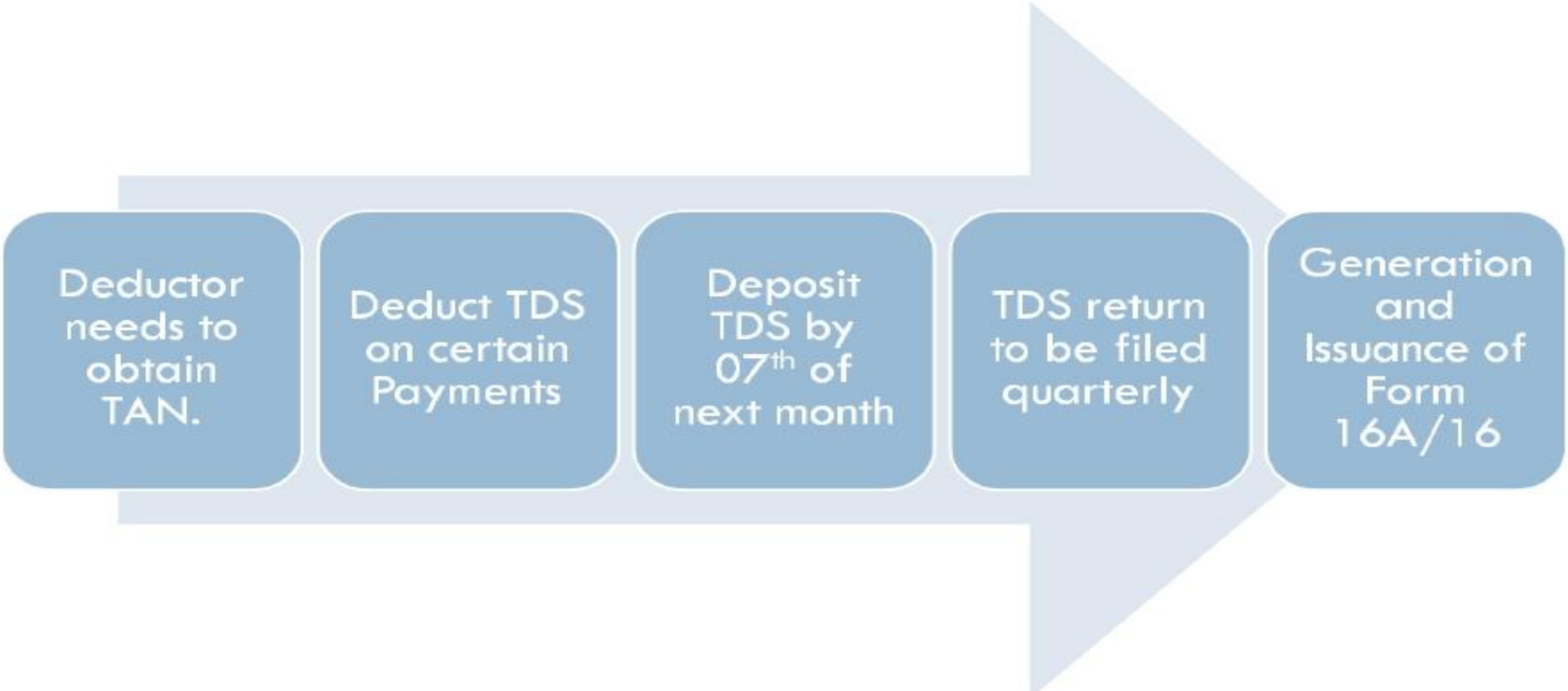
Important points relating to TDS

- What is the nature of payment being made?
- Is it covered by any of the TDS sections?
- On what amount is it to be deducted?
- What is the rate of TDS?
- When is it to be deducted?
- When is to be paid to the Govt.?
- Which challan is to be used for payment?
- Which TDS statement is to be filed?
- When is it to be filed?
- Which form of TDS certificate to be issued?
- When is it to be issued?

Procedure and Scheme of TDS in brief

- The procedure to be followed by the payer:
  - Application Form no. 49B for allotment of TAN or TCAN.
  - Payer of income is to deduct tax from the income / payment mentioned in the various sections i.eS.192 to 196D Challan no. ITNS 281
  - Tax deducted should be deposited through Each Section within the requisite time to the credit of Central Government.
  - Separate Challan should be used to deposit tax under EACH SECTION
  - Correct nature of payment code to be indicated in the relevant column in challan.
  - Separate Challan should be used to deposit tax in case of corporate and non corporate assesses.

Steps for TDS



TDS Rates Chart FY 2012-13

Sl. No.	Section Of Act	Nature of Payment in brief	Cut Off Amount		Rate %	
			01.04.2012	01.07.2012	HUF/IND	Others
1	192	Salaries	Salary income must be more then exemption limit after deductions.		Average Rate	
2	193	Interest on debentures	2500	5000	10	10
3	194A	Interest other than Int. on securities (by Bank)	10000	10000	10	10
3A	194A	Interest other than Int. on securities (By others)	5000	5000	10	10
4	194B	Lottery / Cross Word Puzzle	10000	10000	30	30
5	194C(1)	Contracts	30000	30000	1	2
5A	194C(2)	Sub-contracts/ Advertisements	30000	30000	1	2
6	194G	Commission on sale of lottery tickets	1000	1000	10	10
7	194H	Commission or Brokerage	5000	5000	10	10
8	194I	Rent (Land & building)	180000	180000	10	10
		Rent (P & M , Equipment, furniture & fittings)	180000	180000	2	2
9	194J	Professional/Technical charges/Royalty & Non-compete fees	30000	30000	10	10
10	194J(1)(ba)	Any remuneration or commission paid to director of the company**(Effective from 1 July 2012)**	NA	NIL	10	10

1. Yearly limit INR 75,000/-
2. Surcharge is applicable only on Salary Income as well payment to Foreign company
3. Education Cess & SHEC is applicable only on Salary and payment to Non residents & Foreign Company

TIME OF TAX DEDUCTION

TAX DEDUCTED	SECTIONS
At the time of **PAYMENT**	192,194,194B,194BB,194EE, 194F
At the time of **PAYMENT OR CREDIT**	193,194A,194C,194D,194E,194G, 194H, 194I,194J,195

Section 192
- TDS on salaries

Salary (Sec.192)

Who is the payer	Employer
Who is the recipient	Employee
Payment Covered	Taxable Salary of the employee
At what time TDS to be deducted	At the time of payment
Maximum amount which can be paid without tax deduction	The amount of exemption limit (*i.e.,* Rs.200000/250000/500000 for A.Y. 2013-14)
Rate at which tax to be deducted.	Average rate of Income Tax
When the provisions are not applicable	--
Is it possible to get the payment without tax deduction or with lower tax deduction	The employee can make application in Form No.13 to the Assessing Officer to get the certificate of lower tax deduction or no tax deduction.

Some Issues - Multiple employments

- Either simultaneously or one after the other

- Employee *may* furnish details of salaries (and TDS there from) received from the former / other employer(s) to the later / other employer(s). The information is to be furnished in **FORM No. 12B.**

- In such cases, the later / other employer is under an obligation to take into account those details

- What if the employee does not give these details? The employer cannot be held responsible for this.

Income under Other Heads

- Employee not under an obligation to furnish details of income under other heads
- If he furnishes the details of income and TDS thereon, the employer is under an obligation to take them into account.
- There is no prescribed form for this.
- Loss under any head, except house property, cannot be taken into account

Other Issues

- The annual circular is issued by the CBDT every year guides employers on how to compute the taxable salary and the tax

- Short or excess deduction can be adjusted from subsequent salaries within the same year.
  - CIT vs Marubeni P. Ltd [294 ITR 157]
  - A.P State electricity board [20 ITD 318] (Hyd)
  - Vinsons [89 ITD 267](Mum)

- Proof for allowance u/s 10(14) and deduction under chapter VI
  - Larsen and Tubro [221CTR 620]

- Disallowance u/s 40a(iii) – Salary paid to non-residents

Section 193

- TDS on Interest on securities

Interest on Securities (Sec. 193)

Who is the payer	Payer of interest on securities
Who is the recipient	A resident person holding securities
Payment covered	Interest on securities
At what time TDS to be deducted.	At the time of payment or at the time of credit, whichever is earlier
Maximum amount which can be paid without tax deduction	Rs. 5000
Rate at which TDS to be deducted	10%
When the provisions are not applicable	Interest on Central/State Government securities
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make application to the Assessing Officer in Form No. 13 or declaration to the payer in Form 15G or 15H as applicable

Section 194
- TDS on Dividends

Section 194 - Dividends

- Effectively, TDS is applicable only for deemed dividend u/s. 2(22)(e) for an amount exceeding Rs. 2,500

- **At what rate to deduct? –** 10% (Rate applicable to any other income)

Section 194A
- TDS on Interest other than interest on securities

Interest other than interest on Securities(Sec 194A)

Who is the payer	Any person paying interest other than interest on securities
Who is the recipient	A Resident person
Payment covered	Interest other than interest on securities
At what time TDS to be deducted.	At the time of payment or at the time of credit, whichever is earlier
Maximum amount which can be paid without tax deduction	-If payer is banking company, co-operative engaged in banking business Rs 10000/- -if Payer is any other person Rs 5000/-
Rate at which TDS to be deducted	10% if the recipient is resident non-corporate assessee and 20% if the recipient is resident corporate assessee
When the provisions are not applicable	If the payee are Insurance companies or financial institutions including co-operative societies etc.
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make application to the Assessing Officer in Form No. 13 or declaration to the payer in Form 15G or 15H as applicable

Interest – section 2(28A)

Interest means

- Interest payable in any manner
- In respect of money’s borrowed or debt incurred including a deposit, claim or other similar right or obligation
- Includes any service fee or other charge in respect of money’s borrowed or debt incurred or in respect of any credit facility which has not been utilized

Some issues

- Tax not to be deducted at source in respect of the provision for interest accrued but not due. (Circular no. 3/2010, dated 2-3-2010)
  - Industrial Development Bank of India vs ITO (2006) 10 SOT 497 (Mum)
  - Bank of Maharashtra v ITO (2010) (Ahm Tribunal)

- Whether capitalization of interest payable attracts TDS U/S 194A?
  Yes. Capitalization of interest payable attracts the provisions of TDS. TDS is to be made on interest payment regardless of the fact whether borrower uses funds for acquiring fixed assets, capital assets or stock-in-trade or for making payments of trading debts.

- Form 15H / 15G must precede the date of credit or payment of interest
  - Sudershan Auto & General Finance [60 ITD 177](Delhi)

Section 194B
– Winnings from lottery or crossword puzzle.

Winnings from Lotteries or Crossword Puzzles (Sec. 194B)

Who is the payer	Any person paying winnings from lotteries/crossword puzzles/card games/other games
Who is the recipient	Any Person
Payment covered	Winnings from lotteries/crossword puzzles/card games/other games
At what time TDS to be deducted.	At the time of Payment
Maximum amount which can be paid without tax deduction	If the amount payment is Rs. 10000/-
Rate at which TDS to be deducted	30%
When the provisions are not applicable	--
Is it possible to get the payment without tax deduction or with lower tax deduction	Not Possible

194 B – Gift (prize by way of winnings from lottery) given in kind

(i) **If prize is given partly in cash and partly in kind -** Tax will be deducted from cash prize with reference to the aggregate amount of the cash prize and the value of prize in kind. And where in the part of cash is not sufficient to meet the liability for tax deduction in respect of whole of the winnings then payer has to collect the balance from the payee.

(ii) Where the prize is wholly in kind - The payer has to collect the liability for tax deduction from payee.

Example – Mr." X "wins a Maruti-Zen value of Rs.3,70,000/- on August 20, 2008, in a draw of lot organized by Maruti Udyog. Tax liability on prize in kind comes to Rs.1,14,330/- (i.e., 30.9% of Rs.3,70,000/-) which may be recovered by the Maruti Udyog from Mr. "X" and the same can be deposited with the government on account of tax deduction.

Section 194C
- TDS on payment to contractors and sub-contractors

Section 194C – Payments to contractors and sub-contractors

- Substitution of the entire section w.e.f 01/04/2009
- Applicable to Individuals and HUF only if they are liable for tax audit during the **preceding** financial year
- **What is covered? - Payment made for carrying out any work including supply of labour for carrying out any work, in pursuance to a contract**
- Written as well as Oral contracts are covered
- **No TDS if payment is made by an Individual/HUF for personal purposes**
- **Tax to be deducted on advance payment against the contract**

Monetary Limit and Rates

- Single payment exceeds Rs. 30,000, or
- Aggregate payments during the financial year exceed or are likely to exceed Rs. 75,000

- **At what rate to deduct? -**
  - Payment to Individual and HUF: 1%
  - Other than Individual and HUF : 2%
  - No Difference between contractor and sub-contractor

- Payments to **Transport Contractors** – No TDS on furnishing PAN.
- Otherwise, TDS as per the above rates. w.e.f 01/04/2010 - @20%

- Person responsible for making payment to transporter to furnish prescribed information.

Contract for sale v Contract for work

- Customer specific sale is still a contract for sale
  - Seagram Manufacturing [19 SOT 139](Del)
  - Whirlpool of India Ltd. [16 SOT 435](Del)
  - BDA Ltd. Vs ITO(TDS) [281 ITR 99] (Bom)
  - CIT vs Dabur India Ltd. [283 ITR 197](Del)
  - CIT vs Glenmark Pharmaceuticals Ltd (2010) 191 Taxman 455 (Bom)
- Printing of books
  - Where paper is supplied by the customer, it is a contract for work
  - Where paper is provided by the printing press, it is a contract for sale
  - However, Q. No. 15 of Circular No. 715 dated 08-08-1995 suggests Tax to be deducted u/s 194C which will have to be interpreted in light of the amendments in Section 194C.

What is ‘Work’?

Work *includes*:

- Advertising
- Broadcasting and telecasting including production of programmes for broadcasting and telecasting
- Carriage of goods and passengers by any mode other than railways
- Catering
- *Manufacturing a product according to specification of customer by using material purchased from customer*

Reimbursement of expenses

- The term 'Any Sum' refers to the Gross Amount paid under the contract. Hence, reimbursement of expenses would also attract TDS
- Reimbursement of actual expenses cannot be deducted out of the bill amount for the purpose of tax deduction at source
  - CBDT's Circular No. 715 dated 8-8-1995

Service tax

- Since section 194C refers to **any sum paid**, TDS will be attracted on the service tax portion also

- Circular No. 4/2008 states that TDS should not be made on service tax element of rent. Since the circular specifically mentions rent, it cannot be applied for the purpose of section 194C

Car / Bus / Helicoptor Hire charges

- The terms of hire need to be examined
- Section 194C includes payment for carriage of goods and passengers
- Hirer should not have control over the direction of the car
- It should be a time charter – Gosalia Shipping Co case
- Point-to-point service / Pick and drop facility is covered under section 194C
- **Controversy now resolved by amendment made by Finance Act 2009**

- **SKIL Infrastructure Ltd. Vs. ITO (ITAT Mumbai)- 2011**
- ACIT vs. Accenture Services (P.) Ltd. 44 SOT 290 (Mum)
- Tata AIG General Insurance Co. Ltd. vs. ITO 43 SOT 215 (Mum)
- Ahmedabad Urban Development Authority vs. ACIT ITA No. 1637/Ahd/2010 dated 10.03.2011

Payments to Hotels for other facilities

- Whether TDS is required to be deducted on payments made to hotels for availing incidental amenities like food and beverages, laundry, telephone, wifi, health club, etc. alongwith accommodation?
  - East India Hotels Ltd [2009-TIOL-122-HC-MUM-IT]

Section 194H
- TDS on Commission and Brokerage

Commission or Brokerage (Sec.194H)

Who is the payer	Any person paying commission or brokerage
Who is the recipient	Any resident person
Payment covered	Commission or brokerage (not being insurance commission)
At what time TDS to be deducted.	At the time of payment or at the time of credit, whichever is earlier
Maximum amount which can be paid without tax deduction	If the amount of payment is Rs. 5000 or less than Rs. 5000
Rate at which TDS to be deducted	10%
When the provisions are not applicable	--
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make an application in Form No.13 to the Assessing Officer to get a certificate of lower tax deduction or no tax deduction

Points to be noted

- Existence of agency relationship is implied
- Commission should be distinguished from discount
  - Ahmedabad Stamp Association [176 CTR 193](Guj)
- Contract of agency should be distinguished from contract of sale
  - CIT v Qatar Airways (2011) 332 ITR 253 (Bom)
  - CIT v Jai Drinks Pvt Ltd (2011) 198 Taxman 271 (Del)
  - CIT v Mother Dairy India Ltd (2012) 18 Taxmann.com 49 (Del)

Section 194-I
- TDS on Rent

Rent (Sec.194-I)

Who is the payer	Any person paying rent (not being an individual or HUF whose books of account are not required to be audited under section 44AB in the immediately preceding financial year)
Who is the recipient	A Resident Person
Payment covered	Rent
At what time TDS to be deducted.	At the time of payment or at the time of credit, whichever is earlier
Maximum amount which can be paid without tax deduction	Rs. 180000/-
Rate at which TDS to be deducted	*For Plant and Machinery Rent **2%** and for* *For Use of and Land or Building including Furniture etc.* ***Individual Huf 10%*** ***For any other 10%***
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make application in Form No. 13

What is Rent?

- Any payment, by whatever name called
  Under any lease, sub-lease, tenancy or any other agreement or arrangement
  For the use ,either separately or together, of any
  - Land
  - Building
  - Land appurtenant to a building
  - Machinery or Plant
  - Equipment, Furniture or Fittings
  - Whether or not owned by the payee

Service tax

- No TDS on service tax element of rent
  - Circular No. 4/2008

Rent Deposits

- No TDS in case of refundable deposits

- However, if deposit is non-refundable, it partakes character of rent and liable to TDS at the time of payment of deposit
  - Reebok India Company [291 ITR 455](Del). Deposit was to be adjusted after certain period. Court held it to be advance rent liable for TDS upfront.

- Interest, if any, on deposits will be covered under section 194A

- No Notional income on deposits
  - Circular No. 718

Advance rent

- Difficulty in claiming TDS credit in case of advance rent since income is spread over more than one year

  - TDS Credit is allowed in the same proportion in which advance rent is offered to tax
  - Credit for all such years will be allowed based on the single TDS certificate
  - Circular No. 5/2001

Payment for Hotel Rooms

- Payment made to hotels for rooms taken on *regular basis* would be in the nature of rent
  - Circular No. 715

- Meaning of the term *'Regular basis' (Circular No. 5/2002)*
  - Where earmarked rooms let out for a specific rate and specified period, it is in the nature of accommodation on a regular basis
  - Same would be the case where rooms are not earmarked but hotel is under a legal obligation to provide such rooms

Co-owned property

- If the share of each co-owner can be ascertained, the limit of Rs. 1.8 lacs will apply to each co-owner separately
  - Circular No. 715 dated 8-8- 1995
  - CIT, Muzaffar Nagar v Senior Manager, SBI (2012)

Warehousing charges and Cold storages

- **Warehousing charges** paid for storage of goods is covered u/s 194I
  - Circular No. 718
  - Hindustan Coca Cola Beverages (P.) Ltd. 90 ITD 720 (T-Del.)

- **Cold storages** provide a composite service – Preservation of goods and their storage
- Storage is only incidental to the main purpose of preservation
- No hiring of building, plant or machinery
- Customer is not given any right to use a demarcated space or machinery
- The arrangement is contractual in nature and attracts TDS under section 194C and not under section 194-I
  - Circular No. 1/2008

- Whether above circular could taken help of in case of preservation of files, documents, etc?

Section 194J
- TDS from Fees for Professioanal and Technical Services

Fees for Professional or Technical Services (Sec.194J)

Who is the payer	Any person paying professional charges (not being an individual or HUF whose books of account are not required to be audited under section 44AB in the immediately preceding financial year)
Who is the recipient	Any Person
Payment covered	Professional services, technical services, Royalty,
At what time TDS to be deducted.	At the time of payment or at the time of credit, whichever is earlier
Maximum amount which can be paid without tax deduction	If the amount of payment during the financial year is Rs. 30000 or less than Rs. 30000
Rate at which TDS to be deducted	10%
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make application in Form No. 13

Exclusions

- No TDS if fees for professional services are paid by an Individual or HUF for personal purposes of the individual or member of the HUF

- No TDS if the payment does not exceed Rs. 30,000 in aggregate during the financial year

- The limit of Rs. 30,000 applies separately to the items covered by the section

Professional services

Services rendered by a person in the course of carrying on a:

- Legal profession
- Medical profession
- Engineering profession
- Architectural profession
- Accountancy profession
- Technical consultancy profession
- Interior decoration profession
- Profession of Information Technology
- Profession of Company Secretary
- Film artistes
- Sports person, Umpires and Referees, Coaches and trainers, Team Physicians and Physiotherapists, Event Managers, Commentators, Anchors and Sports Columnists (Notification 2085(E) dated 21st August 2008)

Section 194 J

- Since section 194J refers to “any sum paid”, TDS is applicable even on reimbursement of expenses including service tax
  - Circular no. 715
- If separate bill is raised for reimbursement of expenses, TDS is not applicable
  - Dr. Willmar Schwabe India (P) Ltd. [3 SOT 71](Del)

Non-resident making payment to professional in India

- Non-resident making payment of professional fees to any resident CA, lawyers, advocate and solicitor is not required to deduct tax provided:
  - Such fees is paid through regular banking channels
  - Such non resident does not have any agent, business connection or permanent establishment in India
  - Circular No. 726

Some Issues

- Payment to Agencies providing **Recruitment Services** whether through Internet or Otherwise – Liable to deduct TDS u/s 194J
  - Circular 715

- Transaction fees paid to **Stock Exchange** an the basis of volume of transactions is payment for use of facilities provided by stock exchange and not for any services, either technical or managerial, hence provisions of section 194J are not attracted
  - Kotak Securities Ltd. [25 SOT 440](Mum)
  - Dun & Bradsteet [272 ITR 99](AAR)

Some Other Issues

- Credit for TDS (In case of cash system of accounting)
- Though tax deduction will show up as credit in Form 26AS, the assessee as professional has to claim credit for TDS relating to income offered to tax during the year.

Credit for TDS

Rule 37BA- Credit for TDS

- **Section 199** is the relevant section.
- Credit for TDS shall be given to deductee on the basis of information relating to tax dedcution furnished by the deductor to tax authority.
- Credit for taxes should be allowed to the payee in the year in which the income is assessable.
- If income on which tax is deducted is assessable in the hands of a person other than deductee, credit shall be given to that other person.
- For e.g.
  - Income of deductee is included in income of other person u/s 60,61,64 etc.
  - Income of AOP or trust is assessable in the hands of the members / beneficiary
  - Income received by a partner or member of HUF, which is assessable in the hands of firm or HUF.

Rule 37BA- Credit for TDS

- In case of joint ownership of a property where income from such property is taxable in the hands of the joint owners, TDS credit would be allowed in proportion to the ownership interest.
- **Deductee must file a declaration with the deductor** specifying the name, address, PAN of the person to whom credit is to be given and reasons for giving credit to such person.
- The deductor shall issue the certificate for deduction of tax at source to the person so specified.

Form 27A is a summary of TDS return (Form 24Q, 26Q or 27Q), which contains control totals of 'Amount Paid' and 'Income tax deducted at source'.

Sec. 200 and Rule 31A

FORM NO.	PARTICULARS	PERIODICITY	DUE DATE OF RETURN
Form 24Q	Quarterly statement for tax deducted at source from **"Salaries" to Resident as well Non Resident**	Quarterly	July 15, October 15, January 15 and May 15
Form 26Q	Quarterly statement of tax deducted at source in respect of all payments **other than "Salaries"**	Quarterly	July 15, October 15, January 15 and May 15
Form 27Q	Quarterly statement of deduction of tax from interest, dividend or any other sum payable to **non-residents**	Quarterly	July 15, October 15, January 15 and May 15

Issue TDS Certificates Sec. 203

Sr. No.	Form no	Periodicity	Cut off Date
1	16 For Salary	Annual	31^{st} May of following financial year
2	16A Other than salary	Quarterly	Within 15 days from due date of furnishing the TDS statement under rule 31A

	FY 2010-11	FY 2011-12	FY 2012-13
Download Form 16A from TIN Web Site	Optional	Mandatory for Companies and Banks. Optional for others	Mandatory for all type of deductors
Digitally Sign Form 16A	Optional but only if downloaded from TIN Web site	Optional but only if downloaded from TIN Web site	Optional but only if downloaded from TIN Web site
Manually Issue TDS Certificate(Form 16A)	All deductors can manually issue TDS Certificate	Companies and Banks cannot manually issue TDS Certificate	No deductors can issued manually TDS certificate
Manually Issue TDS Certificate(Form 16 salary)	All deductors can manually issue TDS Certificate	All deductors can manually issue TDS Certificate	All deductors can manually issue TDS Certificate

Dates for Payment of TDS

Deductor	For March	For April to February
Government	On or before 7th of next month for salary	On the same day for other than salary & on or before 7th of next month for salary
Other than Government	On or before 30th April *(notification 41/2010 dated 31.05.2010)*	On or before 7th of next month
Special Cases	30th April	Quarterly payment on or before 7th of the month succeeding quarter

Defaults In TDS
- Consequences

Non compliance with TDS provisions can result in:

1. Disallowance u/s. 40(a)(ia) of Income Tax Act, 1961 (Act).
2. Raising of demand u/s. 201(1) of the Act.
3. Charging of Interest u/s. 201(1A) of the Act.
4. Levying penalty u/s. 271C of the Act upto the amount of tax in default
5. Levying of penalty u/s. 221 of the Act for non payment of demand raised.
6. Prosecution u/s.276B of the Act involving rigorous imprisonment upto 7 years with fine.
7. Penalty u/s. 272BB of the Act for failure to apply for TAN or non-quoting thereof.
8. Penalty u/s. 272A (2)(k) of the Act for late / non filing of TDS returns. (Not applicable from 1st July 2012)

From 1st July, 2012

9. Fee U/s 234E for late filing of TDS Statement:
10. Penalty u/s. 271H for late filing or non- filing TDS statement

Effects of Evasion of TDS (Sec 201)

Sr. No.	Reasons	Effects
1.	Non deduction of TDS	The expenditure for which TDS to be deducted gets *DISALLOWED* & penal interest @1% for **every month or part of month** from the date on which such tax was deductible to the date of deduction
2.	Non payment of TDS	The expenditure for which TDS deducted but not paid gets disallowed
3.	Less deduction of TDS.	*The amount less deducted is required to be paid by the deduct or along with penalty*
4.	Late Payment of TDS	The deductors should have to pay *penal interest* @1.5% for **every month or part of month** from date of deduction to the date of payment.

After deducting not paying also leads to a **charge** being credited on the assets of the payer.

Section 195
- TDS on payment to non-residents

Section 195 – Other sums

- Section applies to all payers, including individuals and HUF
- Section covers payment made to a non-resident not being a company or a foreign company
- **What is covered? –** Payment in the nature of interest **or any other sum chargeable under the Act**
- **When to deduct? –** TDS at the time of payment or credit, whichever is earlier
- **At what rate to deduct? –** Rates in force for the section under which the payment falls (for e.g. Section 115A, 111A etc.) or treaty rate whichever is beneficial

An overview of TDS u/s 195

- Snapshot of the Section
  - Sec. 195(1) – Scope & conditions for applicability
  - Sec. 195(2) – Application by payer to A.O. for lower deduction of tax
  - Sec. 195(3 & 4) – Application by payee to A.O. for lower deduction of tax
  - Sec. 195(5) – Powers to CBDT to make Rules
  - Sec. 195(6) – Payer to furnish information in prescribed form

Certificate by CA for Remittance

- As amended by Notification No. 30/2009 dt. 25th March, 2009 w.e.f. 1st July,2009.
- CA certificate to be obtained in Form No.15 CB
- Form No. 15 CA to be furnished electronically by the assessee.

SECTION 206(AA)

- Furnishing PAN is compulsory for all TDS eligible payments covered under **Chapter XVII-B** , failing to which, Deductors will be deducting TDS at a higher rate.

- For such case, the rate of TDS should be determined at **higher of** below conditions:
  1. TDS rate prescribed in the Act ;
  2. Rate of Tax in force ;
  3. At 20%

- The section is applicable for all payments made on or after April 1, 2010.

- Declaration under Section sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A shall be valid only if PAN is furnished.

- No certificate under section 197 shall be granted unless the application made under that section contains the PAN of the applicant. TAN of the deductor is mandatory without which certificate cannot be generated from the system.

- The deductee shall furnish his PAN to the deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

THANK YOU

MIHIR DOSHI