TDS (Tax Deduction at source) RATES FOR FINANCIAL YEAR 2013-14

Sl. No.	Section Of Act	Nature of Payment in brief	CUT OFF	Rate %	
				HUF/IND	Others
1	192	Salaries		Average Rate	
2	193	**Interest on debentures**	5000	10	10
3	194	Deemed dividend	-	10	10
4	194A	Interest other than Int. on securities (by Bank)	10000	10	10
4A	194A	Interest other than Int. on securities (By others)	5000	10	10
5	194B	Lottery / Cross Word Puzzle	10000	30	30
6	194BB	Winnings from Horse Race	5000	30	30
7	194C(1)	Contracts	30000	1	2
8	194C(2)	Sub-contracts/ Advertisements	30000	1	2
9	194D	Insurance Commission	20000	10	10
10	194EE	Payments out of deposits under NSS	2500	20	-
11	194F	Repurchase of units by MF/UTI	1000	20	20
12	194G	Commission on sale of lottery tickets	1000	10	10
13	194H	Commission or Brokerage	5000	10	10
14	194I	Rent (Land & building) furniture & fittings)	180000	10	10
		Rent (P & M , Equipment)	180000	2	2
15	194 IA	TDS on transfer of immovable property other than agriculture land (wef 01.06.13)	50 Lakh	1	1
16	194J	Professional/Technical charges/ Royalty & Non-compete fees	30000	10	10
17	**194J(1)(ba)**	**Any remuneration or commission paid to director of the company** (Effective from 1 July 2012)	NIL	10	10
18	194LA	Compensation on acquisition of immovable property	200000	10	10

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Note:

1. **Yearly Limit u/s 194C**: Where the aggregate of the amounts paid/credited or likely to be paid/credited to Contractor or Sub-contractor exceeds Rs.75,000 during the financial year, TDS has to be deducted u/s 194C.
2. **TDS at higher rate ie., 20%** has to be deducted if the deductee does not provide PAN to the deductor.(read detail u/s 206AA)
3. **No TDS on Goods Transport** :No deduction shall be made from any sum credited or paid or likely to be 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.(read details here **No TDS on Goods Transport**)
4. **Surcharge on tax is not deductible**/collectible at source in case of resident individual/ HUF /Firm/ AOP / BOI/Domestic Company in respect of payment of income other than salary.
5. Surcharge on TDS is applicable on payment made to non resident other than company ,if payment is in excess of one crore.(10 %)
6. Surcharge on TDS on salary is applicable if taxable salary is more than one crore @ 10 %
7. **In the case of Company other than Domestic Company**,
   - (i) at the rate of two per cent. of such tax, where the amount or the aggregate of such amounts collected and subject to the collection exceeds one crore rupees but does not exceed ten crore rupees;
   - (ii) at the rate of five per cent. of such tax, where the amount or the aggregate of such amounts collected and subject to the collection exceeds ten crore rupees.
8. **No Cess on payment made to resident:** Education Cess is not deductible/collectible at source in case of resident Individual/HUF/Firm/ AOP/ BOI/ Domestic Company in respect of payment of income other than salary.Education Cess @ 2% plus secondary & Higher Education Cess @ 1% is deductible at source in case of non-residents and foreign company.
9. **TDS by Individual and HUF (Non Audit) case not deductible :**An Individual or a Hindu Undivided Family whose total sales, gross receipts or turnover from business or profession carried on by him does not exceeds the monetary limits(Rs.100,00,000 in case of business & Rs.25,00,000 in case of profession) under Clause (a) or (b) of Sec.44AB during the **immediately preceding financial year** shall not be liable to deduct tax u/s.194A,194C, 194H, 194I & 194J.So no tax is deductible by HUF/Individual in first year of operations of business even sales/Fees is more than 100/25 Lakh.

Various situations and Surcharge /Cess applicable on TDS/TCS				
Payment to		**payment**	**Surcharge**	**Cess**
Resident	Non-corporate	salary(up to 1 crore)	No	yes(3%)
	Non-corporate	salary(> I crore)	yes (10%)	yes (3%)
	Non-corporate	other than salary	No	No
	Corporate	other than salary	No	No
Non-Resident	Non-corporate	salary(up to 1 crore)	No	yes (3%)
	Non-corporate	salary(> I crore)	Yes (10 %)	yes (3%)
	Non-corporate	other than salary up to one Crore	No	yes (3%)
	Corporate	other than salary (> 1 Crore to 10 crore)	yes(2%)	yes (3%)
	Corporate	other than salary > 10 Crore	yes(5%)	yes (3%)

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20 % discount on TDSMAN ETDS Software(till 25.04.2013) 10 % discount after 20.04.2013

TCS (tax collection at source rates fy 2013-14)(read more details by Tax collection at source)

Sl.No.	Nature of Goods	Rates in %
1	Alcoholic liquor for human Consumption	1
2	Tendu leaves	5
3	Timber obtained under forest lease	2.5
4	Timber obtained by any mode other than a forest lease	2.5
5	Any other forest produce not being timber or tendu leaves	2.5
6	Scrap	1
7	Parking lot	2
8	Toll plaza	2
9	Mining & Quarrying	2
10	**Minerals, being coal or lignite or iron ore**	**1 wef 01.07.2012**
11	**Bullion or jewellery (if the sale consideration is paid in cash exceeding INR 5 lakhs in jewellery and two lakh in case of Bullion)**	**1 wef 01.07.2012**

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Due date to Deposit TDS and TCS

“Time and mode of payment to Government account of tax deducted at source or tax paid under sub section (1A) of section 192.

Rule :30.
(1) All sums deducted in accordance with the provisions of Chapter XVII-B by an **office of the Government** shall be paid to the credit of the Central Government -

(a) on the same day where the tax is paid without production of an income-tax challan; and

(b) on or before seven days from the end of the month in which the deduction is made or income-tax is due under sub-section (1A) of section 192, where tax is paid accompanied by an income-tax challan.

Tax to be deducted by Govt Office		
1	Tax deposited without challan	Same day
2	Tax deposited with challan	7th of next month
3	Tax on perquisites opt to be deposited by the employer	7th of next month

(2) All sums deducted in accordance with the provisions of Chapter XVII-B by deductors **other than an office of the Government** shall be paid to the credit of the Central Government -

(a) on or before 30th day of April where the income or amount is credited or paid in the month of March; and
(b) in any other case, on or before seven days from the end of the month in which-

1. the deduction is made; or
2. income-tax is due under sub-section (1A) of section 192.

Tax deducted by other		
1	tax deductible in March	30th April of next year (In case of tcs 7th of April)
2	other months & tax on perquisites opted to be deposited by employer	7th of next month

(3) Notwithstanding anything contained in sub-rule (2), in special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192 or section 194A or section 194D or section 194H for the quarters of the financial

year specified to in column (2) of the Table below by the date referred to in column (3) of the said Table:-

SrNo	Quarter ended On	Date of payment
1	30th June	7th July
2	30the September	7th October
3	31st December	7th January
4	31st March	30Th April

Person required to file ETDS Return Filing due Dates

NOTIFICATION No. 238/2007, dated 30-8-2007.Now following person are liable to file etds/etcs return.

1. All Government department/office or
2. All companies.or
3. All person required to get his accounts audited under section 44AB in the immediately preceding financial year; or
4 The number of deductees' records in a quarterly statement for any quarter of the immediately preceding financial year is equal to or more than fifty,

DUTIES OF TAX DEDUCTOR/COLLECTOR

1. To apply for Tax Deduction Account Number (TAN) in form 49B, in duplicate at the designated TIN facilitation centers of NSDL(please see www.incometaxindia.gov.in), within one month from the end of the month in which tax was deducted.
2. To quote TAN (10 digit reformatted TAN) in all TDS/TCS challans, certificates, statements and other correspondence.
3. To deduct/collect tax at the prescribed rates at the time of every credit or payment, whichever is earlier, in respect of all liable transactions.
4. To remit the tax deducted/collected within the prescribed due dates by using challan no. ITNS 281 by quoting the TAN and relevant section of the Income-tax Act.
5. To issue TDS/TCS certificate, complete in all respects, within the prescribed time in Form No.16(TDS on salaries), 16A(other TDS) 27D(TCS).
6. To file TDS/TCS quarterly statements within the due date.
7. To mention PAN of all deductees in the TDS/TCS quarterly statements.

CONSEQUENCES OF DEFAULT

Failure to deduct or remit TDS /TCS(full or part)

- **Interest**: Interest at the rates in force (12% p.a.) from the date on which tax was deductible /collectible to the date of payment to Government Account is chargeable. The Finance Act 2010 amended interest rate wef 01.07.2010 and created a separate class of default in respect of tax deducted but not paid to levy interest at a higher rate of 1.5 per cent per month, i.e. 18 per cent p.a. as against 1 per cent p.m., i.e. 12 per cent p.a., applicable in case the tax is deducted late after the due date. The rationale behind this amendment is that the tax once deducted belongs to the government and the person withholding the same needs to be penalized by charging higher rate of interest Penalty equal to the tax that was failed to be deducted/collected or remitted is leviable.
- In case of failure to remit the tax deducted/collected, rigorous imprisonment ranging from 3 months to 7 years and fine can be levied.
- **Failure to apply for TAN** in time or Failure to quote allotted TAN or Wrong quoting of TAN :Penalty of Rs.10,000 is leviable u/s.272BB(for each failure)
- **Failure to issue TDS/TCS certificate i**n time or **Failure to submit form 15H/15G** in time or **Failure to furnish statement of perquisite**s in time or F**ailure to file Quarterly Statements** in time: For each type of failure, penalty of Rs.100/- per day for the period of default is leviable. Maximum penalty for each failure can be up to the amount of TDS/TCS.

New Section for Penalty for non submission of ETDS /ETDS return (section 271H)(applicable from 01.07.2012)

- Failure to deliver statement within time prescribed u/s 200 (3) or to the proviso to sub-section (3) of section 206C may liable to penalty which shall not be less than Rs. 10,000/- but which may extend to Rs. 1,00,000/-. No penalty if payment of tax deducted or collected along with fee or interest and delivering the statement aforesaid before the expiry of 1 year from the time prescribed for delivering the such statement. However No penalty shall be imposed u/s 271H if the person proves that there was reasonable cause for the failure.(section 273B)

Assessee In default (amendment in section 201)

The Deductor will not to be treated as assessee in Default provided the resident payee has furnished his return u/s 139 and has taken into account such amount for computing income in such Return of Income and has paid the Tax Due on the income declared by him in such return of income and furnishes a certificate to this effect, duly certified by a CA, in the prescribed form. This form is yet to be notified.

However, the interest for not deducting tax would be payable from the date on which such tax was collectible till the date of furnishing of return of income by the resident payee.

Due Dates For ETDS returns (Form 24Q for salary and 26Q for contractors others ,27Q for Non-resident

Due date ETDS return 24Q, 26Q 27Q and Form16 ,Form 16A					
Sl. No.	Quarter ending	From 01.11.2011 on wards For Govt offices		For other deductors	
		Etds return	Form 16A	Etds return	Form 16A
1	30th June	31st July	15th August	15th July	30th July
2	30th September	31st October	15th November	15th October	30th October
3	31st December	31st January	15th Feburary	15th January	30th January
4	31st March	15th May	30th May (31st May for form 16)	15th May	30th May (31st May for form 16)

Download Full Notification 41/2010.right click on link and select save target as or save link as as the case may be "

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Issuance Of TDS certificate Form 16 and Form 16A

Tax deducted on or after 01.04.2012, it is mandatory for all type of deductors to issue quarterly form 16A (non salary tds certificate) only after downloaded the same from the TDSCPC (TRACES) website. Earlier this was mandatory for only companies ,Banks and co-operative societies engaged in Banking services with effect from 01.04.2011 through circular number 3/2011.

Form 16A downloaded from TDSCPC (TRACES) can be signed manually or can be authenticated through digital signature only.

Though this will be an increase in work load on small traders also but it is welcome step as it will reduce arbitrary demands by department due to mismatching of TDS claimed and TDS shown on form 26AS. Moreover small traders are also not small now .TDS is to be deducted by HUF and Individual only if their turnover/Receipt is during the immediately preceding year more than limit prescribed under section 44AB .Present limit for FY 2012-13 is proposed to be increased to 1 crore for business and 25 lakh for Professionals.

	FY 2010-11	FY 2011-12	FY 2012-13 onwards
Download Form 16A from TDSCPC (TRACES) 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 TDSCPC (TRACES) Web site	Optional but only if downloaded from TDSCPC (TRACES) Web site	Optional but only if downloaded from TDSCPC (TRACES) Web site
Manually Issue TDS Certificate(Form 16A)	All deductors can manually issue TDS Certificate	Companies and Banks cannot manually issue TDS Certificate	No deductor can issue manually TDS certificate
Manually Issue TDS Certificate(Form 16 salary)	All deductors can manually issue TDS Certificate	All deductors can manually issue TDS Certificate	Form 16(PartA) is mandatory to downloaded form TDSCPC website Part B to be issued manually

So manually field form 16A cannot be issued for tax deducted on or after 01.04.2012.

Update (22.04.2012) Form 16 (Part-A) to be issued mandatory through download from TDSCPC website (circular 04/2013 dated 17.04.2013) salary can be issued without downloading from the TDSCPC (TRACES) site. Now you are interested in how you can download Form 16A from TDS CPC (TRACES) website

Update :Please Note that Form 16A now(01.01.2013) shall be available through new website www.tdscpc.gov.in only .Read more from links given below

1. Procedure How to register at TRACES (www.tdscpc.gov.in) and
2. How to download Form 16A form TRACES (www.tdscpc.gov.in)
3. HOW TO DOWNLAOD FORM16 FROM TDSCPC WEBSITE

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GENERAL INFORMATION

1. Deduction at lower or nil rate requires certificate u/s.197, which will take effect from the day it is issued. It cannot be used retrospectively.
2. If TDS/TCS certificate is lost, duplicate may be issued on a plain paper giving necessary details marking it as duplicate.
3. Refund can be claimed by the deductee on filing of return of income.
4. Even if the recipient of payment has shown it in his income-tax return and paid the taxes thereon, the deductor/collector who has failed to deduct/collect tax will be liable to pay interest and penalty.

Other Point to be noted

1. TDS on Job work(194C) Tds on Job work has been relaxed read new definition u/s 194C.
2. TDS on Cold Storage (194C clarification)
3. TDS on Rent without service tax(194 I)(clarification 4/2008)
4. Tds on Professional service (194J) including service tax (clarification)
5. TDS on Rent (various circulars by department on tds on rent)
6. Do and Dont's Tax deposit of Taxes
7. E-payment of TDS mandatory from 01.04.2008
8. E-Payment Auto Filler for Tds Challan
9. E-Payment From Other Banks Account Allowed
10. TDS challan ITNS 281 In excel &
11. How to Fill TDS CHALLAN-ITNS 281
12. How To pay Income Tax/Tds Online FAQ
13. Nil TDS on Transporter and others to be reported in ETDS quarterly returns
14. 1% TDS on transfer of property u/s 194IA wef 01.06.2013
15. TDS changes by Budget 2012 (detailed)
16. TCS changes by Budget 2012(detailed)
17. TDS on rent section 194-1 brief notes, circular, notification and case laws
18. Procedure How to register at TRACES (www.tdscpc.gov.in) and
19. How to download Form 16A form TRACES (www.tdscpc.gov.in)

Non deduction, late deduction and Late deposit of Tax deducted at sources(TDS) may lead you to face following consequences.

- A: Interest on late deduction /deposit of Tax at source.
- B :Dis-allowance of Exp , on which tax has not been deducted /deposited u/s 40(a)(ia)
- C: Penalty and prosecution.(271C and 276B)

A.Interest on late deduction and delayed deposit of TDS

As per income-tax , interest is payable under the following two circumstances

1. Tax is not deducted , when it was deductible
2. Tax once deducted, is not paid on or before due date

To understand the above concept ,we must have to read

1. When Tax is to be deducted?
2. When tax deducted at source (TDS) is to be deposited (TDS due date of deposit)?

When tax is to be deducted

- **At the time of credit or payment, whichever is earlier**
  - 193- Interest on securities
  - 194A- Interest Other than "Interest on securities"
  - 194C- Payment to contractors / sub contractors
  - 194D – Insurance commission
  - 194H – Commission or Brokerage
  - 194G- Commission on sale of lottery tickets
  - 194I- Rent
  - 194J- Professional or technical fees

- **Before making payment or distribution**
  - 194- Dividend

- **At the time of payment**
  - 192- Salaries
  - 194B- Winning from lotteries / crossword puzzles
  - 194BB Winnings from horse races
  - 194EE – Payment from National Saving Scheme
  - 194F Payment for repurchase of units by UTI / mutual funds
  - 194LA: Payment of compensation on acquisition of certain immovable property

What is the Due date of deposit of TDS ?

All the TDS deductions made during a month are to be paid on or before 7th of the next month.

Example : All deductions made during April,2013 ,must be paid on or before May 7th, 2013.In case 7th of the month happens to be a Sunday or a bank holiday, then the payment can be made on the next business day.

However for deductions made during the month of March, payment must be made on or before 30th April.

Read more on due date of TDS,TCS, Form 16,Form 16A , etds returns

What is the rate of interest ?

W.e.f 01-07-2010

- From the date when TDS was deductible till date of actual deduction,rate of interest is 1% p.m.
- For delayed deposit, from date of deduction till actual date of payment, rate of interest is 1.5% p.m

Prior to 01-07-2010

From FY 2006-07 onwards for delayed deposit, from date of deduction till actual date of payment, rate of interest is 1.0% p.m

What is the due date of payment of interest ?

Interest must be calculated and paid before filing of eTDS statement of the quarter.
Quarter 1 Jul-15
Quarter 2 Oct-15
Quarter 3 Jan-15
Quarter 4 May-15
Read more on due date of TDS,TCS, Form 16,Form 16A , etds returns

How is interest to be calculated?

1. Interest is to be calculated for every month or part of a month comprised in a period,
2. Any fraction of a month shall be deemed to be a full month
3. The amount of tax, penalty or other sum in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and
4. for this purpose any fraction of one hundred rupees shall be ignored and the amount so rounded off shall be deemed to be the amount in respect of which the interest is to be calculated.

Example of Interest Calculation

Date Of Payment	Date of Deduction	Due Date	Date of Deposit	Delayed Deposit		Delayed Deduction	
				Months	Rate	Months	Rate
05/04/2012	05/04/2012	07/05/2012	09/05/2012	2	1.50%	-	-
10/04/2012	10/04/2012	07/05/2012	09/05/2012	1	1.50%	-	-
02/07/2012	04/08/2012	07/09/2012	07/09/2012	-	-	2	1%
02/07/2012	04/08/2012	07/09/2012	15/09/2012	2	1.50%	2	1%

One Day delay may charge you Interest @ 3 %: Suppose tax is deducted on 05.04.2012 and due date is 07.05.2012 however deposited after delay of one day on 08.05.2012.

Delay period in above case is : From 05.04.2012 to 08.05.2012 is one month and 3 days .As per above provisions part of the month is to be taken as full month .so delay of 2 month means 1.5 % per month fo 2 month =3 % interest . So delay of only one day of tds may cause you interest loss of three percent.

Rectifying Interest Default

- You may download default/Justification report notices after logging into your TAN account at tdscpc.gov.in
- Default Notice is a plain excel sheet without any password protection
- If there is any default on account of non-payment or short payment of interest, you need to pay up the same
- After paying , you have to file correction statement by including the interest payment challan.

Dis allowance of Expenses due to non payment of Tax deducted at source or non deduction of Tax

Section 40(ia): Following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",

1. any interest,or
2. commission or
3. brokerage or
4. rent or royalty or
5. fees for professional services or
6. fees for technical services payable to a resident, or
7. amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work),

on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid.

Expense allowed if tax deposit before the due date of deposit Income Tax return :if Tds is not deposited with due date but deposited on or before the due date specified in sub-section (1) of section 139 then expenses will not be disallowed.

Expenses will be allowed in actual year of tds deposit : Where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Rationalisation of the provision relating to dis allowance of expenditure under Section 40(a)(ia)

The amendment for Rationalisation of the provision relating to dis allowance of expenditure under Section
40(a)(ia) is in consequence of the amendment in Section 201. As per the amendment if the payer fails to deduct the whole or any part of the tax as per the provision of Chapter XVII-B on the amount paid
to any resident payee, the payer shall not be deemed to an assessee in default in respect of such tax, if the
following conditions are satisfied:

- (a) The payee has furnished his return of income under Section 139;
- (b) He has included such income in the return of income;
- (c) He has paid the tax due on the income declared in such return of income
- (d) The payer furnishes a certificate of chartered accountant in prescribed form.(form 26A)

The date of payment of taxes by such payee shall be deemed to be the date of filing of his return of income.

Accordingly, as per the amendment in Section 40(a)(ia) where an assessee fails to deduct whole or part of tax at source on any sum but is not deemed to be an assessee in default under Section 201(1), then for the purpose of Section 40(a)(ia) the assessee shall be deemed to have deducted and paid the tax on such sum on the date of filing of the return of income by the resident payee and therefore, no dis allowance under Section 40(a)(ia) shall be made.

Interest in above case:
If assessee avail the benefit of change in section 40(a)(ia) then interest @1 % shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such payee.

Example: Suppose a Ram paid Rs 10,00,000 as professional fees on 01.05.2012 to Sham but not deducted tax u/s 194J @ 10 % .Sham furnished his return on 30.08.2013. So to claim benefit of amendment in above section Ram has to

1. A certificate from CA on form 26A
2. Deposit interest from 01.05.2012 to 30.08.2013 @ 1 % for 16 months .

Penalty on Non deduction of TDS

Penalty for failure to deduct tax at source.
Section 271C. If any person fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B then, such person shall be liable to pay, by way of penalty, **a sum equal to the amount of tax which such person failed to deduct or pay** as aforesaid.This penalty is imposable by Joint Commissioner.

Prosecution for failure to deduct /deposit tax at source
Section 276B. If any person fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B then, such person he shall be punishable with rigorous imprisonment for a term which s**hall not be less than three months but which may extend to seven years** and with fineThis penalty is imposable by Joint Commissioner

Relevant section of Income Tax act

Consequences of failure to deduct or pay.[12]

201. [13][(1) Where any person, including the principal officer of a company,—

(*a*) who is required to deduct any sum in accordance with the provisions of this Act; or

(*b*) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

[13a]**[Provided** *that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—*

(i) *has furnished his return of income under section 139;*

(ii) *has taken into account such sum for computing income in such return of income; and*

(iii) *has paid the tax due on the income declared by him in such return of income,*

*and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:***]**

Provided [13b]**[further]** that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.]

[14][(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(*i*) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(*ii*) at one and one-half per cent for every month or part of a 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, and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200:]

[13b]**[Provided** *that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso of sub-section (1), the interest under clause* (i) *shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.***]**

(2) Where the tax has not been paid as aforesaid after it is deducted, [15][the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A)] shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

[16][(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of—

(*i*) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed;

(*ii*) [16a][*six*] years from the end of the financial year in which payment is made or credit is given, in any other case :

Provided that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day of March, 2011.

(4) The provisions of sub-clause (*ii*) of sub-section (3) of section 153 and of *Explanation 1* to section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).]

[16b][Explanation.—*For the purposes of this section, the expression "accountant" shall have the meaning assigned to it in the* Explanation *to sub-section (2) of* section 288.]

40. Notwithstanding anything to the contrary in sections 30 to [31][38], the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

[32](*a*) in the case of any assessee—

[33][(*i*) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,—

(*A*) outside India; or

(*B*) in India to a non-resident, not being a company or to a foreign company,

on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200 :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under sub-section (1) of section 200, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Explanation.—For the purposes of this sub-clause,—

(*A*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9;

(*B*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9;

(*ia*) any interest, commission or brokerage, [34][rent, royalty,] fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, [35][has not been paid on or before the due date specified in sub-section (1) of section 139 :]

[36][**Provided** that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but

paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.]

The following second proviso shall be inserted in sub-clause (*ia*) of clause (*a*) of section 40 by the Finance Act, 2012, w.e.f. 1-4-2013 :

Provided further *that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.*

Explanation.—For the purposes of this sub-clause,—

(*i*) "commission or brokerage" shall have the same meaning as in clause (*i*) of the *Explanation* to section 194H;

(*ii*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9;

(*iii*) "professional services" shall have the same meaning as in clause (*a*) of the *Explanation* to section 194J;

(*iv*) "work" shall have the same meaning as in *Explanation III* to section 194C;

[37][(*v*) "rent" shall have the same meaning as in clause (*i*) to the *Explanation* to section 194-I;

(*vi*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9;]

(*ib*) [38][***]]

[39][(*ic*) any sum paid on account of fringe benefit tax under Chapter XIIH;]

[40](*ii*) any sum paid on account of any rate or tax levied[41] on the profits or gains of any business or profession[41] or assessed at a proportion of, or otherwise on the basis of, any such profits or gains.

[42][*Explanation 1*.—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, any sum paid on account of any rate or tax levied includes and shall be deemed always to have included any sum eligible for relief of tax under section 90 or, as the case may be, deduction from the Indian income-tax payable under section 91.]

[43][*Explanation 2*.—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, any sum paid on account of any rate or tax levied includes any sum eligible for relief of tax under section 90A;]

[44][[45](*iia*) any sum paid on account of wealth-tax.

Explanation.—For the purposes of this sub-clause, "wealth-tax" means wealth-tax chargeable under the Wealth-tax Act, 1957 (27 of 1957), or any tax of a similar character chargeable under any law in force in any country outside India or any tax chargeable under such law with reference to the value of the assets of, or the capital employed in, a business or profession carried on by the assessee, whether or not the debts of the business or profession are allowed as a deduction in computing the amount with reference to which such tax is charged, but does not include any tax chargeable with reference to the value of any particular asset of the business or profession;]

[46][(*iii*) any payment which is chargeable under the head "Salaries", if it is payable—

(*A*) outside India; or

(*B*) to a non-resident,

and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B;]

(*iv*) any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries";

[47][(*v*) any tax actually paid by an employer referred to in clause (*10CC*) of section 10;]

[48][(*b*) in the case of any firm assessable as such,—

(*i*) any payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as "remuneration") to any partner who is not a working partner; or

(*ii*) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is not authorised by, or is not in accordance with, the terms of the partnership deed; or

(*iii*) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is authorised by, and is in accordance with, the terms of the partnership deed, but which relates to any period (falling prior to the date of such partnership deed) for which such payment was not authorised by, or is not in accordance with, any earlier partnership deed, so, however, that the period of authorisation for such payment by any earlier partnership deed does not cover any period prior to the date of such earlier partnership deed; or

(*iv*) any payment of interest to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as such amount exceeds the amount calculated at the rate of [49][twelve] per cent simple interest per annum; or

[50](*v*) any payment of remuneration to any partner who is a working partner, which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as the amount of such payment to all the partners during the previous year exceeds the aggregate amount computed as hereunder :—

[51][(*a*) on the first Rs. 3,00,000 of the book-profit or in case of a loss	Rs. 1,50,000 or at the rate of 90 per more;
(*b*) on the balance of the book-profit	at the rate of 60 per cent :]

Provided that in relation to any payment under this clause to the partner during the previous year relevant to the assessment year commencing on the 1st day of April, 1993, the terms of the partnership deed may, at any time during the said previous year, provide for such payment.

Explanation 1.—Where an individual is a partner in a firm on behalf, or for the benefit, of any other person (such partner and the other person being hereinafter referred to as "partner in a representative capacity" and "person so represented", respectively),—

(*i*) interest paid by the firm to such individual otherwise than as partner in a representative capacity, shall not be taken into account for the purposes of this clause;

(*ii*) interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of this clause.

Explanation 2.—Where an individual is a partner in a firm otherwise than as partner in a representative capacity, interest paid by the firm to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person.

Explanation 3.—For the purposes of this clause, "book-profit" means the net profit, as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit.

Explanation 4.—For the purposes of this clause, "working partner" means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner;]

[52][(*ba*) in the case of an association of persons or body of individuals [other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India], any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such association or body to a member of such association or body.

Explanation 1.—Where interest is paid by an association or body to any member thereof who has also paid interest to the association or body, the amount of interest to be disallowed under this clause shall be limited to the amount by which the payment of interest by the association or body to the member exceeds the payment of interest by the member to the association or body.

Explanation 2.—Where an individual is a member of an association or body on behalf, or for the benefit, of any other person (such member and the other person being hereinafter referred to as "member in a representative capacity" and "person so represented", respectively),—

(*i*) interest paid by the association or body to such individual or by such individual to the association or body otherwise than as member in a representative capacity, shall not be taken into account for the purposes of this clause;

(*ii*) interest paid by the association or body to such individual or by such individual to the association or body as member in a representative capacity and interest paid by the association or body to the person so represented or by the person so represented to the association or body, shall be taken into account for the purposes of this clause.

Explanation 3.—Where an individual is a member of an association or body otherwise than as member in a representative capacity, interest paid by the association or body to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person.]

(*c*) [*Omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989. Earlier, it was amended by the Finance Act, 1963, w.e.f. 1-4-1963, Finance Act, 1964, w.e.f. 1-4-1964, Finance Act, 1965, w.e.f. 1-4-1965, Finance Act, 1968, w.e.f. 1-4-1969, Finance (No. 2) Act, 1971, w.e.f. 1-4-1972, Finance Act, 1984, w.e.f. 1-4-1985 and Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.*]

(*d*) [*Omitted by the Finance Act, 1988, w.e.f. 1-4-1989.*]

[34][**Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.**

276B. If a person fails to pay to the credit of the Central Government,—

(*a*) the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or

(*b*) the tax payable by him, as required by or under—

(*i*) sub-section (2) of section 115-O; or

(*ii*) the second proviso to section 194B,

he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.]

[92][**Penalty for failure to deduct tax at source.**

271C. [93][(1) If any person fails to—

(*a*) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or

(*b*) pay the whole or any part of the tax as required by or under—

(*i*) sub-section (2) of section 115-O; or

(*ii*) the second proviso to section 194B,

then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.]

[94][(2) Any penalty imposable under sub-section (1) shall be imposed by the [95][Joint] Commissioner.]