"STANDARD OPERATING PROCEDURE FOR PROSECUTION IN CASES OF TDS/ TCS DEFAULT".

Two categories of cases for prosecution in TDS related offences:

LIST – A - MANDATORY PROSECUTION :-TDS of more than Rs. 1,00,000 deducted but not deposited before due date or Late payment Interest had not been paid completely /not at all paid:- Shall Mandatorily be processed for prosecution + recovery

LIST – B – DISCRETIONARY PROSECUTION: TDS of between Rs. 25,000/- to 1, 00,000/- deducted but not deposited before due date: - May be processed for prosecution depending upon facts and circumstances of the cases.

- CPC-TDS/TRACES will generate lists of prosecutable cases in accordance with the criteria laid down by the CBDT.
- In cases of default in furnishing the quarterly TDS statement, CPC-TDS shall generate the list of such non-filers within one month from due date and communicate to the AO(TDS) for issue of notice and further pursuit.

PROCEDURE FOR LAUNCHING PROSECUTION

1. identification of potential cases for prosecution by the CPC – TDS
2. Maintenance of Prosecution Register in FORM – C BY CPC – TDS
3. Reporting Of Cases By CPC – TDS TO CIT (TDS)
4. Maintenance of Prosecution Register in FORM – D BY CIT (TDS)
5. Collection of following information AO (TDS):
   - Details of the company/ firm/ individual

Name of the company/ firm/individual	Present address	PAN Number	TAN Number

   - Details of its directors/ partners/ proprietor etc.

Name of Directors/ Partners/ Proprietor as applicable for the relevant year	Date of birth	PAN & residential address

   - Accounts of the deductor for the relevant year showing late payments.
   - Copies of the TDS statement filed by assessee deductor.
   - Copies of challans of late deposit of TDS by the assessee deductor.
   - Copies of the intimations showing late payment interest for all the quarters of the relevant assessment year, if it is available.
   - Copies of Audit report, if they show default.
   - AO(TDS) may also collect other details that may help the CIT(TDS) like:
     (a) whether the default was only in one year and no defaults took place later,
     (b) whether the deductor has himself rectified the mistake and deposited the tax along with interest prior to issue of notice by the department,
     (c) whether the same offence has been compounded earlier and if yes, how many time etc.

6. **ISSUE OF SHOW CAUSE NOTICE :**The AO(TDS) shall issue show cause notices to the person responsible for deduction (directors/principal officers/partners/members/ karta), within 45 days of receipt of the list of prosecutable cases from CPC-TDS
7. **REPLY TO SHOW CAUSE NOTICE:** person responsible for deduction (directors/principal officers/partners/members/ karta) should furnish reply within 30 days of the issue of the show cause notice.

8. **EXAMINATION OF REPLY BY** AO (TDS): - The AO (TDS) shall examine the reasons/reply for non-compliance and will prepare the proposal in Form 'F' and send it to the CIT (TDS) . The Form 'F' will indicate inter alia, the following:
   (a) The facts indicating the commission of offence.
   (b) Chronology of events, primary & secondary evidences to establish the offence.
   (c) Present stage of the proceedings relating to the commission of offence.

(d) List of documentary evidences including depositions, submissions to prove the offence.
(e) List of witnesses on which the departmental case depends.
(f) Any other facts or evidence to establish the offence.
(g) Whether the offence is second or subsequent offence in terms of Section 278A.

9. An entry can be made by the AO (TDS) in the Form 'C' as soon as the proposal is moved.

10. REFER OF CASE BY AO (TDS) TO CIT (TDS):-While the AO(TDS) will mandatorily refer all the cases of TDS default exceeding Rs.1 lakh to CIT(TDS), cases of defaults between Rs.25000-Rs.1lakh shall be referred to the CIT(TDS) only if he is satisfied that it is a case fit for prosecution. The report to CIT (TDS) shall be submitted within 60 days of the issue of show cause notice. Time granted to furnish the reply may be excluded from this time limit.

11. SANCTION OF CIT (TDS): The CIT(TDS) to accord sanction u/s 279(1) If he is of the opinion that the case is prima facie fit for prosecution and will issue show cause notice(s) to all proposed accused(s) u/s 276B/276BB to ask why sanction for launching of prosecution should not be accorded ??? After hearing the assessee , CIT(TDS) will pass sanction order for prosecution. In case he is not satisfied after receiving reply, he shall drop the proceedings. The CIT (TDS) shall complete the process and pass an order u/s 279 sanctioning prosecution or dropping the show cause notice within 60 days of receipt of the proposal.

12. COMPOUNDING APPLICATION FILED BY ASSESSEE DEDUCTOR: The assessee deductor can at any stage of the proceedings, file a compounding application before the Pr. Chief Commissioner of Income-tax/Chief Commissioner of Income-tax. CIT (TDS) shall keep the prosecution proposal pending if Compounding application filed.

13. WORK AFTER SANCTION ORDER u/s 279 by CIT (TDS) :-

- ✓ The CIT(TDS) after according sanction u/s 279(1) shall send back the records to the authority seeking sanction with sanction order in duplicate, one for filing in the Court with complaint and other for the record.
- ✓ The AO(TDS) shall, after entering receipt of the sanction order in the prosecution register maintained by him, ensure that the complaint is launched in the competent Court having jurisdiction over the place where the offence is committed.
- ✓ The CIT(TDS) & the AO(TDS) shall both make an entry in the respective registers maintained manually or in the utility as and when available in TRACES.
- ✓ If any such prosecutable offence comes to light during the proceedings before the appellate authorities, revision authorities or any other proceedings, same shall also be treated at par with other prosecutable cases

14. TIME FRAME : The time period for the entire process from identification to passing of order u/s 279(1)/279(2) should be as under:

S.No.	**Section**	**Time limit for submitting proposal for sanction u/s 279(1)**	**Time limit for according sanction u/s 279(1)**	**Time limit for launching Prosecution**	**Authority to submit proposal & launch prosecution**
1	276B	Within 90 days of generation of list on CPC-TDS detection of offence or receipt of information from any other source/ income tax authority	Within 60 days of receipt of information from the AO(TDS)	Within 30 days of receiving approval u/s 279(1)	AO(TDS) having jurisdiction.

2	276BB	-do-	-do-	-do-	-do-

ROLE OF THE DIFFERENT TDS AUTHORITIES IN ADDRESSING THE ISSUE OF PROSECUTION AND COMPOUNDING OF TDS CASES

I. Role of Principal CCIT/CCIT(TDS):

(i) Taking quarterly review meeting with CIT (TDS) monitoring progress in all cases identified for prosecution.
(ii) Apprising the Zonal Member of the progress/ outcome made during the month through monthly DO. Copy of such progress shall also be sent to Pr. DGIT (Admn.), New Delhi for information and monitoring.
(iii) Disposing all compounding petitions received expeditiously and within the time period prescribed in the Central Action Plan. While disposing off compounding petitions, speaking orders are expected to contain those facts based on which a fair and judicious view has been taken in accordance with relevant provisions of the Income Tax Act, 1961.

II. Role of CIT(TDS)
(i) Ensuring that the Guidelines issued vide F.No.285/35/2013-IT(Inv.V)/108 dt. 23.12.2014 is adhered to.
(ii) Monitoring the action in the cases of mandatory processing for prosecution generated by the CPC-TDS on a monthly basis.
(iii) Guiding AO (TDS) to shortlist the cases for processing of prosecution on the basis of list-B and identified on the basis information received from external sources such as spot verification/survey and monitoring action thereon.
(iv) Maintaining a register in Form-D or in online utility as and when made available in TRACES wherein record of all cases identified for prosecution should be kept.
(v) Processing all the proposal received by him and if he is of the opinion that the case is prima facie fit for prosecution, issue show cause notices to the accused(s) u/s 276B/276BB r.w.s. 278B or 278C as to why sanction for launching of prosecution should not be accorded.
(vi) Seeking opinion of the Prosecution or Standing Counsel, as the case may be, about suitability of the case for launching of prosecution and as well as strength of the case against accused(s). Ensuring that the opinion is obtained from the Counsel within 30 days.
(vii) Examining the opinion of the Standing Counsel and on satisfaction that it is a fit case for prosecution, passing speaking orders u/s 279(1) in the case of accused(s) for each assessment year separately. In case he is not satisfied, he shall drop the proceedings.
(viii) Completing the process and passing an order u/s 279 sanctioning prosecution or dropping the show cause notice within 60 days of receipt of the proposal.
(ix) Making an entry for the following events in the manual register or in the utility created in TRACES:

a. On receipt of proposal from the AO(TDS).
b. On issue of show cause notice to the accused / co-accused.
c. On passing of sanction order u/s 279(1) or on dropping of the proceedings as the case may be.
d. On receipt of compounding application / report on the compounding application.
e. On filing of complaint / launching of prosecution before the competent court.
f. On receipt of order of competent Court
g. On appeal, if any appeal is filed.

III. Role of Addl.CIT(TDS)
(i) Discussing cases of list-B generated by CPC-TDS and list prepared on the basis of information received from external sources such as spot verification/survey with AO (TDS) and also guiding them in short listing the cases fit for prosecution.
(ii) Monitoring timely action in all the cases involving mandatory processing for prosecution or cases identified otherwise and to report the progress to the CIT (TDS) in the monthly DO.

IV. Role of AO(TDS)

(i) Downloading list of cases identified by CPC-TDS for mandatory proceeding of cases (list-A).
(ii) Downloading list-B of cases for identification of cases based on facts and circumstances of the cases and also to examine cases on the basis of information gathered from external sources such as spot verification / surveys and shortlist cases fit for prosecution amongst these cases after discussion with Range Head and CIT (TDS).
(iii) Initiating action and collecting information in accordance with the procedures lay down above.
(iv) Issuing show cause notice to all the accused(s) identified by him giving due opportunity to the accused within 45 days of receipt of the list of prosecutable cases from CPC-TDS.
(v) Sending the proposal prepared in Form ‘F’ along with other information / documents to the CIT(TDS) through proper channel.
(vi) Making an entry for the following events in the manual register or as and when in the utility made available in TRACES:
a. Initiation of proceedings for prosecution.
b. Sending the proposal to the CIT (TDS) for necessary action.
c. Date of receipt of sanction u/s 279(1) of CIT (TDS).
d. Filing of complaint / launching of prosecution in the competent court on receiving order u/s 279(1).
e. In case report on the compounding application is to be sent on filing of compounding application by the deductor, date of the report as well as when order on such application is received from the competent authority.
f. On receiving orders of the competent Court in the case, date of filing of appeal, if any filed.

V. Role of CIT(CPC-TDS), Ghaziabad:
(i) Generating list-A of defaulters along with their statement of defaults for mandatory processing of cases for prosecution involving delayed payment of Rs. 1 lakhs or more as prescribed in the present Instruction and make it available to AO(TDS) as well as the CIT(TDS) within one month of the filing of the quarterly TDS statement.
(ii) Generating list-B of cases involving defaults of delay in payment of Rs. 25,000/- to 1, 00,000/- along with default sheets for the year as well as proceeding year and subsequent year (if dates are available), to help CIT (TDS) AO (TDS) to identify cases fit for prosecution based on facts & circumstances of the cases within one month of the filing of the quarterly TDS statement.
(iii) Generating a list of non-filers of TDS statement within one month of the due date and communicating to the AO (TDS) with a copy to the CIT (TDS).
(iv) Developing and maintaining a specific module/utility in TRACES for identification and control over prosecution proceedings where all the details of each case of prosecution can be maintained online.

SOP COVER FOLLOWING ISSUES:-

- **UNCONSUMED CHALLAN.**
- **TOP DEDUCTORS PAYING LESS/NO TAX WITH RESPECT TO PREVIOUS FINANCIAL YEARS.**
- **RESOLVABLE/COLLECTIBLE TDS DEMAND.**
- **G-OLTAS RECONCILIATION.**
- **CORPORATE CONNECT FOR TDS COMPLIANCE.**

REASON FOR UNCONSUMED CHALLAN

1. In case of a deductor where demand has been raised due to short payment or; due to quoting of wrong challan particulars in TDS statement.
2. Non Reporting by deductor of payment made against demand on account of late filing fee or; interest including late payment interest or; late deduction interest through TDS statement.
3. Deductor paid the TDS but has either not reported TDS transactions through TDS statement at all or; reported incomplete transactions in TDS statement.

<u>PROCEDURE FOR MATCHING THE UNCONSUMED CHALLAN WITH SHORT PAYMENTS</u>

1 Issuing letter to the deductor. Deductor should be advised to file the correction statement
2 On receipt of letter, the TAN holder can make online corrections
3 The deductor can request the AO - TDS to force match the unconsumed challan
4 AO - TDS to periodically monitor the default summary for the demands raised
5 After consumption/tagging of the challan, an e-mail should be generated from the system and be sent to the deductor , so that the deductor can use the information for filing the correction statement.

FORCED MATCHING (FUNCTIONALITY IN TRACES – AO PORTAL)

1 The AO Portal provides the functionality of Forced Matching of challan.
2 Only unmatched challans in a statement will be shown in the output table.
3 At present, statements filed for F.Y. 2010-11 and 2011-12 only are available for forced matching.
4 Only those challans from OLTAS will be displayed whose FY is within +1/-1 year range of F.Y. of the searched statement.
5 Challan quoted in the statement has to be equal to or less than the available balance in a challan.
6. Force-matching should be done only on deductor's request in writing and the application is to be uploaded on the portal while raising the request for such force-matching.
7. Challan fields "claimed interest", "claimed others", and "levy" are not editable during forced matching.

LINKING UNCONSUMED CHALLANS WITH MANUAL DEMANDS

1. AOs - TDS record demands in their registers & start follow-up for collection. As soon as the counterfoil of challan is received by the AO-TDS, he records the same in the register and treats the demand as collected. AO – TDS must ensure that gross demand rose (even in the cases of net NIL demand due to squaring off) is uploaded. The collection made through challans must then be immediately tagged against gross demand to prevent further use of such unclaimed challan.

2. In cases where demand is reduced completely or in part by way of reduction, due to rectification u/s 154 of the Income-tax Act, 1961 or; order of CIT(Appeal) or; ITAT or; Courts, it is not required to upload the gross demand. Effective net demand in these cases may be uploaded.

3. **Challans stay "Unclaimed" in OLTAS database**, since they are available for matching and consumption against TDS statements or any other demand which is outstanding as per the System which may lead to adverse consequences. Hence, it is very crucial to get the balance of these challans reduced by the appropriate amount

RECORDS FOR UPLOADING THE MANUAL DEMAND.

1 D & CR registers in most of the charges are not available prior to FY 2008-09.
2 In such situation it is difficult to upload gross demand in each case.
3 So a cut off year should be decided for tagging of the unclaimed challan.
4 Further, no refund should be issued for unclaimed challans prior to the cut-off year through refund portal.
5 It is recommended that payments made on account of compounding fee are uploaded using the bulk upload demand functionality.
6 It is suggested to maintain the record in current D & CR, which should be uploaded periodically (say fortnightly).
7 To cater to this need and root-out these possibilities, CPC-TDS has introduced two sets of functionalities as under :-

A. bulk-UPLOAD DEMAND :

- User can add/modify/delete a manual demand row by row. Manual demand created by the AO - TDS, has to be uploaded in the System. Utmost care should be taken as to what types of demands are to be uploaded. The deductor making payment on account of **"Compounding Fee"** should also be kept on record separately in the current D&CR and uploaded from time to time. The payment on account of such compounding fee is also being reflected as 'unclaimed challan' in software and is necessarily required to be tagged.
- Bulk upload (using a template) facility is also available to AO – TDS.
- The functionality must be used in order to make a record of the demand in System and get rid of the manual registers and to finally give the credit of collection against the demand in System so that the challans can be frozen.

B. TAG/REPLACE A CHALLAN :

- Tag/Replace challan functionality has been provided to the AO – TDS to enable him to tag the challans against the uploaded demands.
- On tagging of demand against a challan(s), the available balance in the OLTAS for that challan(s) gets

reduced to the extent of the demand.

- A separate request will have to be submitted for tagging challan against each demand.

WORK RELATING TO IDENTIFYING TOP DEDUCTORS PAYING LESS/NO TAX WITH RESPECT TO PREVIOUS FINANCIAL YEARS:

1) Generating a list of top deductors on the system through TRACES, for the last three financial years.
2) Ascertaining reasons for lower tax deduction or collection, based on the type of industry/business.
3) Issuing letters to the deductor to ascertain the reason for negative growth and thereafter taking corrective measures such as spot verifications or referring the matter for prosecution in the case to the CIT (TDS), if the tax so deducted/collected is being utilized by the TAN holder for business.
4) In case of listed companies whose financial results are available in public domain, if there is fall in TDS as compared to earlier year but financial results show business growth, the case *must* be picked up for survey/spot verification.
5) Survey/spot verification may also be resorted to in case of deductors showing negative growth.

DRAFT STANDARD OPERATING PROCEDURE (SOP) FOR RESOLVABLE/ COLLECTIBLE TDS DEMAND

The outstanding TDS demand which are recoverable immediately and free from any dispute or litigation or corrections can be clubbed the category “resolvable demand”. Resolvable demands include the following:-
(i) Short payment
(ii) Interest on short payment
(iii) Interest on late payment
(iv) Late filing fees
(v) short deduction
(vi)interest on short deduction
(vii)penalty u/s 221, 271C

DRAFT STANDARD OPERATING PROCEDURE (SOP) FOR G-OLTAS RECONCILIATION

- List of active AIN holders is less than total no of AINs allotted.
- Amount reported by state Government AINs in form 24G is less/more than the amount reported by the State AGs as consolidated deduction during the year.
- Due to such a reporting, inference is drawn that whether any TDS collection was left to be accounted for or there was any incorrect reporting in Form 24G.
- It is also seen that there are substantial delays in deposit of TDS collections by AGs, some times more than months.
- TDS claimed by deductees of State Government departments in their individual returns of income, is more than the figure reported by State AGs/Form 24G.

DRAFT STANDARD OPERATING PROCEDURE (SOP) FOR CORPORATE CONNECT FOR TDS COMPLIANCE.

i) Organizing workshops with big Corporates/Banks with large number of TANs to sensitize the Principal Officers of respective Corporates/Banks about various defaults being committed by their branches.

ii) Sensitizing corporates that the defaults committed by branches have implications on the total income of the corporate entity in view of section 40(a)(ia) of the Act and also the fact that interest u/s 201(1A), fee u/s 234E do not qualify work deduction and such defaults also attract prosecution against the deductor.

iii) Sensitizing the corporates that the defaults on their part impact their clients as they are unable to get credit in their income-tax returns.