

PROVISIONS CONCERNING ADVANCE TAX AND TAX DEDUCTED AT SOURCE

Question 1

What are the consequences of failure to deduct tax at source or pay the tax deducted at source to the credit of Central Government?
(4 Marks)(May 2007)

Answer

Consequences of failure to deduct tax at source or pay such tax deducted to the credit of the Central Government [Section 201]

- (1) The following persons shall be deemed to be an assessee in default, if they do not deduct the whole or any part of the tax or after deducting, fail to pay the tax -
 - (i) any person including the principal officer of a Company, who is required to deduct any sum in accordance with the provisions of the Act, and
 - (ii) an employer paying tax on non-monetary perquisites u/s 192(1A).
- (2) However, no penalty shall be charged under section 221 from such person, principal officer or company unless the Assessing Officer is satisfied that such failure to deduct or pay the tax deducted, was without good and sufficient reasons.
- (3) Such person, principal officer or company shall also be liable to pay simple interest at 1% per 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 actually paid.
- (4) Such interest should be paid before furnishing the statement in accordance with section 200(3).
- (5) Where the tax has not been paid after it is deducted, the amount of the tax together with the amount of simple interest thereon shall be a charge upon all the assets of the person or the company, as the case may be.

Note: Since the question carries only 4 marks, it is sufficient if the above points are given in the answer. For a detailed discussion of section 201, students may refer chapter 9 of the study material.

Taxation

Question 2

Briefly discuss the provisions relating to payment of advance tax on income arising from capital gains and casual income. (4 Marks)(May 2007)

Answer

The proviso to section 234C contains the provisions for payment of advance tax in case of capital gains and casual income.

Advance tax is payable by an assessee on his/its total income, which includes capital gains and casual income like income from lotteries, crossword puzzles, etc.

Since it is not possible for the assessee to estimate his capital gains, or income from lotteries etc. it has been provided that if any such income arises after the due date for any installment, then, the entire amount of the tax payable (after considering tax deducted at source) on such capital gains or casual income should be paid in the remaining installments of advance tax, which are due.

Where no such installment is due, the entire tax should be paid by 31st March of the relevant financial year.

No interest liability on late payment would arise if the entire tax liability is so paid.

Question 3

Briefly explain the provisions of section 197 in respect of obtaining certificate for deduction of tax at a lower rate. (4 Marks)(Nov 2007)

Answer

Section 197 applies where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or payment, as the case may be, at the rates in force as per the provisions of sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA and 195 of the Act.

The assessee can make an application to the Assessing Officer for deduction of tax at a lower rate or for non-deduction of tax.

If the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at lower rates or no deduction of income-tax, as the case may be, he may give to the assessee a certificate to this effect.

Where the Assessing Officer issues such a certificate, the person responsible for paying the income shall deduct income-tax at such lower rates, as specified in the certificate, or deduct no tax, as the case may be, until such certificate is cancelled by the Assessing Officer.

Question 4

Mrs. Hemalatha has made payments of Rs. 5 lacs to a contractor (for business purposes) during the last two quarters of the year ended 31.3.2008. Her turnover for the year ended 31.3.2007 was Rs. 45 lacs. Is there any obligation to deduct tax at source? (2 Marks)(May 2008)

Provisions concerning advance tax and tax deducted at source

The provisions of the Income-tax Act, 1961 relevant for Assessment Year 2010-11 should be taken into consideration while solving the question. Accordingly, the facts given above may be taken as relating to financial year 2009-10. The turnover of Rs.45 lakh is in respect of the year ended 31.3.2009.

Answer

In the case of an individual, the provisions of section 194C shall apply, where the turnover from business has exceeded Rs.40 lakh during the financial year immediately preceding the financial year in which such payment is made and payment is made for other than for personal purposes. In the given case, since the turnover of Mrs. Hemalatha has exceeded Rs.40 lakh for the year ended 31st March 2009 and the payment of Rs. 5 lakh to the contractor is for business purposes, she shall be liable to deduct tax at source in respect of payment made to the contractor at the applicable rate.

Question 5

What are the due dates of instalments and the quantum of advance tax payable by companies?
(4 Marks)(May 2008)

Enlist the installments of advance tax and due dates thereon in case of companies.

(4 Marks)(June 2009)

Answer

Advance tax installments payable by Companies

The due dates of installments and quantum of advance tax payable by a company assessee are as under:-

Due date of installment	Amount payable
On or before the 15 th June	Not less than 15% of advance tax liability
On or before the 15 th September	Not less than 45% of advance tax liability as reduced by the amount paid in earlier installment
On or before the 15 th December	Not less than 75% of advance tax liability as reduced by the amount paid in earlier installments
On or before the 15 th March	The whole amount of advance tax liability as reduced by the amount paid in earlier installments

Question 6

When will tax not required to be deducted at source on interest payable to a resident on any bond or security issued by a company though the aggregate amount of interest exceeds Rs.2,500, the basic exemption limit under section 193 of the Act? (2 Marks)(June 2009)

Taxation

Answer

As per section 193 of the Act, no tax is required to be deducted at source on any interest payable to a resident on any bond or security issued by a company, where the following conditions are satisfied -

- (i) where such security is in dematerialised form and
- (ii) is listed on a recognised stock exchange in India.

Question 7

State with reasons, whether the following statements are true or false having regard to the provisions of the Income-tax Act, 1961, for the assessment year 2009-10:

- (a) Person not deducting tax also deemed to be an assessee in default under section 191 read with section 201 of the Income-tax Act, 1961. (2 Marks)(Nov 2009)
- (b) An AOP having gross receipts of Rs.50 lacs during the financial year 2007-08 is not required to deduct tax at source under section 194C of the Income-tax Act, 1961, on payment made to contractors during the financial year 2008-09. (2 Marks)(Nov 2009)

Answer

- (a) True

Section 201 deems certain persons to be an assessee-in-default if they –

- (i) do not deduct the whole or any part of the tax; or
- (ii) after deducting, fail to pay the tax.

This deeming provision is also contained in the Explanation to section 191. Therefore, a person not deducting tax is also deemed to be an assessee-in-default.

- (b) False

The Finance Act, 2008 has now included within the scope of section 194(1), Association of persons and Body of Individuals whose total sales/gross receipts/turnover from the business or profession exceeds the monetary limits specified in section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor. Thus, such AOPs and BOIs subject to tax audit in the immediately preceding financial year are liable to deduct tax at source from payments to resident contractors.

Question 8

Mrs. Indira, a landlord, derived income from rent from letting a house property to M/s Vaibhav Corporation Ltd. of Rs.1,00,000 per month. She charged the service tax @ 10.3% on lease rent charges. Calculate the deduction of tax at source (TDS) to be made by M/s Vaibhavi Corporation Ltd. on payment made to Mrs. Indira and narrate related formalities in relation to TDS. What are the consequences of failure to deduct or pay TDS? (8 Marks)(Nov 2009)

Provisions concerning advance tax and tax deducted at source

Answer

- (1) As per Circular No. 4/2008 dated 28th April, 2008 issued by the CBDT, the service tax paid by the tenant does not partake the nature of income of the landlord. The landlord only acts as a collecting agency for collection of service tax. Therefore, tax deducted at source under section 194-I would be required to be made on the amount of rent paid or payable excluding the amount of service tax, i.e. tax has to be deducted under section 194-I on Rs.12 lakh.
- (2) TDS shall be applicable @ 15% upto 30th September, 2009 and 10% from 1st October, 2009.
- (3) Hence, in the given case, TDS under section 194-I would amount to Rs. 15,000, being 15% of Rs.1 lakh, to be deducted every month up to September, 2009 and cheque for net amount of Rs.85,000 will be issued by M/s. Vaibhavi Corporation Ltd. to Mrs. Indira. Thereafter, TDS @10% on Rs.1,00,000 would amount to Rs.10,000, to be deducted every month from October 2009 to March 2010.
- (4) Tax deducted should be deposited within prescribed time.
- (5) Form No. 16-A has to be issued by M/s. Vaibhavi Corporation Ltd. to Mr. Abhijit within the prescribed time.

Consequences of failure to deduct or pay tax (Section 201)

- (1) The following persons shall be deemed to be an assessee in default if they do not deduct the whole or any part of the tax or after deducting fails to pay the tax -
 - (i) any person including the principal officer of a company, who is required to deduct any sum in accordance with the provisions of the Act; and
 - (ii) an employer paying tax on non-monetary perquisites under section 192(1A).
- (2) However, no penalty shall be charged under section 221 from such person, principal officer or company unless the Assessing Officer is satisfied that such person or principal officer or company, as the case may be, has failed to deduct and pay the tax without good and sufficient reasons.
- (3) Such person, principal officer or company shall also be liable to pay simple interest at 1% for every month or part of a month. Such interest is chargeable on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid.
- (4) Such interest should be paid before furnishing the statements in accordance with section 200(3).
- (5) Where the tax has not been paid after it is deducted, the amount of the tax together with the amount of simple interest thereon shall be a charge upon all the assets of the person or the company, as the case may be.

Taxation

Question 9

Explain the difference between tax deduction at source and tax collection at source.

(4 marks) (Nov 2009)

Answer

Tax deduction at source means any tax which has been deducted at source by the payer at the time of accrual or payment to the payee. Persons responsible for making payment of income covered by the scheme of tax deduction are required to be deducting tax at source at the prescribed rates. Tax so deducted should be deposited within the prescribed time. Tax is always deducted on expense and not supply of goods.

Tax collection at source is effected by the seller from the buyer at the time of debiting the amount to the account of the buyer or at the time of receipt of amount, whichever is earlier. Certain specified goods when sold must be subjected to tax collection at source and taxes collected thereon must be remitted into government's account as done in the case of TDS.