ALL THE RECENT AMENDMENTS TO TDS PROVISIONS

I have presented below the summary of all the notification. Instruction, circulars, budget amendments etc issued by government which have an effect on TDS Provisions for the financial year 2010-11 and as well as on financial year 2011-12.

Instruction on section 200 – Instruction regarding parameters for processing e-TDS returns [F.No. 275/73/2009-IT(B)] dated 8-12-2010

- In the present system of processing e-TDS returns, the returns are processed online and mismatch report showing defaults is generated.
- Based on these reports, the AO issues show cause notices to the deductors
- Substantial returns are pending where deducteewise default due to short deduction is less than Rs.10/-
- It has been decided that where the default on account of short deduction is less than Rs.100/- for each ***deductor***the demand is rounded off to zero; and
- After considering the above if the deductorwise demand/default of Rs.100/- or less will be ignored for further action
- However, the officers have been instructed to ensure that the short deduction should not become habitual

Instruction No.6/2010 issued by CBDT on 9 August 2010 issued to curb the indiscriminate issuanceof 197 certificates

- Instruction No.8/2006 dated 13-10-2006 laid down that certificate of lower/NIL deduction u/s1 97 are not to be issued indiscriminately and prior administrative approval of the concerned Range head shall be obtained before issue of each certificate
- Instruction 7/2009 read with F.No.275/23/2007-IT(B) laid down monetary limits for prior adminitrative approval of the CIT-TDS or DIT- International Taxation.
- Such certificates are issued manually
- It is now instructed that certificates u/s 197 shall be generated and issued by the AO mandatorily through the ITD system only. In case the certificate cannot be generated on the date of issue, the AO shall upload the data on the system within 7 days of manual issue
- The manual system of issuing certificates had the following issues:

- No check as to whether such certificate has been issued by the authorized/competent AO having jurisdiction

- No information available as regards number of certificates issued or the quantum of revenue involved.

- No systematic reference number which could be amenable to verification. It is not possible to ascertain the veracity of claim, of the deductor about no/low deduction having been made on the strength of a 197 certificate actually issued by the department

- Issue of certificates u/s 197 vide the ITD system shall have the following benefits: -

- Complete information of he deductor and deductee will be available with the department
- This information will be useful in processing e-TDS returns

- The non-deduction defaults detected by the system when processing the TDS returns would reduce substantially
- There will be a control on the number of certificates issued

Amendment under Finance Act, 2011 (insertion of section 194LB)

w.e.f. 1st June 2011, notified infrastructure debt fund will deduct tax at source at the rate of 5% (plus applicable surcharge & cess) on interest payable to a non-resident at the time of credit or payment, whichever is earlier.

Amendment to Rule 28AA (Certificate for deduction at lower rates or no deduction of tax fromincome other than dividends)

- Now in order to obtain a lower/NIL deduction certificate, is it necessary for the AO to be satisfied that theexisting and estimated tax liability of the applicant justifies the deduction of tax at lower rate or no deduction of tax.
- The mechanism of arriving at the rate of tax deduction has been eliminated. The AO shall determine the rate of tax deduction after considering the following:

1. Tax payable on estimated income of the previous year relevant to the AY;

2. Tax payable on the assessed or returned income of the last three previous years; 3. Existing liability under the ITA and Wealth-tax Act, 1957;

4. Advance tax payment for the AY relevant to the previous year till the date of making application.

5. Tax deducted at source for the AY relevant to the previous year till the date of making application under sub-rule (1) of rule 28; and

6. Tax collected at source for the AY relevant to the previous year till the date of making application under sub-rule (1) of rule 28.

- The certificate shall be issued direct to the ***person responsible for deducting the tax*** under advice to the person who made an application for issue of such certificate

Amendment to Rule 31A (Quarterly statement of deduction of tax under sub-section (3) of section200)

• The deductor at the time of preparing statements of tax deducted will be required to furnish the following additional particulars besides his PAN, TAN, PAN of deductees, particulars of taxes paid to the Central Government:

1. amount paid/credited on which tax was not deducted in view of the issue of certificate of no deduction of tax under section 197 by the AO of the payee;

2. amount paid or credited on which tax was not deducted on payments made to transporters who have provided their PAN.

Notification 41/2010 dated 31 May 2010 w.e.f April 1, 2010

1. Due dates for payment of TDS

	Amount paid / credited	**Due date of deposit of TDS**
Old Provisions	On 31 March	31 May
	On any other day	7th of the next month
New Provisions	In the month of March	30 April
	In other months	7th of the next month

2. In the case of a company or a person (other than a company) to whom the provisions of tax audit are applicable, TDS must be remitted electronically (by way of internet banking facility or debit card) to the RBI or SBI or any authorized bank accompanied by an electronic income-tax challan

3. Quarterly filed of TDS returns

a. Statement of deduction of tax under section 192 – Form no. 24Q

b. Statement of deduction of tax under other sections

–In case of the deductee being a non-resident or a foreign company or resident but not ordinarily resident –Form no. 27Q

–In case of all other deductees –Form no. 26Q

4. If the number of deductee‟s / collectee‟s records in a statement for any quarter are twenty or more, the statements are required to be furnished electronically

Quarter ended	**Due date**	**Requirements of the forms**
30 June	15 July	o TAN of deductor o PAN of deductor o PAN of all deductees o Particulars of the tax paid to the Central Government, o including Challan identification number
30 September	15 October	
31 December	15 January	
31 March	15 May	

5. Timelines for issue of TDS certificates

Deduction u/s	**Form No.**	**Requirements of form**	**Time for furnishing the form**
192	16	o Valid PAN of the deductee o Valid TAN of the deductor o Challan identification number in case of payment through bank o Receipt number of the relevant quarterly TDS statement(s)	Periodicity – Annual Due date – By 31 May
Any other provision	1 6A	Same as above	Periodicity – Quarterly Due date – Within 15 days from the due date for furnishing the quarterly TDS statements

6. The deductor may use digital signatures to authenticate Form 16

- Once digitally signed, the contents of the certificate are not amenable to change
- The certificates must have a control number and a log of such certificates must be maintained by the deductor

7. Form 16 now has two parts:

- Part A dealing with basic information regarding the deductor and employee and the summary of tax deducted of source;

If an assessee is employed by more than one employer during the year, each of the employers are required to issue Part A of the certificate;

- Part B dealing with details of salary and tax deducted / paid.

Part B may be issued by each of the employers or the last employer at the option of the assessee

8. The provision for issue of Form 1 6AA in cases of salaries not exceeding Rs. 150,000 is not contained in the amended rules

New sub-sections have been added to Section 201 w.e.f 01.04.2010

• 201(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:

–2 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

–4 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 1 April 2000 may be passed at any time on or before the 31st day of March , 2011

•201(4) –The provisions of sub-clause (ii) of sub-section (3) of section.153 and of Explanation to Sec153 shall, so far as may, apply to the time limit prescribed in sub-section(3)

Finance Act 2010 has increased the interest u/s 201(1A) rate w.e.f. 1 July 2010

Interest on late deduction/deposit of tax	**Existing**	**New**
Interest from the date when tax deductible to actually deducted	1 %	1 %
Interest from the date when tax actually deducted to actually paid	1 %	1.5%