



Consequences of TDS **Defaults**

- CA Anil Sathe

Categories of Defaults :

SUBSTANTIVE :

- I. Deduction of tax at source :
 - a) Failure to deduct tax at source
 - b) Delay in the deduction of whole or part amount of tax

- II. Payment of tax deducted at source :
 - a) Failure to deposit the whole or part of TDS (non-deposit)
 - b) Delay in the payment of whole or part amount of TDS (short deposit or late deposit)

Types of TDS Defaults :

PROCEDURAL :

III. Failure to furnish or delay in furnishing the prescribed statements u/s 200(3)

- The provisions of quarterly statements of TDS have been introduced in the statute vide section 200(3) w.e.f. 01/04/2005.
- Every person responsible for deducting tax is required to file quarterly statements of TDS for the quarters ending on 30th June, 30th September, 31st December, and 31st March in each Financial Year.

Types of TDS Defaults :

Section 200(3) contd..

The due dates as per Rule 31A for furnishing the statements are as follows :

| Sr.No. | Date of Quarter ending of the Financial Year | Due Date for Office of Govt. | Due Date for any other person |
|--------|--|------------------------------|-------------------------------|
| 1. | 30 th June | 31 st July | 15 th July |
| 2. | 30 th September | 31 st October | 15 th October |
| 3. | 30 th December | 31 st January | 15 th January |
| 4. | 31 st March | 15 th May | 15 th May |

Types of TDS Defaults :

IV. Failure to issue TDS certificate u/s 203

- Issues a certificate in regard to salary
- Issues a certificate in regard to other payers.

Rule 31

The certificate of deduction of tax at source by the employer on behalf of the employee shall be in –

- a. Form no. 16, if the deduction or payment is u/s 192
- b. Form no. 16A, if the deduction is under any other provision of chapter XVII-B

Types of TDS Defaults :

Section 203 contd...

The Certificate u/s 203 shall be furnished within due dates as specified in Rule 31 which are as follows :

| Sr.No. | Form No. | Periodicity | Due Date |
|--------|----------|-------------|---|
| 1. | 16 | Annual | By 31 st day of May of the FY immediately following the FY in which the income was paid & tax was deducted |
| 2. | 16A | Quarterly | Within 15 days from the due date for furnishing the statement of TDS under Rule 31A |

Consequences of TDS Defaults

- **Consequences on failure to comply with TDS/TCS provisions under the Income-tax Act, 1961 are as follows :**
- Non allowance of expenditure u/s 40(a)(i) / 40(a)(ia).
 - Being treated as an assessee in default u/s 201
 - Simple interest payable u/s 201(1A) on account of failure to deduct or pay tax.
 - Penalty payable when assessee is in default in payment of tax u/s 221.
 - Assessee liable to pay fee u/s 234E for delay in furnishing statement.
 - Penalty u/s 271C for failure to deduct tax at source.



Consequences of TDS Defaults

- Penalty u/s 271CA for failure to collect tax at source
- Penalty u/s 271H for failure to furnish the statements of tax deducted at source.
- Penalty for failure to to furnish a certificate as required by section 203 or 206C.
- Prosecution u/s 276B on failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.
- Prosecution u/s 276BB on failure to pay the tax collected at source.

Consequences of TDS Defaults

A. Non allowance of expenditure u/s 40(a)(ia)

- Failure to deduct tax on interest, commission, brokerage, rent, royalty or professional fees etc.
- Having deducted, failure to pay the tax deducted within the dates prescribed or before the due date of filing the return of income u/s 139(1)
- Results in disallowance of expenditure

Saving :

- If tax is deducted & paid in the subsequent year, or paid after the end of the previous year but after due date of return u/s 139(1) then expenditure is deductible in that year.
- If established that assessee is not an assessee in default u/s 201- No disallowance.



Consequences of TDS Defaults

- Issues :

1. Will short deduction result in disallowance of expenditure?
2. What is the position in regard to sums deducted and paid during the year but beyond the time as prescribed in chapter XVII B?
3. What is the position in regard to the provisions where payees have been identified? Will there be a difference if the payees have not been identified?
4. What is the meaning of the term “deduction”?

Consequences of TDS Defaults

B. Tax deductor deemed to be an assessee in default u/s 201

- If an assessee fails to deduct tax at source or having deducted fails to pay, then such person shall be deemed to be an assessee in default.
- Simple interest u/s 201(1A) at the rate of 1% or 1.5% shall be payable who does not deduct or after deducting fails to pay the tax.
- Interest to be paid from the date on which such tax was deducted to the date on which such tax is actually paid.

Consequences of TDS Defaults

Section 201 (contd..)

Saving

- As per the Proviso inserted by Finance Act, 2012--
 - any person who fails to deduct tax, but
 - is not deemed to be an assessee in default in respect of such tax provided if the resident payee—
 - a. Has furnished return of income u/s 139;
 - b. has taken into account such sum for computation of income;
 - c. Has paid the tax due on income
 - d. A certificate to that effect is issued by his “accountant”

Issues :

- Is the insertion of the proviso retrospective?
- What is the position in case of a return of loss by the payee?
- In case of such a return of loss by the payee is the assessee still to be treated as an assessee in default?

Consequences of TDS Defaults

C. Penalty payable when tax in default u/s 221

- Penalty u/s 221 is payable when an assessee is in default or is deemed to be in default in making the payment of tax and fails to pay the tax.
- The Assessing Officer may direct an amount of penalty payable.
- The total amount of penalty shall not exceed the amount of tax in arrears.
- The assessee shall be given a reasonable opportunity of being heard.
- No penalty shall be levied where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons.

Consequences of TDS Defaults

C. Fee for default in furnishing statements u/s 234E

- Fee payable for failure to deliver a statement within the time prescribed in section 200(3) or the proviso to sub-section (3) of section 206C.
- A sum of rupees two hundred shall be payable for every day during which the failure continues.
- The amount of fee shall not exceed the amount of tax deductible or collectible, as the case may be.
- The amount of fee shall be paid before delivering or causing to be delivered a statement as per section 200(3) or the proviso to sub-section (3) of section 206C.



Consequences of TDS Defaults

- The provisions of this section shall apply to a statement which is to be delivered for TDS or TCS, on or after the 1st day of July, 2012.

Issues :

- Is the payment of “Fee” mandatory ?
- Is this payment for default in the nature of “Fee” as is understood or will it partake the character of a Penalty ?

Consequences of TDS Defaults

C. Penalty for failure to deduct tax at source u/s 271C

- Failure to deduct the whole or any part of the tax—
 - As required under the provisions of Chapter XVIIIB, or
 - As required under section 115-O(2) or
 - As per second proviso to section 194B
 - Penalty of the sum equal to the amount of tax which was required to be deducted or paid shall be payable.
 - Any penalty imposable shall be imposed by the Joint Commissioner.
- **Issue** : Can a penalty be levied under both the sections, i.e, section 221 & section 271C ?

Consequences of TDS Defaults

C. Penalty for failure to collect tax at source u/s 271CA

- Failure to collect the whole or any part of the tax under the provisions of Chapter XVIIBB.
- Penalty of the sum equal to the amount of tax which was failed to be collected shall be payable .
- Any penalty imposable under sub-section (I) shall be imposed by the Joint Commissioner.

Consequences of TDS Defaults

G. Penalty for failure to furnish the statements u/s 271H :

- A person shall be liable to pay penalty, if—
 - He fails to deliver a statement within the time prescribed in section 200(3) or the proviso to sub-section (3) of section 206C or;
 - Furnishes incorrect information in the statement which is required to be delivered
- The penalty payable shall be a sum which shall not be less than ten thousand rupees but which may extend to one lakh rupees.



Consequences of TDS Defaults

- Penalty shall not be payable u/s Sec.271H(3) if the quarterly statements for TDS or TCS were delivered before the expiry of a period of one year from the time prescribed.
- The provisions of Sec.271H are applicable in respect of the quarterly returns filed on or after 1st day of July 2012.

Consequences of TDS Defaults

H. Penalty u/s 272A(2)(g) for failure to furnish a certificate as required by section 203 or 206C :

If any person fails –

- to furnish a certificate as required by section 203 or 206C,

he shall pay by way of penalty, be liable to pay a sum of Rs.100 for everyday during which the failure continues.

Consequences of TDS Defaults

I. Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B (Prosecution u/s 276B) :

- Failure to pay to the credit of the Central Government, -
 - (a) the tax deducted at source as required by or under the provisions of Chapter XVII B ; or
 - (b) the tax payable by him under sub-section (2) of section 115-O ; or as per second proviso to section 194B,
- 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.



Consequences of TDS Defaults

I. Failure to pay the tax collected at source (Prosecution u/s 276BB) :

- Failure to pay to the credit of the Central Government, the tax collected by him as required under the provisions of section 206C
- 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.



Compounding of offences

- Power to compound offences u/s 279(2)
- Compounding of interest at the discretion of the authority
- Compounding according to the guidelines issued by the CBDT from time to time.



Thank You

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