

TAX DEDUCTION AT SOURCE FROM "SALARIES"(SECTION 192 OF THE INCOME-TAX ACT,1961)

1. Every person who is responsible for paying any income chargeable under the head "Salaries" shall deduct income-tax on the estimated income of the assessee under the head "Salaries" for the financial year 2007-2008. The income tax is required to be calculated on the basis of the rates given above and shall be deducted on average at the time of each payment. No tax will, however, be required to be deducted at source in any case unless the estimated salary income including the value of perquisites, for the financial year exceeds Rs.1,10,000/- or Rs.1,45,000/- or Rs.1,95,000/-, as the case may be, depending upon the age and gender of the employee.

Payment of Tax on Non-monetary Perquisites by Employer:

2. An option has been given to the employer to pay the tax on non-monetary perquisites given to an employee. The employer may, at his option, make payment of the tax on such perquisites himself without making any TDS from the salary of the employee. The employer will have to pay such tax at the time when such tax was otherwise deductible i.e. at the time of payment of income chargeable under the head salaries to the employee.

Computation of Average Income Tax:

3. For the purpose of making the payment of tax mentioned in para 1 above, tax is to be determined at the average of income tax computed on the basis of rate in force for the financial year, on the income chargeable under the head "salaries", including the value of perquisites for which tax has been paid by the employer himself.

ILLUSTRATION:

Suppose that the income chargeable under the head 'salary' of a male employee below sixty-five years of age for the year inclusive of all perquisites is Rs.2,40,000/-, out of which, Rs.40,000/- is on account of non-monetary perquisites and the employer opts to pay the tax on such perquisites as per the provisions discussed in para 1 above.

STEPS:

| | |
|---|---------------------|
| Income Chargeable under the head "Salaries" inclusive of all perquisites: | Rs. 2,40,000 |
| Tax on Total Salaries(including Cess): | Rs. 22,660 |
| Average Rate of Tax $[(22,660/2,40,000) \times 100]$: | 9.44% |
| Tax payable on Rs.40,000/- (9.44% of 40,000) : | Rs. 3,776 |
| Amount required to be deposited each month: | Rs. 315 (3,766/ 12) |

The tax so paid by the employer shall be deemed to be TDS made from the salary of the employee.

Salary From More Than One Employer:

3.4 Sub-section (2) of section 192 deals with situations where an individual is working under more than one employer or has changed from one employer to another. It provides for deduction of tax at source by such employer (as the tax payer may choose) from the aggregate salary of the employee who is or has been in receipt of salary from more than one employer. The employee is now required to furnish to the present/chosen employer details of the income under the head "Salaries" due or received from the former/other employer and also tax deducted at source therefrom, in writing and duly verified by him and by the former/other employer. The present/ chosen employer will be required to deduct tax at source on the aggregate amount of salary (including salary received from the former or other employer).

Relief When Salary Paid in Arrear or Advance:

3.5 Under sub-section (2A) of section 192 where the assessee, being a Government servant or an employee in a company, co-operative society, local authority, university, institution, association or body is entitled to the relief under Sub-section (1) of Section 89, he may furnish to the person responsible for making the payment referred to in Para (3.1), such particulars in Form No. 10E duly verified by him, and thereupon the person responsible as aforesaid shall compute the relief on the basis of such particulars and take the same into account in making the deduction under Para(1) above.

Explanation :- For this purpose "University means a University established or incorporated by or under a Central, State or Provincial Act, and includes an institution declared under section 3 of the University Grants Commission Act, 1956(3 of 1956), to be University for the purposes of the Act.

[Form 12C has been omitted by the IT(24th Amendment) Rules, 2003

w.e.f. 1.10.2003.

3.6 (i) Sub-section (2B) of section 192 enables a taxpayer to furnish particulars of income under any head other than "Salaries" and of any tax deducted at source thereon. Form no. 12C, which was earlier prescribed for furnishing such particulars (**Annexure-II**), has since been omitted from the Income Tax Rules. However, the particulars may now be furnished in a simple statement, which is properly verified by the taxpayer in the same manner as was required to be done in Form 12C.

(ii) Such income should not be a loss under any such head other than the loss under the head "Income from House Property" for the same financial year. The person responsible for making payment (DDO) shall take such other income and tax, if any, deducted at source from such income, and the loss, if any, under the head "Income from House Property" into account for the purpose of computing tax deductible under section 192 of the Income-tax Act. However, this sub-section shall not in any case have the effect of reducing the tax deductible (except where the loss under the head "Income from House Property" has been taken into account) from income under the head "Salaries" below the amount that would be so deductible if the other income and the tax deducted thereon had not been taken into account'. In other words, the DDO can take into account any loss (negative income) only under the head "income from House Property" and no other head for working out the amount of total tax to be deducted. While taking into account the loss from House Property, the DDO shall ensure that the assessee files the declaration referred to above and encloses therewith a computation of such loss from House Property.

(iii) Sub-section (2C) lays down that a person responsible for paying any income chargeable under the head "salaries" shall furnish to the person to whom such payment is made a statement giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof in form no. 12BA. **Form no. 12BA along with form no. 16, as issued by the employer, are required to be produced on demand before the Assessing Officer in terms of Section 139C of the Income Tax Act.**

Conditions for Claim of Deduction of Interest on Borrowed Capital for Computation of Income From House Property 3.7(i) For the purpose of computing income / loss under the head 'Income from House Property' **in respect of a self-occupied residential house**, a normal deduction of Rs.30,000/- is allowable in respect of interest on borrowed capital. However, a deduction on account of interest up to a maximum limit of Rs.1,50,000/- is available if such loan has been taken on or after 1.4.1999 for constructing or acquiring the residential house and the construction or acquisition of the residential unit out of such loan has been completed within three years from the end of the financial year in which capital was borrowed. Such higher deduction is not allowable in respect of interest on capital borrowed

for the purposes of repairs or renovation of an existing residential house. To claim the higher deduction in respect of interest upto Rs.1,50,000/-, the employee should furnish a certificate from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by such employee for the purpose of construction or acquisition of the residential house or for conversion of a part or whole of the capital borrowed, which remains to be repaid as a new loan.

3.7(ii) The essential conditions for availing higher deduction of interest of Rs.1,50,000/- **in respect of a self-occupied residential house** are that the amount of capital must have been borrowed on or after 01.4.1999 and the acquisition or construction of residential house must have been completed within three years from the end of the financial year in which capital was borrowed. There is no stipulation regarding the date of commencement of construction. Consequently, the construction of the residential house could have commenced before 01.4.1999 but, as long as its construction/ acquisition is completed within three years, from the end of the financial year in which capital was borrowed the higher deduction would be available in respect of the capital borrowed after 1.4.1999. It may also be noted that there is no stipulation regarding the construction/ acquisition of the residential unit being entirely financed by capital borrowed on or after 01.4.1999. The loan taken prior to 01.4.1999 will carry deduction of interest up to Rs.30,000/ only. However, in any case the total amount of deduction of interest on borrowed capital will not exceed Rs.1,50,000/- in a year.

Adjustment for Excess or Shortfall of Deduction:

3.8 The provisions of sub-section (3) of Section 192 allow the deductor to make adjustments for any excess or shortfall in the deduction of tax already made during the financial year, in subsequent deductions for that employee within that financial year itself.

TDS on Payment of Balance Under Provident Fund and Superannuation Fund:

3.9 The trustees of a Recognized Provident Fund, or any person authorized by the regulations of the Fund to make payment of accumulated balances due to employees, shall, in cases where sub-rule(1) of rule 9 of Part A of the Fourth Schedule to the Act applies, at the time when the accumulated balance due to an employee is paid, make therefrom the deduction specified in rule 10 of Part A of the Fourth Schedule.

3.10 Where any contribution made by an employer, including interest on such contributions, if any, in an approved Superannuation Fund is paid to the employee, tax on the amount so paid shall be deducted by the trustees of the Fund to the extent provided in rule 6 of Part B of the Fourth Schedule to the Act.

Salary Paid in Foreign Currency:

3.11 For the purposes of deduction of tax on salary payable in foreign currency, the value in rupees of such salary shall be calculated at the prescribed rate of exchange.

4. PERSONS RESPONSIBLE FOR DEDUCTING TAX AND THEIR DUTIES:

4.1. Under clause (i) of Section 204 of the Act the "persons responsible for paying" for the purpose of Section 192 means the employer himself or if the employer is a Company, the Company itself including the Principal Officer thereof.

4.2. The tax determined as per para 6 should be deducted from the salary u/s 192 of the Act.

Deduction of Tax at Lower Rate:

4.3. Section 197 enables the tax-payer to make an application in form No.13 to his Assessing Officer, and, if the Assessing Officer is satisfied that the total income of the taxpayer justifies the deduction of income-tax at any lower rate or no deduction of income tax, he may issue an appropriate certificate to that effect which should be taken into account by the Drawing and Disbursing Officer while deducting tax at source. In the absence of such a certificate furnished by the employee, the employer should deduct income tax on the salary payable at the normal rates: **(Circular No. 147 dated 28.10.1974.)**

Deposit of Tax Deducted:

4.4. According to the provisions of section 200, any person deducting any sum in accordance with the provisions of Section 192 or paying tax on non-monetary perquisites on behalf of the employee under Section 192(1A), shall pay the sum so deducted or tax so calculated on the said non-monetary perquisites, as the case may be, to the credit of the Central Government in prescribed manner (vide Rule 30 of the Income-tax Rules,1962). In the case of deductions made by, or, on behalf of the Government, the payment has to be made on the day of the tax deduction itself. In other cases, the payment has to be made within one week from the last day of month in which deduction is made.

Penalty for Failure to Deposit Tax Deducted:

4.5 If a person fails to deduct the whole or any part of the tax at source, or, after deducting, fails to pay the whole or any part of the tax to the credit of the Central Government within the prescribed time, he shall be liable to action in accordance with the provisions of section 201. Sub-section (1A) of section 201 lays down that such person shall be liable to pay simple interest at twelve per cent per annum on the amount of such tax from the date on which such tax was deductible to the date on which the tax is actually paid. Such interest, if chargeable, has to be paid before furnishing of quarterly statement of TDS for each quarter. Section 271C lays down that if any person fails to deduct tax at source, he shall be liable to pay, by way of penalty, a sum equal to the amount of tax not deducted by him. Further, section 276B lays down that if a person fails to pay to the credit of the Central Government within the prescribed time the tax deducted at source by him, he shall be punishable with rigorous imprisonment for a term which shall be between 3 months and 7 years, along with fine.

Furnishing of Certificate for Tax Deducted:

4.6 According to the provisions of section 203, every person responsible for deducting tax at source is required to furnish a certificate to the payee to the effect that tax has been deducted and to specify therein the amount deducted and certain other particulars. This certificate, usually called the "TDS certificate", has to be furnished within a period of one month from the end of the relevant financial year. Even the banks deducting tax at the time of payment of pension are required to issue such certificates. In the case of employees receiving salary income (including pension), the certificate has to be issued in Form No.16. However, in the case of an employee who is resident in India and whose income from salaries does not exceed Rs.1,50,000/-, the certificate of deduction of tax shall be issued in Form No. 16AA (Specimen form 16AA). It is, however, clarified that there is no obligation to issue the TDS certificate (Form 16 or Form 16AA) in case tax at source is not deductible/deducted by virtue of claims of exemptions and deductions. As per section 192, the responsibility of providing correct and complete particulars of perquisites or profits in lieu of salary given to an employee is placed on the person responsible for paying such income i.e., the person responsible for deducting tax at source. The form and manner of such particulars are prescribed in Rule 26A, Form 12BA, Form 16 and Form 16AA of the Income-tax Rules. Information relating to the nature and value of perquisites is to be provided by the employer in Form no. 12BA in case of salary above Rs.1,50,000/-. In other cases, the information would have to be provided by the employer in Form 16 itself. In either case, Form 16 with Form 12BA or Form 16 by itself will have to be furnished within a period of one month from the end of relevant financial year. An employer, who has paid the tax on perquisites on behalf of the employee as per the provisions discussed in paras 3.2 and 3.3, shall furnish to the employee concerned a certificate to the effect that tax has been paid to the Central Government and specify the amount so paid, the rate at which tax has been paid and certain

other particulars in the amended Form 16. The obligation cast on the employer under Section 192(2C) for furnishing a statement showing the value of perquisites provided to the employee is a serious responsibility of the employer, which is expected to be discharged in accordance with law and rules of valuation framed thereunder. Any false information, fabricated documentation or suppression of requisite information will entail consequences therefor provided under the law. The certificates in form no.12BA and form no. 16 are to be issued on tax-deductor's own stationery within one month from the close of the financial year i.e. by April 30 of every year. If he fails to issue these certificates to the person concerned, as required by section 203, he will be liable to pay, by way of penalty, under section 272A, a sum which shall be Rs.100/- for every day during which the failure continues.

Option to issue TDS Certificates by way of digital signatures:

4.7 Since the requirement of annexing the TDS certificates with the return of income has been dispensed with, the TDS certificates will be now issued only for the purpose of personal record of the deductees subject to the condition that they may be required to produce the same on demand before the Assessing Officer in terms of section 139C, inserted by the Finance Act, 2007. The TDS claim made in the return of income is also required to be attached with the e-TDS returns furnished by the deductors. Assessing Officers may, if considered necessary, also write to the deductors for verification of the correctness of the taxes deducted or other particulars mentioned in the certificate. It has been decided for the proper administration of this Incometax Act to allow the deductors, at their option, in respect of the tax to be deducted at source from income chargeable under the head Salaries to use their digital signatures to authenticate the certificates of deduction of tax at source in Form No. 16. The deductors will have to ensure that TDS certificates in Form No. 16 bearing digital signatures have a control No. with log to be maintained by the employer (deductor). The deductor will ensure that its TAN and the PAN of the employee are correctly mentioned in such Form No. 16 issued with digital signatures. The deductors will also ensure that once the certificates are digitally signed, the contents of the certificates are not amenable to change by anyone. The Income-tax authorities shall treat such certificate with digital signatures as a certificate issued in accordance with rule 31 of the Income-tax Rules, 1962.(Circular No.2/2007 dated 21.5.2007).

Mandatory Quoting of PAN and TAN:

4.8 According to the provisions of section 203A of the Income-tax Act, it is obligatory for all persons responsible for deducting tax at source to obtain and quote the Tax-deduction Account No. (TAN) in the *challans*, TDS certificates, statements and other documents. Detailed instructions in this regard are available in this Department's Circular No.497 (F.No.275/118/87-IT(B) dated 9.10.1987). **If a person fails to comply with the provisions of section 203A, he will be liable to pay, by way of penalty, under section 272BB**, a sum of ten thousand rupees. Similarly, as per Section 139A(5B), it is obligatory for persons deducting tax at source to quote PAN of the persons from whose income tax has been deducted in the statement furnished u/s 192(2C), certificates furnished u/s 203 and all returns prepared and delivered as per the provisions of section 200(3) of the Income Tax Act, 1961.

4.9 All tax deductors/collectors are required to file the TDS returns in Form No.24Q (for tax deducted from salaries). As the requirement of filing TDS/TCS certificates has been done away with, the lack of PAN of deductees is creating difficulties in giving credit for the tax deducted. It has, therefore, been decided that TDS returns for salaries, i.e. Form No. 24Q with less than 90% of PAN data will not be accepted for the quarter ending on 30.9.2007 and thereafter. Tax deductors and tax collectors are, therefore, advised to quote correct PAN details of all deductees in the TDS returns, failing which the TDS 12 returns will not be accepted and all penal consequences under the Income Tax Act will follow. Taxpayers liable

to TDS are also advised to furnish their correct PAN with their deductors, failing which they will also face penal proceedings under the Income Tax Act.

Quarterly Statement of TDS:

4.10. The person deducting the tax (employer in case of salary income), is required to file Quarterly Statements of TDS for the periods ending on 30th June, 30th September, 31st December and 31st March of each financial year, duly verified, to the Director General of Income Tax (Systems) or M/s National Securities Depository Ltd (NSDL). These statements are required to be filed on or before the 15th July, the 15th October, the 15th January in respect of the first three quarters of the financial year and on or before the 15th June following the last quarter of the financial year. **The requirement of filing an annual return of TDS has been done away with w.e.f. 1.4.2006. The quarterly statement for the last quarter filed in Form 24Q (as amended by Notification No. S.O.704(E) dated 12.5.2006) shall be treated as the annual return of TDS. It is now mandatory for all offices of the Government and all companies to file quarterly statements of TDS on computer media only in accordance with the “Electronic Filing of Returns of Tax Deducted at Source Scheme, 2003” as notified vide Notification No. S.O. 974 (E) dated 26.8.2003. (ANNEXURE-V) . The quarterly statements are to be filed by such deductors in electronic format with the e-TDS Intermediary at any of the TIN Facilitation Centres, particulars of which are available at www.incometaxindia.gov.in and at <http://tin.nsd.com>.** If a person fails to furnish the quarterly statements in due time, he shall be liable to pay by way of penalty under section 272A(2)(k), a sum which shall be Rs.100/- for every day during which the failure continues. However, this sum shall not exceed the amount of tax which was deductible at source. The Quarterly Statements are to be filed on computer media only in accordance with rule 31A of the Income-tax Rules, 1962.

These Quarterly Statements compulsorily require quoting of the Tax Deduction Account Number (TAN) of the tax-deductor and the Permanent Account Number(PAN) of the employees whose tax has been deducted. Therefore, all Drawing and Disbursing Officers of the Central and State Governments/ Departments, who have not yet obtained TAN, must immediately apply for and obtain TAN. Similarly, all employees (including non-resident employees) from whose income, tax is to be deducted may be advised to obtain PAN, if not already obtained, and to quote the same correctly, as otherwise the credit for the tax deducted cannot be given. A penalty under section 272B of Rs.10,000/- has been prescribed for willfully intimating a false PAN.

For and from the quarter ending 30.9.2007, filing of TDS returns in electronic form is also mandatory for deductors required to get their accounts audited under section 44AB of the Income Tax Act in the immediately preceding financial year or where the number of deductees' records in a quarterly statement for any quarter of the immediately preceding financial year is 13 equal to or more than fifty. TDS returns in paper form will no longer be accepted from such tax deductors.

4.11. A return filed on the prescribed computer readable media shall be deemed to be a return for the purposes of section 200(3) and the Rules made thereunder, and shall be admissible **in any proceeding thereunder, without further** proof of production of the original, as evidence of any contents of the original.

Challans for Deposit of TDS:

4.12. While making the payment of tax deducted at source to the credit of the Central Government, it may be ensured that the correct amount of income-tax is recorded in the relevant *challan*. It may also be ensured that the right type of *challan* is used. The relevant *challan* for making payment of tax deducted at source from salaries is ***challan no. ITNS-281***. Wherever the amount of tax deducted at source is credited to the Central Government through book adjustment, care should be taken to ensure that the correct

amount of income-tax is reflected therein.

TDS on Income from Pension:

4.13. In the case of pensioners who receive their pension from a nationalized bank, the instructions contained in this circular shall apply in the same manner as they apply to salary-income. The deductions from the amount of pension under section 80C on account of contribution to Life Insurance, Provident Fund, NSC etc., if the pensioners furnish the relevant details to the banks, may be allowed. Necessary instructions in this regard were issued by the Reserve Bank of India to the State Bank of India and other nationalized Banks vide RBI's Pension Circular(Central Series) No.7/C.D.R./1992 (Ref. CO: DGBA: GA (NBS) No.60/GA.64(11CVL)-/92) dated the 27th April, 1992, and, these instructions should be followed by all the branches of the Banks, which have been entrusted with the task of payment of pensions. Further all branches of the banks are bound u/s 203 to issue certificate of tax deducted in Form 16 to the pensioners also vide **CBDT circular no. 761 dated 13.1.98.**

Important Circulars:

4.14. Where Non-Residents are deputed to work in India and taxes are borne by the employer, if any refund becomes due to the employee after he has already left India and has no bank account in India by the time the assessment orders are passed, the refund can be issued to the employer as the tax has been borne by it :**Circular No. 707 dated 11.7.1995.**

4.15. TDS certificates issued by Central Government departments which are making payments by book adjustment, should be accepted by the Assessing Officers if they indicate that credit has been effected to the Income Tax Department by book adjustment and the date of such 14 adjustment is given therein. In such cases, the Assessing Officers may not insist on details like *challan* numbers, dates of payment into Government Account etc., but they should in any case satisfy themselves regarding the genuineness of the certificates produced before them : **Circular No. 747 dated 27.12.1996.** 4.16 There is a specific procedure laid down for refund of payments made by the deductor in excess of taxes deducted at source, vide **Circular No. 285 dated 21.10.1980.** 4.17 In respect of non-residents, the salary paid for services rendered in India shall be regarded as income earned in India. It has been specifically provided in the Act that any salary payable for rest period or leave period which is both preceded or succeeded by service in India and forms part of the service contract of employment will also be regarded as income earned in India.