DEDUCTION OF TAX AT SOURCE

Written by ***Dasvinder Singh***

1st Semester LL.M. Student, Department Of Laws, Panjab University, Chandigarh

INTRODUCTION

"*Taxation is the price which civilized communities pay for the opportunity of remaining civilized.*"

-Albert Bushnell Hart,
Former President,
The American Historical Association.

The concept of TDS or 'Tax Deducted at Source', was introduced with an aim to collect tax from the very source of income.[1] It is a means of indirect tax collection by Indian authorities according to the Income Tax Act, 1961. TDS is managed by the Central Board of Direct taxes (CBDT), which comes under the Indian Revenue Services (IRS). TDS is collected as a means to keep a stable revenue source for the government throughout the year, while desisting people from avoiding taxes.[2]

The provisions relating to deduction of tax at source are part of the provisions relating to "***Collection & Recovery of Tax***" as contained in **Chapter XVII**. **Sub-chapter-B** relating to "***Deduction at source***" is part of this Chapter and is spread from **Section 192 to 206A** of the I. T. Act, 1961.

There are two main ways of collection and recovery; one is direct from the subject and other through deduction at source of generation or payment of income. While Section 190 provides for the deduction and collection of tax at source at the time of payment, Section 191 provides

[1] https://www.incometaxindia.gov.in/Pages/Deposit_TDS_TCS.aspx. Last assessed on 11-Oct-2017 at 10:09 pm.
[2] https://www.bankbazaar.com/tax/all-about-tds.html. Last assessed on 11-Oct-2017 at 10:15 pm.

for the direct payment by the assessee,[3] in case of provisions of TDS are not being made as per this Chapter.[4]

MEANING

Tax[5] Deducted[6] at Source[7] means, "*A method of tax collection on income assessments in India. The tax collection can be affected if the income increases. The taxpayer pays tax on income from the preceding year. Tax collection is therefore delayed until the year has been completed. In order to prevent from hiding income, the government collects some amount of tax owed from the amount that is receivable by the tax payer.*"[8]

Tax deducted at source (TDS), as the very name implies aims at collection of revenue at the very source of income. It is essentially an indirect method of collecting tax which combines the concepts of "***pay as you earn***" and "***collect as it is being earned***." Its significance to the government lies in the fact that it prepones the collection of tax, ensures a regular source of revenue, provides for a greater reach and wider base for tax. At the same time, to the tax payer, it distributes the incidence of tax and provides for a simple and convenient mode of payment.[9]

A person who is liable to make payment is referred to as deductor and the person who is receiving specified income is referred to as deductee. As per the concept of TDS, deductor has to deduct the tax at the time of making payment of income (if the income is above a predefined limit) and forward the same to government on behalf of deductee. It is the deductor's duty to

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[3] As per Section 2(7) of the Income Tax Act, 1961, "*Unless the context otherwise requires, the term "assessee" means a person by whom any tax or any other sum of money is payable under this Act, and includes-*
(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or assessment of fringe benefits or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;
(b) every person who is deemed to be an assessee under any provision of this Act;
(c) every person who is deemed to be an assessee in default under any provision of this Act."

[4] http://akstaxlaws.com/images/Tax%20Deduction%20At%20Source%20&%20Section.pdf. Last assessed on 12-Oct-2017 at 6:09 pm.

[5] The term "tax" has been defined in Sub-section (43) of Section 2 of the I. T. Act, 1961 and it means income-tax chargeable under the provisions of this Act. It does not include penalty or interest and it has to be read with the limited meaning assigned to it – *Harshad Shantilal Mehta* v. *Custodian* (1998) 231 ITR 871 (SC).

[6] Deduct means, "*to take away an amount or part from total*"; http://dictionary.cambridge.org/dictionary/english/deduct. Last assessed on 12-Oct-2017 at 5:39 pm.

[7] Source means , "*at the place where something comes from";* http://dictionary.cambridge.org/dictionary/english/source. Last assessed on 12-Oct-2017 at 5:41 pm.

[8] http://www.businessdictionary.com/definition/tax-deducted-at-source-TDS.html. Last assessed on 12-Oct-2017 at 5:35 pm.

[9] http://www.incometaxindia.gov.in/Booklets%20%20Pamphlets/tds-on-salaries.pdf. Last assessed on 12-Oct-2017 at 5:40 pm.

pay the tax deducted at source to the government within a prescribed time limit. Deductor after filing returns, issues a TDS certificate to the deductee.[10]

PURPOSE AND OBJECTIVE

The **purpose** of deduction of tax at sourc**e** is to bring more persons in to net of income tax. The rules for income tax deduction at source have been framed in such a manner so that tax evasion can be controlled. However, if the income of any person is not taxable and the tax has been deducted at source, he can claim for refund against the tax deducted at source from income tax department after filing the annual income tax return.[11]

This is primarily to be done to make sure that tax payment is not avoided by unscrupulous income tax assessees and the government receives its actual share of taxes. Therefore, to achieve this goal, the responsibility of deduction and deposition of part of the taxes was put on the payer rather than the receiver of payments of different nature.[12]

The **objective** of TDS could be said, in general, to be maximization of revenue collection while minimizing the cost of collection. For example, it should be easier to deduct tax from all employees by one employer than for the tax administration to collect from each individual separately. This is so especially for wage and salary income; and this is why such income is subject to TDS in a wide cross section of countries.[13]

SCOPE

Deduction of income-tax at source has become one of the major tools in the hands of the income tax department for the purpose of collection of income tax. The scope of TDS has been enlarged, particularly in the late 1980s and during the reform process of 1990s. Withdrawals from National Savings Scheme, commission on sale of lottery tickets and income of offshore funds were brought in the ambit of TDS in 1991. The scheme was extended to certain incomes

[10] https://www.paisabazaar.com/tax/tds/. Last assessed on 11-Oct-2017 at 10:43 pm.
[11] http://webcache.googleusercontent.com/search?q=cache:http://www.letslearnaccounting.com/tax-deduction-at-source-or-tds&gws_rd=cr&dcr=0&ei=9vncWY-FBKOSvQSblayoCA. Last assessed on 12-Oct-2017 at 7:17 pm.
[12] http://echs.gov.in/images/pdf/pfc/tds1.pdf. Last assessed on 12-Oct-2017 at 7:20 pm.
[13] http://www.nipfp.org.in/media/medialibrary/2014/11/The_System_of_Tax_Deduction_at_Source_TDS_Coverage_Functioning_and_Suggestions_for_Reforms.pdf. Last assessed on 11-Oct-2017 at 11:04 pm.

of non-residents in 1992-93. Rental income was subject to TDS in 1994. Similarly, the scheme was made applicable to various other kinds of income in 1995.[14]

TDS is applicable on the various incomes received such as salaries, interest received, commission received etc.[15] At present, there are around 25 types of income where TDS has to be paid.[16] TDS payment is made at a specified rate prescribed. The rates of TDS vary depending on the source of income or type of recipient of income or payment. In general, the rates applicable to companies are found to differ from those applicable to non-companies. Also, the rates applicable to domestic companies differ from those applicable to foreign companies and the rates applicable to resident taxpayers differ from those applicable to non-resident taxpayers.[17] No tax is deducted in case the amount doesn't exceed the specified limit.[18]

PROCEDURE AND SCHEME

The obligation to deduct tax at source is upon the person responsible for paying the income which is subject to TDS. Therefore such person i.e. the payer, has to follow the procedure for deducting tax at source. The main responsibilities and procedure of TDS may be mentioned as under[19]: -

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[14] Supra Note 13.
[15]http://economictimes.indiatimes.com/wealth/tax/what-is-tds-and-how-does-itwork/articleshow/58905206.cms. Last assessed on 11-Oct-2017 at 10:21 pm.
[16] http://www.indianeconomy.net/splclassroom/84/what-is-tax-deducted-at-source-tds/. Last assessed on 11-Oct-2017 at 10:31 pm.
[17] Supra Note 13.
[18] https://www.icicibank.com/knowledge-base/tax/about-tds.page. Last assessed on 11-Oct-2017 at 10:23 pm.
[19] Supra Note 12.

STEP-1
- The payer has to apply for tax deduction account number (TAN)* in Form No-49B.

STEP-2
- He is to deduct tax from the income/payment mentioned in the various sections i.e. Section 192 to 196D or collect tax under Section 206C.

STEP-3
- The amount so deducted should be deposited within the requisite time by the 7th of the next month to the credit of central government.

STEP-4
- The payer should prepare TDS Return statements for every quarter and file the same with the authority designated by the Income-Tax department in such form and verified in such manner as may be prescribed.

STEP-5
- Lastly, the payee should be issued certificate** of tax deduction at source within the specified date.

NOTE 1:

Tax Deduction and Collection Account Number (TAN) is a unique 10 digits alpha-numeric number allotted to deductor of TDS. It is issued to identify each deductor.

Every person who is required to deduct TDS shall apply for TAN. TAN is required to be quoted on all TDS payment challans, TDS certificate & TDS returns. One can submit a application in Form 49B in any **National Securities Depository Limited** office or you can also apply online for TAN from NSDL website. There is **penalty** of Rs. 10,000 on failure to apply for TAN or failure in quoting TAN in payment challans, TDS certificates & TDS return.[20]

There is **no specific time limit** provided for getting TAN. However one should apply for TAN once he becomes liable to deduct TDS of any person because TDS payment and return filing can't be done without TAN.

There is **exception** for its requirement. TAN is not required in case TDS is deducted for purchase of Immovable property (Section 194LA). Deductor has to use his personal PAN for the TDS payment and for filing returns.[21]

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[20] http://taxadda.com/income-tax/tax-deducted-at-source-tds/. Last assessed on 13-Oct-2017 at 6:40 pm.

[21] Supra Note 20.

****NOTE 2:**

As per **Section 203** of Income Tax Act, everyone who is deducting TDS is required to furnish a certificate to the respective deductee to the effect of the amount deducted as tax, along with all the other particulars. Such certificates are called TDS certificates.[22]

There are various types of TDS certificate, namely,

i. For Salary Individual: Form 16 containing details about tax computation, deduction and payment.

ii. For a Non-salary individual: Form 16A providing details about tax deduction and payment.[23]

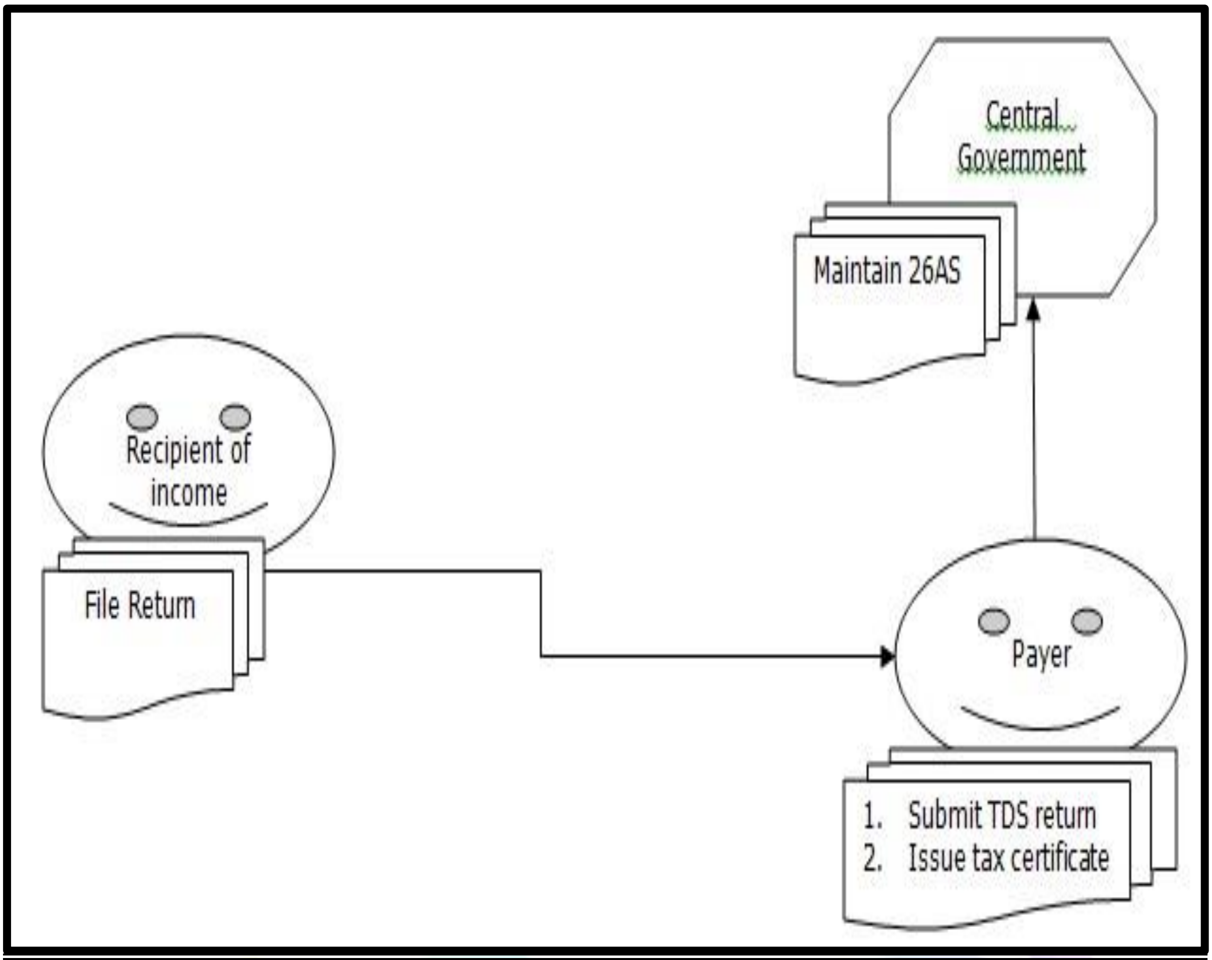
The Position of amount deducted as TDS:

The position of amount deducted as TDS under income tax act is as below:

1. The TDS so deducted is part of the total gross income of the assessee.
2. The recipient of income – though gets only the net amount – is liable to tax on the gross amount.
3. Thus, amount deducted at source is subtracted against the assessee final tax liability. This facility is known as – "**Credit of tax deducted**" and available in the following manner:
    - Credit of tax deducted and paid to the central government, shall be given to the deductee for the assessment year for which such income is offer for assessment.
    - Where income is assessable over a number of years, credit for the tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.
    - If the income is assessable in the hands of a person other than the deductee, then credit will be given to such other person.[24]

[22] Supra Note 10.
[23] Supra Note 18.
[24] http://www.sensystechnologies.com/blog/?p=2288. Last assessed on 13-Oct-2017 at 8:20 pm.

Form26AS is a statement which shows the amount of tax deducted and deposited in a person's name/PAN.



ADVANTAGES

The amount deducted as the TDS depends on the amount you earn. TDS starts getting deducted after you start earning. Both the government and the Tax-payers get benefitted from TDS. When you make payments through cash, cheque or credit card, a certain amount of tax is deducted, which gets deposited to the central agencies.

The advantages of collecting TDS are highlighted below:

1) It prevents people from evading taxes.

2) It ensures a steady source of revenue for the Government.

3) The Tax Collection base is widened.

4) The burden of responsibility of the Tax Collection Agencies and the Deductor are lessened.

5) It is convenient for the deductee as Tax is automatically deducted.[25]

DISADVANTAGES

Among the disadvantages may be mentioned:

1) The inequity implied in the inability to capture potentially large taxpayers in the TDS net, and the relatively lower success in withholding tax on certain forms of income such as dividends or professional and self-employment income,
2) For a developing country in particular, the inadequacy of trained tax administrators may be further deepened by the addition of the TDS function needing extra staff, infrastructure and processing particularly to check bogus tax deduction claims, short deductions and short payments to the exchequer;
3) The possible excessive burden on the taxpayers in terms of obtaining certificates TDS from deductors, filling additional (and often complicated) tax forms, followed by long waits for refunds; and[26]
4) The burden on deductors implied by the free service of withholding carried out for the tax department even when it may be difficult to obtain the necessary withholding forms and even while they may be subject to two scrutinies (audits) by the tax department: the usual as well as an additional one specifically for TDS.[27]

TDS MECHANISM UNDER GST

Under the GST(Goods & Services Tax) regime, **Section 51** of the CGST(Central Goods and Services Tax) Act, 2017, prescribes the authority and procedure for 'Tax Deduction at Source'. The Government may order the following persons (the deductor) to deduct tax at source:

(a) A department or an establishment of the Central Government or State Government; or

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[25] https://www.policybazaar.com/income-tax/what-is-tds/. Last assessed on 13-Oct-2017 at 9:15 pm.
[26] Supra Note 13.
[27] Supra Note 13.

(b) Local authority; or

(c) Governmental agencies; or

(d) Such persons or category of persons as may be notified by the Government on the recommendations of the Council.[28]

The tax would be deducted @1% of the payment made to the supplier (the deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh fifty thousand rupees (excluding the amount of Central tax, State tax, Union Territory tax, Integrated tax and cess indicated in the invoice). Thus, individual supplies may be less than Rs. 2,50,000/-, but if contract value is more than Rs. 2,50,000/-, TDS will have to be deducted. However, no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory, which is different from the State, or as the case may be, Union Territory of registration of the recipient.[29]

Registration of TDS Deductors: A TDS deductor has to compulsorily register without any threshold limit. The deductor has a privilege of obtaining registration under GST without requiring PAN. He can obtain registration using his Tax Deduction and Collection Account Number (TAN) issued under the Income Tax Act, 1961.[30]

Deposit of TDS with the Government: The amount of tax deducted at source should be deposited to the Government account by the deductor by 10th of the succeeding month. The deductor would be liable to pay interest if the tax deducted is not deposited within the prescribed time limit. Any excess or erroneous amount deducted and paid to the Government account shall be dealt for refund under Section 54 of the CGST Act, 2017.

[28]http://www.cbec.gov.in/resources//htdocs-cbec/gst/eflier-TDSmechanism21062017.pdf. Last assessed on 14-Oct-2017 at 2:27 pm.
[29] Ibid.
[30] Supra Note 28.

TDS Certificate: A TDS certificate is required to be issued by deductor (the person who is deducting tax) in Form GSTR-7A to the deductee (the supplier from whose payment TDS is deducted), within 5 days of crediting the amount to the Government, failing which the deductor would be liable to pay a late fee of Rs. 100/- per day from the expiry of the 5th day till the certificate is issued. This late fee would not be more than Rs. 5000/-. For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the Central tax, State tax, Union territory tax, Integrated tax and cess indicated in the invoice.

TDS Return: The deductor is also required to file a return in Form GSTR-7 within 10 days from the end of the month.[31]

Consequences of not complying with TDS provisions:

Table 1[32]

S. No.	Event	Consequence
1.	TDS not deducted	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.

[31] Ibid.
[32] Supra Note 28.

2.	TDS certificate not issued or delayed beyond the prescribed period of five days	Late fee of Rs. 100/- per day subject to a maximum of Rs. 5000/-
3.	TDS deducted but not paid to the Government or paid later than 10th of the succeeding month	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.
4.	Late filing of TDS returns	Late fee of Rs. 100/- for every day during which such failure continues, subject to a maximum amount of five thousand rupees.

TDS FROM SALARY

Salary:

According to ***Shorter Oxford English Dictionary***, the term salary means, "*to recompense, rewards; to pay for something done*". ***Chambers' Twentieth Century Dictionary*** defines salary as "*a periodical payment (usually at longer intervals than a week) for services other than mechanical*".[33]

Salary is said to be the remuneration received by or accruing to an individual for service rendered as a result of an express or implied contract. The statute, gives an inclusive but not exhaustive definition of salary. As per **Section 17(1)**, salary includes therein -wages[34], annuity or pension[35], gratuity, fees, commission, perquisites or profits in lieu of salary[36], advance salary, receipt from provident fund, contribution of employer to a recongnised provident fund in excess of prescribed limit, leave encashment[37], compensation as a result of variation of service contract etc., government contribution to a pension scheme.

Who is responsible to deduct tax:

Section 192 requires that once the salary or remuneration is paid, the tax shall be deducted on such remuneration.[38] Any person responsible for paying any income chargeable under the head "Salaries" is required to deduct tax on the amount payable. For this purpose, the following are treated as "***person responsible for paying***" salary income:

a) in the case of employees of the Central or a State Government, the appropriate disbursing officer is the person responsible for paying salary;
b) in the case of employees of a non-corporate organisation in the private sector, the employer himself is the person responsible for paying salary; and
c) In the case of employees of the private corporate sector, the person responsible for payment is the company itself as also the principal officer thereof. [39]

Where salary is payable by other employers also:

Section 192(2) provides the method of tax deduction at source when a person is employed by more than one employer during the financial year.[40]Where an employee is in employment of

[33]Dr. Vinod Singhania & Dr.Kapil Singhania, "*Deduction of Tax at Source*",p.39, Taxmann Publications(P.) Ltd., New Delhi, 19th Ed.,2007.
[34] *Gestetner Duplicators (P.) Ltd.* v. *CIT*(1979) 117 ITR 1(SC).
[35] *C.K. Karunakaran* v. *Union of India* ,(1980) 4 Taxman 178(Delhi).
[36] *Karamchari Union* v. *Union of India*,(2000) 109 Taxman 1 (SC).
[37] *CIT* v. *Ram Rattan Lal Verma*(2005) 145 Taxman 250(All.)
[38] *B. Choudhary* v. *Union of India* [2000] 241 ITR 284 (MP).
[39] Supra Note 33 at p.4.
[40]Dr. Vinod Singhania & Dr.Monica Singhania, "Students' Guide to Income Tax", p.795, Taxmann Publications (P.) Ltd., New Delhi, 36th Ed. 2006.

more than one employer or receives payment from former employer, tax will be deducted at source by that employer which the said employee so chooses, or the present employer.

The employee will furnish to the said employer details of income under the head "Salaries" due or received from former or other employer and tax deducted at source therefrom, in writing and duly verified by him, in **Form No. 12**.

The present employer will then deduct tax at source on the aggregate amount of salary (including salary received from former or other employer).[41]

When Tax is to be deducted:

Tax is to be deducted only at the time of payment of salary. If, therefore, the employer transfers salary payable to the personal account of the employee in his books of account, tax is not deductible at the time of transfer; it is deductible only at the time of actual payment. Tax should be calculated at the rate prescribed for the year in which payment is taxable in the hands of recipient.[42]

The liability to deduct tax at source from salary is absolute and it cannot be discharged merely because, under a private agreement, the employer has undertaken to pay salary as tax-free.[43]

TDS Rate:

Normal TDS rates are given in **Chapter II** of Finance Act, 2017. However, for normal rate of TDS the payee must furnish his PAN to the deductor (payer) otherwise, tax shall be deducted at the normal rate or rate of 20% whichever is higher. Further, PAN of deductee (payee) must be mentioned in every correspondence and document exchange between deductor and deductee.[44]

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[41] Supra Note 33 at p.4.
[42] Supra Note 33 at p.5.
[43] *John Patterson & Co.(India)Ltd.* v. *ITO*,(1959) 36 ITR 449(Cal.)
[44] Dr. Jyoti Rattan, "Taxation Laws", p.533, Bharat Law House Pvt. Ltd., New Delhi, 9th Ed.,2017.

Surcharge on TDS payments during the financial years 2017-18, will be applicable in the case of TDS only when the recipient is a foreign company and the payment/credit subject to TDS exceeds: 50 Lakh at the rate of 10 percent of TDS; and 1 crore at the rate of 20 per cent of TDS.

During the financial years 2017-18 education cess (at the rate of 2 per cent) and secondary and higher education cess (at the rate of 1 per cent) will be applicable only in the following cases:

- Tax deduction from payment of salary (where recipient is resident or non-resident);
- Tax deduction from payment/credit of any sum (other than salary) to a non-resident or a foreign company.[45]

Tax on non-monetary perquisite:

Perquisite is defined in ***Webster's New International Dictionary*** as, "*a gain or profit incidentally made from employment in addition to regular salary or wages, especially one of a kind expected or promised*".[46] They are included in salary income only if they are received by an employee from his employer.[47]

Section 192(1A) provides that the person responsible for paying any income in the nature of a perquisite which is not provided for by way of monetary payment, may pay, at his option, tax on the whole or part of such income without making any deduction at source. However, tax so paid by the employer is not taxable in the hands of employee.[48]

When relief under Section 89 is available:

Generally relief under section 89 is given only by the Assessing Officers in respect of salary received in arrears or advance as per **Section 192(2A)**. Where employee is a Government servant or an employee in a company, co-operative society, local authority, university[49],

[45] Ibid.
[46] Supra Note 33 at p.83
[47] *David Mitchell* v. *CIT* ,(1956) 30 ITR 710(Cal.).
[48] Supra Note 44 at p.534.
[49] "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 to be a university for the purposes of that Act [Explanation to section 192(2A)].

institution[50], association[51] or body, he may furnish in Form No. 10E details of income subject to relief under section 89 and thereon the person responsible for paying salary shall take into consideration admissible relief under section 89 while deducting tax at source.

However, other employees cannot claim such relief from the employer.[52]

When income other than salary income is considered by employer:

According to **Section 192(2B)**:

- The employee may (or may not) declare his other incomes to the employer.
- If the employee wants to declare his other incomes to the employer, then such information should be given plain paper[53] to the employer.
- The employee may declare details of his other incomes (including loss under the head "Income from house property" but not any other loss) and tax deducted thereon by others. If the aforesaid information is not submitted by the employee to the employer, then employer cannot take into consideration other incomes of the employee (even if the quantum of other incomes is otherwise known to the employer).[54]

Computation of Taxable Salary for TDS[55]:

Step I: Find out salary which includes:

- Wages, fee, commission, allowances, perquisites, profit in lieu of salary, Annuity, Pension, gratuity and leave salary beyond exempted limit.
- Employer's contribution in excess of 12% basic salary of employee and interest credited in excess of specified limit. Further it includes contribution made by Central Government under Notified Pension Scheme.

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[50] An "institution" is an established or organized society or corporation. It may be private in its character, designed for profit to those composing the organization, or public and charitable in its purpose as held in *Re Peabody's Estate*, 21 Cal. 690.
[51] The word "association" is used to indicate a collection of persons who have united or joined together for some special purpose or business and is often used as synonymous with company or society as held in *Stampolis* v. *Lewis* 186 Pa. Super 285.
[52] Supra Note 33 at p.6
[53]A verification shall be annexed to the statement of other income given on plain paper as follows—
"I(name of employee) do declare that what is stated above is true to the best of my information and belief."
[54] Supra Note 33 at p.7.
[55] Supra Note 44 at p.536.

- Expenditure actually incurred in payment of rent regarding a residential accommodation where it exceeds specified limit.
- Value of all taxable perquisites under section 17(2) such as Rent free accommodation, concession in rent.

Step II: Aggregate salary received from more than one employer.

Step III: Give deduction under Section 16[56].

Step IV: Give Deduction under Sections 80C[57], 80CCC[58], 80CCD[59], 80D[60], 80DD[61], 80E[62], 80GG[63], 80 U[64].

Step V: Now compute taxable income and round it off to nearest multiple of 10.

Step VI: Calculate tax at the rate applicable for the Financial Year.

Step VII: Add 2% Education Cess and 1% SHEC (Senior Higher Education Cess).

Step VIII: Divide such tax calculated in 12 installments. After deducting one or more installments, the amount of remaining installments shall be increased or decreased if there is change of circumstances.

However, No tax shall be deducted:

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[56] Section 16 provides, "*The income chargeable under the head "Salaries" shall be computed after making the following deductions, namely:—*
(i) [***]
(ii) a deduction in respect of any allowance in the nature of an entertainment allowance specifically granted by an employer to the assessee who is in receipt of a salary from the Government, a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or five thousand rupees, whichever is less;
(iii) a deduction of any sum paid by the assessee on account of a tax on employment within the meaning of clause (2) of article 276 of the Constitution, leviable by or under any law."

[57] Deduction in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, etc.

[58] Deduction in respect of contribution to certain pension funds.

[59] Deduction in respect of contribution to pension scheme of Central Government.

[60] Deduction in respect of health insurance premia.

[61] Deduction in respect of maintenance including medical treatment of a dependant who is a person with disability.

[62] Deduction in respect of interest on loan taken for higher education.

[63] Deductions in respect of rents paid.

[64] Deduction in case of a person with disability.

(a) Where income computed above does not exceed beyond the Basic Exemption limit for the Financial Year.[65]

(b) Where application is made by payee in Form No. 13 to Assessing Officer to get a certificate for no tax deduction or deduction of lower rate.[66]

The following is a table showing the exemption limits from deduction of tax at source from salary :

Table 2[67]

Basic Exemption Limit	(Rs.)
a) Individual a. Resident super senior citizen(80 years or more) b. Resident senior citizen (60 years or more but less than 80) c. Any other individual	 5,00,000 3,00,000 2,50,000
b) Hindu Undivided Family	2,50,000
c) Company	Nil
d) Firm	Nil
e) Association of persons or body of individuals	2,50,000
f) Local Authority	Nil
g) Artificial juridical person	2,50,000

How to make Adjustment for excess or deficiency:

As per **Section 192(3)**, the employer who is deducting tax at source at any time of making deduction, may:

(a) decrease the amount to be deducted if tax has been deducted in excess in the earlier months; or

(b) increase the amount to be deducted if less tax or no tax has been deducted in the earlier months.[68]

[65] Supra Note 44 at p.537.
[66] Section 197 provides for Certificate for deduction at lower rate.
[67] Supra Note 44 at p.534.
[68] Supra Note 44 at p.536.

TDS FROM WINNING LOTTERY TICKETS OR CROSSWORD PUZZLE

Legislative History:

The provision of TDS from winning lottery tickets or crossword puzzle i.e. **Section 194B** was newly inserted by the Finance Act, 1972, with effect from 1st April, 1972. The scope and effect of this section was explained by the Board in a circular[69] as under:

"*The effect of this provision is that winnings from lotteries and crossword puzzles will become chargeable to income-tax from the assessment year 1973-1974 onwards. Under a provision made in the new section 194B, every person responsible for paying any income by way of winnings from lottery or crossword puzzle in an amount exceeding Rs. 1,000 is required to deduct income tax thereon at the rates prescribed in this behalf in the Finance Act of the relevant year.*[70]

An interesting feature of this provision is that, along with this provision was also introduced ***sub-clause (ix) of clause (24) of Section 2*** *by the same Finance Act, 1972. That provision defined income as including "any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever*".

With effect from 1-6-2001, "card game and other game of any sort" are included in section 194B.[71]

Lottery:

The word "lottery" in its etymological sense is derived from the word "lot". A lottery is a type of gambling game in which people buy numbered tickets. Several numbers are then chosen, and the people who have those numbers on their tickets win a prize.[72]A lottery has been described as a scheme for distributing prizes by lot or chance. In its simplest form, the adventurers contribute to a fund which they agree among themselves shall be unequally divided upon the happening of an agreed event. The organizer of such a scheme may or may not himself

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69 Circular No. 108, dated 20th March, 1973.
70 Sampath Iyengar's, "Law of Income Tax",p.9467, Bharat Law House Pvt. Ltd. New Delhi, 10th Ed., 2007.
71 Supra Note 70 at p.9471.
72 https://www.collinsdictionary.com/dictionary/english/lottery. Last assessed on 15-Oct-2017 at 8:50 pm.

be an adventurer, and, in considering whether a lottery is set up or maintained, it is unnecessary to consider whether or not the organizer is to make a profit out of the subscriptions.[73]

The State Act also governs lotteries. Lottery income will be taxed under the head "other sources" and provisions of tax deduction at source will apply to lottery winnings.

A Maruti car was won as a prize on the basis of a lottery promoted by the Government to promote small savings scheme. The Kerala High Court in *Suresh (KC)* v. *Director of Lotteries*[74], held that such winning will be assessable and tax deductible under section 194B of the Income-tax Act. **The High Court remarked that the petitioner was lucky in a lottery, but unlucky with the Income-tax Department.**

The Supreme Court considered a prize scheme known as "hidden wealth prize offer" with some Horlicks bottles containing prize coupons[75] and took the view that it is not lottery. Proper view seems to be that lottery will cover only such prizes, where the participants make contribution solely for the purpose of prize and not where the prize is given to promote sales.[76]

Under chit fund schemes, chits are taken out periodically and any person whose name comes first is entitled to get full amount without further contribution. The prize money comes from the interest earned from subscribers' contributions. Since the subscribers purchase a chance of winning a prize, the amount received without further contribution is winning from lottery and tax is to be deducted therefrom under Section 194B.[77]

The following are the necessary ingredients of a scheme to be called a lottery:

a) Winning of the prize must be by chance.
b) Subscriber should contribute to the scheme.
c) The intention of the subscriber should be of winning of the prize decided by chance.[78]

Who is responsible to deduct tax:

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73 Halsbury's Law of England,p.5, Vol. 4, 4th Ed.
74 (1993) 199 ITR 266(Ker.)
75 *H.M.M. Ltd.* v. *Director General, Monopolies and Restrictive Trade Practices Commission*,(1998) 94 Comp Cas 132(SC).
76 Supra Note 70 at p.9472.
77 *CIT* v. *Sanjeev Kumar*,(1980) 123 ITR 187 (Punj.&Har).
78 *Viseswaraiah Lucky Centre* v. *CIT* ,(1991) 189 ITR 698 (Kar.)

a) Any person who is paying any income exceeding Rs. 10,000 by way of winning from lottery tickets or crossword puzzles or card game or any other game of any sort;

b) to any other person;

c) shall deduct tax at the time of payment.[79]

Where lottery or cross-words puzzle is paid in installments, the deduction will be made at the time of actual payment of each installment.[80]

TDS Rate:

TDS shall be at a rate of **30%**. No surcharge or education cess will be deducted. Therefore tax shall be deducted at basic rate.

Exception:

No tax shall be deducted where amount payable is upto Rs. 10,000. However, it is not possible to get the payment without tax deduction or with lower rate of tax. [81]

Winnings wholly or partly in Kind:

Proviso to Section 194B provides for this situation:

a) Where winnings are wholly in kind or partly in kind and partly in cash;

b) And cash is not sufficient to meet liability of TDS in respect of whole of winnings;

c) Then the Payer, before releasing the winnings, shall ensure that tax has been paid by payee.[82]

Example: A non-resident receives a Maruti Car (Market Value of Rs. 5 lacs) from a TV Show. Payer should receive Rs.1,50,000 (30% of 5 lacs) before releasing that car.

Right to credit for remitted payment:

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[79] Supra Note 44 at p.542.
[80] Circular No. 303, dated May 12, 1981.
[81] Supra Note 44 at p.542.
[82] Ibid.

In *ACIT* v. *Om Prakash Gattani*[83], a winner of lottery was not given credit for payment of tax deducted at source on the ground that deducter did not intimate the date of actual payment. The assessee filed a writ and the High Court held that remedy for the Revenue lay in enforcement of recovery from the deducter. There can be no recovery directly from the assessee, where tax has been deducted at source. If the deductor has not paid it to the Government, he should be proceeded against and not the assessee.[84]

TDS FROM WINNING FROM HORSE RACE

Legislative History:

This is a new provision inserted by the Finance Act, 1978, with effect from 1st April, 1978. The scope and object of this insertion was explained by the Board in a circular[85] as, "*The Finance Act has inserted a new **Section 194BB** in the Income Tax Act to provide for deduction of tax at source from income by way of winnings from horse races at such rates as may be prescribed in the Finance Act of the relevant year. The obligation to deduct tax at source will apply only where such winnings are paid by a bookmaker or a person to whom a licence has been granted by the government under any law for the time being in force for horse racing in any race course.*"[86]

Horse race:

The term "horse race" is not defined under the Act. However, under the English Racecourse Licensing Act, 1879 [section 1(18)], "horse race" means, "*Any race in which any horse, mare, or gelding shall run, or be made to run, in competition with any other horse, mare, or gelding, or against time - for any prize of what nature or kind so ever, or for any bet or wager or to be made in respect of such horse, mare, or gelding or the riders thereof....*"

According to this definition, the following are essential elements of "horse race"

[83] (2000) 242 ITR 638(Gau.)
[84] Supra Note 70 at p.9472.
[85] Circular No. 240, dated 17 May, 1978: (1979) 117 ITR St 39.
[86] Supra Note 70 at p.9474.

a) Any race in which horse, mare or gelding run or are made to run.

b) Horse, mare or gelding run in competition with each other or against time.

c) The race is arranged to obtain a chance to win a prize.

d) The prize may be in cash or kind.

e) The prize is in accordance with any bet or wager made in respect of any such horse/mare/gelding, or the riders thereof.[87]

Who is responsible to deduct tax:

a) Any person who is a bookmaker[88] or to whom licence has been granted by the Government under any law for the time being in Force for horse racing or for arranging for wagering or betting in any race; and
b) who is paying any income exceeding Rs. 10,000[89] by way of winnings from any horse race; to any other person;
c) shall deduct tax at the time of payment.[90]

TDS Rate:

TDS shall be at the rate of **30%**. No surcharge or education cess will be deducted. Therefore tax shall be deducted at basic rate.

Exception:

No tax is to be deducted at source where such payment is upto Rs.10,000. It is not possible to get the payment without tax deduction or with lower rate of tax.[91]

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[87] Supra Note 33 at p.249.
[88] A bookmaker is a person who carries on the business of receiving, or negotiating bets. It matters not whether he carries on that business on his own account or as servant or agent to any other person, and it matters not whether he carries on that business in any of these capacities occasionally or regularly. He is in any of those events a bookmaker as held in the case of *Lake* v. *Cronin* [1929] 1 KB 31.
[89] Substituted for "five thousand rupees", by the Finance Act, 2016 w.e.f. 01-06-2016.
[90] Supra Note 44 at p.543.
[91] Ibid.

TDS FROM RENT

Legislative History:

This section i.e. **Section 194-I** was inserted by the Finance Act, 1994, with effect from 1 June, 1994. The scope and effect of the new provisions was explained by the Board in a circular[92] as under:

"***Provisions for deduction of income-tax at source from income by way of rent****- An effective method of widening the tax base is to enlarge the scope of deduction of income-tax at source. Apart from bringing in more persons in the tax net, it also helps in the reporting of correct incomes. An item of income which needs to be covered within the scope of deduction of income-tax at source is the income by way of rent. In a number of countries, such income is subject to deduction of income-tax at source.*

The Finance Act has, therefore, inserted a new section 194-1 in the Income-tax Act relating to deduction of income-tax at source from rent.[93]

RENT:

The meaning of "Rent" has been modified by the Taxation Laws (Amendment) Act, 2006, with effect from 13, July, 2006. It means any payment called by any name, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land; or building[94]; or land appurtenant[95] to a building (including factory); or machinery; or plant; or equipment; or furniture; or fittings.[96]

However, it immaterial whether such land, building, etc., are owned by payee or not. (Explanation to Section 194-I)[97]

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[92] Circular No. 684, dated 6 June, 1994: (1994) 208 ITR St 8.
[93] Supra Note 70 at p.9571.
[94] Building is an enclosure of the brick or stone work covered by roof as held in *Moir* v. *Williams*,(1892) 1 QBD 264.
[95] The appurtenant lands in respect of a residential building may be in the form of approach roads to and from public streets, compounds, courtyards, back yards, playgrounds, kitchen garden, motor garage, stable or a coach home cattle-shed, etc., attached to and forming part of building. In respect of non-residential building, the appurtenant lands may be in the form of car parking spaces, roads, connecting one department with another department, playgrounds for the benefits of employees, etc.
[96] Supra Note 33 at p.327.
[97] Supra Note 44 at p.550.

Landing or parking fee of aircraft is rent with in explanation (i) to Section 194-I; therefore, liable to TDS[98].

Scope of term "Rent" under Section 194-I:

If **advance rent** is paid on or after May 31, 1994, it is subject to tax deduction under section 194-I at the time of "payment".[99]

The term "rent" as defined in section 194-I means any payment by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any building or land. Therefore, the **warehousing charges** will be subject to deduction of tax under section 194-I.[100]

Even if a **part or portion of building** is given on rent, section 194-I is applicable.[101]

If the **composite agreement** is in essence the agreement for taking premises on rent, the tax will be deducted under section 194-I from payments thereof. For instance, in a case of composite arrangement for user of premises and provision of manpower for which consideration is paid as a specified percentage of turnover, section 194-I would be attracted if the agreement is in essence the agreement for taking premises on rent at source.[102]

Who is responsible to deduct tax:

a) Any person other than individual or Hindu Undivided Family who is not required to audit his books of account under Section 44AB in the immediately preceding Financial Year, who is paying income exceeding 1,80,000;
b) to any resident person; and
c) payment must be rent;
d) shall deduct tax at the time of:
   • payment in cash or issue of cheque or draft or any other method; or
   • credit of such amount,

[98] *United Airlines* v. *CIT* ,(2006) 152 Taxman 156 (Del.).
[99] Supra Note 33 at p.330.
[100] Circular No. 718, dated August 22, 1995.
[101] Ibid.
[102] Circular No. 715, dated August 8, 1995.

whichever is earlier.[103]

TDS Rate:

(i) In case of Rent for plant/Machinery or equipment - **2%**

(ii) In case of Rent for land, building furniture or fittings - **10%**

There will be no surcharge and education cess and secondary higher education cess. If the recipient does not furnish his PAN to the deductor, tax will be deducted at the rate of 20%. PAN of the deductee should be mentioned on any correspondence and document which is exchanged between the deductor and deductee.[104]

Exception:

No tax is to be deducted:

(a) where aggregate amount of rent during a Financial Year does not exceed Rs.1,80,000. However, when property is jointly owned by two or more persons and share of each co-owner is definite and ascertainable then the limit of Rs. 1,80,000 shall be applicable to each co-owner.

(b) Where rent is paid to Government or Local Authority or any other entity whose income is exempted under sections 10(20) of Income-tax Act, 1961.[105]

(c) Where income of any entity is unconditionally exempted under section 10[106] and it is not required to file return under Section 139.

(d) Where application is made by payee in Form No. 13 to Assessing Officer to get a certificate for no tax deduction or deduction at lower rate provided few conditions are satisfied (Rule 28AB).[107]

CONCLUSION

[103] Supra Note 44 at p.550.
[104] Ibid.
[105] Circular No. 699, dated January 1, 1995.
[106] Section 10 deals with- Incomes not included in total income.
[107] Supra Note 44 at p.551.

In my humble opinion TDS or tax deducted at source is an indirect method to collect income tax from the people of India who are employed. Tax is deducted at source from all sorts of incomes such as salary, royalty payments, interest earned, professional fees, brokerage, commission and more. These deductions are made in compliance with the Income Tax Act, 1961, and the implementation of TDS is regulated by the CBDT (Central Board for Direct Taxes). TDS also comes under the purview of Indian Revenue Service.

The purpose of deduction of tax at source is to bring more and more persons under the purview of income tax so that they are not able to evade tax later on. Thus, the rules for income tax deduction at source have been framed in such a manner so that tax evasion can be minimized. However, if the income of any person is not taxable and the tax has been deducted at source, in that case he can claim for refund against the tax deducted at source from income tax department after filing the annual income tax return.

TDS works to the great advantage of both the tax collector as well as the taxpayers as the latter get to pay income tax as the income is earned. It also does away with the need of large tax deductions at the end of the financial year.

"*Taxes are the lifeblood of government and no taxpayer should be permitted to escape the payment of his just share of the burden of contributing thereto.*"

-**Arthur Vanderbilt**,
Former Chief Justice,
The New Jersey Supreme Court.

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