

## Union Budget 2012: Extension of TDS and TCS Provisions to more Areas



The author in this write up has discussed the provisions relating to TDS and TCS proposed to be introduced in the Income-tax Act, 1961 by the Finance Bill, 2012. According to the author these provisions are justified on the ground of generating revenue to the Government early, but it needs to be ensured that the money collected through the new provisions by way of TDS & TCS goes to the kitty of the Government.

### Introduction

Section 190 of the Income-tax Act, 1961 (the Act) provides for collection of tax by way of deduction at source (TDS) or collected by way of advance tax or recovered at source (TCS) as per the provisions of Section 206C of the Act. Thus, before a case is taken up for assessment for determination of tax liability of an assessee, he has already paid substantial amount by way of TDS & TCS and advance tax as per the provisions in Parts A, B, BB, C of Chapter XVII of the Act and also by way of self assessment at the time of submission of return if any tax is found due after adjustment of TDS, TCS & advance tax. In the discussion to follow, only new provisions relating to TDS and TCS proposed to be introduced in the Act are being considered. However, before that, the philosophy behind TDS needs to be briefly mentioned.

### Why TDS?

Deduction of tax at source is a convenient way of tax collection since it helps in earlier collection of tax, lessens its impact for the deductees because the tax is deducted before receipt of the payments liable to tax. Practically no cost is incurred and botheration felt by the IT Department. The Government is also secured from the chances of losing tax in case the taxpayer's financial position worsens by the time the assessment gets finalised. Further, the person making a deduction of tax at source is required to pay such deducted amounts to the credit of the Central Government in the manner prescribed [Section 200]. Failure to make deduction where the law provides for one, and



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failure to make payment of the deducted amount of tax, amount to contumacious conduct on the part of the person liable to deduct and/or pay the tax and penal consequences follow for any such default [Section 201]. The person making the deduction has to furnish a certificate of such deduction in the prescribed form [Section 203]. He has to furnish the prescribed returns with the Assessing Officer for such deductions, etc. [Section 206]. In view of these advantages, the Government has been extending the coverage of TDS provisions to newer areas and the same has been done at the time of drafting the Finance Bill, 2012 also. The new proposals relating to TDS (and also TCS) coverage are being analysed in later discussion.

#### **New areas of extension of TDS schemes**

The new areas to which the TDS scheme has been extended are:

#### **A. Deduction of tax at source on transfer of certain immovable properties**

Vide Clause 73 of the Finance Bill, a new Section is being inserted as Section 194LAA after the existing Section 194LA. The contents of this clause are analysed in later discussion.

#### **The proposed law**

Under the existing provisions of the Act, on transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a resident except in the case of compulsory acquisition of certain immovable properties.

#### **Deemed consideration in certain situations**

In order to collect tax at the earliest point of time and also to have a reporting mechanism of transactions in the real estate sector, it is proposed to insert a new provision to provide that every transferee, at the time of making payment or crediting any sum by way of consideration for transfer of immovable property (other than agricultural land), shall deduct tax, at the rate of 1 per cent of such sum, if the consideration paid or payable for the transfer of such property exceeds-

- (a) fifty lakh rupees in case such property is situated in a specified urban agglomeration; or
- (b) twenty lakh rupees in case such property is situated in any other area.

#### **Ensuring compliance**

It is proposed to provide that where the consideration paid or payable for the transfer of such property is less than the value adopted or assessed or assessable by any authority of a State Government for the purposes of payment of stamp duty, the value so adopted or assessed or assessable shall be deemed as consideration paid or payable for the transfer of such immovable property.

#### **Care for taxpayers**

For reducing the compliance burden on the transferee, it is proposed that a simple one page challan for payment of TDS would be prescribed containing details (including PAN) of transferor and transferee and also certain details of the property. The transferee would not be required to obtain any Tax Deduction and Collection Account Number (TAN) or to furnish any TDS statement as this would be mostly a one time transaction. The transferor would get credit of TDS like any other pre-paid taxes on the basis of information furnished by the transferee in the challan of payment of TDS.

#### **Applicability of the new provision**

As it is, an anti-evasion/avoidance provision, it is proposed to bring it into operation early after the passing of the Finance Act, 2012. Hence its date of operation has been proposed as is 1<sup>st</sup> October, 2012.

#### **B. TDS on remuneration to Director of Companies (Clause 71 of the Bill)**

Presently, tax at source is deductible on remuneration/salary to the Managing or Whole Time Directors of the Companies. But not on payments which are not in the nature of salaries or on sitting fees paid to them. Hence it is proposed to amend Section 194J to provide that tax is required to be deducted on the remuneration paid to a director, which is not in the nature of salary, at the rate of 10 per cent of such remuneration. This change is proposed to be done by amending Section 194J. This provision is to be operative from 1<sup>st</sup> July, 2012.

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**It is proposed to insert a new provision to provide that every transferee, at the time of making payment or crediting any sum by way of consideration for transfer of immovable property (other than agricultural land), shall deduct tax, at the rate of 1 per cent of prescribed sum**

#### Tax collection at source

##### A. Section 206C- Profits and gains from the business of trading in alcoholic liquor, forest produce, etc.

This section provides that every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in case or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax.

Sl.No.	Nature of goods	Percentage
(i)	Alcoholic liquor for human consumption (other than Indian made foreign liquor) and tendu leaves	Ten per cent
(ii)	Timber obtained under a foreign lease	Fifteen per cent
(iii)	Timber obtained by any mode other than under a forest lease	Five per cent
(iv)	Any other forest produce not being timber or tendu leaves	Fifteen per cent

The AO has been given power to restrict the operation of this section in some cases.

Tax at source is being collected presently by sellers from buyers of Tendu leaves, timber from forest lease or by other means, forest products other than timber or tendu leaves, scrap and also in respect of contracts for parking lot, toll plaza, mining and quarrying. The tax so collected is to be deposited to Government account.

##### B. TCS on bullion & jewellery

The application of collection at source provisions are proposed to be extended, from the angle of reducing the quantum of cash transactions to bullion and jewellery sector and for curbing the flow of unaccounted money in the trading system of bullion and jewellery. It is proposed to provide that the seller of bullion and jewellery shall collect tax at the rate of 1

per cent of sale consideration from every buyer of bullion and jewellery if sale consideration exceeds two lakh rupees and the sale is in cash. This would be irrespective of the fact whether buyer is a manufacturer, trader or purchase is for personal use.

This provision is to come into force from 1<sup>st</sup> July, 2012.

##### C. TCS on sale of certain minerals

Mining sector is an important segment of Indian economy but the trading of minerals remained largely unregulated resulting in non-reporting or underreporting of trading in minerals transactions for taxation purpose.

In order to collect tax at the earliest point of time and also to improve reporting mechanism of transactions in mining sector, it is proposed that tax at the rate of 1 per cent shall be collected by the seller from the buyer of the following minerals:

- Coal;
- Lignite; and
- Iron ore

However, the seller shall not collect tax on sale of the said minerals if the same are purchased by the buyer for personal consumption. Further, the seller of these minerals shall not collect tax if the buyer declares that these minerals are to be utilised for the purposes of manufacturing, processing or producing articles or things.

This provision too is to be operative from 1<sup>st</sup> July, 2012.

##### Conclusion

These provisions are justified on the ground of generating revenue to the Government early. But it needs to be ensured that the money collected through the new provisions by way of TDS & TCS goes to the kitty of the Government. This may be a difficult exercise in the cases where tax is collected from jewellery and bullion sales and purchases where the seller is an individual whose identity may be difficult to establish and the money may not reach Government's account for that reason. Hence, safeguards will have to be provided concerning such collections.

Secondly, the new TDS rule regarding Director's remuneration may be hard in small companies where sitting fees are paid at the rate of say ₹2000 per meeting. Generally 4 or 5 meetings are held in a year. Hence a threshold limit needs to be prescribed for this. A limit of ₹10000 may be a good limit and tax may be deducted only in cases where payment increases ₹10000 in a year on the full amount. Section 194J provides a limit of ₹30000 in a year. ■