

AMENDMENTS RELATED TO TDS, TCS, PENALTIES & PROSECUTIONS



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In the recent past budgets, Hon'ble Finance Minister's one of the focus area has been widening and deepening of tax base and improving deterrence against non-complying tax payers. Given the fact that tax deduction and collection provisions are one of the major contributors in widening and deepening the tax base of the country, we are witnessing introduction of new TDS/TCS provisions and strengthening of existing provisions every year. Similar approach can be seen in the Finance Bill, 2022 as well. The bill proposes to insert 2 new sections and amend 6 sections related to TDS/TCS. Also to discourage non-complying tax payers it proposes to insert 1 new section and amend 10 existing sections pertaining to penalties & prosecution.

Amendments relating to TDS\TCS

Proposed Amendments to section 194-IA : TDS on sale of immovable property

Present Position

Section 194-IA of the Act provides for deduction of tax by any person responsible for paying **to a resident** any sum by way of consideration **for transfer of any immovable property (other than agricultural land)** at the rate of **1 per cent**, if such consideration **exceeds Rs.50 Lakhs**.

Proposed Amendment

- a. It is proposed to amend section 194-IA of the Act to provide that **in case of transfer of an immovable property (other than agricultural land)**, tax is to be deducted at the rate of **1%** of such **consideration or the stamp duty value (SDV) of such property, whichever is higher**.
- b. Stamp duty value (SDV) shall have the meaning assigned to it in clause (f) of the Explanation to clause (vii) of sub-section (2) of section 56.
- c. **No deduction** of tax shall be made where the consideration paid for the transfer of an immovable property and the stamp duty value of such property **both are less than Rs.50 Lakhs**.

The amendment to this section is proposed to remove inconsistency between section 43CA, 50C and 194IA of the Act. However, proposed amendments may lead to some issues and mismatches, such as:

1. No tolerance limit of 10% is provided while deducting TDS where the actual consideration is less than SDV. There may be instances of mismatch whereby the Buyer of immovable property has done TDS on SDV whereas Seller has offered for taxation at actual sale consideration which is less than SDV but within the tolerable range of 10%.

2. Also, where the date of allotment letter, agreement and registration of agreement for the transfer of property are not the same. There could be an issue in deciding which SDV to consider for TDS. SDV as on date of allotment letter, agreement or registration of agreement.

The aforesaid amendment is proposed to be effective from 1st April, 2022.

Proposed Amendment to section 194-IB : Payment of Rent by certain Individuals or Hindu undivided family (HUF)

Present Position

In case of payment of rent above Rs.50,000/- by certain individuals or Hindu undivided family (HUF), TDS at higher rate was required to be deducted in terms of section 206AB i.e. if deductee has not filed his return of income for previous 2 years and the amount for tax deducted at source was Rs.50,000/- or more for the current year.

Proposed Amendment

It is proposed that the provisions of section 206AB i.e. requirement to deduct TDS at higher rate in cases where deductee has not filed his return of income will not apply on payment of rent covered under Section 194-IB of the Act.

The aforesaid amendment is proposed to be effective from 1st April, 2022.

Newly introduced Section 194R : Deduction of tax on benefit or perquisite in respect of a business or profession

- a. As per section 28(iv) of the Act, the value of any benefit or perquisite, arising from business or exercise of profession is taxable in the hands of the recipient. However, often such income is not getting reported in the return of income. Taking note of the above fact, Finance Minister has proposed to introduce new section 194R wherein any person responsible for providing **to a resident, any benefit or perquisite**, whether convertible into money or not, **arising from carrying out of a business or exercising of a profession by such resident**, shall, **before providing** such benefit or perquisite, ensure that tax has been deducted at the rate of **10 per cent** of the value or aggregate value of such benefits or perquisites.
- b. In a case where the benefit or perquisite, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax, the person responsible for providing such benefit or perquisite shall, before releasing the benefit or perquisite, ensure that entire tax has been paid in respect of the benefit or perquisite.
- c. **No tax is to be deducted** if the value or aggregate value of the benefits or perquisites to a resident person does not exceed **Rs.20,000/-** during the financial year.
- d. Further, the provisions of the said section **shall not apply to an Individual or a HUF**, whose **total turnover/receipts does not exceed Rs.1 crore (in case of business) or Rs.50 Lakhs (in case of profession)** during the immediately preceding financial year in which such benefit or perquisite is provided.



- e. For the purpose of this section, the expression 'person responsible for providing' has been proposed to mean a person providing such benefit or perquisite or in case of a company, the company itself including the principal officer thereof.

This new section is likely to have wide ranging implications for many business/profession where multiple types of perquisites & benefits are extended to their dealers/distributors/agents/channel partners, etc. with the objective of incentivizing and motivating them for the growth of the business. One would have consider following points to ensure compliance with this new provision:

- To keep record of all non-monetary benefits being provided to vendors/business partners and check if the same is likely to be covered by definition of perquisite/benefit as per Section 28(iv) of the Act;
- Unlike other TDS sections, this section does not use the sentence "at the time of credit or payment, whichever is earlier". Under section 194R, the payer has to ensure tax is deducted before providing such benefit or perquisite to the receiver;
- In case perquisites or benefits are fully or partly in kind, one has to ensure that, the tax has been paid in respect of the entire value of benefit or perquisite;
- Difficulties may arise in valuation of such perquisites/benefits;
- The Hon'ble Supreme Court in the case of Mahindra and Mahindra Ltd [2018] has interpreted the provision of section 28(iv) of the Income Tax Act, 1961 that, only income which are in kind or party in cash or kind can be considered as benefit or perquisite under the said section. If such benefit or perquisite is entirely payable in monetary term or pure money form then this benefit or perquisite cannot be taxed under the aforesaid section. Though section 194R doesn't refer to section 28(iv) of the Act, it uses similar terminologies used in section 28(iv) of the Act, and the memorandum explaining the provisions of Finance Act, 2022 gives reference to the fact that many recipients of the benefit or perquisite covered by the section 28(iv) of the Act do not offer the same in their return of income, therefore to widen the tax base it is proposed to introduce section 194R.
- So the question remains whether tax is required to be deducted only on the benefit or perquisite which are fully in kind or partly in cash and kind; or it is required to be deducted on the benefit or perquisite which are entirely payable in monetary term as well.

This amendment will take effect from 1st July, 2022.

Newly introduced Section 194S : Deduction of tax on Payment on transfer of Virtual Digital Assets (VDA).

- i. Finance Bill, 2022 proposes to tax Virtual Digital Asset (VDA) transactions and thus in order to capture the transaction details, section 194S is proposed to be inserted into the Act to provide for deduction of tax on transfer of VDA. It provides for deduction of tax **on payment for transfer of virtual digital asset to a resident** at the rate of **1%** of such sum.

- ii. However, in case the payment for such transfer is–
 - i. wholly in kind or in exchange of another VDA where there is no payment in cash; or
 - ii. partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax,
the person making the payment shall ensure that the tax has been paid in respect of such consideration before making the payment.
 - a. Concessions are provided if the payer is a specified person, the provisions of section 203A (requirement to obtain TAN) and section 206AB (deduction of tax at higher rate) will not be applicable.
- iii. Further, no tax is to be deducted in case **the payer is a specified person** and the value or the aggregate **value of consideration** to a resident is less than **Rs.50,000/-** during the financial year. **In case of non-specified persons**, the said limit is proposed to be **Rs.10,000/-** during the financial year.
- iv. For the purposes of the said section, it is proposed that '**specified person**' means a person:--
 - i. being an individual or a HUF, whose total turnover/receipts does not exceed Rs.1 crore (in case of business) or Rs.50 Lakhs (in case of profession) during the immediately preceding financial year in which such VDA is transferred; or
 - ii. being an individual or HUF having income under any head other than the head 'Profits and gains of business or profession'
- v. It is also proposed to provide that if tax has been deducted under section 194S, then no tax is to be collected or deducted in respect of the said transaction under any other provision of Chapter XVII of the Act.
- vi. Similar to other TDS provisions, tax is to be deducted at the time of payment or credit whichever is earlier. Therefore, even if it is credited to suspense account, TDS is required to be deducted on such sum.
- vii. It is also proposed to provide that in case of a transaction where tax is deductible under section 194-O along with the proposed section 194S, then the tax shall be deducted under section 194S and not under section 194-O.

This amendment will take effect from 1st of July, 2022.

Amendments to section 206AB and 206CCA

Present Position

Section 206AB & 206CCA of the Income Tax Act, 1961 provide for deduction of tax or collection of tax at a higher rate in the case of non-filers of returns. Earlier, the aforesaid sections provided that tax deduction & tax Collection rates will be higher in the case of the "Specified Person". Presently, the term "Specified Person" covers a person who has not filed his return of income for both of the **2 previous years** preceding the financial year in which tax is to be deducted or collected for which the time limit of filing ITR u/s 139(1) has expired and tax deduction and tax collection in whose case is Rs.50,000/- or more.

Proposed Amendment

- a. The definition of "Specified Persons" has been proposed to be amended to **reduce the period of non-furnishing of return from 2 years to 1 year**. As such, if a person has not filed Income Tax Return for the previous year preceding the financial year in which tax is to be deducted or collected, tax shall be deducted or collected at higher rates as per section 206AB/ 206CCA.
- b. Further, in order to reduce the additional burden on individual and HUF taxpayers covered under section 194-IA, 194-IB and 194M of the Act for whom simplified tax deduction system has been provided without requirement of TAN, it is proposed that the provisions of section 206AB will not apply in relation to transactions on which tax is to be deducted under the said sections of the Act.

These amendments will take effect from 1st April, 2022.

Amendments to Section 201 : Related to Interest on TDS default

Present Position

Sub-section (1A) of the section 201 provides that if any person who is liable to deduct tax at source does not deduct it or after so deducting fails to pay the same to the credit of the Central Government, then he shall be liable to pay simple interest at the rates specified therein.

Proposed Amendment

In section 201 of the Income-tax Act, in sub-section (1A), new proviso is proposed where any order is made by the Assessing Officer for the default under section 201(1), the interest shall be paid in accordance with the order made by the Assessing Officer.

This amendment will take effect from 1st April, 2022.

Amendments to Section 206C : Related to Interest on TCS default

Present Position

Sub-section (7) of the section 206C provides that if any person who is liable to collect tax at source does not collect it or after so collecting fails to pay the same to the credit of the Central Government, then he shall be liable to pay simple interest at the rates specified therein.

Proposed Amendment

In section 206C of the Income-tax Act, in sub-section (7), new proviso is proposed where any order is made by the Assessing Officer for the default under section 206(6A), the interest shall be paid in accordance with the order made by the Assessing Officer.

This amendment will take effect from 1st April, 2022.

Amendments relating to Penalty and Prosecution

Proposed Amendments to Section 271AAB, 271AAC, 271AAD

Present Position

These sections deal with penalty provisions in case of undisclosed income found during search, unexplained credits or expenditure, fake invoice or false entry in books, etc. Till now only **the Assessing Officer** had the power to levy penalty under these sections.

Proposed Amendment

- a. In order to improve deterrence against non-compliance among tax payers, it is proposed to amend the sections 271AAB, 271AAC and 271AAD to empower the **Commissioner (Appeals)** to levy penalty under these sections along with the Assessing Officer.
- b. Further, definition of "specified date" in clause (a) Explanation to section 271AAB is also amended to make it applicable to a notice issued under section 148 in case where search is initiated on or after 1st April, 2021.

These amendments will take effect from 1st April, 2022.

Newly introduced Section 271AAE: Penalty for passing on unreasonable benefits to trustee or specified persons

- a. The Finance Minister has proposed numerous amendments in the Finance Bill, 2022 related to Charitable Trusts / educational institutions / hospital or medical institutions registered u/s 10(23C), u/s 12AA/12AB of the Act to ensure proper monitoring of such entities, bring consistency in application of provisions of the Act and providing clarity wherever required.
- b. Trusts or institution are required **not to pass on any unreasonable benefit to the trustee or any other specified person** as per provision of 21st proviso to section 10(23C) or section 13(1)(c). In order to discourage such misuse of the funds of the trust or institution by specified persons, it is proposed to insert a new section 271AAE in the Act. It is proposed that if during any proceeding under the Act, the Assessing Officer finds that a trust or institution has violated the 21st proviso to section 10(23C) or section 13(1)(c), the Assessing Officer may direct such person to pay by way of penalty:
 - i. **100% of amount of income applied** directly or indirectly by such trust or institution **for the benefit of specified person** where the violation is noticed for **the first time** during any previous year;
 - ii. **200% of the amount** of such income where the violation is notice again in any **subsequent year**.
- c. The proposed section seeks to operate without prejudice to any other provision of chapter XXI. Thus, if any penalty is leviable under any of the other provisions of this chapter, in addition to the proposed penalty, that penalty would also be applicable.

- d. The 200% penalty could be harsh in situations where in the opinion of the Assessing Officer (AO) the trust or institution has provided unreasonable benefit to the trustee of specified person and such benefits are passed on in back to back years. For example, if during the assessment u/s 143(3) for the year 2022-23 the Assessing Officer (AO) is of the opinion that trust or institution has provided unreasonable benefit to the trustee or specified person. By the time the assessment order is passed by AO for the first year i.e. 2022-23, the sub-subsequent year i.e. 2023-24 would have already been over. And if such benefits are also passed in the year 2023-24. The AO may levy 200% penalty for the year 2023-24.
- e. Also, the levy of penalty is discretionary and not mandatory. If sufficient explanation is provided to the satisfaction of the AO no penalty could be levied.

These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Proposed Amendment to section 271C

- a. Section 271C provides for Penalty for failure to deduct tax at source under provisions of Chapter XVII-B. The sub-clause (1)(b)(ii) of the section refers to the second proviso to section 194B. However, the first proviso to section 194B was omitted with effect from 01st April 2000 by the Finance Act, 1999, and the said section currently has only one proviso.
- b. Therefore, to avoid ambiguity among the sections it is proposed to omit the word "second" in section 271C(1)(b)(ii) of the Act.

This amendment will take effect from 1st April, 2022.

Proposed Amendments to Section 272A

Present Position

Section 272A of the Act provides for penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc. At present, the amount of penalty for failures listed under sub-section (2) of section 272A is Rs.100/- for every day during which the failure continues.

Proposed Amendment

It is proposed to increase the amount of penalty for failures listed under sub-section (2) of section 272A to Rs.500/- per day.

This amendment will take effect from 1st April, 2022.

Proposed Amendments to Section 276AB: Failure to pay tax to Central Govt

Prosecution provisions u/s 276AB deals with punishment for failure to comply with provisions of sections 269UC, 269UE and 269UL of the Act. It is proposed that no proceeding under this section shall be initiated on or after 1st April 2022, as the corresponding provisions have already been abolished.

Proposed Amendment to section 276B

Section 276B provides for prosecution for a term ranging from three months to seven years with fine for failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B. The clause (b) sub-clause (ii) of the section refers to the second proviso to section 194B. However, section 194B has only one proviso, hence, the word “second” is proposed to be deleted.

This amendment will take effect from 1st April, 2022.

Proposed Amendments to Section 276CC : Failure to furnish return of Income

Finance Minister has introduced the concept of “Updated Return of Income” to provide taxpayers an opportunity to offer to taxation additional income which was omitted to be included in earlier return by payment of additional sum over and above tax, interest and fees, as applicable; and then submit an Updated Return of Income (“Updated ITR”) for that Assessment Year, so as to avoid any further penal consequences on such income. It is proposed to amend proviso to the section 276CC to exclude penal consequence under this section on such returns.

This amendment will take effect from 1st April, 2022.

Proposed Amendments to Section 278A : Punishment for second and subsequent offences

Present Provisions

Section 278A is related to **punishment with prosecution** against persons for **second and subsequent failure to pay tax** to the credit of Central Government under Chapter XVII-B for **tax deducted at source (TDS)** in terms of section 276B. However, **no such provisions** exist against persons **failing to pay tax collected at source (TCS)** in terms of section 276BB.

Proposed Amendment

It is proposed that similar consequences of **punishment with prosecution** under section 278A shall be made applicable for **second and subsequent failure to pay tax collected at source (TCS)** in terms of section 276BB as well.

This amendment will take effect from 1st April, 2022.

Proposed Amendments to Section 278AA : Punishment not to be imposed in certain cases

Present Position

This section provides immunity from penal consequence under section 276A, 276AB and 276B if it is proved that there was reasonable cause for such failure.

Proposed Amendment

It is proposed that 278AA immunity shall also be provided for the failure under section 276BB (i.e. failing to pay tax collected at source (TCS) to the credit of the government) if it is proved that there was reasonable cause for such failure.

This amendment will take effect from 1st April, 2022.

