

TDS gets really really tedious!

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THE Government has come out with two very important notifications, both dated March 25, 2009. While Notification No. 30/2009 deals with the new procedural requirements related to payments to Non-Resident Indians and Foreign Companies effective July 1, 2009, Notification No. 31/2009 deals with the new procedures related to payment of taxes deducted at source.

Notification No. 31/2009 brings in significant changes in the TDS provisions. First and foremost, e-payment of TDS becomes mandatory for ALL assessees. Right now, e-payment of taxes is mandatory for all the corporate assessees and for assessees who are required to undergo tax audit under Section 44AB of the Income tax Act. Though many banks which do not have e-payment facility are accepting physical payments, with the introduction of the new Notification No. 31/2009, e-payment would become mandatory and banks might stop accepting physical tax payments. To what extent banks are prepared to face this challenge, is a big question mark. Currently, even some MNC banks do not have an e-payment facility, which speaks of the non-preparedness of the Indian banking system to implement the e-payment mode. Now, the e-payment mode would cover all assessees including those who are not required to under the tax audit procedure under

Section 44AB. One does not understand the rationale of expanding the e-payment mode to all assessees, when the current banking system does not seem to be prepared to handle the load even in respect of corporate assessees.

Secondly... the new procedure would increase the overall number of forms that would get filed with the Income tax Department. For instance, the Department has specified that the quarterly returns would need to be filed in Form 24C and it seems like that the filing of the Form 24C forms would be in addition to the filing of the annual returns in Forms 24Q, 26Q and 27Q. Surely, more forms to be filed means more work for the assessees.

Thirdly, the Form 17 which is the form to be used for remitting tax to the Government, seems quite complex. For instance, the Form 17 does not mention the break up for payment of income tax, surcharge and education cess. This would lead to a lot of problems in terms of matching the figures in Form 17 with the figures in Form Nos 24Q, 26Q and 27Q. It would seem that Form 17 has been designed without taking into account, the needs arising out of the information to be filled in Form Nos 24Q, 26Q and 27Q. I would welcome a clarification from

the Board that they have intentionally designed the Form 17 to provide that all TDS payments can be clubbed into one.

Fourthly, how many Form 17s would need to be filed, Sir? On the face of it, an assessee would need to file as many Form 17s, as there are Sections of the Income tax Act under which he is remitting the monthly taxes, as there are no columns for the Sections under which the tax has been deducted. For instance, if an assessee is remitting tax deducted under Sections 192, 194 and 195, let's say, he should file one Form 17 each, for each of the Sections under which he effects the taxdeduction. This could be a major issue which would significantly increase the work load and the administrative and transaction costs for the assessees, unless the Department changes the format of the Form 17.

Fifthly, the Department is getting into the concept of allotting a "Unique Transaction Number" that will be issued by it and which would have to be quoted in the Forms Nos 16 and 16A to be issued to the Deductees. Now, how many unique numbers would the Department require? Already, the Form 16s/16As contain the PANs of the Deductor and the Deductee and what purpose would another unique number serve, other than adding to the administrative load of everybody concerned. And, one hopes that the 'Unique Transaction Number' is something which would get automatically generated from the website without the need for the assessees to run around to the Department.

Sixthly, there seems to be some issues in the new procedure for issuance of Form Nos 16 and 16A which have been specified by the Department. It seems that Form 16s and 16As cannot be issued unless the PANs are validated by the Department after the electronic filing of the quarterly returns by the assessee. I am not sure if, in a case, a deductee's PAN does not get validated due to any issue, a Form 16A cannot be issued.

Seventhly, the procedure for issuance of duplicate Form 16s/16As have been really tightened and the new procedure requires the deductee to give an affidavit to the Assessing Officer and the Deductor can issue the duplicate Certificate only on receiving written instructions from the Assessing Officer. A needless attempt to complicate issues.

Perhaps, alarmed by the widespread concerns that have been expressed on the new procedure, the CBDT has already clarified that the new procedure would apply only to tax deducted and paid with effect from April 1, 2009. Hence, at least, in respect of tax deducted and paid in respect of transactions pertaining to 2008-09, the existing procedure would continue to be applicable. So far, so good.

There can be little doubt that the TDS procedure would become really tedious effective April 1, 2009 and assessees, CAs and other players would better start planning to get into understanding the new procedures.

If you thought that this was it, you are mis-informed. The Department has issued another equally important Notification No. 30/2009 dated March 25, 2009, on the new procedures related to payments to Non-Resident Indians and Foreign Companies under Section 195 of the Income tax Act, with effect from July 1, 2009. A new Rule 37BB has been added, as per which, the person effecting payment to a Non-Resident or a Foreign company should obtain a certificate from a Chartered Accountant in Form 15CB and file the Form 15CA electronically to the website designated by the Income-tax Department and thereafter, a signed printout of the said form shall be submitted prior to remitting the payment. One clearly does not understand the need for the physical filing of the Form 15CA, when an electronic filing of the same has already been effected by the assessee.

A casual look at the Form 15CB clearly indicates that CAs would now have to be on their toes, in respect of issues concerning international taxation and Double Taxation Avoidance Agreements, while certifying the tax implications in this new Form 15CB, for their clients.

Since, obtaining a Form 15CB from a CA is a pre-requisite now, even for payments made for imports of goods, etc., it seems clear that the assessee effecting payments to their nonresidents and foreign companies would now need to plan out their transactions, as the following of the new procedures would entail a lot of time to be spent.

And, if you thought that the confusion was only about the “unique identification number”, you are mistaken. Perhaps, for the first time ever, CAs would now need to give a serial number to the certificates that they provide, in Form 15CB and the assessee/remitter will have to mention this serial number of the CA certificate in the Form 15CA to be filed electronically.

Before parting....

☐ Despite that the electronic filing of income tax returns has been made mandatory, one finds that the Departmental Officers still insist on physical copies of the returns, while handling assessments. Despite the good intentions behind the computerization drive, one must keep in mind that most Income tax Offices have little computer connectivity, which totally undermines the efforts. With more and more computerization taking place, one expects that parallel efforts are made to ensure the Income tax Officers and Offices across the country are linked and that Departmental Officers have access to the central data base at all times.

☐ The need to mandatorily mention the ‘Unique Transaction Number’, perhaps being introduced to tackle the evasion in respect of TDS, could add to the bureaucratic hassles for the small time service providers, who would now be forced to take PAN and let the deductor/service receiver to mention the same in the new format of the Form 16As? While, under the earlier dispensation there was no need for the PANs of the small service providers

(who are not required to pay income tax) to be mentioned in the returns filed by the service receivers/deductors, the new procedure makes it mandatory for PAN to be mentioned even in respect of small service providers.

☒ Why is the Department getting more and more bureaucratic, vis-à-vis payments to Non-Residents? Is it practicable for the new procedure to be followed for even small payments? What is the point in insisting on this procedure for imports of goods, etc., for which Section 195 is not applicable? Further, can't the Department make this procedure applicable for payments beyond a minimum amount, of say, US\$ 5,000/-? With the income tax procedures going the e-mode in a very big way, CAs who are not 'tech savvy' will find the going really tough, though.

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