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New TDS Certificate Forms

The CBDT has issued Notification No 83/2007, Dated 26-3-2007 prescribing the new forms of TDS certificates. These forms are:

- Form 16 TDS certificate for Salaries
 - Form 16A TDS certificate for other than salaries
 - Form 27D Certificate for tax collection at source
- The new forms have come into effect with immediate effect. This article will elaborate on the changes as compared to old formats and other practical issues.

Time limit of issuance of TDS certificate

Periodicity and Due Date

Monthly Certificate

Form No 16A is to be issued for all the TDS deductions made during a month. Such monthly certificates are to be issued on or before the end of next month. For deductions in February 2007, TDS certificate must be issued on or before 31st March 2007.

Yearly Certificate

Form No 16

TDS certificate for salaries is always issued once a year and the due date is 30th April of the assessment year.

Form No 16A

- The yearly certificate can be issued only if the deductee so requests.
- Such yearly certificate which can be issued on or before 30th April of the current assessment year.
- If there are provisional entries at the end of the year, the certificate for the same can be issued on or before 7th of June, since, the last date of payment of provisional entry is 31st May.

Based on above, it is clear that the following must be issued in the new TDS forms

- Form 16 for FY 2006-2007
- Form 16A / 27D for February and March 2007
- Form 16A / 27D consolidated for FY 2006-2007

Changes in the forms

Form 16

1. 'PAN No. of the Deductor' instead of PAN/GIR No. earlier
2. 'TAN No. of the Deductor' instead of TAN earlier

3. 'PAN No. of the Employee' instead of PAN/GIR No. earlier
4. "TDS Circle where annual return u/s 206 is to be filed" is removed completely.
5. New column - Acknowledgement Nos. of all quarterly statements of TDS under sub-section (3) of section 200 as provided by TIN Facilitation Centre or NSDL web-site
6. New line added after "Details of Tax Deducted and Deposited"
(The Employer is to provide transaction-wise details of tax deducted and deposited)

Form 16A

1. Heading 'For interest on securities -----' is changed
2. 'PAN No. of the Deductor' instead of PAN/GIR No. of the deductor earlier
3. 'PAN No. of the Payee' instead of PAN/GIR No. of the payee earlier
4. TDS Circle where annual return u/s 206 is to be delivered is removed completely.
5. New column - Acknowledgement Nos. of all quarterly statements of TDS under sub-section (3) of section 200 as provided by TIN Facilitation Centre or NSDL web-site
6. New line added after the "Details of Payment, Tax deduction and deposited"
(The Deductor is to provide transaction-wise details of tax deducted and deposited)

Form 27D

1. Heading 'For Collection of tax -----' is changed.
2. 'Name and address of the buyer or licensee or lessee or a person who is awarded the contract' instead of Name & address of the buyer earlier
3. 'Tax deduction and tax collection account no. of the collector instead of Tax collection account no. of the collector earlier
4. 'PAN No. of the Collector' instead of PAN/GIR No. of the Collector earlier
5. PAN No. of the Buyer or Licensee or Lessee or a person who is awarded the contract' instead of PAN/GIR No. of the Buyer earlier.
6. Nature of goods referred to in the table in section 206C (1) or nature of contract or licence or lease referred to in the Table in section 206C (1C)' instead

of Nature of goods referred to in the table in section 206C (1) earlier.

7. Circle where return u/s 206C (5A) is to be delivered is removed completely.
8. New Heading - Acknowledgement Number of all quarterly statements of TCS under sub-section (3) of section 206C as provided by TIN Facilitation Centre or NSDL web-site
9. New line added after the "Details of Payment, Tax collected and deposited".
(The Collector is to provide transaction-wise details of tax collected and deposited)

Analysis

Minor Changes

As is evident , the column TDS circle where Annual Return is filed as TDS circle is removed , as this identifiable on the basis of TAN.

Redundant expressions like GIR number of the deductor or collector have also been dropped.

Major Changes

Quarter Wise Acknowledgement No.

The most significant change in the forms is about giving details of Quarter Wise Acknowledgement numbers. The format of the same is as follows:

Quarter	Acknowledgement No.

- The details are to be given for all quarterly statements.
- The details are as provided by TIN Facilitation Centre or NSDL web-site. If the returns are filed at TIN Facilitation Centre, a printed Acknowledgement is provided. However, when the electronic returns are filed online using digital signature, the number is available at the filing web site.

- The most important question is about giving details for all quarterly statements. For this we need to check the due dates of filing quarterly statements. Please refer to the table given below.
- Co-relating the due date of filing eTDS statements and due of Monthly / Yearly TDS certificates, it is clear that:
 - o For Monthly certificates for April and May, no details of eTDS Acknowledgement Number can be provided. Similarly for July and Aug, details of Q1 Acknowledgement Number can be provided.
 - o For Yearly certificates only details of Q1, Q2 and Q3 eTDS Acknowledgement Number can be provided.
- So unless the due dates of certificates and eTDS statements is synchronized, details of all quarterly Acknowledgement Number cannot be provided.

Payment-wise transaction-wise details

- The new forms specifically requires the deductor, collector and employer to furnish payment-wise, transaction-wise details of the tax deducted or collected and paid to the credit of the Central Government.
- Earlier, many deductors used to give one consolidated figure of TDS deducted, mentioning only the name of bank branch where amount was deposited. Similarly , the TDS certificates issued by institutions on interest on bonds etc. generally does not give the details transaction wise. Such certificates are printed on the back of interest warrant. This change will make all such TDS certificates invalid.
- The idea behind this is to facilitate matching of the entries in the electronic returns with those in the TDS certificates.
- Similarly employers will now have to provide details regarding deposit of taxes each month, after deducting from the salaries of employees.
- The changes in the tax forms are expected to provide complete details to taxmen about the gross income of employees and improve flow of income taxes on schedule to the State Exchequer.

Due Dates of Quarterly e-TDS / e-TCS Statements

Qtr No	Quarter	Due Dates for Form NO.24Q/26Q	Due Dates for Form No.27Q	Due Dates for Form No. 27EQ
Q1	April to June	15 th July	14 th July	15 th July
Q2	July to September	15 th Oct	14 th Oct	15 th Oct
Q3	Oct to Dec	15 th Jan	14 th Jan	15 th Jan
Q4	Jan to March	15 th June	14 th April / 14 th June *	30 th Apr

If there are TDS deduction provisional entries as on the last date of the accounting year, then due date of return is 14th June. If there are no such entries, then it is 14th April. ■

Issue: Taxability of Interest Income u/s 56
DCIT, circle, Bulandshahr v. Allied construction { 105 ITD 1 (Delhi-SB)}

The firm received interest on FDR placed with the bank. The FDR was placed out of surplus business fund of the firm. Further, the FDR was pledged with the bank for availing loan for the business purpose. Hence, the firm offered interest income as business income. Dept did not accept the contention of the assessee and taxed it as income from other sources. The tribunal also endorsed the view of Department in as much as the source of interest income was FDR with bank which is different from business receipt. It was further decided that taking FDR and pledging them for business loan are two different transactions. Hence, Interest income on FDR was considered as income from other sources.

Issue: Re-opening Proceedings
S.K. Jain v. Deputy commissioner of gift Tax Spl. Range, Bhilai { 105 ITD 205 (Nag)}

In this case, the department collected some information at the back of the assessee and used it for reopening of gift tax assessment proceedings. The Tribunal decided that department has right to re-open the case even if the information is collected through illegal means by them. It was decided that truth of affair and not manner of getting material is to be taken note of in case of reopening the cases.

Issue: Capital receipt.
JCIT, Spl Range-1 v. Kwalty Café & Restaurant (P) Ltd { 105 ITD 169 (Chd)}

In this case, the company sold its right to use trade mark and manufacturing facilities. The company offered capital gain on surrender of trade mark as long term capital gain and certain portion of consideration as capital receipt not liable for taxation . It took the view that it lost income earning apparatus. The Department taxed it as a revenue receipts. However, the Tribunal accepted assessee's contention and held that loosing a source of income in the case of a person, who is not in a business of buying and selling of business, would amount to transfer of a capital assets and compensation received therefore clearly falls within the ambit of a capital receipt.

Issue: Deduction u/s 80HHC
Brook Crompton Greaves Ltd., v. ITO Ward 1, Ahmednagar { 105 ITD 146 (Pune)}

The Tribunal decided that unabsorbed depreciation / loss of earlier years need to be reduced from the income of current year to determine the business income for computation of deduction u/s 80HHC. It was also decided that CIT (A) has power to enhance the income on the issue which was not the subject matter of appeal before him if the A.O. has overlooked any aspect relating to the assessment. Therefore, one needs to be careful before filing appeal to CIT (A) since it will open entire case even the issue is not agitated before CIT (A).

Issue: Deduction u/s 35D
LIC Housing Finance Ltd., v. DCIT Spl. Range 36, Mumbai { 105 ITD 86 (Mum)}

It was decided that if company wants to claim deduction for preliminary expenses after it commence business; it can be claimed only by industrial undertaking and that too, after fulfilling condition of extension of undertaking or setting up of new undertaking. Therefore, one has to be careful while claiming deduction u/s 35D i.e. public issue expenses, expenses for increase of authorized capital.

Issue: Allowability of Expenses u/s 37 (1) & MAT u/s 115JA
IBM Ltd., v. CIT (Appeals)-I { 105 ITD 1 (Bang)}

In this case it was decided that liability to pay warrant is not contingent liability. It arises no sooner sales are effected and therefore, it is to be allowed in the year of sale of products.

As regards purchase of application software, it was decided that purchase of application software in the course of business, which merely enabled to carry on business operation efficiently and smoothly even though it gives enduring benefit, would be considered as revenue expenditure.

The tribunal held that in case provision for doubtful debts are made in the books, the deduction thereto would be available in the computation of book profit for the provision of MAT in view of the fact that such provisions are not made for meeting and liability, it simply reduce the assets. Hence, such provisions are deductible for computation of book profits under the provisions of MAT.

Issue: Un-explained cash credit u/s 68.
Davinder Singh v. ACIT Circle-III, Ferozepur { 104 ITD 325 (ASR)}

In this case, it was decided that if any credit found un-explained by the assessee, the same would be hit by the provisions of section 68 of the Act. It is not necessary that only cash receipt on credit side ought to be considered. It was held that it covers all credits loan, trade credits and also other receipts be that of cash or kind. Therefore, one need to be careful while showing creditors which are not verifiable, the same may be subjected to tax u/s 68 of the Act.

Issue: Statement recorded u/s 132(4).
Ms. Aishwarya K. Rai v. DCIT, Central circle 2, Mumbai { 104 ITD 166 (MUM) (TM) }

In this case, if any person makes any disclosure on the day of search u/s 132 (4) of the Act and thereafter during the post search operation, he makes statement u/s 131 denying the confession made earlier, the disclose will not have any evidentiary value in the assessment. The A.O. must have conclusive evidence, other than the mere disclosure, that assessee has undisclosed income. This judgment will come to rescue in those case where department merely extract disclosure and makes addition solely on the basis thereof. ■

Consumer Court acts strongly against Unsolicited Calls

Here is good news for all the mobile users. Hopefully soon the menace of unsolicited calls may be a thing of past because for first time in India consumer court has penalised the telemarketing and cellular companies for making unsolicited calls. In a landmark judgment on Jan 19, 2007, the Delhi State Consumer Disputes Redressal Commission ordered:

- A hefty fine of Rs.50 lakhs jointly on Airtel and Cellular Operators Association of India (COAI) for their failure to prevent unnerving and unsolicited calls and SMSs by telemarketing and banking companies to mobile users.
- A joint penalty of Rs.25 lakhs on ICICI Bank and American Express Bank for causing "immense nuisance by making unsolicited communications such as SMSs and telemarketing calls at odd hours to cellular users."
- Compensation of Rs.50000/- to be paid to the complainant for the loss suffered.
- That every such subscriber who suffers this agony, harassment and nuisance shall be entitled to a minimum compensation of Rs.25000/-, who has and is suffering as a complainant has suffered, as and when he approaches the Consumer Forum in this regard.
- The TRAI shall bring in 'Number Portability Rule' as prevalent in USA and other countries so that subscribers need not change their phone numbers again and again.
- That TRAI shall establish a National 'Do Not Call Registry', which shall apply to all marketers. No marketer can call a subscriber if that number is on Registry.

Facts of the Case

The above order was passed on a complaint filed by Delhi based Nivedita Sharma against Airtel, ICICI and American Express Bank alleging that:

- She had been receiving unsolicited calls and SMSs on her mobile phone. Sharma had alleged that even after lodging complaint with Airtel, she used to receive 15 to 20 calls in a day.
- That it caused disturbance to her in her day to day work as these calls were made at odd hours when she was in a business meeting or other important work or sometimes even in late evening.
- It not only harassed her but also unduly interfered

with her right to privacy besides causing financial loss when she attended to such calls even when she was on national and international roaming.

- The acts of cellular operators posed a grave threat and jeopardised her safety and security as they shared her confidential information such as name, address, mobile no., financial standing etc. with telemarketers.
- The unsolicited calls amounted to violation of an individual's privacy and fundamental rights enshrined under article 21 & 19 of the Constitution. And that these calls were in contravention of rule 427 and 513 of Indian Telegraph Rules, 1951.

Justice J.D. Kapoor justified the heavy damages imposed on the service providers and banks because of their 'care-a-fig' attitude and their having continued to indulge in making unsolicited commercial communications such as SMSs, telemarketing calls etc. at odd hours despite following measures already taken:

- Notices issued by the Supreme Court on 7th Feb 2005 under a PIL (Public Interest Litigation) filed in 2003.
- Interim orders passed by the Delhi State Commission passed from time to time.
- Pursuant to Commission's orders the TRAI (Telecom Regulatory Authority of India) issued Consultation Paper no.15/2006 on 20.11.06 on the subject "Unsolicited Commercial Communication" and asked the stakeholders to comment.

Ultimate Solution

The solution lies in introducing a National 'Do-Not-Call-Registry' to enable consumers to 'opt out' of the all telemarketing services by registering their phone nos. etc. in the registry. But so far, despite the guidelines issued by RBI and other measures taken, the DNCR has not proved to be effective as people continue to get calls from the banks etc. for selling their credit/debit cards, loan offers etc. despite getting registered at the DNCR. Here RBI needs to enforce its guidelines to ensure its compliance. There has to be penal provisions also for violations. In USA also the National Do Not Call Registry is effectively managed and enforced by Federal Trade Commission (FTC) along with Federal Communications Commission (FCC) under Telephone Consumer Protection Act (TCPA) of 1991 and the Telemarketing Sales Rules. ■

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Service Tax Updates

Money changers are not liable to pay service tax for purchase and sale of foreign currencies
Earlier the Board vide letter No. 341/44/2005 - TRU, dated 6-10-2005 clarified that buying and selling of forex by money changers is liable to be taxed under Banking and other Financial Services.

Now on 12th March, 2007 the Board has issued Circular No. 92/3/2007 and clarified that 'money changing' and 'foreign exchange broking' are two distinct activities. Money changing is an activity of sale and purchase of foreign exchange at the prevalent market rates. Service tax is not leviable on money changing *per se*; as such activity does not fall under the category of foreign exchange broking.

Abatement to consignor or consignee paying service tax under GTA

C&AG has raised an objection and disallowed abatement of 75% to consignor or consignee paying service tax under Transportation of goods by Road.

Even after clarification from the Board that abatement of 75% is available to consignor or consignee paying service tax subject to satisfaction of other conditions mentioned in Notification No. 32/2004 ST dated 3-12-2004.

Department had issued various show cause notices to consignor and consignee availing abatement. After

obtaining opinion of the law ministry, now on 12-3-2007 Board has issued order No. 37B 5/1/2007-ST instructing that no demand notice may be issued on the basis of objection raised by the C&AG office, and all pending matters may be decided accordingly.

New service tax payment challan
New single page Service tax challan GAR 7 shall replace TR6 Challan from 1st April, 2007.
TR6 challan was required to filed in quadruplicate.
The new challan has only a single copy to be filed.

No service tax on Interconnect Usage Charges (IUC)

Board vide circular No. 91/2/2007 ST, dated 22-3-2007 clarified that IUC collected by one telephone company from another telephone company are not liable to service tax till the telecommunication service proposed in finance bill 2007 are not notified.

T.R. Rustogi Report

Shri T.R. Rustogi has submitted his report to Board for review of circulars, instructions and clarifications issued relating to Service Tax. After this report very soon circulars, instructions and clarifications issued in Service Tax will see drastic changes. ■

In Brief

MCA 21

Filing of DIN-1 and DIN-3

The last date for filing of DIN Form-1 and DIN Form-3 without payment of fee has been extended from March 31, 2007 to June 30, 2007.

Resubmission of eForms

One time extension has been provided to resubmit eForms. The resubmission can be made upto June 30, 2007. After this date, any resubmission, if not done within specified 60 days will be treated as fresh filing.

Income Tax

Income tax Ombudsman.

Ms. Baljeet Matiyani has taken over as Income Tax Ombudsman for Delhi. The Ombudsmans address is Office of Income Tax Ombudsman, Room No. 251, CR Building, IP Estate, Delhi, 110002. For details on Ombudsman Scheme.

Process has been initiated for appointment of Income Tax Ombudsmen for Bangalore, Hyderabad, Ahmedabad, Pune, Bhopal and Kolkata, etc. ■

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Reverse Mortgages: F.A.Qs.

According to the Budget 2007, the National Housing Bank (NHB) will shortly introduce a novel product for senior citizens : a "Reverse Mortgage" under which a senior citizen who is the owner of a house can avail a monthly stream of income against the mortgage of his/her house while remaining the owner and occupying the house throughout his/her lifetime, without repaying or servicing the loan.

What is a reverse mortgage?

A reverse mortgage enables older home owners (senior citizens) to convert part of the equity in their homes into tax-free income without having to sell the home, give up title, or take on a new monthly mortgage payment.

The reverse mortgage is aptly named because the payment stream is "reversed." Instead of making monthly payments to a lender, as with a regular mortgage, a lender makes payments to you.

In India the actual process of reverse mortgage has not yet started. But based on general practices followed in other countries, some common questions asked by consumers about reverse mortgages are being given below :

What are common payment plan options?

You can choose to receive the money from a reverse mortgage

- all at once as a lump sum,
- fixed monthly payments either for a set term or for as long as you live in the home,
- as a line of credit,
- or a combination of these.

The most popular option is the line of credit, which allows you to draw on the loan proceeds at any time.

Does unused balance in the Line of Credit Option has a growth feature? Does that mean I'm earning interest?

No, you're not earning interest like you do with a savings account. The growth factor takes into consideration that your home has appreciated in value over the past 12 months and that you are one year older.

How much money will I get?

No matter which reverse mortgage product you choose, the amount of funds you are eligible to receive depends on your age (or the age of the youngest spouse in the case of couples), appraised home value, current interest rates, and the lending limit in your area. In general, the older you are and the more valuable your home (and the less you owe on your home), the more money you can get.

Does my home qualify?

Eligible property types include single-family homes, 2-4 unit properties; own constructed homes and flats in housing societies.

How can I use the proceeds from a Reverse Mortgage?

The proceeds from a reverse mortgage can be used for anything, whether its to supplement retirement income to cover daily living expenses, repair or modify your home, pay for health care, pay off existing debts, buy a new car or take a "dream" vacation, cover property taxes etc.

Are there any special requirements to get a reverse mortgage?

As long as you own a home, and Senior Citizen, and have enough equity in your home, you can get a reverse mortgage. There are no special incomes or medical requirements.

What if I have an existing mortgage?

You may qualify for a reverse mortgage even if you still owe money on an existing mortgage. However, the reverse mortgage must be in a first lien position, so any existing indebtedness must be paid off. You can pay off the existing mortgage with a reverse mortgage, money from your savings, or assistance from a family member or friend.

For example, let's say you owe Rs.10,00,000/- on an existing mortgage. Based on your age, home value, and interest rates, you qualify for Rs.15,00,000/- under the reverse mortgage program. Under this scenario, you will be able to pay off ALL the existing mortgage and still have Rs.5,00,000/- left over to use as you wish.

If, however, you only qualify for Rs.8,00,000/- then you would need to come up with Rs.2,00,000 from your own savings to get the reverse mortgage. Even then, all the money from the reverse mortgage will have been used to pay off the existing mortgage. On the other hand, you won't have a monthly mortgage payment anymore.

If you find yourself in a deficit situation where you don't have enough money to pay off the existing mortgage, you may use funds from a grant or gift from a family member or friend to cover the gap, but you cannot incur a new debt obligation (i.e., loan).

When do I pay back my loan?

No monthly payments are due on a reverse mortgage while it is outstanding. The loan is repaid when you cease to occupy your home as a principal residence, whether you (the last remaining spouse, in cases of couples) pass away, sell the home, or permanently move out. The amount owed can never exceed the value of your home. Furthermore, if the home is sold and the sales proceeds exceed the amount owed on the reverse mortgage, the excess money goes to you or your legal heir.

Under what circumstances should I not consider a Reverse Mortgage?

Because of the upfront costs associated with a reverse mortgage, if you intend to leave your home within 2-3 years, there may be other less expensive options to consider, such as home equity loans. Also, if you want to leave your home to your children, then you should consider other options, because in many cases, the home is sold to pay back a reverse mortgage. ■



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