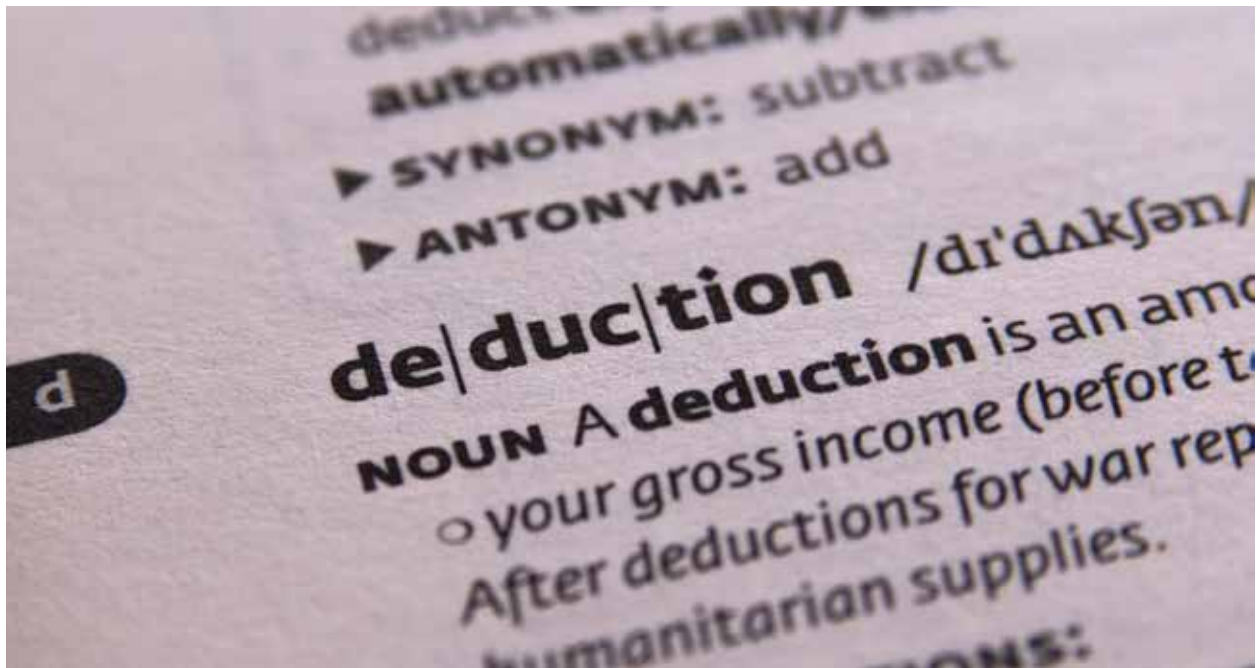


## Practical Issues in TDS Defaults



*“Practical issues in TDS Defaults”, is an article governing issues related to TDS defaults which are presently creating trouble to both the common deductors and professionals. This article provides a detailed description about the causes of these defaults which may help in avoiding the same. Various reasons such as PAN error or error in quoting valid certificate number for lower deduction causing huge defaults can be easily avoided, if the effects of entering those details are known in advance. This article aims to help both the deductors and professionals to gain an understanding of the same while filing the TDS returns and also to avoid common and general errors. Read on...*

Centralised Processing Cell (TDS) is a technology driven transformational initiative on ‘Tax Deduction at Source’ that provides a comprehensive solution through ‘Tax Deduction, Reconciliation, Analysis and Correction Enabling System (TRACES)’-its core engine.

CPC (TDS) undertakes bulk processing of TDS statements to generate ‘Annual Tax Credit’ statements for each taxpayer (PAN holder) in Form 26AS, TDS certificates in Form 16/16A and identifies TDS defaults of short payment, short

deduction, interest, etc. CPC (TDS) reconciles and co-relates the information from various sources including banks (tax payment), deductors (reporting tax deduction), assessing officers (mapping no tax/low tax deductions) and tax professionals (reporting international transactions).

Every person filing TDS return is very much aware of the pre and post-return filing functionalities. He needs to undertake to complete his task of return filing, be it checking the challan status, statement status, downloading of TDS certificates or checking for defaults and many more.

To facilitate this process, the Income Tax Department has provided a web based application-TDS Reconciliation Analysis and Correction Enabling System, commonly known to us as “TRACES”, which provides an interface to every person associated with deduction of tax at source, be it deductor, collector or payee.



**CA. Chinki Jalan**

(The author is a member of the Institute who may be reached at [chinkijalan@yahoo.in](mailto:chinkijalan@yahoo.in).)

Growing TDS default notices have come out to be a source of plight for deductors and even professionals. Understanding the main reasons behind such default notices may help in minimising instances of these defaults and also reduce the chance of errors. The causes of these defaults have been explained in the details below:

- PAN Error:** The most commonly found error in maximum TDS defaults is that of INVALID PAN. For a better understanding of this, let us have a reading of Section 206AA of the Income-tax Act, 1961:

**206AA. Requirement to Furnish Permanent Account Number—(1)** Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum

### A Sample TDS Default Notice:

#### Default Summary for Q1 of FY 2012-13 for Form 26Q

Statement	Token Number	Order Passed Date
Regular Statement		-
Latest Processed Correction Statements*		

\* Details of maximum 2 latest processed correction statement(s) will be displayed. For details of other correction statement(s), if any, refer prior intimations sent by TDS CPC.

Count of Correction Statement(s)	1	Net Payable (Rounded-Off) (Rs.)	88220.00
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#### Default Summary Details

Sr.No.	Type of Default	Default Amount (Rs.)	Amount Reported As 'Interest / Others' Claimed in the Statement (Rs.)	Payable (Rs.)
1	Short Payment	0.00	0.00	0.00
2	Short Deduction	19706.50	0.00	19706.50
3	Interest on Payments Default u/s 201(1A)			
3(a)	Interest on Short Payment	0.00	0.00	0.00
3(b)	Interest on Late Payment	65289.00	0.00	65289.00
3(c)	Additional Late Payment interest against the processing of latest correction	0.00	0.00	0.00
4	Interest on Deduction Default u/s 201(1A)			
4(a)	Interest on Short Deduction	3225.00	0.00	3225.00
4(b)	Interest on Late Deduction	0.00	0.00	0.00
4(c)	Additional Late Deduction interest against the processing of latest correction	0.00	0.00	0.00
5	Late Filing Fee u/s 234E			
5(a)	Late Filing Levy	0.00	0.00	0.00
5(b)	Additional Late Filing levy against the processing of latest correction	0.00	0.00	0.00
6	Interest u/s 220(2)	0.00	0.00	0.00
<b>Total Payable (Rs.)</b>				<b>88220.50</b>
<b>Net Payable (Rounded-Off) (Rs.)</b>				<b>88220.00</b>

or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—

- (i) at the rate specified in the relevant provision of this Act; or
- (ii) at the rate or rates in force; or
- (iii) at the rate of twenty per cent.

Further, Clause (6) of the same Section says that:

- (6) *Where the Permanent Account Number provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his Permanent Account Number to the deductor and the provisions of sub-Section (1) shall apply accordingly.*

A clear reading of the above explains that in cases where PAN is not quoted or incorrect PAN is quoted, the deductor is supposed to deduct tax @20%. A detailed reading of Clause (6) makes it clear that the deductor will be liable for short-deduction if 20% tax is not deducted in cases of 'invalid PAN' which often gets overlooked.

Also, filing revised return for the same, owing to the above provision, if an invalid PAN is replaced with a valid one or a valid PAN (not belonging to the deductee) is replaced with the actual PAN of the deductee, still the default remains as 20%

only since it is deemed that deductee had not furnished his Permanent Account Number to the deductor while receiving the payment.

As per the explanation provided by the Service Desk of TDS-CPC, "*The provisions of Section 206AA apply at the time of tax deduction, which happens prior to the filing of statement. Thus, the deductor is expected to have a valid PAN at the time of deduction. Only a typographical error is expected at the time of filing the TDS statement. The demand in the hands of the deductors is being rectified in cases where the difference between the 'invalid PAN' and the 'valid PAN' is not more than 2 characters. This is being done in order to take care of the genuine typographical errors in data entry. The rectification of demand in other cases is not done if the mismatch is more than two alpha characters & two numerics. Therefore, out of 10 characters in case of structurally valid PAN, 4 characters are being considered for rectification of demand.*"

Example: Say, ABCPJ1234L (Invalid PAN) to be replaced by ABDPM1245L (Valid PAN), this will be allowed.

But, if ABCPJ1234L (Invalid PAN) to be replaced by ABKPS1289O (Valid PAN), this will not be allowed.

To avoid this, the deductor should first verify the PAN online before filing the return which is available on [tdscpc.gov.in](http://tdscpc.gov.in).

The screenshot displays the TDS TRACES portal interface. At the top, there are logos for TDS (Centralized Processing Cell), TRACES (TDS Reconciliation Analysis and Correction Enabling System), and the Government of India Income Tax Department. The navigation menu includes Dashboard, Statements / Payments, Defaults, Communications, Downloads, Profile, and Help. The main content area shows a 'Quick Links' section with a red arrow pointing to 'PAN Verification'. Other sections include 'Customer Care' with contact information and 'User Login Details' showing TAN / PAN SHLA00430E and IP: 59.93.190.186.



**A detailed reading of Clause (6) makes it clear that the deductor will be liable for short-deduction if 20% tax is not deducted in cases of 'invalid PAN' which often gets overlooked.**

2. **Short Payment:** The default for short payment/short deposit arises in the following case(s):
- when the amount of TDS deposited is less than the amount of TDS deducted,
  - when the tax in respect of deductees of higher amount is mapped against a Challan of lesser amount,
  - when there is an error in entering Challan details or due to some reasons, the Challan does not match with details in OLTAS.

3. **Interest On Short Payment:** Interest on short payment is calculated under Section 201(1A) @ 1.5% for every month or the part of a month for the amount of short-payment from the date on which such tax was deducted till the "Order Pass Date" mentioned in the default notice.

#### **Penalty for Failure to Deduct Tax at Source**

As per Section 271C, if any person fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid. This penalty is imposed by the Joint Commissioner.

#### **Prosecution for Failure to Deduct/Deposit Tax at Source**

As per Section 276B, if any person fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B then, such person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine. This penalty is imposed by the Joint Commissioner.

4. **Short Deduction:** In simple terms, the default of short deduction occurs when the rate of tax actually deducted by the deductor is less than the rate mentioned in the Income-tax Act, 1961. This may occur due to the following reasons:
- **PAN Error:** This has been extensively explained above.

- **Lower Deduction:** Say, in the case of Section 194C, for an individual/HUE, TDS to be deducted is 1% and for assesseees other than an individual, the rate is 2%. However, if 1% is deducted for a company deductee, then the same will be generated as a short deduction default.

5. **Interest on Short Deduction:** Interest on short deduction is calculated under Section 201(1A) @ 1% for every month or the part of a month for the amount of short deduction from the date of payment/credit till the "Order Pass Date" mentioned in the default notice.

6. **Interest on Late Payment:** This is a very common default which arises due to late deposit of tax deducted, i.e. depositing tax after the due date of deposit of tax. Interest for failure to deduct tax at source/delay in payment of TDS is applicable in such cases. As per Section 201, if any person who is liable to deduct tax at source does not deduct it, or after so deducting fails to pay the whole or any part of the tax to the credit of the Government, then, such person shall be liable to pay simple interest as given below:

- Interest shall be levied at 1% for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax was deducted. Say, tax was supposed to be deducted on 23<sup>rd</sup> March, but is deducted on 4<sup>th</sup> April; interest will be levied for 2 months @1%.
- Interest shall be levied at 1.5% for every month or part of a month on the amount of such tax from the date on which such tax was actually remitted to the credit of the Government. In other words, interest will be levied at 1% for every month or part of a month for delay in deduction and at 1.5% for every month or part of a month for delay in remittance after deduction. Say, tax was deducted on 13<sup>th</sup> February; hence, it should have been paid by 7<sup>th</sup> March. But, if it is paid

**Interest on short payment is calculated under Section 201(1A) @ 1.5% for every month or the part of a month for the amount of short-payment from the date on which such tax was deducted till the "Order Pass Date" mentioned in the default notice.**

**As already mentioned, late filing levy under Section 234E of ₹200 per day is for delay in filing the quarterly TDS statement. It is limited to the amount of tax deposited as per the statement.**

on 3<sup>rd</sup> of April, interest will be levied for 3 months @1.5%.

7. **Additional Interest against Processing of Latest Correction Statement:** In the instances of filing correction statements with addition of Challans where tax has not been paid within due date and also interest has not been paid or paid less, this default is likely to arise. Say, we are filing a correction statement on 20<sup>th</sup> June, 2015 for Form 26Q4 for the financial year 2014-15, for adding a new deductee row to whom payment of professional fees is made on 31<sup>st</sup> January, 2015 for ₹25,000/-. The TDS to be deposited in this case comes to ₹2,500/- which should have been deposited latest by 7<sup>th</sup> February 2015, but it gets missed due to some circumstances. Now, if TDS is being deposited in the month of June, interest @1.5% for 6 months (January-June) should be deposited and the same should be quoted in the correction statement. If the interest amount is not mentioned in the statement, this default is likely to crop up and the deductor may happily wait for another default notice from TRACES.
8. **Late Filing Levy:** Levy for late filing of TDS Statement (Section 234E of the Income Tax Act, 1961):
  - Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-Section (3) of Section 200 or the *proviso* to sub-Section (3) of Section 206C, he shall be liable to pay, by way of fee, a sum of *two hundred rupees for every day* during which the failure continues.
  - The amount of fee referred to in sub-Section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.
  - The amount of fee referred to in sub-Section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-Section (3) of Section 200 or the *proviso* to sub-Section (3) of Section 206C.
9. **Additional Late Filing Levy against Processing of Latest Correction Statement:** As already mentioned, late filing levy under Section 234E of ₹200 per day is for delay in filing the quarterly TDS statement. It is limited to the amount of tax deposited as per the statement. Therefore, if Form 26Q4 for financial year 2014-15, containing only deductees with NIL tax deducted amount, say, the earlier provision of transporters where TDS need not be deducted on furnishing of PAN, is filed on 18<sup>th</sup> May 2015 (due date being 15<sup>th</sup> May 2015), no late filing fee will be levied. But later, if the same return is revised and a correction statement is filed for the same quarter inserting entries for interest on unsecured loan and TDS deducted thereon, late filing fee of ₹200\*3=₹600 (delay of three days) will be levied upon the deductor.
10. **Invalid Certificate under Section 197:** For tax to be deducted at a lower rate, the deductee has to possess a certificate under Section 197 and the certificate number needs to be quoted in the quarterly statement. Due to incorrect certificate number provided by the deductee to the deductor, the statement often ends up carrying the same incorrect number. As a result, the deductor is served with a short deduction notice. With the facility provided by TRACES, one can go for validation of the certificate number and also check whether the same has been mapped with the deductor's TAN.
11. **Interest Portion Not Allocated:** Often it is seen that even after separately and duly paying the interest amount in the TDS Challan, still the system does not take into consideration the amount of interest paid and raises a default for interest not paid. This happens when the interest portion is not shown in the interest to be allocated/apportioned column of the Challan sheet of the TDS statement. Say, if the deductor has deposited a Challan 281 with ₹2,000 under

the income-tax head and ₹60 under interest-head, he also has to enter this ₹60 in the interest allocated column.

Form No. 26Q  
(See section 193,194,194A,194BB,194C,194D,194EE,194F,194G,194H,194I,194J,194LA and rule 31A)

Form Challan Annexure I (Deductee Details)

Updation Mode For Challan	Section Code	TDS ₹	Surcharge ₹	Educational Cess ₹	Interest ₹	Fee ₹	Penalty/ Others ₹	Last Total Tax Deposited as per Form No. 26Q	Total Amount Deposited / DD No. / BSR Code / Receipt Number of Form No. 26Q	Last Date on which Tax Deposited	Date on which Amount Deposited through Challan / Date of Transfer Voucher	Challan Serial No. / DDO No. / Form No.	Interest to be allocated/apportioned ₹	Others ₹					
	(402)	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
		2000.00	0.00	0.00	60.00	0.00	0.00	0.00	2060.00	5360218	05/02/2014	00002	60.00	0.00					

Another notable point is that even if the interest is not separately paid in Challan in the interest-head, still we can allocate the interest amount while filing the TDS return.

To illustrate, say in the above example, the TDS Challan had not shown the interest amount separately, i.e. the entire ₹2,060/- was shown as tax, still if while filing the statement, if tax and interest amounts are shown separately as above and also the interest is allocated properly, interest will be considered.

- 12. Notice for Non-Filing of TDS Quarterly Statement:** The Income Tax Department has of late started issuing notices to deductors who do not file their TDS quarterly statements despite the fact that there is no tax deducted and deposited by them. To avoid such notices, the deductor needs to file a declaration for non-filing of statement stating the financial year, quarter, form type and reason for non-filing from the drop down menu.

**The Income Tax Department has of late started issuing notices to deductors who do not file their TDS quarterly statements despite of the fact that there is no tax deducted and deposited by them. To avoid such notices, the deductor needs to file a declaration for non-filing of statement stating the financial year, quarter, form type and reason for non-filing from the drop down menu.**

- 13. Interest Under Section 220:** As per Section 220(1), when a demand notice under Section 156 has been issued to the taxpayer for payment of tax (other than the notice for payment of advance tax), then such amount shall be paid within a period of 30 days of the service of the notice at the place and to the person mentioned in the notice. In certain cases, the above period of 30 days can be reduced by the tax authorities with the approval of designated authorities.

Section 220(2) deals with payment of interest in case of failure to pay tax within the time specified in the demand notice. As per Section 220(2), if the taxpayer fails to pay the amount specified in any notice of demand issued under Section 156 (as discussed) within the period as allowed in this regard, then, he shall be liable to pay simple interest at 1% for every month or part of a month. Interest shall be levied for the period commencing from the day immediately following the end of the period mentioned in the notice and ending with the day on which the amount is paid.

### Waiver of Interest under Section 220(2A) By Commissioner

The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by the taxpayer under Section 220(2), if he is satisfied that:

- Payment of such interest has caused or would cause genuine hardship to the taxpayer.
- Default in the payment of the amount on which interest has been paid or was payable, was due to circumstances beyond the control of the taxpayer.
- The taxpayer has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

A detailed and in depth analysis of TDS defaults can help in going a long way in avoiding the defaults. With the justification report download feature of TRACES, the deductor may come to know the reasons for defaults and can proceed accordingly. ■