

Withholding Tax on payments to Non-Residents: INDIA [Section 195]

Any person responsible for paying any sum to a tax non-resident of India ("NR") is required to withhold taxes (Tax Deduction at Source), commonly known as "TDS". This note provides a glimpse of the law and its compliance thereof.

Applicability:

Any amount paid/payable to NR shall be subject to withholding of taxes depending on the nature of payment and the double tax treaty between India and the country in which the NR is a resident. TDS shall be deducted by any resident or non-resident while paying an NR. There is no monetary threshold for this section.

Nature of payments can be of various types such as interest, royalties, fees for technical services, dividends, capital gains and rentals. The payer is required to withhold the tax at the time of payment or credit in the books of accounts (whether suspense or otherwise) whichever is earlier.

Exclusions: Salary, interest under sections 194LB, 194LC, 194LD.

Rate of withholding:

TDS is deducted at either of the following rates, whichever is beneficial to the payee:

- Rates as per the Finance Act of the given year
- Rates contained in the **Double Taxation Avoidance Agreement [DTAA]** ("Treaty") between India and the country of residence of such non-resident.

However, the Multilateral Instruments [MLI] modified many of the existing tax treaties signed by India. Around 22 DTAA's out of the existing 93 signed by India, were amended since FY 2020-2021. They are now called **Covered Tax Agreements [CTA]** globally. In India, they are called as **Synthesized Text**.

Importantly, NR to whom Treaty applies, shall not be entitled to claim any relief under DTAA unless a certificate of his being a resident in any country outside India is obtained by him from the Government of that country.

The withholding tax rates to be increased by the applicable surcharge and education cess while using the Finance Act but not in the case of rates as per the Treaty.

Compliance:

The payer shall obtain a Tax Deduction Account Number (TAN) before deducting TDS for which the Permanent Account Number (PAN) is mandatory.

Challan/Form	Particulars	Due date
Challan 281	Deposit tax withheld	On or before 7 th of the following month of the TDS deduction, except TDS deducted in month of March should be deposited till 30th April.
Form 27Q	Quarterly statement of deduction of tax from interest, dividend, or any other sum payable to non-residents	On or before last day of the following month from end of each quarter, except for Q4, the due date is 31st May
Form 16A	TDS Certificate to be downloaded/sent to payee	Within 15 days from the due date from furnishing the TDS returns
Form 15CB/15CA	Remittance Certificates for remittance of funds outside India to be obtained by the remitter payer	Before remittance of funds outside India

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When the payee non-resident believes that no amount or only a partial amount (other than salary) is taxable in India then he may make an application to the Assessing Officer for obtaining a lower or NIL deduction certificate.

Penalty/Late Fees/Interest#:

Non-Compliance	Consequences
Not deduction [Section 40 (a)(ia)]	100% expenditure disallowed in the books of the payer
Non-deduction and non-payment [201(1A)]	Interest @ 1.5% p.m or part thereof from the due date of the deduction till the actual date of deduction Interest @1% p.m or part of the month from the due date of payment till actual date of payment
Non-payment of TDS after deduction [201(1A)]	Interest @ 1.5% per month or part thereof from the due date of the deduction to the date of deposit.
Failure to deduct tax at source [Section 271C]	Penalty of sum equal to the amount of tax which such person failed to deduct or pay
Failure to e-file TDS return [Section 234E]	Late fees of Rs. 200 per day from due date of return until the return is e-filed
Failure to file the statement of TDS/TCS within the due date [Section 271H]	Minimum penalty of Rs 10,000 which may be extended to Rs 1,00,000
Non-issuance of TDS Certificates [272A(2)]	Penalty Rs. 500 per day from due date of download until the certificate is downloaded

the above excludes prosecutions

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