**NON-FILING OF TDS**

Under the provisions of the IT Act 1961, an employee is entitled to claim credit for the tax deducted at source by the employer even if the same is not paid by the employer. The person who is not provided with the TDS (Tax Deducted at Source) shall inform the Commissioner of Income Tax in whose jurisdiction the case of the employer falls about the non-payment of TDS.

Tax deducted at source (TDS) from your salary or any other income must be deposited with the government within a certain specified time period. However, a recent scam of Rs 3,200 Crore unearthed by the income tax department has highlighted the problems faced by many individuals and employees.

How the TDS is calculated? There is a process to calculate the TDS, while filing your income tax returns, you have to calculate your total tax liability, then subtract the TDS from this and arrive at the balance tax payable which could be a refund, additional tax, or nothing at all. There may be cases where the employer does not issue TDS certificates at all and the employee comes to know of the TDS only via salary slip entries or short payment of salary.

A Company files its TDS returns on a quarterly basis. The due date for filing a TDS returns is one month after the end of a quarter, with it ending on March 31. The due date for filing of TDS returns for quarter ending March 31 is May 31. In Recent past we noticed that department has taken late payment of TDS very seriously and in addition to imposing Interest and Penalty for Late Payment, they also start initiating Criminal Prosecution against those responsible for Deduction and Payment of TDS. The income tax department has stated that in case of failure to deposit tax that has been deducted, demand to pay must not be made on the taxpayer. It further states that the tax dues must be recovered from the employer instead. If your employer fails to take action regarding this, you can alert the tax department by making a complaint in writing to your assessing officer.

As per section 40(a)(i) of the Income-tax Act, any sum (other than salary) payable outside India or to a non-resident, which is chargeable to tax in India in the hands of the recipient, shall not be allowed to be deducted if it is paid without deduction of tax at source or if tax is deducted but is not deposited with the Central Government till the due date of filing of return. However, if tax is deducted or deposited in the subsequent year, as the case may be, the expenditure shall be allowed as deduction in that year.

If a person fails to deduct the whole or any part of the tax at source, or, after deducting, fails to pay the whole or any part of the tax to the credit of the Central Government within the prescribed time, he shall be liable to action in accordance with the provisions of section 201 and shall be deemed to be an assessee-in-default in respect of such tax and liable for penal action u/s 221 of the Act. Further Section 201(1A) lays down that such person shall be liable to pay simple interest at 1% for every month or part of the month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and at one and one-half percent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid. Such interest, if chargeable, is mandatory in nature and has to be paid before furnishing of quarterly statement of TDS for respective quarter.

Penalty of an amount equal to tax not deducted/paid could be imposed under section 271C. Penalty shall be charged under section 221 if deductor fails to deduct and pay tax to the credit of Central Government. The penalty shall be levied to the extent the Assessing Officer directs; however, the total amount of penalty shall not exceed the amount of tax in arrears. Further, section  276B  lays  down that  if  a person fails to pay to the credit  of  the Central  Government  within  the prescribed  time, as above, the  tax  deducted at  source  by him, he shall be punishable with rigorous imprisonment  for a term which shall be between 3 months and 7 years, along with fine.

Tax deducted at source shall be deposited to the credit of Central Government in accordance with the following provisions: In case deductor is an office of the Government as Particulars Due Date, Where tax is paid without production of an income-tax challan on the same day when tax is deducted and where tax is paid accompanied by an income-tax challan. On or before 7 days from the end of the month in which the deduction is made or income-tax is due under Section 192(1A); In case of any other deductor Where the amount is credited or paid in the month of March On or before 30th day of April and In any other case On or before 7 days from the end of the month in which the deduction is made or income-tax is due under sub-section (1A) of section 192.

In the case of Dy*.CIT Vs. Excel Industry Ltd.* It was held that These four appeals, two by the department and two by the assessee involve common issue of collection of deficit tax under section 201 and interest under section 201(1A) on non-deduction of tax at source by the employer (i.e. M/s. Excel Industries Ltd., the assessee) on payment of salary by not including therein conveyance allowance paid by it to its employees. Since facts are common, they are disposed of by this common order for convenience.

In the Case *The Commissioner of Income Tax Vs. M/S Kingfisher Airlines Ltd.* it was held that The Assessee Company-M/s. Kingfisher Airlines Limited is engaged in the business and operating as a schedule passenger airline in India. A survey under Section 133A was conducted in the assessee's premises on 18.3.2011, in order to verify TDS compliance. The survey revealed that the assessee was not remitting the taxes deducted by it at source to Government account within the due dates as prescribed in the Income Tax Act, 1961.

When tax is deducted/ collected by government office, it can remit the amount to the Central Government without production of an Income-tax challan and by making only book adjustment. In such a case, it has to furnish Form No. 24G to NSDL with in prescribed time-limit. The non deposit of the TDS may require various things to be handy to file a complaint for that which includes, Maintaining proof of TDS deduction including salary slips, bank statements and any other documents as evidence that TDS has been deducted, reviewing your 26AS and tally it with the TDS certificate to detect and rectify any discrepancies and to ensure with the employer that TDS has been deducted against the correct PAN. If the PAN is incorrect with the employer one can revise the same with the employer.

To conclude we can say that although it is the employer’s duty to remit the deducted tax to the government, one must ensure there is no pending liability in their name or else takes recourse from the redresses provided by the Income Tax Department, in the case of non compliance by the employer.