

CHAPTERS 7 & 8

Deduction of tax at source from dividends as required under section 194

HOW TO PROCEED

- *Ascertain whether you are a person responsible for making deduction at source from dividends - see **para 7.1.***
- *Find out whether the payment you are making is “dividend”, for determining the meaning of the expression “dividend” - see **para 7.2.***
- *Find out the rate of income-tax in force at the relevant time - see **para 8.3.***
- *Deduct tax from the amount of dividend at the rate in force before making any payment in cash or before issuing any cheque or warrant or before making any distribution or payment to a shareholder - see **paras 8.4 to 8.6** for certain exceptions.*
- *Deposit the tax deducted to the credit of the Central Government, for the place of payment, time of payment and the number of challan form for payment - see **para 7.5.***
- *Issue a certificate of tax deduction at source to payee - see **para 7.6.***
- *File returns of tax deducted at source to the concerned Assessing Officer - see **para 7.7.***

RELATED ISSUES

- *Tax deduction account number - see **para 1.4.***
- *Certificate for tax deduction at lower rates - see **para 8.5.***
- *Consequences of failure to deduct or pay tax, furnish return, etc. - see **para 7.8.***

7

Deduction of tax at source from dividend

Who is responsible for tax deduction in the case of dividend [Sec. 194]

7.1 Under section 194, the principal officer of an Indian company or a company which has made the prescribed arrangement for the declaration of dividends in India is responsible for deducting tax at source from dividends payable to a resident*.

7.1-1 Who is “principal officer” - By virtue of section 2(35), the expression “principal officer”, with reference to a company, means—

- a. the secretary, treasurer, manager or agent of the company ; or
- b. any person connected with the management of the company upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof.

Since managing director is not one of the persons falling under (a) above, he cannot be treated as principal officer of a company, so long as he is not served with a notice by the Assessing Officer of his intention to treat him as principal officer - *ITO v. Joseph* [1972] 83 ITR 362 (Ker.).

7.1-2 What makes one an Indian company [Sec. 2(26)] - An Indian company means a company formed and registered under the Companies Act, 1956. Besides, it includes the following :

- a. a company formed and registered under any law relating to companies formerly in force in any part of India other than the State of Jammu and Kashmir and the Union territories specified in (e) *infra* ;
- b. a corporation established by or under a Central, State or Provincial Act;
- c. any institution, association or body which is declared by the Board to be a company under section 2(17) ;
- d. a company formed and registered under any law in force in the State of Jammu and Kashmir ;
- e. a company formed and registered under any law for the time being in force in the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry.

*Dividends payable to non-residents are subject to tax deduction under section 195 from October 1, 1991.

In the aforesaid cases, a company, corporation, institution, association or body will be treated as an Indian company only if its registered office is in India.

7.1-3 What amounts to prescribed arrangements for declaration and payment of dividends in India [Rule 27] - Three requirements are to be satisfied cumulatively by a company before it can be said to be a company which has made the necessary “arrangements for declaration and payment of dividends within India”, within the meaning of section 194 :

1. *Share register in India* - The share register of the company for all shareholders should be regularly maintained at its principal place of business in India, in respect of any assessment year, at least from April 1 of the relevant assessment year.

2. *General meeting in India* - The general meeting for passing of accounts of the relevant previous year and for declaring dividends in respect thereof should be held only at a place within India.

3. *Dividend payable in India* - The dividends declared, if any, should be payable only within India to all shareholders.

What is “dividend” for the purpose of tax deduction

7.2 During April 1, 2003 and March 31, 2018, tax is deductible under section 194 only on deemed dividend under section 2(22)(e) [for detailed discussion, see **para 8.3**]. However, with effect from April 1, 2018, tax deduction under section 194 is not applicable in respect of declaration of any dividend (whether normal or deemed).

When tax is to be deducted

7.3 The principal officer of an Indian company or a company which has made prescribed arrangement for declaration and payment of dividends within India should deduct tax on dividends at the rates in force. Tax is deductible at the earliest of the following stages :

- a. before making any payment of dividend in cash; or
- b. before issuing any cheque or warrant in respect of dividend ; or
- c. before making any distribution or payment to a shareholder, of any dividend within the meaning of section 2(22).

7.3-1 Private arrangement of paying dividend tax-free cannot discharge obligation under section 192 - It may be noted that the liability to deduct tax at source from dividend is absolute and it cannot be discharged merely because under a private arrangement the company has undertaken to pay dividend free of tax.

Tax deduction account number

7.4 See **para 1.4**.

Deposit of tax to the credit of Central Government

7.5 Tax is to be deposited to the credit of the Central Government as follows :

7.5-1 *Where to deposit* - see para 1.5-1.

7.5-1a *e-Payment of tax* - After March 31, 2008, all corporate assesseees and other assesseees (who are subject to compulsory audit under section 44AB) will have to make electronic payment of tax through internet banking facility offered by authorized banks (irrespective of the assessment year or the financial year for which the payment of tax has to be made). Alternatively, these taxpayers can make electronic payment of tax through internet by way of credit or debit cards. For detailed discussion, see para 1.5-1a.

7.5-2 *Time within which tax is to be deposited* - Tax should be deposited within 7 days from the last day of the month in which tax is deducted. However, tax deducted in the month of March can be deposited on or before April 30 after the end of the financial year.

7.5-3 *Filing challan for payment* - The tax deducted at source is required to be deposited on appropriate challan (ITNS 281).

7.5-4 *Claim for refund* - A claim for refund for TDS paid to the credit of the Central Government under Chapter XVII-B shall be furnished by the deductor in Form No. 26B electronically under digital signature.

Issue a certificate for tax deducted at source to shareholders

7.6 Every person deducting tax from dividend is required to issue a quarterly certificate in Form No. 16A.

➤ It may be noted that the recipient of income must be given a certificate in Form No. 16A within the stipulated time even if tax is borne by the payer of the income—*Circular No. 785, dated November 24, 1999.*

7.6-1 *TDS certificate in Form No. 16A* - TDS Certificates in Form No. 16A shall be issued by downloading from TIN website† by the following deductors—

- a. any deductor (including a Government deductor who deposits TDS in the Central Government Account through book entry), if tax is deducted on or after April 1, 2012, and
- b. any company (including a banking company), if tax is deducted on or after April 1, 2011.

➤ *Authentication of TDS certificate in Form No. 16A* - Deductors, issuing the TDS certificates in Form No.16A by downloading from the TIN website†,

†Now, TRACES Portal.

can authenticate these certificates by either using digital signature or manual signature.

7.6-2 Time-limit within which the certificate should be given - TDS certificate in Form No. 16A shall be issued on quarterly basis as given below—

<i>Different quarters</i>	<i>TDS certificate should be given on or before the dates given below</i>
For the quarter ending June 30 of the financial year	August 15 of the financial year
For the quarter ending September 30 of the financial year	November 15 of the financial year
For the quarter ending December 31 of the financial year	February 15 of the financial year
For the quarter ending March 31 of the financial year	June 15 of the financial year immediately following the financial year in which tax is deducted

7.6-3 Issue of duplicate certificate - See para 1.6-4.

Statement/returns to the Government

7.7 The following returns are to be submitted by the person deducting tax from dividend :

7.7-1 Annual return [Rule 37] - Annual return is not required in respect of tax deducted at source after March 31, 2005.

7.7-2 Quarterly return of TDS deposited - See para 5.7-2.

Consequences of failure to deduct or pay tax, furnish returns, etc.

7.8 The following are consequences of different defaults :

7.8-1 Failure to deduct and/or pay tax - See para 1.8-1.

7.8-2 Failure to comply with the provisions of section 203A regarding tax deduction account number - See para 1.8-2.

7.8-3 Failure to issue certificate, or submit return/statement - See para 1.8-3.