



## **CBDT notifies rules for claiming credit for tax deducted/ collected at source**

### **Background**

The Finance Act, 2008 had amended the provisions of the Income-tax Act, 1961 (“the Act”) to provide powers to the Central Board of Direct Taxes (CBDT) to lay down rules/ procedure in respect of granting credit for the tax deducted at source (TDS)/ tax collected at source (TCS).

In exercise of its power, CBDT has recently notified<sup>1</sup> rules to lay down the procedure to grant credit for TDS/ TCS. The new rules shall come into force with effect from 1 April 2009.

### **Credit for TDS (Rule 37BA)**

- The credit for TDS shall be granted to the deductee on the basis of information relating to TDS furnished by the deductor.
- In case the income on which tax has been deducted is taxable in the hands of a person other than deductee (non-deductee), the credit for TDS shall be granted to the non-deductee as under :

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<sup>1</sup> CBDT Notification no. 28 / 2009 dated 16 March, 2009. Rule 37BA for TDS & 37I for TCS of Income-tax Rules, 1962



Situations	Non-deductee to whom credit shall be given
Where the income of deductee is taxable in the hands of other person by virtue of specific provisions <sup>2</sup> .	Person in whose hands the income so included is taxable
Where the income of the deductee being an Association of Persons (AOP) is taxable in the hands of its members.	Member of AOP
Where the income of the deductee being a trustee is taxable in the hands of its trustees.	Trustees
Where the income from asset held in name of deductee being partner of a firm is taxable in the hands of the firm.	Firm
Where the income from asset held in name of deductee being the Karta of a firm is taxable in the hands of the firm.	HUF
Where income from property, deposit, security, unit or share jointly owned by deductee and other persons, is taxable in their hands in proportion of ownership.	Respective joint owner in proportion of their ownership.

- For availing the credit in the above mentioned circumstances, the deductee should file a declaration with the deductor furnishing the details of non-deductee to whom credit should be given. These include the name, address, Permanent Account Number, payment in relation to which credit should be given and reasons for giving such credit.
- Pursuant to the declaration filed by the deductee, the deductor should report the details of TDS with tax authorities.
- The deductor should issue TDS certificate in the name of non-deductee.
- Credit for TDS should be given for the year in which the income is taxable. Where the income is taxable for a period exceeding one year, credit should be given for those years in the same proportion in which the income is taxable.

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<sup>2</sup> Specific provisions:

- Transfer of income without transfer of assets (Section 60)
- Revocable transfer of asset (Section 61)
- Income arising to minor child, spouse etc. (Section 64)
- Tax avoidance transactions by transfer of income to non-residents (section 93)
- Avoidance of tax in respect of transaction in securities (section 94)



### **Credit for TCS (Rule 37I)**

- The credit for TCS shall be given to the collectee on the basis of information relating to TCS furnished by the collector.
- The credit for TCS shall be given for the year in which the income is taxable.
- Where the lease or licence is for a period exceeding one year, credit for TCS shall be given for those years in the same proportion of the lease or licence.

### **Our Comments**

These rules clarify the procedure for granting credit of TDS/ TCS in light of the electronic filing of quarterly TDS/ TCS returns by the deductor / collector.

These rules address practical difficulties faced by the deductor / collector while giving credit for TDS/ TCS to the tax payers.

### **Disclaimer**

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