

TDS Surveys by Income Tax Department unearths huge defaults in Deduction and Deposit

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In a major breakthrough, the Tax Deducted at Source (TDS) wing of the Income Tax Department has unearthed default of TDS of Rs.324 crore in the case of a major Telecom Operator in Delhi. The company did not make the required **TDS of 10% u/s 194J of the Income-tax Act, 1961** on technical contracts worth Rs.4,000 crore. The amount is further liable to go up once the enquiry is completed.

Several hospitals of the city were found openly flouting the norms of TDS and tax collected at source (TCS) and were paying less tax to the Income Tax Department. During the survey, at two premier hospitals, one with more than 2,500 bed capacity and the other with 700 bed capacity, it was found that the former was not making any TDS on construction contracts as statutorily required **u/s 194C/ 194J**, while the latter was deducting tax at the rate of 10% only on salary paid to the doctors, instead of the present TDS rate of 30% applicable for salary payments.

Enquiries during the survey revealed that the terms of appointment between the hospital and the doctors indicated an employer-employee relationship on which the hospital was required to deduct tax at 30% instead of 10% as was being made by the hospital. TDS defaults of Rs.70 crore and Rs.20 crore respectively were detected in the said hospitals. Further enquiry revealed that the hospitals were also not making the required TDS at 10% from the maintenance charges paid for the hi-tech sophisticated operation theatre and diagnostic equipments.

Furthermore, it was seen that many hospitals were still not complying with the TCS norms which came into effect from June 1, 2016 under which, on any cash payment received in excess of Rs.2 lakh, the hospital was required to collect TCS @1% and deposit it to the Government account.

In another TDS survey conducted on a prominent Real Estate Group in Delhi in the first week of the March, 2020, after credible data analysis of previous years, analysis of TDS compliance patterns by the various group companies, their ITR filings and tax auditor reports and real time data generated by CPC-TDS, it was seen that the deductor having already deducted tax in earlier years, had not deposited the deducted taxes in Government account.

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During the survey, verification and analysis indicated outstanding TDS liability and interest payable of Rs.214 crore. Major TDS default related to the payment of interest on outstanding loans. The Real Estate Company had taken huge loans on which interest payments were credited from time to time, TDS was duly deducted during various financial years but was not deposited to Government account. Since it was a case of non-compliance, interest at the rate of 1.5% for every month or part of the month is to be paid from the date on which such tax is deducted to the date on which such tax is actually deposited to Government account.

In another action by the TDS Wing of the Department, TDS default of approximately Rs.3,200 crore was detected in the case of a major oil company pursuant to survey u/s 133A of the Act. The defaults included short deduction of tax and non-deduction of tax respectively. Short deduction of tax pertained to **TDS u/s 194J** for several years on payment of Fee for Technical Services for installation and maintenance of high tech oil refineries, payments for chemical process of re-gasification and transportation of LNG. Default of non-deduction was detected on composite contracts involving service and purchase of products on which TDS @2% should have been deducted but which was not deducted resulting in the said default.

The Income Tax Department has, in recent times, stepped up enforcement action against TDS default cases as this category of revenue contributes to over 45% of the total direct tax collection in the country. As per Rules, the TDS has to be paid to the credit of the central Government within seven days from the end of the month in which the deduction is made.