CBDT prescribes a procedure for furnishing and verification of Form 26A/27BA for removing default on account of short deduction/collection or non-deduction/collection of tax at source

Background

Section 201(1) of the Income-tax Act, 1961 (the Act) provides that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an ‘assessee in default’ in respect of such tax if such resident has furnished his return of income, has taken into account such sum for computing income in such return of income and has paid the tax due on the income declared by him in such return of income. Further, the person furnishes a certificate to this effect from an accountant in the prescribed form.

Section 206C(6A) of the Act provides that any person, other than a person referred to in Section 206C(1D)1 of the Act, responsible for collecting tax in accordance with the provisions of this section, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an ‘assessee in default’ in respect of such tax if such buyer or licensee or lessee has furnished his return of income under Section 139, has taken into account such amount for computing income in such return of income; and has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in the prescribed form.

Under Rule 31ACB(1) of Income-tax Rule, 1962 (the Rules), the certificate from an accountant under Section 201(1) shall be furnished in Form 26A to the Principal Director General of Income-tax (Systems)2 in accordance with specified procedures, formats and standards. Similarly, under Rule 37J of the Rules, the certificate from an accountant under Section 206C(6A) shall be furnished in Form 27BA to Director General of Income-tax (Systems)3 in accordance with specified procedures, formats and standards.

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1 Every person being a seller, who receives any amount in cash for sale of bullion or jewellery or any other goods (other than bullion or jewellery) or providing any service, shall, at the time of receipt of such amount in cash, collect from the buyer, a sum equal to one per cent of sale consideration as income-tax, if such consideration –
   (i) for bullion, exceeds two hundred thousand rupees; or
   (ii) for jewellery, exceeds five hundred thousand rupees; or
   (iii) for any goods, other than those referred to in clauses (i) and (ii), or any service, exceeds two hundred thousand rupees

2 or the person authorised by the Director General of Income-tax (Systems)

3 or the person authorised by the Director General of Income-tax (Systems)
**CBDT notifications**

Recently, the Central Board of Direct Taxes (CBDT) has issued notifications\(^4\) prescribing the procedure for electronic filing of Form 26A/27BA for short deduction/collection and non deduction/collection of tax at source. Notification No. 11/2016 states that the following persons shall receive Form 26A in a prescribed manner in case the taxpayer fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on the sum paid/credited to the account of a resident. Similarly, as per the Notification No. 12/2016, Form 27BA shall be furnished where the person responsible for collecting tax fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee:

<table>
<thead>
<tr>
<th>Authorised tax officer</th>
<th>Mode of furnishing Form</th>
<th>Assessment Year</th>
<th>Form No.</th>
<th>To be used exclusively under Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field Assessing Officer (TDS)</td>
<td>Paper</td>
<td>Upto and including 2016-17</td>
<td>• 26A&lt;br&gt;• 27BA</td>
<td>• Section 201(1) and/or Section 40(a)(ia) of the Act.&lt;br&gt;• Section 206C(6A) of the Act.</td>
</tr>
<tr>
<td>CPC-TDS</td>
<td>Electronic</td>
<td>Upto and including 2016-17</td>
<td>• 26A&lt;br&gt;• 27BA</td>
<td>• Section 200A of the Act.&lt;br&gt;• Section 206CB of the Act.</td>
</tr>
<tr>
<td>CPC-TDS</td>
<td>Electronic</td>
<td>Including and from 2017-18</td>
<td>• 26A&lt;br&gt;• 27BA</td>
<td>• Section 200A of the Act, 201(1) and/or 40(a)(ia) of the Act.&lt;br&gt;• Section 206CB of the Act and/or 206C(6A) of the Act.</td>
</tr>
</tbody>
</table>

The Assessing Officer (AO) should ensure that interest on non-deduction/non-collection of the whole or any part of the tax or failure in payment after deduction/collection as required by or under the Act shall be paid before furnishing the statement in accordance with the provisions of the Act. Furnishing of Form 26A/27BA in electronic form shall be enabled **with effect from 15 January 2017**.

The notification also prescribes the procedure for electronic filing of Form 26A/27BA. The procedure prescribes the role of the deductor to get details of short deduction/short collection, no deduction/no collection transactions, etc. It also prescribes the role of accountant for e-filing of Annexure A to Form 26A/27BA.

The procedure for electronic filing of Form 26A/27BA has been summarised as follows:

**Role of the deductor/collector**

- The deductor has to go to the TRACES portal and submit a request to get short deduction/collection. Further, deductor/collector needs to enter the details of non-deduction/non-collection transaction, if any.

- On submitting the request, a Unique Request Number (URN) will be generated for further reference. The short deduction/collection and/or non-deduction/non-collection request so submitted will be processed by TRACES and the successful transaction will be displayed to the deductor/collector after a certain time.

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\(^4\) Notifications No. 11/2016, dated 2 December 2016, Notifications No. 12/2016, dated 8 December 2016
• A unique DIN will be generated by TDS-CPC for unique short deduction/deduction transaction. Similarly, a unique alpha numeric string will be generated for no-deduction/collection transaction.

• The deductor/collector will communicate the DINs and alpha numeric strings generated to the accountant identified for certifying Annexure A and obtain the membership number of such accountant.

• The deductor/collector shall locate and select the relevant DIN in the menu driven option for which the request for Form 26A/27BA is to be submitted.

• The deductor/collector shall locate and select a non-deduction/collection transaction for which the request for Form 26A/27BA is to be submitted.

• The deductor/collector needs to authorise the accountant by entering his/her membership number in respect of each of the short deduction/collections and no deduction/collection transaction.

• The accountant so authorised may fill relevant details in Annexure to Form 26A/27BA and digitally sign the same.

• Once registered, accountant/accountants certify DINs and alpha numeric strings, the deductor/collector needs to digitally sign the form and submit its final request. Consequently, these submitted records will be shared with the FAOs concerned.

• Once the request has been processed, short deduction/collection will be re-calculated and late deduction/collection interest will be generated accordingly, which can be viewed by deductor/collector.

• Deductor/collector needs to pay late deduction interest amount, according to the modified computation.

Role of accountant at e-filing

• Accountant has to get himself/herself registered at e-filing portal and share his membership number with the deductor/collector desiring to authorise him with respect to short deduction/collection and/or non deduction/collection.

• After being so authorised by deductor/collector and upon receiving DINs and/or alpha-numeric strings from deductor/collector, login to e-filing portal with the accountant’s credentials.

• Use DINs and/or alpha-numeric strings to identify the deductee/buyer rows which are to be verified.

• Complete Annexure A to Form 26A/27BA with respect to the concerned deductee/buyer and submit the Annexure A so completed by digitally signing it.

Role of e-filing

<table>
<thead>
<tr>
<th>For the deductor/collector</th>
<th>Validations</th>
<th>TRACES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide a view of short-deduction/collection and/or non-deduction/collection transactions to the deductor/collector as communicated to the e-filing portal electronically by CPC-TDS.</td>
<td>Check mandatory compliance: ITR of deductee (PAN) should have been filed under Section 139 and no demand should be payable at the time of assessment.</td>
<td>Share digitally signed Form 26A/27BA with CPC-TDS</td>
</tr>
<tr>
<td>Allow the deductor/collector to locate and select short-deduction/collection and/or non-deduction/collection transactions and authorise accountant(s) with respect to each of these transactions by entering the membership number of accountant(s).</td>
<td></td>
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</tbody>
</table>
• Allow accountants so authorised to view Annexure A to Form 26A/27BA on the basis of DIN and/or alpha-numeric string. Complete the Annexure; and submit it by digitally signing it.

• Allow the deductor to view Form 26A/27BA including Annexure A to Form 26A/27BA so submitted by authorised accountant(s) and submit this Form 26A/27BA by digitally signing it.

Role of TRACES

<table>
<thead>
<tr>
<th>For the deductor/deductor</th>
<th>Backend Processing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Display identified short deduction/collection transactions so the deductor/collector can view the same.</td>
<td>Processing the request: Once the deductor/collector submits the request for Form 26A/27BA, TDS-CPC will repossess the statement and short deduction/collection will be modified.</td>
</tr>
<tr>
<td>Provide the option of adding no-deduction/collection transactions to deductor/collector.</td>
<td></td>
</tr>
<tr>
<td>Provide DIN and/or alpha-numeric string for each transaction after submission by deductor/collector.</td>
<td></td>
</tr>
<tr>
<td>Display the updated status of submitted Form 26A as received from the e-filing portal.</td>
<td></td>
</tr>
</tbody>
</table>

Our comments

Section 201 as amended by the Finance Act, 2012 provide that the payer shall not be treated as an ‘assessee in default’ for non-deduction of tax at source, if the payer furnishes Accountant’s certificate in Form 26A confirming that payee has filed his tax return considering such income and has paid taxes on such income. Further, Rule 31ACB provides that such form needs to be filed electronically.

These notifications allow filing of Form 26A/27BA in a paper form till AY 2016-17. The taxpayer from AY 2017-18 onwards needs to file Form No. 26A/27BA only in electronic form. The AO should ensure that interest on non-deduction/non-collection of the whole or any part of the tax or failure in payment after deduction/collection as required by or under the Act shall be paid before furnishing the statement in accordance with the provisions of the Act.

In furtherance with the government’s ‘digital India’ initiative, the CBDT has notified the procedure for e-filing of form in the case of short deduction/collection or no deduction/collection at source. It will provide clarity to the deductor/collector in the case of short/non deduction/collection of tax at source when the prescribed conditions mentioned under Section 201(1)/206C(6A) of the Act are satisfied.
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