

Section 197 of the Income-tax Act, 1961 – Deduction of tax at source – Certificate of lower deduction or non-deduction of tax at source – Instructions for issue of certificate u/s 197 mandatorily through ITD system

Instruction No. 4/2010, dated 25-5-2010

1. I am directed to bring to your notice on the subject of issue of certificates u/s 197 that by Instruction No. 8/2006 dated 13/10/2006, it was laid down that certificates for lower deduction or nil deduction of tax at source u/s 197 are not to be issued indiscriminately and for issue of each certificate, prior administrative approval of the concerned Range Head shall be obtained by the AO. Subsequently, Instruction No. 7/2009, dated 23/12/2009 read with letter F.No.275/23/2007-IT(B), dated 8/02/2010 has laid down monetary limits for prior administrative approval of the CIT-TDS or DIT-Intl. Taxation, as the case may be. Such certificates are normally being issued at present, manually rather than through the ITD system.
2. To maintain centralized data of issue of such certificates and facilitate better processing of the TDS returns filed by the deductors and in continuation to the above instructions, I am directed to communicate that henceforth w.e.f.....the certificates u/s 197 shall be generated and issued by the AO mandatorily through ITD system only.
3. In case due to certain reasons, it is not possible to generate the certificate through the system on the date of its issue, the AO shall upload the necessary data on the system within 7 days of the date of issue (manually) of the certificate.
4. The manner of issue of certificate u/s 197 through the system, uploading of data in situation covered in para 3 above and the prior administrative approval by the Range Head and by the CIT-TDS / DIT-Intl. Taxation is given in the enclosed Annexure for guidance of all concerned.
5. The content of the above Instruction may be brought to the notice of all officers working in your charge for strict compliance.

Note for issue of certificate u/s 197 mandatorily through the system

1. Chapter-XVIIIB of the IT Act 1961 provides for deduction of tax at source by person responsible for making payment of some specified nature mentioned in Sec 192 to Sec 194 LA (hereof. The tax so deducted is deposited to Govt. a/c on monthly basis. The deductor of tax is liable to file quarterly returns of TDS wherein data about the amount paid, tax deducted, rate of deduction, date of deduction, date of payment of tax to Government, identification of the payees/recipients (by specifying their PAN) and some other prescribed details are furnished.
2. While processing the TDS return, the information contained therein is matched with the legal provisions (prescribed rates of deduction), due dates for payment, the information of tax payment received from banks etc. and defaults, if any, are generated. The defaults are mainly non-deduction (including short deduction), non-payment of tax deducted (including part payment) and interest for default or delayed payment.

3. Sec 197 of the IT Act, 1961 provides for issue of certificate for no deduction or deduction of tax at lower rate if the Assessing Officer is satisfied that the issue of such certificate is justified in view of total income of the recipient. Till FY 09-10 the certificates u/s 197 were being issued manually by the concerned Assessing Officer. The present system of issuance of 197 certificates suffers from the following deficiencies:

- There is no check as to whether such certificate has been issued by the authorized/competent assessing officer having jurisdiction.
- There is no information available in the system as regards number of certificates issued at Nil/Lower rate authorized by AO or the quantum of revenue involved.
- Such certificates are being presently issued without any systematic reference number which could be amenable to verification. In the TDS returns, since neither reference numbers of 197 certificates are being captured nor is it possible to compare such numbers in the light of manual issue of certificates, it is not possible to ascertain the veracity of claim, of the deductors about no/low deduction having been made on the strength of a 197 certificate actually issued by the department.
- The extent of default, for FYs 2007-08 and 2008-09, generated as a result of deductors making 'mistakes' in ticking relevant column (about 197 certificates) in TDS returns is to the extent of more than Rs 10,000 crores. This is indicative of the magnitude of revenue involved in issuance of 197 certificates, which are being otherwise issued by the field officers without perhaps being aware of the extent of revenue involved.

4. Therefore, processes have to be put in place which enables the department to take policy decision on the issue on one hand and on the other help the field officers to verify the genuineness of claims being made in TDS returns as also to decide about the extent of such certificates which are to be issued.

5. It is reported that in the middle of FY 09- 10, facility was provided in the TDS module of ITD system to generate certificates Under section u/s 197 through the system.

6. Some of the benefit of issue of certificate u/s 197 through the system would be that:

- Entire information about the deductor and deductee, nature of payment (related section), the lower rate authorized, dates of validity of certificate and quantum of payment would be available to the department in the system.
- Element of reconciliation on part of deductors and regulation in the case of field officers (so far as issuance of the certificates is concerned) would be introduced.

- The information (as above) can be used while processing the TDS returns and matching the data provided by the deductor in TDS return.
- The information/statistics would help the CBDT in taking an informed policy decision on the issue in future.
- The non-deduction defaults detected by the system while processing the TDS returns would be substantially reduced or almost eliminated, if all certificate u/s 197 are issued compulsorily through the system.

7. Under these facts, it is proposed that all certificates u/s 197 be issued mandatorily through ITD system.

However, considering that these certificates are issued by the AOs scattered throughout the country, there may be exigencies/situations when these may *not* be generated through the system. In such cases, the procedure may involve suitable measures to capture the data on the system by the AO within 7 days of the date of issue (manually) of the certificate.

8. The entire procedure is open for suggestions, modifications and amendments as considered necessary.