

## TDS is charged at higher rates from non-filers



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TDS applied for non filers is higher of twice the normal applicable TDS rate or 5%

In last year's budget, a new provision was inserted to provide for a higher tax deduction at source (TDS) rate from payments to persons who have not filed their returns of income (non-filers). The TDS to be applied in such cases is the higher of twice the normal applicable TDS rate or 5%.

Non-filers are persons who have not filed their returns of income for two years preceding the year of deduction where returns of income are due, and if TDS deducted from their income has been ₹50,000 or more in each of these 2 years. On 1 July 2021, the applicable years would be the financial years 2018-19 and 2019-20, since the tax returns for the financial year 2020-21 would be due only by 31 December 2021 or later.

Exemption is provided for certain types of payments from applicability of this provision. Payment of salaries, provident fund, winnings from lotteries, winnings from horse races, and income from securitization trusts, and withdrawals from a bank in cash, have been exempted from this requirement of higher TDS. Similarly, payments to a non-resident who does not have an establishment in India is also exempt from these provisions.

To facilitate such verification by tax deductors, as to whether tax is required to be deducted at a higher rate or not, the CBDT has created an online facility for checking whether this provision would apply or not to taxpayers, with a list of such taxpayers to whom these provisions would apply. A search can be done by the PAN of the person from whom TDS is being deducted. For this purpose, a taxpayer has to log in to use this facility through his Tax Deduction Account Number (TAN).

There are certain provisions of the tax law, which require tax deduction by an individual from payments made for personal purposes. These require one-time online filing and payment of TDS return, without the requirement of having to obtain a TAN or file a quarterly TDS return. These provisions are those for payments for purchase of an immovable property exceeding ₹50 lakh (requiring TDS of 1%), payment of monthly rent exceeding ₹50,000 (requiring TDS of 5%), and payments to contractors, payment of professional fees, commission or brokerage exceeding ₹50 lakh (requiring TDS of 5%). In such cases, the government has consciously evolved a separate

procedure to facilitate one-time TDS payments by such individuals, without having to go through the cumbersome procedure of obtaining a TAN and filing TDS returns every quarter. Such persons, however, are now forced to obtain a TAN, or else they cannot access the utility to check whether TDS is required to be deducted at a higher rate or not. Therefore, the concessional compliance granted by one provision of TDS law is undone by the requirement of compliance with another procedural requirement of TDS law.

This seems all the more evident from the fact that if this requirement of higher deduction were to apply, the TDS on payment of rent would be 10% instead of 5%. This is required to be deducted for the entire year once from the last month's rent. This would be impossible to do, since such last month's rent would normally be only 8.5% of the entire year's rent, as compared to the TDS required of 10% of the entire year's rent. Instead of paying rent, the tenant would have to ask the landlord to pay him back the excess of TDS over the last month's rent, which most landlords would refuse to return. It is therefore essential that such tax deductors are provided an exemption from the requirement of deducting such higher TDS in respect of these 3 types of payments, as the government's intention clearly is not to burden them with the large amount of compliance that a regular tax deductor has to undergo. This can be done by introducing a clarificatory amendment in the forthcoming budget, or by issuing a circular clarifying that the higher TDS requirement does not apply to TDS being deducted in respect of these 3 types of payments. This alone will ensure that the next time you make a payment for purchase of a property or pay rent for your house, you do not have to go through the procedure of finding out whether you have to deduct a higher TDS and figuring out how it would be possible to do it, particularly in case of rent.

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