**[Delay in payment OF TDS for one day – Interest chargeability @ 3% INJUSTICE TO ASSESSEE](http://taxguru.in/income-tax/delay-payment-tds-day-interest-chargeability-3-injustice-assessee.html" \o "Permanent Link to Delay in payment OF TDS for one day – Interest chargeability @ 3% INJUSTICE TO ASSESSEE)**

“Pay as you earn” and “collect as it earned” is the basic concept of Tax Deducted at Source. It is one of modes of collecting Income Tax at the source of Income under the Income Tax Act, 1961. Simply it is an indirect method of collection of tax. Its importance to the government lies in the fact that it prepones the collection of tax, provides a greater reach and wider base for tax. The concept of TDS requires that the person, on whom responsibility has been cast, is to deduct tax at the appropriate rates, from payments of specific nature which are being made to a specified recipient.

The recipient from whose income tax has been deducted at source gets the credit of the amount deducted in his personal assessment on the basis of the certificate issued by the deductor. The deducted sum is required to be deposited to the credit of the Central Government. The deductor of the Income Tax is required to deposit the tax deducted with in the specified time with Income Tax Department.

The deductor is required to deposit the tax deducted with in seven day of the next month. In the case of March, the deductor can deposit the tax deducted by 30th April. If the assessee does not deduct the tax or after deduction does not deposit it, he is required to pay the interest u/s 201(1A). Section 210(1A) states as under:

*“(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,*

*(i) at one per cent****for every month or part of a month****on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and*

(ii) *at one and one-half per cent****for every month or part of a month****on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid.*

After studying the provision of Section 201(1A) (i), it is clear that the interest for non deduction of TDS will be paid from the date on which the tax is required to be deducted to the date of actual deduction @1% and from the date of deduction to the date of actual payment @1.5% p.m.

This has been a matter of dispute that what should be the definition of month as emphasized above. The definition of month has not been defined in the Income Tax Act, 1961. Whether while counting the no. of months for the purpose of calculation of interest, it should be considered as a calendar month as per General Clauses Act or it means a period of thirty days.

CPC – TDS is using TDS Reconciliation Analysis and Correction Enabling System (‘TRACES’) for processing the e-tds return. The software which has been used by it takes the definition of month as calendar month and due to which it has become a nightmare for the assessee.

**For e.g. If an assessee has made a transaction of Rs. 5 Crores on January 31, 2014 and required to pay Rs. 50 lakhs as TDS on that amount. He deducted the TDS and required to pay the amount on February 7, 2014. Unfortunately he made the payment on February 8, 2014. For a delay of a single day as per the Software of the TRACES, he will be required to pay interest for two month i.e. January and February @ 3%. If will get a demand calculated @3% from the TRACES as soon as he will file the return.**

Even though while defining the definition of ‘Month’ in number of cases held by High Court/Tribunals it has been mentioned that the definition of month should be taken as thirty days and not English Calendar Month.

In the case of **CIT v. Laxmi Ratan Cotton Mills co. Ltd. [1974] 97 ITR 285 (ALL.), Allahabad High Court** has held that

*“we are of the view that the word “month” as occurring in this sub-section must be taken to mean a period of thirty days. This provision was enacted for the purpose of imposing a penalty on an assessee who had not filed his return during the prescribed time, and was enacted to serve as a deterrent for such lapses. The penalty is imposable for every month during which the default continues. If the meaning ascribed to this word in the General Clauses Act is adopted, it may in some cases lead to a defaulting assessee escaping penalty altogether, in spite of default. To take an illustration: Let us assume that time is given to an assessee up to the 30th of January in a particular year for filing a return and he defaults. He, thereafter, files his return on the 27th February. If the word “month” occurring in the section is taken to mean a full calendar month, the assessee in such a case would not be liable for any amount of penalty. Such a result is not contemplated by the language of the sub-section, for the sub-section in clear and unambiguous terms makes every assessee liable for penalty during the period of default. In the circumstances, it is not appropriate to import the meaning of the word “month” given in the General Clauses Act in the sub-section, for it does not fit in with the context and scheme of the section, and results in some cases in setting at naught the purpose of the enactment.****We are thus of the view that the Tribunal was not right in holding that the word “month” occurring in this sub-section refers to the English calendar month.****”(Emphasis applied)*

Further in the case of **Kesharwani Zarda Bhandar v. Commissioner of Income-tax, [2013] 30 taxmann.com 387, the Allahabad High Court** has held that

*“The charging of interest for four months was a clear error of law on the facts of the case in which the Assessing Officer had failed to take into account that the return was due to be filed by 31-7-1979. Whereas it was filed on 31-12-1979, by taking the month to mean a period of 30 days, interest was to be required to be charged for five months and not for four months.”*

However, in one of the case while computing the time for the purpose of section 54EC the ITAT **Ahmedabad (SB) in the case of Alkaben B. Patel v. ITO, ward – 14(2) [2014] 43 taxmann.com 333**, has held that the time limit of ‘six months’ in sec 54EC means ‘six British Calendar months’ in view of the General Clauses Act, 1897. It has held that in the absence of any definition of the word ‘month’ in the Act, the definition of the General Clauses Act, 1897 will be applicable. Legislature in its wisdom has chosen to use the world ‘month’. This was done keeping in view the definition in section 3(35) of the General Clauses Act, 1897. It has rejected the Revenue’s interpretation that ‘month’ should be understood in the ordinary sense i.e. the month is a period from a specified date in a month to the date numerically corresponding date in the following month.

Due to this anomaly, the TRACES is processing the e-tds return on the basis of definition of month as calendar months and raising demands on assesses accordingly. In other words, if there is a delay of one day, the assessee is getting demand letter for two months interest which is nothing else than harassment on him. On his appeal to the TDS officers, they are not accepting the plea of the assessee as this is inbuilt in the software/system and they can’t do anything.

The systems are made by us for our convenience only and they can be changed/modified easily but the main question is that whether we are interested in changing the same or what our final view on the same is. As per my opinion, by charging tax on calendar month basis the department is harassing the assesse. In the Information Technology Era, where we can transfer money from one account to other in one second even I don’t feel comfortable that a part of month should be considered as one month. You have developed software and you can make calculation of interest charged easily on the day to day basis as well easily. It is opined that a writ petition should be filed before the high court against the harassment of the department for charging undue interest from the assessee.

COURTESY

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