

New TDS Regime - A grand fiasco for CBDT; Is outgoing FM 'aware' of policy change, richly contributing to 'Tax Misery Index'!

MAY 11, 2009

By TIOL Investigative Bureau

WHEN the USA's reputed magazine Forbes recently came out with a startling 'Tax Misery Index' and ranked India **23rd for least friendly tax climate - a substantial drop from 35th rank**

a year before, their ranking had confounded our Editorial team with a vertical split in favour and against their findings. However, TIOL is indeed **'thankful'** to CBDT (**particularly TPL - direct tax version of TRU**) for cementing the crack in the perception of our Editorial by creating a **'Grand Mess' out of the New TDS Regime** and richly adding to the cup of misery for all tax payers. If one goes by the *'ishtyle'* the CBDT has handled the new ferocious TDS Regime - a new Challan (Form 17), new Forms like 24Q, 26Q, 27Q and 26EQ for TDS from various types of payments, a new quarterly TDS compliance statement (Form QE) etc, one can be more than certain that India is going to figure **more prominently** on the 'Misery Index' next year.

How unprofessionally, non-chalantly, perfunctorily and uncouthly, the introduction of this New TDS Regime has been handled by the TPL, can be seen from the bare fact that there has been **no official communication about the new Form 17** which was to be mandatorily put in place for online payment of TDS **before 7th May**. When the **tax deductors numbering more than 16 lakhs**

across the country began losing their 'Gandhian patience' over the delay in the release of the new Form, they pressed the panic-button and a huge part of the volley of queries and inquiries landed on TIOL's ICT infrastructure. Soon TIOL team of reporters swung into action and came back with the news from trusted and highly dependable sources that the

CBDT Board had an acrimonious debate over the pathetic handling of the new regime, and a notification was in the pipeline to postpone the same to July, 2009. To assuage the fear of tax deductors about missing the due date for tax payment, TIOL quickly gave a flash news and **helped the CBDT retain the faith and confidence of lakhs of taxpayers in the Board's ability to overcome the unexpected quagmire**. All this happened last Wednesday. Delhi went to polls on Thursday, and it was a holiday. TIOL patiently waited for the notification on Friday but the inside inputs suggested that the TDS mess had become such a **glaring 'sin'**

that the officers who had earlier shown extraordinary zeal to notify the changes, had run out of their confidence and were **unsuccessfully busy passing the buck, and feebly defending the indefensible mess**.

Let's see what **'inside inputs'**

our team of reporters could gather about this historic mess the CBDT top brass itself had never visualised. It was the last day of the fiscal 2008-09 when the TPL issued two Notifications numbered 31 and 32, altering the mode and manner of TDS deposit and TDS return-filing. It was by **all standards a major policy change** but the same was

never discussed by the full Board of CBDT as the TPL and the Member concerned, perhaps in their arrogance or maybe out of ignorance, did not think it wise to share their extraordinary ideas with anyone else. And the level of stealth they resorted to was of such a horrendous proportion that they did not take into confidence many other integral agencies whose involvement is necessary for the success of this new policy.

And some of them are DG (Systems) which was to design and structure the columns of the new Form 17, NSDL which is to be the epicentre of all TDS activities, designated banks, Controller General Accounts (CGA), DDOs of all Central Govt and State Govt departments and the Assessing Officers.

In simple words, leave aside the question of issuing a Draft Notification for wider consultative process with organised institutions like ICAI or taxpayers at large, the TPL did not care for a proper homework nor did it involve other agencies to get prepared for a New TDS Regime.

With one stroke, the TPL dismantled the TDS policy which had taken five long years to stabilise since 2003.

On numerous occasions the taxpayers have complained to the Finance Minister, the Revenue Secretary, the Chairman and the Members about the frequent changes being effected in various IT Forms and it was publicly promised that major changes would be adequately spaced out in future.

Anyway, none cares for promises in a Government setup nor is there a rich convention for the same. Let's go back to examine the virtue of the new regime. Theoretically speaking, it is a well conceived idea and may be able to eliminate chances of revenue leakage and TDS fraud with a proper fine-tuning. But at this stage it has a large gamut of inherent flaws which will not only disrupt the healthy growth in TDS compliance but also **impact the 30% growth in TDS collections recorded in the past three years.**

A change at this stage was not called for. The Income Tax Department has consistently been getting computerised. Tax deductors have gradually been switching over to robust ICT infrastructure. Taxpayers have shown appreciable tendency to computer literacy. NSDL and Banks have been increasingly

investing a tidy sum in their Server infrastructure. In nutshell, **the TPL could have waited for a couple of more years and given reasonable time to all its implementing agencies to strengthen their own server and IT infrastructure and also the taxpayers to get prepared for the new regime.**

Now the question is if certain officers in the Board did not take the Board approval and made such a major policy change why can't the Board initiate disciplinary proceedings against them. Any lenient approach at this time may go down the history as a precedent. And precedents are also known for having strong propensity to repeat themselves. Can CBDT afford a repeat of such a blunder in future? The second pertinent question is that when the full Board approval was not taken, how did the Revenue Secretary agree with a handful of officials? Does it not amount to serious supervisory failure on his part? Or, he has been keener to encourage a group of errants to challenge the authority of the Board? If not so, what has Revenue Secretary been doing sitting in North Block and not preventing certain officials from taking such a harsh anti-taxpayers step.

TIOL is sure many lakhs of tax deductors must have failed to pay TDS by 7th May, waiting for the new Form 17 and they are now subject to penal interest in lakhs. Isn't it necessary to fix the accountability for such a serious lapse being committed when the Govt is in a transition mode and the Finance Minister has no time to pay personal intention to such a policy change? Another vital question that crops up is that when there is going to be a new Govt in place soon why this unholy haste to change a major policy? Or, is it an attempt to discredit the outgoing Finance Minister who is perhaps not even 'aware' of the implications of such a policy change at this stage?

Anyway, let's now see why this New TDS regime is bound to be a **grand fiasco in its present avatar if the CBDT decides to ignore the ground realities and implement these changes:**

1) Govt DDOs:

Can you believe it? - About two lakh DDOs of Central Govt and State Govt departments are also expected to pay TDS through internet banking or credit or debit card. It is common knowledge that Govt DDOs are not authorised to make payment by cheques leave alone online payment. Going by the poor infrastructure in State Govt departments, CBDT may be realistic in forgetting about any electronic payment from State DDOs. Rather it may have adverse impact on Centre-State relations and can become a sensitive issue for the body of federalism. In other words, a major chunk of TDS deductors who are yet to accept even the present system, can be simply ruled out from this new concept on complete online integration.

2) Given the guaranteed failure of Govt DDOs, it basically means that the banks and the NSDL will have to maintain two interfaces with complete sets of forms etc - one for the private sector and the second for the DDOs. This is going to create huge procedural and systemic complications for both banks as well as NSDL.

3) Unique Transaction Number (UTN):

Conceptually speaking, once a tax deductor enters the details of transactions and sends the same for verification to the NSDL Server which will generate a Unique Transaction Number, the same is to be quoted in the Form 16/ Form 16A for availing tax credit. It sounds nice but has TPL thought about all those corporate taxpayers which have large workforce like 50,000 to 100,000. Even if a software is developed over a period of time, it would be a gigantic exercise for large corporates to interact with NSDL server every month with huge data and preserve UTN for issuing Form 16. Next question is what will be the configuration or the platform of the UTN - alpha numeric or TAN-related or code-based. This is not yet decided. Let's presume that even if it is decided, there would be more than 30 million transactions for which the NSDL Server will have to generate UTN and the same has to be archived for six years - a period for which a return of income can be required as per the law. In simple words, if the NSDL starts the work on installing a server of such capacity it would take more than 18 months to set up.

4) Last Quarter TDS Return:

In this ICT background of the NSDL isn't it foolhardy to believe that the NSDL will allot UTN for all the transactions of last quarter TDS return of FY 2008-09 which is due on June 15, 2009. Then the last due date for return-filing for AY 2009-10 is June 30, 2009. Does anybody believe that a corporate will be able to issue Form 16/16A with the UTN to all deductees which can claim credit in their returns of income!

5) I-T Department infrastructure:

Since AY 2007-08 the Income Tax Department has been accepting e-filed returns as well as new annexure-less returns in paper. The Department has been confronted by huge problems in processing the large volume which is evidenced by a large bunch of clarifications and relaxations notified in the recent months. Despite all such easing guidelines, it is learnt that only about 22 lakh e-returns for AY 2007-08 were processed by March 2009. It took 22 months but all the returns could not be processed. More delay means an exponential rise in interest liability on Department due to refund. A large number of cases have already got time-barred also.

6) CGA in dark:

A call to Pr CCA office reveals that the controller of government finance is not aware of all such changes. Government finances are governed by Central Government (Receipt & Payment) Accounting Rules 1983 (Read our column - [DDT 1102 dated May 04, 2009](#)) and Central Govt Accounting Rules 1990. These rules have the legal force. Unless they are amended, no Govt department is going to pay taxes electronically. CGA has authorised certain PAOs to pay salaries through ECS and RTGS through their designated banks but they have no authorisation for

TDS payment. At present there is a clear-cut conflict between the IT Rules and the CGA Rules which should have been resolved before notifying the new TDS Regime.

There are many more infirmities and empirical problems associated with this new Regime (**Look for this week 'Cob(Web) Column**) but the larger issue is the lack of consultations with all stake-holders which has countervailed the implementation of the new Regime. It would be in the interest of the exchequer that this Scheme is postponed for at least **TWO**

years, and sufficient time is given to all stake-holders to do their homework, all the necessary parallel rules in the Govt are amended and **a trial run is also conducted for certain specific types of transactions before all transactions are brought under the purview of UTN.**

Let's hope good senses prevail over the officers who appear to be

cocooned in TPL for too long and have got disconnected with the real world outside North Block!