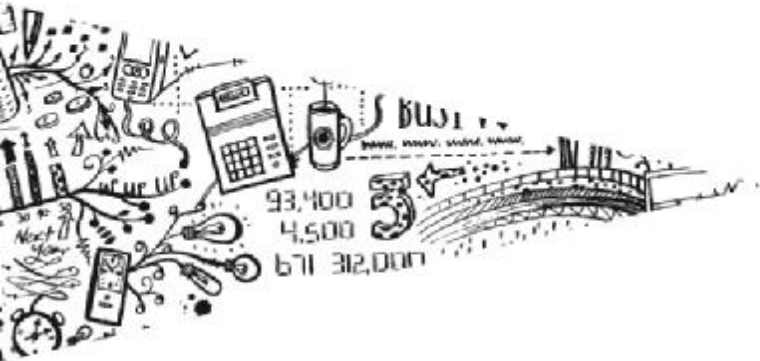


18 May 2011

EY Tax Alert

CBDT permits TDS certificate for non-salary TDS with digital signature



Executive summary

This Tax Alert summarizes a recent circular, Circular No. 3/2011 [F.No. 275/34/2011-IT(B)] (Circular) dated 13 May 2011, issued by the Central Board of Direct Taxes (CBDT), permitting issue of certificate for tax deducted at source (TDS certificate) with digital signature for TDS from income other than salary income (non-salary TDS) in Form 16A.

The extant rules provide an option to persons withholding tax (deductors) to issue TDS certificate with digital signature only for TDS from salary income (in Form 16). Non-salary TDS certificates in Form 16A are required to be issued in hard copy format with authentication by manual signature. The Circular now extends the option of digital signature to Form 16A also. The deductors exercising this option need to download Form 16A from the Tax Information Network (TIN) website.

The new facility is available for issue of Form 16A for financial year (FY) 2010-11 onwards. The Circular states that companies and deductors carrying on banking business will need to mandatorily issue Form 16A downloaded from the TIN website from FY 2011-12.

Background-Statutory provisions

- ▶ The deductor is required to issue TDS certificate to the deductee, specifying particulars like permanent account numbers (PAN) of deductor

and deductee, tax deduction account number of deductor, nature and amount of payment, amount of TDS, date of payment of TDS to the credit of the Government etc. (collectively 'TDS data').

- ▶ The form, periodicity and format for issue of such TDS certificates as per extant rules are as under:

Particulars	TDS from salary income	Non-salary TDS
Form	Form 16	Form 16A
Periodicity	Annual (by 31 May following relevant financial year)	Quarterly (30 July, 30 October, 30 January & 30 May)
Format	Deductor has option to issue either in hard copy with manual signature or with digital signature	Hard copy with manual signature

- ▶ The extant rules do not provide for an option to issue Form 16A with digital signature. The CBDT received representations to permit issue of such certificates with digital signatures since issuance with manual signatures is very time-consuming, especially for deductors who are required to issue a large number of TDS certificates.

TIN facility

- ▶ The Tax Authority has set up TIN, hosted by the National Securities Depository Limited, as a

repository of important tax-related information. TIN receives, on behalf of the Tax Authority, all TDS returns and other information for digitization into a central database. TIN receives online information on collection of taxes from the banks through the Online Tax Accounting System (OLTAS), which also flows into the central database.

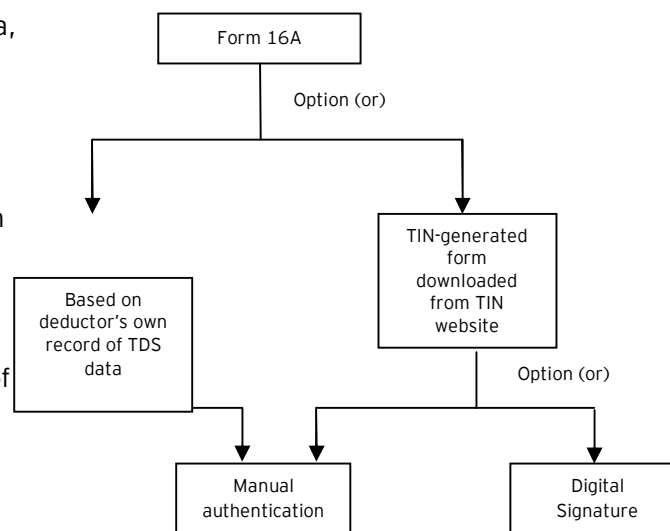
- ▶ TIN matches TDS returns from the deductors with the collection details received from the banks (through OLTAS). On the basis of this matched data, a deductee-wise electronic ledger account is prepared with the details of tax credits. This ledger (called Form 26AS) is made available to the deductees so that they can verify whether the deductors have deposited the tax in a timely manner.
- ▶ The issue of Form 16A by deductors to the deductees is a distinct and independent process. Deductors issue Form 16A based on TDS data as per the deductors' record. Ideally, there should be no mismatch between the TDS data displayed in Form 26AS and Form 16A. However, the Tax Authority has found that in some cases there is mismatch mainly on account of wrong data entry by deductor or non-filing of TDS returns by the deductor. The new facility introduced in this Circular is intended to overcome the challenge of such mismatch.

New facility to download TDS certificate in Form 16A from TIN

- ▶ The Tax Authority will introduce a new facility in TIN to enable deductors to download Form 16A from TIN website (TIN-generated Form 16A) based on the TDS data reported in quarterly TDS returns filed by them. This certificate will bear a unique TDS certificate number.
- ▶ Since both TIN-generated Form 16A and Form 26AS will be generated on the basis of same data, the likelihood of mismatch between the two will be eliminated.
- ▶ The Director General of Income-tax (Systems) shall specify the procedure, formats and standards for the purpose of TIN-generated Form 16A and shall be responsible for its day-to-day administration.
- ▶ Having regard to the new facility, the CBDT has modified the procedural requirements for issue of Form 16A.

Issue of Form 16A for FY 2010-11

- ▶ The deductor has an option to issue TDS certificate in Form 16A either based on his own data or through TIN-generated Form 16A. Form 16A issued on the basis of own data can be authenticated by manual signature only. In respect of TIN-generated Form 16A, the deductor has a further option to authenticate it either manually or with digital signature. This is illustrated below in a chart:



- ▶ The due date for issue of Form 16A for the first three quarters of FY 2010-11 have already expired. The facility of issue of TIN-generated Form 16A can, therefore, be availed of only for the last quarter of FY 2010-11^[1].

Issue of Form 16A for FY 2011-12

- ▶ Mandatory issue of TIN-generated Form 16A for certain deductors
 - ▶ The Circular states that the following deductors shall be required to issue TIN-generated Form 16A:
 - ▶ Company, including banking company, to whom Banking Regulation Act, 1949 (BRA) applies.
 - ▶ Any bank or banking institution referred to in Section 51 of BRA.
 - ▶ Co-operative society carrying on banking business.
 - ▶ It needs to be noted that these deductors need to issue TIN-generated Form 16A not only for TDS from interest but for all non-salary TDS.
- ▶ Other deductors have an option to issue Form 16A either based on their own data or through TIN-generated Form 16A with a further option,

[1] The applicability of the facility for belated issue of Form 16A for first three quarters of FY 2010-11 is ambiguous.

with regard to TIN-generated Form 16A, to authenticate either manually or with digital signature.

Comments

Issue of TDS certificates with manual signatures in Form 16A is a huge administrative exercise, especially for large corporates, in view of wide scope of non-salary TDS. The Circular provides welcome relief to deductors to reduce the administrative burden by opting for TIN-generated Form 16A with digital signatures.

Before exercising the option, the deductors would need to evaluate whether TIN-generated Form 16A correctly captures the TDS data. There may be certain practical challenges while availing of the new facility. For example, the TIN website may not capture TDS data of deductees for whom PAN is not available. Also, currently there is no clarity on whether the deductor can exercise the option selectively for some deductees. The validity of mandate of issuing TIN-generated Form 16A for companies and deductors carrying on banking business from FY 2011-12, without amendment in statutory rules, may also be legally debatable.

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