

**BSR & Associates LLP**

TDS Defaults- Tax authorities  
hitting with hard hammer.

*Private and strictly confidential  
February 2019*





# Table of contents

TDS Defaults- Action by the tax authorities

Purpose of Survey

Powers of Income Tax Authorities

Actions post survey

Precautions to be taken

How KPMG can assist in TDS Survey proceedings?

# Tax Defaults- Action by the tax authorities

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- TDS is the major source of collection for the tax authorities. There are stringent penal provisions for non deduction of TDS from specified payments.
  - In order to enhance the tax collections on year end the tax authorities for the past few years have been heavily using “TDS Survey” and have been successful in collecting tax from the tax payers.
  - In the recent past, the tax authorities have been very strict with the tax payers who defaulted in complying with the TDS provisions and initiated prosecution proceedings. The tax authorities have been successful in prosecuting the errant directors for not depositing TDS with the Government.
  - In the last month, thousands of notices were issued by the tax authorities per instruction of the CBDT which created fear and agitation by genuine tax payers
  - While the battle of prosecution continues, the tax authorities have aggressively started TDS survey to unearth TDS defaulters and collect tax revenues.
  - The recent news speaks LOUD
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# Tax Defaults- Action by the tax authorities (News)

## Companies face action over TDS non-payment

The payments also have to be made during a stipulated period, failing which a company is liable to be prosecuted as the government sees this as a major violation.

By Sidhartha, Rajeev Deshpande, TNN | Jan 23, 2019, 10:51 AM IST

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Tax officials said apart from default by a company, the violation impacted employees and other entities who were unable to file returns due to someone else's fault.

NEW DELHI: The government has cracked the whip on several large companies, which had either failed to deposit tax deducted at source (TDS) with the income tax (I-T) department or delayed the payment, with claims against top 10 such entities adding up to nearly Rs 350 crore. I-T authorities have gone ahead and launched prosecution action, while some of the companies have come forward to settle the cases. Under the law, individuals as well as companies have to deduct tax for several payments — ranging from salaries to rent and payments to contractors above a specified threshold.

The payments also have to be made during a stipulated period, failing which a company is liable to be prosecuted as the government sees this as a major violation. While a large number of cases relate to 2016-17, 2017-18 as well as the current financial year, action has been taken in cases where default dates back to 2012-13 as well, sources told TOI.

## PRISON TERM COULD BE UP TO 7 YEARS

### SOME OFFENCES THAT LEAD TO PROSECUTION NOTICES

➤ Section 276B for failure to deposit TDS with government: Imprisonment for 3 months to 7 years, plus fine

➤ Section 276C for tax evasion: If the tax sought to be evaded is Rs25,000 or more, imprisonment for 6 months to 7 years, plus fine. In other cases, it is 3 months to 2 years, plus fine

➤ Section 276CC for failure to file I-T returns: Imprisonment for 3 months to 7 years, plus fine

### NEXT STEPS FOR TAXPAYERS

➤ Respond promptly to notice, explaining reasons for default, say, delay in depositing TDS

➤ If there is a 'reasonable cause' (a subjective term), no punishment should follow

➤ Go in for compounding of offences, if needed; however, it is costly and time-consuming

➤ Taxpayers can also approach high courts to get prosecution notices quashed

### IN NUMBERS

➤ From April to Nov 2017, prosecution complaints were filed in 2,225 cases, compared to 784 in the previous corresponding period – a rise of 184%, according to a government release

➤ According to a collation of RTI replies, number of notices served during 2018 has totalled nearly a lakh





# Tax Defaults- Action by the tax authorities (News)

## 2 Andheri firm directors get 3-month jail for Rs 6 lakh TDS default

Vijay V Singh | TNN | Updated: Oct 16, 2018, 10:17 IST

✉️ 🖨️ A- A+



Representative image

MUMBAI: A metropolitan magistrate court on Monday convicted two directors of an Andheri-based firm to three months' rigorous imprisonment for defaulting on 6 lakh tax deducted at source (TDS) payment in 2012. Additional chief metropolitan magistrate M I Lokwani also imposed 5,000 fine on each. Conviction in TDS cases is a rarity, said officials.

Shailesh Shah and his wife

Bhavana, who run Lightwave Trading in Andheri (E), were released on bail and will appeal against the conviction. A A Shanker, principal chief commissioner, I-T (Mumbai region), said TDS had not been deposited by the due date. The deducted TDS amount must be deposited on the 7th of every month.

## Delhi-based realty firm's director sent to Tihar for non-compliance in TDS default case

*The ministry said that during investigations it was found that the real estate company had deducted TDS but had not deposited in the government account despite there being a statutory obligation by the Income Tax Act.*

PTI | January 21, 2018, 09:37 IST

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NEW DELHI: [Tis Hazari Court](#) has ordered judicial custody of the Director of a Delhi-based real estate and IT solution company for non-compliance in TDS default case, the finance ministry said in a statement today.

This year the Principal Chief Commissionerate-New Delhi has sanctioned prosecution in approximately 240 cases "which clearly shows" the strict attitude of the [Income Tax Department](#) towards the defaulters, the ministry said

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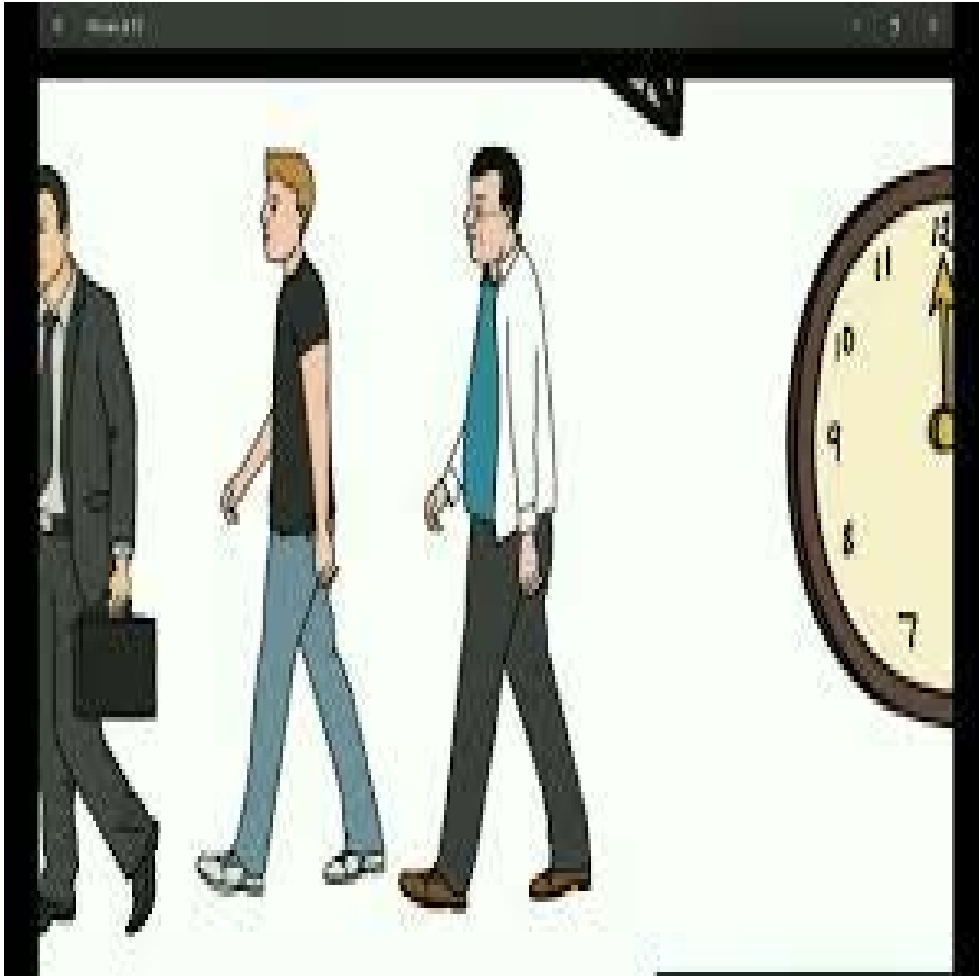
➤ [MaharERA](#) allows builders a second chance ...

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# TDS- Purpose of Survey

# Purpose of Survey

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- To broaden the tax base by discovering new assesses;
- To gather information;
- Serves as evidence for detecting evasion of tax;
- To collect information on the spot from place of business by inspecting stock, cash, books of accounts and other items related to business.
- To identify the tax payer who do not comply with the TDS provisions and divert the tax deducted for business activities or any other purpose.

# Recent Trend of TDS Survey

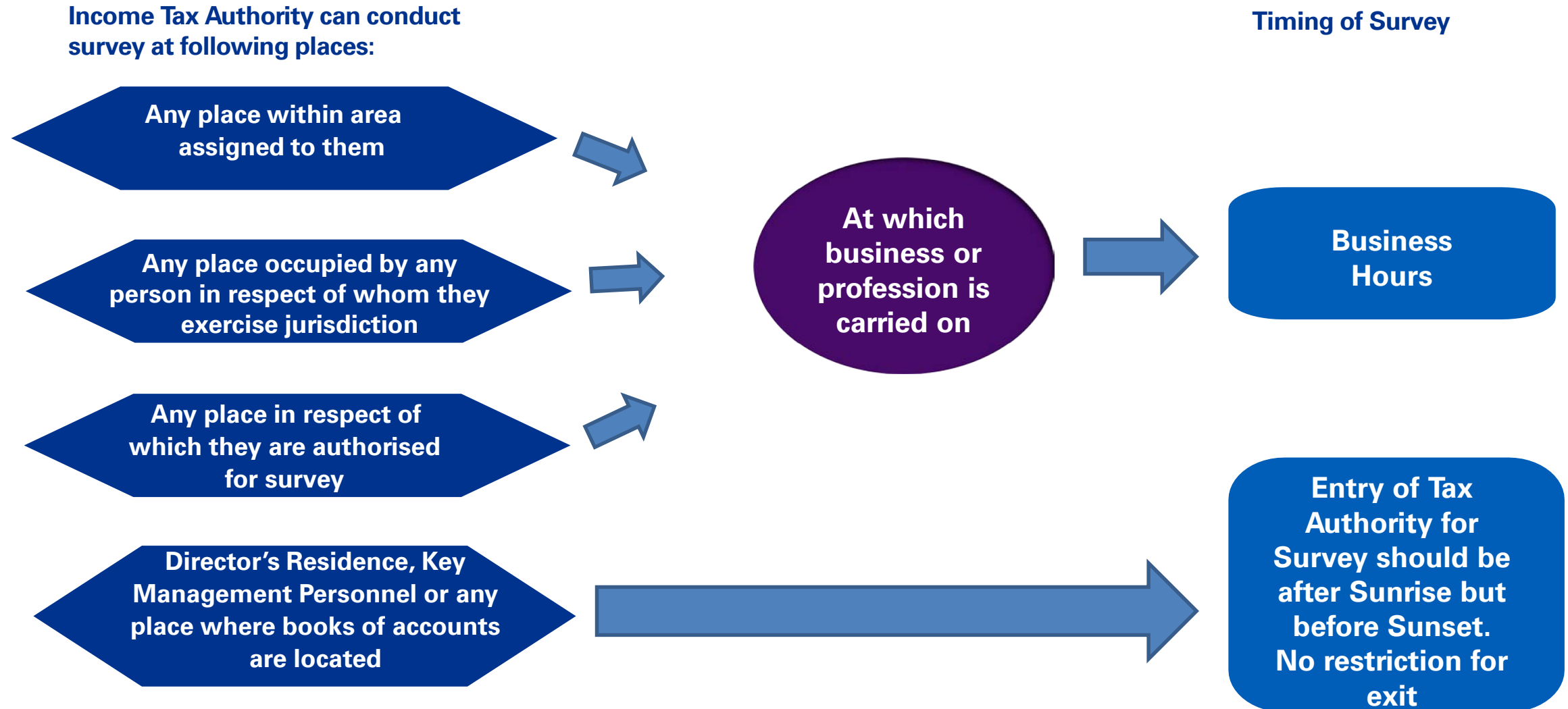
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- Central Board of Direct Taxes (CBDT) has directed the field officers to step up survey operations to check non-deduction of tax deducted at source (TDS) by firms and employers, especially in cases where such payments have dropped by more than 15% as compared to last year.
- Field officers of the income tax department are taking a series of steps including spot verifications, launching prosecutions for lower deductions and closer monitoring of payments made to foreign entities to enforce compliance.
- The directive has been issued by the CBDT as part of its recently issued Central Action Plan 2018-2019. A new target of at least 30 surveys/spot verifications by each Assessing Officer during the year has been incorporated in this plan.



# Place and Timing of Survey



# Powers and duties of Income Tax Authority for TDS Survey

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- to inspect such books of account or other documents as required and which may be available at such place;
- to check or verify the cash, stock or other valuable article or thing which may be found therein;
- to place marks of identification on the books of account or other documents inspected and make or cause to be made extracts or copies therefrom;
- record the statement of any person which may be useful for, or relevant to, any proceeding under this Act;
- all the powers under section 131(1) of the Income Tax Act, in case any person who is required to afford facility to income tax authority to inspect books of account or other documents or to check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded either refuses or evades to do so;
- to disclose the purpose and to commence survey of the business premises, without disturbing the ongoing business and without dislocating the normal business;
- **Director, CEO, CFOs, Finance head and head of tax are being summoned by the tax authorities and their statements are recorded on oath.**
- to prepare and provide panchnama of copy of books of account and documents found in the course of the survey;
- to prepare a report containing details of survey and findings on the material found in the course of the survey;

# TDS Survey Findings

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**Payments on which short TDS deducted/TCS collected**

**Payments on which TDS deducted/ TCS collected but not deposited**

**Payments on which TDS deducted under wrong section**

**Identifying Salary payments and TDS deducted thereon**

**Payments made to foreign entity without withholding tax**

**Failed to give justification for nature of payment**

# Actions post survey

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- Revenue authorities review the information and documents collected during the survey.
- Recording of statement of the CFO/Head of Tax/Management Personnel asking various questions about the business and the transactions.
- Seeking additional information and clarifications by Tax Authorities.
- Overall review of the information by the Tax Authorities and identification of defaults/non-compliances on the TDS front.
- Issuance of show cause notice by the Tax Authorities alleging defaults/non-compliances and seeking to initiate penal consequences.
- Representation before the tax authorities and making submissions.
- Passing of the order by tax authorities raising tax demands and levying penalties.
- The penal consequences for non-compliance of TDS provisions are very severe. (Refer subsequent slide)

# Penal consequences for non-compliance

Sr. No	Penal Consequences	Quantum Penalty
1	TDS Collection	
2	201(1A) Interest	<ul style="list-style-type: none"><li>i. 1% for every month or part of the month from the date tax was deductible till the date it was deducted</li><li>ii. 1.5% for every month or part of the month from the date tax was deducted till the date it was actually paid</li></ul>
3	Penalty u/s. 221	As directed by the AO, not exceeding the amount of tax in arrears.
4	Penalty u/s. 271C	Amount of tax in default
5	Prosecution	Punishable with rigorous imprisonment which shall not be less than 3 months, which may exceed up to 7 years.



# How KPMG can assist in TDS Survey Proceedings?

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Assisting in Pre  
Survey Training

Assisting in  
representation  
before income tax  
authorities during  
the course of  
survey

Assisting in filing  
submissions and  
documents on technical  
issues and  
representation before  
Tax Authority post the  
survey proceedings

Assisting in filing TDS  
returns or filing revised  
returns within the  
prescribed time limits

Reviewing the order  
passed by the Tax  
Authorities and  
advising on the next  
course of action.

Assisting in filing appeal  
before appellate  
authorities challenging  
the order of the Tax  
Authorities and other  
compliance.

**BSR & Associates LLP**

Thank You

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