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## 3% Interest for one day of delay in Payment of TDS A Horrific Income-tax Provision



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### Introduction

Famous Author, Calvin Coolidge, has stated that,

*"Collecting more taxes than is absolutely necessary is legalized robbery."*

Whether the revenue authorities are not robbing the common taxpayers by charging interest @3% for a one-day delay in payment of TDS, even though we ignore the fact that such a delay is intentional or unintentional, or there is justified reason behind such a delay or not.

The fundamental idea behind tax deducted at source ("TDS") is "pay as you earn" and "collect as it earned." According to the Income Tax Act, 1961 (hereinafter called as "the Act"), it is one method of collecting income tax at the source of income. It is merely an indirect technique of tax collection. It is significant to the government because it advances tax collection and gives taxes a wider base and better reach. The idea of TDS mandates that the party who has been given responsibility deduct tax from payments of a certain sort that are being provided to a designated recipient at the right rates.

The provisions of Income-tax related to deduction and payment of TDS has been written in such a manner that a single day delay amount to charge of 3% interest. The provisions consider the definition of month as a calendar month and part of a month as a complete month as interpreted by the CPC while processing the TDS returns and many judicial authorities as well. In this article, the author has attempted to interpret the provisions of the TDS in light of definition of month and its impact on the assessee. He has also tried to analyze the case laws regarding the definition of month and also discussed the pragmatic approach to this matter.

The Income Tax Act's regulations regarding the deduction and payment of TDS have been drafted in such a way that even a single day of delay results in a 3% interest charge. The provisions consider the definition of "month" as a calendar month and "part of a month" as a complete month, as interpreted by the CPC while processing the TDS returns and by many judicial authorities as well. In this article, the author has made an effort to interpret the TDS regulations in light of how "month" is defined under various legislation and how this may affect the assessee. He has also examined the pragmatic approach to this issue and attempted to analyze the case laws pertaining to the definition of month.

### Income-tax Provisions related to payment of TDS

Based on the certificate issued by the deductor, the recipient from whose income tax was withheld at source receives a credit for the amount withheld in his personal assessment. The amount withheld must be transferred to the Central Government's credit within seven days of the next month. If March is the month, the deductor has until April 30 to deposit the tax. 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\(1A\)](#) of the Act 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.

### **Definition of Month - Conundrum for the Experts**

What should be considered in the above-emphasized definition of "month" has been a subject of debate. In the Act, the definition of a month is not provided, in such a case, the question arises that whether a month should be counted as a calendar month in accordance with the General Clauses Act or a period of thirty days while computing the interest.

The e-TDS return is processed by CPC - TDS using the TDS Reconciliation Analysis and Correction Enabling System ('TRACES'). The software used by the CPC, consider a month as a calendar month, which has made things difficult for the assessee. The severity of the provision can be understood by the following example, i.e.,

If an assessee has made a transaction of Rs. 1 Crores on December 27, 2022, he is required to pay Rs. 10 lakhs as TDS by January 7, 2022. Unfortunately, he pays the deducted amount on January 8, 2022. If the definition of month is considered as calendar month, he is required to pay interest for two months i.e. December and January @ 1.5% for one month which amounts @3% for one day delay.

### **Judicial Interpretation of the word 'Month'**

Various courts and tribunals have provided different definitions for the term "month," which is taken into consideration in various sections of the Act. The Revenue has always tried to use the word in a way that is beneficial to it because of this peculiarity, whether that be as a calendar month or 30 days.

(1) Cases where the word 'Month' has been considered as a calendar month

Recently, in the case of *Kartick Chandra Mondal v. Pr. CIT* [\[2020\] 113 taxmann.com 586/181 ITD 89 \(Kol. - Trib.\)](#), the ITAT Kolkata Bench has held that

"9. .... We note that the term "Month" has not been defined in section 54EC of the Act. However, we note that Hon'ble Allahabad High Court in the case of *CIT v. Munnalal Shrikishan* [1987] 167 ITR 415 has defined the term "Month" as calendar month. The findings of the court are as follows:

"Before we deal with the questions raised at the instance of the Revenue, we may dispose of a preliminary objection raised by learned counsel for the assessee. Sri B. N. Bhatnagar, learned counsel for the assessee, submitted that in view of the fact that notice of refusal by the Tribunal under s. 256(1) of the IT Act was served on the CIT on June 25, 1986, the application filed by it on January 1, 1987, was barred by limitation by six days. It was urged that the period prescribed under s. 256(2) is six months which ought to be taken as 180 days. Learned counsel placed reliance on a decision of this Court in the case of *CIT v. Laxmi Rattan Cotton Mills Co. Ltd.* (1974) 97 ITR 285, in support of his

contention that the limitation should be calculated treating each of the six months as meaning 30 days. We are unable to agree with this contention. The decision cited by learned counsel for the assessee was in the context of s. 271(1)(a) which deals with an entirely different subject. This Court, construing that provision, held that inasmuch as penalty leviable under s. 271(1)(a) has to be calculated by deducting the amount of tax already paid and not with respect to the gross tax assessable, the word "month" occurring in s. 271(1)(a) must be taken to mean a period of 30 days. The contextual setting of s. 271(1) is entirely distinct and different from s. 256(2). There is nothing in the context of s. 256(2) to warrant the meaning assigned to the word "month" in the aforesaid decision to an application filed under s. 256(2) of the Act. In our opinion, the reference to six months in s. 256(2) is to six calendar months. The preliminary objection is, therefore, overruled."

Therefore, about the interpretation of the word "month, there is nothing in the context of section 256(2) to warrant the conclusion that the word "month" in it refers to a period of thirty days. Therefore, reference to six months in section 256(2) is to six calendar months and not one hundred and eighty days. In view of the above judgment in the case of Munnalal Shrikishan (supra), we are of the view that the term "Month" means calendar month (and not period of thirty days), which should be applied for the purpose of section 54EC of the Act." (Emphasis applied)

In the case of *Aquatech Engineers v. Addl. CIT* [IT Appeal No. 8029/Mum/2011, dated 19-6-2013], it has been held that,

"3.2 The second component of the controversy stands determined by the co-ordinate Bench of the tribunal in the case of Yahya E. Dhariwala (supra), wherein, being guided by the fact that the provision of section 54EC is a beneficial provision, it sought to grant the benefit of doubt with regard to the word 'month' occurring in the provision, by construing it as a calendar month; the word being undefined. A period of six clear months from the first week of March, 2008, would, therefore, end only 30.09.2008, i.e., the date of allotment of the NHAI bonds. (Emphasis applied)

In the case of *Alkaben B. Patel v. ITO* [[2014](#)] [43 taxmann.com 333/148 ITD 31 \(Ahd. - Trib.\)](#), While computing the time for the purpose of section [54EC](#), ITAT Ahmedabad (SB) 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 word '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.

(2) Cases where the word 'Month' has been considered as 30 days

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. CIT* [[2013](#)] [30 taxmann.com 387/213 Taxman 94 \(Mag.\)](#)/[\[2012\] 349 ITR 519](#), 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."

## **Conclusion**

The aforementioned study has made it abundantly evident that the word "month" has been used throughout the Act, and depending on the situation, different degrees of interference have been utilized by taxpayers, revenue officers, and judicial authorities. The software that has been used by the CPC to calculate the chargeability of the interest on delayed payment treats a month as a calendar month and a single day as a complete month, which has complicated matters even though judicial authorities have generally taken a lenient stance in the majority of these cases.

When contacting CPC, we typically receive the response that interest is computed by the system and that they have no control over it and can do nothing about it. Although the systems are created solely for our convenience and are easily modifiable, the strategy we choose to take is the only thing that really matters.

The author is of the view that in the current age of automation, where millions of calculations can be done in a second, why are we required to interpret the definition of month? The interest should be charged for the exact number of days for which the delay has been made, without going into the definition of a month. Earlier, it was practically quite tough to calculate interest manually based on the number of days, but that is not the case now. Further, in case the authorities want to charge any interest as a penalty, a separate provision should be introduced. The revenue authorities are required to take immediate action to clarify and rectify the provisions related to the chargeability of interest so that it can be based on the number of days without going into the interpretation of the definition of the month.

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