

# **POONIA INSTITUTE OF LEGAL SCIENCES - PILS**

## **Important Issues in TDS Provisions under Income Tax Act**

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## SECTION 192 OF THE INCOME TAX ACT, 1961

- Tax is required to be deducted by any person responsible for paying any income chargeable under the head “**SALARIES**”
- Tax to be deducted at the time of payment
- TDS @ **average rate of income-tax** on **Estimated income** of the employee for the financial year
- No TDS u/s. 192 if tax payable (after taking rebate u/s. 87A) by the employee is **NIL**.

## **EXCESS OR SHORTAGE OF TDS DURING THE F.Y.**

- Any excess/ deficiency arising out of previous deduction or failure to deduct during the financial year can be adjusted subsequently as per **Section 192(3)**.
- Thus, where assessee did not deduct tax from salaries in each month, rather it deducted tax at end of financial year, interest u/s. 201(1A) could not be levied – **CIT v. Enron Expat Services Inc.(Uttarakhand HC)**(ITA No. 78/2007)
- If TDS u/s. 192 is not deducted in equal instalments intentionally(not bona fide) and the deficiency is made good in last months, interest u/s. 201(1A) is liable to be levied – **Madhya Gujarat Vij Co. Ltd. v. ITO (Ahmedabad Trib.)**(ITA No. 420/Ahd/2011)

## RELIEF WHEN SALARY IS PAID IN ARREARS OR ADVANCE – SECTION 89(I)

- Advance Salary and Arrears of salary - Taxable in the year of receipt.
- However, eligible to claim relief u/s. 89(I).
- Relief to be computed as per Rule 21A.
- As per Sec. 192(2A), Form No. 10E is required to be submitted to the employer. Form No. 10E is also required to be submitted electronically on the e-filing portal.
- **Section 89(I) and Section 10(10C):** If any amount received on voluntary retirement or termination of service as per **VRS** or in case of public sector company, a scheme of voluntary separation is claimed as exempt u/s. 10(10C), **relief u/s. 89(I) cannot be claimed.**

## **SALARY FROM MORE THAN ONE EMPLOYER**

- Where the assessee is employed simultaneously under **more than one employer**, or
- Where he has held **successively, employment under more than one employer**
- The employee may furnish to the employer the details of salary received from the other employer along with TDS deducted therefrom.
- Such details to be submitted in Form No. 12B

## OTHER INCOMES MAY BE INFORMED TO EMPLOYER

- The employee MAY provide to the employer, particulars of :
  - **Other Income**, including tax deducted thereon
  - **Loss**, only if it is under the head 'Income from house property'
- **Income from House Property –**
  - **Any other rental income** may be informed to the employer.
  - **Deemed let out property** - From AY 2020-21, if assessee owns more than 2 Self occupied houses, such other house or houses shall be **deemed to have been let** and its annual value shall be computed in accordance with Section 23(1). [Prior to AY 2020-21, if the assessee owned 2 houses, the other house had to be deemed to have been let]
  - Assessee can claim deduction of interest paid on borrowed capital u/s. 24(b) of the Act.

## OTHER INCOMES MAY BE INFORMED TO EMPLOYER

- **Income from House Property (continued.)**
  - Loss only under the head 'Income from house property' can be informed to the employer. House property loss can be set-off maximum upto **Rs. 2 Lakhs. [Section 71(3A)]**
- Particulars of '**Other Income**' to be informed to the employer in simple statement duly verified by the employee – **Rule 26B**
- **Form of verification under Rule 26B**
  - *"I, .....(name of the assessee), do declare that what is stated above is true to the best of my information and belief."*

## **TAX TO BE DEDUCTED ON 'ESTIMATED INCOME'**

- Estimated Income to be calculated after taking into consideration the Taxable Salary (incl. Perquisites, Taxable Allowances)
- Deductions u/s. 16 – Standard deduction of Rs. 50,000 , Professional Tax, Entertainment allowance to Govt. Employee
- Other Income intimated by the employee
- Chapter VI-A deductions (**Section 80C to Section 80U**)



## **EVIDENCE/PROOF OF CLAIMS TO BE SUBMITTED BY THE EMPLOYEE – SECTION 192(2D)**

- The person responsible for making any payment of income chargeable under the head 'Salaries' shall obtain from the assessee the evidence or proof of particulars of prescribed claims made by him in **Form No. 12BB** :-
  - Exemption of House Rent Allowance (**HRA**) u/s. 10(13A)
  - **Leave Travel Concession** or assistance u/s. 10(5)
  - **Interest** under the head 'Income from house property' u/s. 24(b)
  - Deduction under Chapter VI-A (**Section 80C to Section 80U**)

## **FORM 12BB – HOUSE RENT ALLOWANCE**

- **Amount of rent paid** to the landlord
- **Name and address** of the landlord
- **PAN of the landlord** if aggregate rent paid during the previous year **exceeds Rs. 1 Lakh**
- **Rent receipts** / rent agreement from the landlord

## FORM 12BB – LEAVE TRAVEL CONCESSION

- **Evidence of expenditure** is required to be furnished to the employer as per Rule 26C.
- Leave Travel Concession cannot be claimed for foreign travel – Syndicate Bank vs.ACIT(TDS) 164 ITD 319 (Bengaluru Trib.)
- However, if the assessee has, under bona fide belief that foreign travel costs can be claimed as exempt u/s. 10(5), not deducted TDS, penalty u/s. 271C could not be levied and the same was treated as reasonable cause for the purpose of Section 273B. – **State Bank of India vs.ACIT(TDS)** [2019]174 ITD 551 (Jaipur - Trib.)

## LTC F.Y. 2020-21

- **Amount of Exemption:**  $\frac{1}{3}$ <sup>rd</sup> of amount spent on purchase of goods or services from GST Registered vendors / service providers on which GST Rate is 12% or more (i.e. 12% or 18% or 28%).
- **Maximum amount of exemption:** 36,000 per family member. (Eg. If 3 members in family – then Exemption of Rs. 1,08,000)
- Expense / Purchase should have been made between 12<sup>th</sup> October, 2020 to 31<sup>st</sup> March, 2021.

Payment should be made through digital mode. (i.e. it should not be in cash). **It is very important to note that the employee can also claim this exemption on purchases made by any family member of the employee.**

## LTC 2020-21

- The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21.
- Employee should obtain GST Invoice from the vendor / service provider.
- Family Member** means spouse and children of the individual. Family also includes parents / brother / sister dependent on the individual.

## **FORM 12BB – DEDUCTION OF INTEREST u/s. 24(b)**

- Interest on borrowing can be set-off against Salary Income.  
**(House Property loss to the extent of Rs. 2 Lakhs)**
- Details to be submitted:
  - Interest payable/paid to the lender
  - Name, address and PAN/Aadhaar number of the lender
- **Interest Certificate** from the lender

## FORM 12BB – CHAPTER VI-A DEDUCTIONS

- Evidence of investment or expenditure for -
  - **Section 80C/CCC/CCD(1)** – upto Rs. 1,50,000
    - **Section 80CCD(1B)** – Additional Rs. 50,000 for NPS
  - **Section 80D** –Medical expense for senior citizen and Health insurance premium (payment to be made by any mode, other than cash)
    - Rs. 25,000 for family (self, spouse and dependant children; 50,000 if senior citizen)
    - Rs.25,000 for parents (dependant or not; Rs. 50,000 if senior citizen)
    - Above limit includes Rs. 5,000 – for preventive health checkup (can be paid in cash)

## **FORM 12BB – CHAPTER VI-A DEDUCTIONS**

- **Section 80DD** – Maintenance including medical treatment of a dependant who is a person with disability
  - Any expenditure incurred for the medical treatment (including nursing), training and rehabilitation
  - Any amount paid/deposited in an approved scheme of LIC
  - **Amount of deduction:** Rs. 75,000 for person with disability and Rs. 1,25,000 for person with severe disability



## FORM 12BB – CHAPTER VI-A DEDUCTIONS

- **Section 80E** – Deduction in respect of payment of interest on loan taken for higher education
  - No upper limit for deduction
  - Loan to be taken from a banking company or notified financial institution or a charitable institution approved u/s. 10(23C) or 80G(2)(a).
  - Loan can be taken for higher education of the assessee **himself** or **his relative** (relative means spouse, children or a student for whom the assessee is a legal guardian)
  - **Higher Education** – Any course of study pursued after passing Senior Secondary examination or equivalent from any recognised school / board / university.

## FORM 12BB – CHAPTER VI-A DEDUCTIONS

- **Section 80EEA** (w.e.f. A.Y. 2020-21) – Deduction **upto Rs. 1,50,000** in respect of **INTEREST ON LOAN FOR THE PURPOSE OF ACQUISITION OF HOUSE PROPERTY** subject to following conditions:
  - Loan should be sanctioned b/w. 1.4.2019 to **31.03.2022**
  - Stamp duty value of house property – **upto Rs. 45 Lakhs.**
  - Owns no residential house property on the date of sanction of loan.
  - **Double deduction of same interest should not be allowed under any other section.** (i.e. interest cannot be claimed u/s. 24(b) of the Act)

## **FORM 12BB – CHAPTER VI-A DEDUCTIONS**

- **Section 80EEB** – Deduction in respect of **INTEREST ON LOAN** taken for purchase of **ELECTRIC VEHICLE**
  - **Amount of deduction:** upto Rs. 1,50,000
  - Loan should be sanctioned by the financial institution during the period FY 2019-20 to FY 2022-23
  - No limit for amount of loan or price of the electric vehicle.

## FORM 12BB – CHAPTER VI-A DEDUCTIONS

- **Section 80G** - Deductions in respect of donations to certain funds, charitable institutions, etc.
  - For donations to PM National Relief Fund, **PM CARES Fund**, CM Relief Fund, the employee should submit the donation receipt to the employer. If the donation is made through the employer, deduction u/s. 80G can be claimed on the basis of certificate from the employer.
  - In view of The Taxation and Other Laws (Relaxation of certain provisions) Ordinance, 2020, donation made upto 31<sup>st</sup> July, 2020 or any other date as may be notified, can be claimed u/s. 80G for computing the income of A.Y. 2020-21.

## WITHDRAWAL OF ACCUMULATED BALANCE DUE TO AN EMPLOYEE – SECTION 192A

- Trustees of recognised provident fund (RPF) are required to deduct TDS u/s. 192A on payment of accumulated balance due to employees, where the same is includible in his total income.
- Withdrawal of accumulated balance from RPF is exempt u/s. 10(12), subject to the following conditions provided in **Rule 8 of Part A of Fourth Schedule**:
  - Employee has rendered **continuous service for 5 years or more**, or
  - Service has been terminated due to his ill-health, contraction or discontinuance of employer's business or **reason beyond control of the employee**, or
  - If on cessation of employment, the accumulated balance of his RPF is **transferred to his new employer**, or
  - If the accumulated balance is transferred to his **National Pension Scheme** account.

## WITHDRAWAL OF ACCUMULATED BALANCE DUE TO AN EMPLOYEE – SECTION 192A

- If the withdrawal of accumulated balance is exempt in the hands of employee, TDS u/s. 192A is not required to be deducted.
- However, if the withdrawal is taxable in the hands of the employee – **TDS @10%** is required to be deducted at the time of payment.
- **Threshold limit:** No TDS if payment is less than **Rs. 50,000**
- Employee can submit Form No. 15G/15H, as the case may be for claiming the amount without deduction of tax. **[Sec. 197A]**
- Further, if post-retirement, if any interest is paid on the accumulated balance not withdrawn, tax is required to be deducted as per Section 194A, since there is no employer-employee relationship.

## TDS ON PENSION

- **Uncommuted pension (i.e. monthly pension) is taxable** in the hands of employee.
- **Manner of exemption of Commuted pension** is provided u/s. 10(10A)
- In case of pensioners of Govt. or other departments, receiving pension through nationalized banks, TDS has to be deducted by the bank u/s. 192.
- Further, the **Banks are bound to issue Form No. 16 to such pensioners** as per Section 203.
- Form No. 16 cannot be denied merely because there is **no Employer-employee relationship** between the bank and such pensioner. [**CBDT Circular No. 761 dated 13.01.1998**]

## **SALARY RECEIVED BY MP, MLA, MINISTERS**

- Remuneration received by a Member of Parliament, Member of Legislative Assembly is not chargeable as Income under the head 'Salaries'. As there is no employer-employee relationship. It is chargeable under the head '**Income from other sources**' – **CIT vs. Shiv Charan Mathur (Raj. HC)** (ITA No. 96 of 2006) (Also refer CBDT Letter F.No. 40/29/67-IT(A-I) dated 22.5.1967)
- Salary received by Chief Minister or a minister is taxable under the head 'Salaries' - **Lalu Prasad vs. CIT (Patna)** (2009) 316 ITR 186.
- Daily allowance, constituency allowance, etc. received by MP/MLA is exempt u/s. 10(17).



## **TDS u/s. 192 IN LIGHT OF SECTION 115BAC**

- Tax Rates u/s. 115BAC inserted vide Finance Act, 2020

Total Income	Rate of tax
Upto Rs. 2,50,000	NIL
From Rs 2,50,001 to Rs 5,00,000	5%
From Rs 5,00,001 to Rs 7,50,000	10%
From Rs 7,50,001 to Rs 10,00,000	15%
From Rs 10,00,001 to Rs 12,50,000	20%
From Rs 12,50,001 to Rs 15,00,000	25%
Above Rs 15,00,000	30%

## WHEN TO EXERCISE OPTION u/s. 115BAC?

- A person can opt under Section 115BAC
  - **If having income from business or PROFESSION**
    - Option to be exercised on or before due date u/s. 139(1)
    - Option once exercised shall apply to subsequent years.
    - Can only be withdrawn once and thereafter, the assessee shall not be eligible to opt u/s. 115BAC.
  - **If NOT having income from business or PROFESSION**
    - Option to be exercised at the time of furnishing return of income
    - Assessee will have option **EACH ASSESSMENT YEAR** to choose from either the normal provisions or Section 115BAC

## **NORMAL PROVISIONS vs. SECTION 115BAC ?**

- If the assessee opts under the special provisions of tax u/s. 115BAC, then in respect of a salaried employee, **some** of the exemption/deductions/claims which will **NOT BE AVAILABLE** are as under:
  - **Leave travel concession** - Section 10(5)
  - **House rent allowance** - Section 10(13A)
  - **Standard deduction of Rs. 50,000** – Section 16(ia)
  - **Entertainment allowance** – Section 16(ii)
  - **Professional tax** – Section 16(iii)
  - **Standard deduction (lower of 1/3<sup>rd</sup> or Rs. 15,000) against family pension** – Section 57(iia)

## **NORMAL PROVISIONS vs. SECTION 115BAC ?**

- If the assessee opts under the special provisions of tax u/s. 115BAC, then in respect of a salaried employee, **some** of the exemption/deductions/claims which will **NOT BE AVAILABLE** are as under:
  - **Interest on loan for self occupied house property** – Section 24(b)
  - Life insurance premium, principal repayment of housing loan, PPF deposit, etc. upto **Rs. 1,50,000 - Section 80C**
  - Interest on savings bank account upto **Rs. 10,000 – Section 80TTA- other than senior citizen**
  - Interest on S. B. A/c, R. D. and time deposits upto **Rs. 50,000 – Section 80TTB – Senior Citizen**
  - Health insurance premium/medical expenditure – **Section 80D**

## NORMAL PROVISIONS vs. SECTION 115BAC ?

- If the assessee opts under the special provisions of tax u/s. 115BAC, then in respect of a salaried employee, **some** of the exemption/deductions/claims which will **NOT BE AVAILABLE** are as under:
  - Specified deductions u/s. 80DD, 80DDB, 80U
  - Interest on loan for higher education – **Section 80E**
  - Interest on loan for certain house property upto Rs. 1,50,000 – **Section 80EEA**
  - Interest on loan taken for purchase of electric vehicle upto Rs. 1,50,000 – **Section 80EEB**
  - **Donations u/s. 80G, and other Chapter VI-A deductions**
  - No set-off of loss under the head '**Income from house property**'. However, it can be carried forward to subsequent AY's.

## TDS U/S. 192 IN LIGHT OF THE SECTION 115BAC ?

- **Intimation to Employer** - The employee, whether having any income under head 'profits and gains from business or profession' or not, has to intimate the employer about the intention to opt for concessional rate of taxation u/s. 115BAC of the Act. The employer will deduct TDS accordingly.
- If **no such intimation** is made, TDS will be deducted without considering Section 115BAC.
- Intimation so made to the employer **cannot be modified during the year**.
- However, this intimation given to employer is not binding and the employee can choose different option while filing return of income.
- In respect of employee having income under PGBP head – intimation for subsequent years should not deviate from previous intimation, except when the employee opts out from Section 115BAC.
- **CBDT Circular No. C1 of 2020 dated April 13, 2020.**

## TDS ON DIVIDENDS – SECTION 194

- **Nature of Payment:** Dividend (including dividends on preference shares)
- **Deductor:** Any Domestic company
- **Deductee:** Resident shareholder
- **Threshold limit:** No deduction upto Rs. 5,000, if dividend is paid by any mode, other than cash.
- **Rate of tax:** 10% (7.5% w.e.f 14.05.2020 to 31.03.2021)
- No deduction on dividend paid to LIC, GIC or any other connected insurer.
- **Only Individual Shareholder** can furnish **Form No. 15G** or **15H**, as the case may be.

## **194P : CITIZEN OF THE AGE OF 75 YEARS OR MORE NOT REQUIRED TO FILE ITR**

**citizen of the age of 75 years or more not required to file ITR** :- w.e.f. A.Y. 2021-22, Any such resident citizen having income from pension only and receiving interest from the same bank in which he is receiving pension, will not be required to file return of income, bank will do requisite TDS u/s 194P after allowing deduction available under Chapter VI-A and rebate U/s 87A.



## **TDS ON INTEREST** (other than interest on securities) – **SECTION 194A**

- **Nature of Payment:** Interest (other than interest on securities)
- **Threshold:** **Rs. 40,000** in case of payment by **Banks/co-operative bank/Post office** (Rs. 50,000 in case of senior citizen), and Rs. 5,000 in any other case.
- For banks with CBS, limit to be calculated per bank (and not per branch)
- **Rate of tax:** 10% (7.5% w.e.f.14.05.2020 to 31.03.2021)
- Interest paid by a **co-operative society** (if its total sales, gross receipts or turnover of the preceding FY does not exceeds Rs. 50 Crores<sup>#</sup>) to its member or to any other co-operative society not liable for TDS as per 194A(3)(v).
- Recipient other than company or firm can furnish **Form No. 15G** or **15H**, as the case may be.

<sup>#</sup> Inserted vide Finance Act, 2020 w.e.f 01.04.2020

## Whether payment of Interest by a co-operative bank to a co-operative society is liable for TDS under section 194A ?

- As per literal interpretation of Clause (v) of Section 194A(3), **payment of interest by a co-operative society to any other co-operative society is not liable for TDS u/s. 194A.** Co-operative society includes a co-operative bank. Thus, **payment of interest by a co-operative bank to a co-operative society is not liable for TDS u/s. 194A.** On the above issue, **Hon'ble Kerala High Court** has held that in terms of Section 194A(3)(v) there will be no requirement of deducting tax at source in the case of payment of interest by a co-operative bank to a co-operative society. - **Vembayam Service Co-operative Bank Ltd. vs. ACIT** [WP(C).No. 9578/2019 dated 18.10.2019] (Kerala High Court)

## **TDS ON INTEREST** (other than interest on securities) – **SECTION 194A**

- TDS u/s. 194A not applicable on **factoring charges** (debtor discounting) as it is not interest covered u/s. 2(28A) – **CIT v. MKJ Enterprises Ltd** [2014] 50 taxmann.com 441 (**Calcutta**)
- **Interest paid for delayed payments of trade liability** is out of ambit of section 2(28A). Accordingly, not liable for TDS u/s. 194A – **ITO vs. Parag Mahasukhlal Shah** [2011] 46 SOT 302 (**Ahmedabad Trib.**)
- If a Bank/Co-operative bank/Hsg. Fin. Co. has **paid interest without deduction of tax u/s. 194A** due to threshold limit of Rs. 40,000 (or Rs. 5,000 for deposits in public company), then statement of such particulars to be submitted in **Quarterly return in Form No. 26QAA**.

## WHEN AN INDIVIDUAL OR HUF LIABLE TO TDS

- Any individual or HUF who turnover or gross receipts in business exceed Rs. 1 crore or in the profession exceed Rs. 50 Lakh in the just preceding previous year is liable to TDS provisions U/s **194A, 194C, 194H, 194-I, 194J**
- Payment by an individual or HUF for **Personal purposes** excluded from TDS liability U/s **194C, 194J**.

## **SEC. 197 : CERTIFICATE FOR DEDUCTION AT LOWER RATE**

- For deducting tax at lower rate or nil rate under provisions of **sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC, 194M, 194-O and 195**, the payer can apply online for lower rate certificate.

## SEC. 197A : FORM 15G/15H FOR NO TDS

- An **individual** can furnish form **15G/15H** to receive **dividend** without deduction of tax U/s 194, if tax on his income would be nil,
- Any person (individual/HUF/AOP/BOI/TRUST etc.) other than a company or a firm can furnish a declaration in form **15G/15H** as applicable, to receive any amount U/s 192A (PF) or 193 (interest on securities) or **194A** (interest other than interest on securities) or 194D (insurance commission) or 194DA (insurance maturity) or **194-I** (Rent) or 194K (income from units), without TDS, if tax on his estimated total income of the previous year will be *nil*.
- *Form 15G cannot be furnished if aggregate of income under above referred sections is exceeding Rs. 2.50 Lakh i.e. if exceeds basic exemption limit.*
- *Senior citizen can furnish form 15H if tax on his income will be nil.*

# TDS ON PAYMENT TO CONTRACTORS – SECTION 194C

- **Nature of Payment:** Works Contract. It includes :
  - Advertising
  - Broadcasting and telecasting including production of programmes for such broadcasting or telecasting
  - Carriage of goods or passengers by any mode of transport other than by railways
  - Catering
  - Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate covered u/s. 40A(2)(b), but **does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer or associate of such customer.**

## TDS ON PAYMENT TO CONTRACTORS – SECTION 194C

- **Threshold:** upto **Rs. 30,000** for single payment and upto **Rs. 1 Lakh** for aggregate payments
- **Rate of tax:** 1% if recipient is Individual/HUF (2% in any other case)<sup>#</sup>
- **Contract of Sale vs. Works contract** – Purchase of **printed packing material** is a 'Contract of Sale' and not 'Works contract'. Thus, not liable for TDS u/s. 194C - **CIT v. Dabur India Ltd.** [2006] 283 ITR 197 (**Delhi**)
- **Payments to transporters:** If any person owns **10 or less goods carriage** at any time during the year and he furnishes a declaration to this effect, TDS u/s. 194C is not required to be deducted. [Such details of non deduction of tax are to be furnished in **Form No. 26Q**] This exemption is not available if payment is made to a person merely acting as a transport agent and not a goods carriage owner.

<sup>#</sup> **0.75% or 1.5%, as the case may be, w.e.f 14.05.2020 to 31.03.2021**



## TDS ON PAYMENT TO CONTRACTORS – SECTION 194C

- **High Court of Gujarat in the case of PCIT V. Hakimchand and Sons** vide ITA/569/Guj/2017 dt. 9-8-2017 AY 2008-09 discussed the issue that the assessee was granted a contract by **IRCTC for providing catering service** for which the assessee would make payment in the nature of licence fee. We are broadly in agreement with the view of the Tribunal. In plain terms, section 194C of the Act does not cover the present situation where the assessee was making payment of **licence fee to the IRCTC for catering service**. Hence dismissed the appeal of the revenue.

## TDS ON PAYMENT TO CONTRACTORS – SECTION 194C

- **ITAT Mumbai in the case of Uber India Systems P. Ltd. V. JCIT(TDS) vide ITA/5862 & 5863/Mum/2018 dt. 4-3-2021 held that Uber was not liable for deduction of tax at source under section 194C of the Act amounting to Rs.19,65,61,979 with respect to disbursements made to Driver-Partners on behalf of Uber B.V; CIT(A) erred in appreciating that Appellant is Aggregator rather than Uber B.V. and the Appellant is soliciting Driver-Partners and the Users on its platform; and in not appreciating that the Appellant is a support entity and as pan of its support services to Uber B.V. and was appointed to collect and remit payments on behalf of and under the instructions of Uber B.V. only on account of regulatory requirement, erred in concluding that driver-partners have carried out work for the appellant.**

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## 194C :Contd.....

- Uber B.V. is neither the employer of the Driver-Partners, nor owner of the vehicles through which the transportation services are provided by the DriverPartners. Further, Uber B.V. does not engage them as a contractor or an agent. Uber B.V. merely provides lead generation services to the DriverPartners on a principal to principal basis, for which a service fee is charged by it to the Driver-Partners. **UISPL acts as a payment and collection service provider of Uber B.V.** for a fixed monthly consideration of Rs. 5,00,000 and certain % on cost. It was held that UISPL is not the person responsible for payment U/s 204.

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## 194C :Contd.....

- UISPL is limited to act as a payment and collection service provider of Uber B.V. whereby the ride fare is collected by UISPL in its bank account on behalf of Uber B.V. and thereafter payments are made, on the instruction of Uber B.V., to Driver-Partners.
- transportation service is provided by Driver-Partner to Users directly for which User is making the payment and it is the **User who is the person responsible for making payment**. And, Uber B.V. and UISPL are not a party to the contract of transportation entered into between a User and a Driver-Partner.

## SECTION 194C

- **ITAT Ahmedabad in the case of ACIT V. Manish Raichand** vide ITA No. 1512/Ahd/2015/dt. 19-12-2019 AY 2010-11, held in favour of the assessee and dismissed the appeal of revenue and held that, “payments have been made to the **Container Corporation of India for freight** and same corporations is undertaking of Indian Railways but after considering the ITAT orders (viz. ITA No.4522/Del/2012 dated 28/01/2013 in the case of M/s.Nature Bio Foods Ltd., V/s ACIT Central), we are of the confirmed opinion, that assessee is not required to deduct TDS when he has made payment to the Container Corporation of India for freight. In the result, this ground of assessee is allowed”.

## **TDS ON PAYMENT TO CONTRACTORS – SECTION 194C**

- **ITAT Chennai in the case of Siva Valli Vilas Jewellers P. Ltd. V. DCIT Pondichery** vide ITA No. 3071/Chny/2017 dt. 31-3-2021 AY 2013-14 :- AO held that average wastage in this line of business is 1%, whereas the assessee has claimed wastage of 6.2% which is very higher, when compared to industrial practice. Therefore, he opined that wastage allowed to goldsmiths while making ornaments is nothing but making charges, which was paid in lieu of cash, hence, the same needs to be considered as service charges for manufacturing of jewellery. Assessee stated that there is no merit in the reasons given by the Assessing Officer that assessee has paid making charges in form of gold and such payment attracts TDS provisions u/s.194C of the Act. AO and CIT(A) stated that excessive wastage claimed by assessee, while manufacturing gold ornaments which is over and above industry average and thus, same needs to be considered as making charges paid to goldsmiths for manufacturing gold ornaments.  
**Contd.....**

## SECTION 194C: Contd.....

- According to the assessing Officer, average wastage in manufacturing gold ornaments is at 1% whereas, the assessee has claimed 6.2% wastage. Therefore, he has computed excessive wastage of 5% and treated the same as making charges paid for manufacturing of gold ornaments. To arrive at such conclusion, he has relied upon statement recorded from goldsmiths, who were involved in manufacturing of gold ornaments. ITAT held that, “In this case, the assessee has neither debited making charges into profit and loss account nor credited any amount to the respective parties account. Therefore, **when no payment is made or amount is credited to respective parties account, then question of application of provisions of section 194C does not arise at all**”. relied upon decision of ITAT., Mumbai in the case of Interactive Avenues (P) Ltd. Vs. DCIT (2021) 124 taxmann.com 126 and the decision of ITAT., Delhi in the case of Green Valley Tower Pvt.Ltd. Vs.ACIT (2021) (1) TMI 737 - ITAT Delhi.

## TDS ON PAYMENT TO CONTRACTORS – SECTION 194C

- **Honorable Bombay High Court in the case of CIT(TDS) V. Asian heart Care institute and research Pvt. Ltd.** on 5-3-2019 vide ITA/1294/2016/Bom discussed revenue's contention that the Respondent - Assessee while making payment to a contractor providing **maintenance and support services** ought to have deducted tax at source under Section 194J of the Act instead of Section **194C** under which the Assessee had made such deductions. We notice that the CIT(Appeals) and ITAT have concurrently held that the contractor was meant to carry out maintenance and the repair work and therefore his services could not have been categorized as providing technical services. We do not find any error in such finding. No question of law arises. All the Income Tax Appeals of the revenue are dismissed



## TDS ON PAYMENT TO CONTRACTORS – SECTION 194C

- **Circular No.4/2016** dated 29.02.2016 deals with TDS on payments by broadcasters or television channels to production houses for production of content or programme for telecasting. It has been clarified in the Circular that in a situation where the content/programme is produced as per the specifications provided by the broadcaster/telecaster and the copyright of the content/ programme also gets transferred to the telecaster/ broadcaster, such contract is covered by the definition of the term 'work' in section 194C of the Income-tax Act and, therefore, **subject to TDS under section 194C** at 2%, rather than at a rate of 10% under section 194J as payment for 'professional or technical services'

## TDS ON COMISSION OR BROKERAGE – SECTION 194H

- **Nature of payment:** Commission or Brokerage
- **Threshold:** upto Rs. 15,000
- **Rate of tax:** 5% (3.75% w.e.f 14.05.2020 to 31.03.2021)
- **Principal to agent relationship** should exist.
- **Discount offered to distributors for promotion of sales** cannot be treated as commission liable to TDS u/s. 194H - **Nokia India (P.) Ltd. v. DCIT (Delhi Trib.)**[ITA No. 5791/Del/2015]
- Discount on pre-paid SIM Cards not liable to TDS u/s. 194H – **Bharti Airtel Ltd. vs. DCIT** [2015] 372 ITR 33 (**Karnataka HC**)
- No TDS on specified payments to Bank or authorized payment systems company – **CBDT Circular 47/2016 dated 17.06.2016** and **PCIT v. Make My Trip (Del. HC)**(ITA No. 136/2019)

## TDS ON COMISSION OR BROKERAGE – SECTION 194H

- In case of advertising business:- payment by client to advertising agency is liable to TDS U/s 194C by the client.
- In case of payment by advertising agency to media company or retaining of discount by advertsing agency is not covered under commission hence no liability to TDS U/s 194H. **CBDT circular 05/2016** has affirmed the views held by Allahabad High Court in the case of **Jagran Prakashan Ltd.** and Delhi High Court in the matter of Living Media Limited. No TDS is attracted on payments made by television channels/ newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements.

## TDS ON COMISSION OR BROKERAGE – SECTION 194H

- **ITAT Mumbai in the case of Tata Sky Ltd V. ACIT ITA/3214/Mum/2014 dt. 10-9-2020 AY 09-10** held that, “assessee was not required to deduct TDS U/s 194H on the amounts of **discount on sale of Set-top box and hardware, discount on sale of recharge coupon and vouchers, bonus** or credit provided by assessee to subscribers, sales promotion expenses and distribution channel support expenses. Further, the transaction between the company and distributor is on **principal to principal basis** and all the risk, loss, damages are transferred to distributor on delivery. Further, distributors are free to sale at any price below maximum retail price”.

## TDS ON COMISSION OR BROKERAGE – SECTION 194H

- **ITAT Bangalore in the case of R.K.Associates V. ITO** Dt. 11-2-2021 vide ITAT 681/bang/2020 A.Y. 2014-15 held that provisions of section 40(a)(ia) of the Act are not applicable while computing income under the head "**Capital Gain**" and therefore the disallowance made by the AO cannot be sustained. Section 40 clearly stipulates that "Notwithstanding anything to the contrary in Sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession.

## TDS ON COMISSION OR BROKERAGE – SECTION 194H

- **Bombay HC in the case of CIT(TDS) V. Jet Airways I. Ltd. 23-4-2019** in ITA/628/2018/BOM held that, we uphold the order of ITAT and CIT(A) wherein they held that the **amount retained by a bank/credit card agency out of the sale consideration of the tickets booked through credit cards is not covered under the definition of "commission or brokerage"** given in the Explanation (i) to section 194H of the Act” and further held that so called bank guarantee commission is not in the nature of commission paid to an agent but it is in the nature of bank charges for providing one of the banking service. The requirement of Section 194H of the Act, therefore, would not arise. No question of law arises. The Income Tax Appeal of the revenue is dismissed”

## TDS ON RENT – SECTION 194-I

- **Nature of payment:** Rent
- **Threshold:** Rs. 2,40,000
- **Rate of tax:** For use of plant or machinery or equipment - 2%<sup>#</sup> ; For use of Land and building or furniture or fittings – 10%<sup>#</sup>
- For invoking the provisions of Section 194-I, **element of control and possession is necessary** – **Chhattisgarh State Electricity Board vs. ITO (Mumbai ITAT)** [2012] 50 SOT 33 (Mumbai)
- In case of **co-owners** of property, having definite and ascertainable share in the property, the limit of Rs. 2,40,000 will apply for each payee/co-owner separately – **CBDT Circular No. 715 dtd. 08.08.1995**

<sup>#</sup> 1.5% and 7.5%, as the case may be, w.e.f 14.05.2020 to 31.03.2021

## **TDS ON RENT – SECTION 194-I**

- **Non refundable Security deposit** – It is nothing but advance rent and liable for TDS u/s. 194-I.
- Payment of **cooling charges to cold storage owners** liable for TDS u/s. 194C and not u/s. 194-I. – **CBDT Circular No. 1/2008.**
- Payments for **hotel accommodation** on regular basis is liable for TDS u/s. 194-I – **CBDT Circular No. 5/2002**
- Payment for **warehousing charges** is liable for TDS u/s. 194-I - **CBDT Circular No. 718 dated 22.08.1995.**



## **TDS ON RENT – SECTION 194-I**

- **ITAT Mumbai in the case of DCIT(TDS) V. Bank of India** vide ITA/6039/Mum/2016 dt. 20-12-2018 dismissed the appeal of revenue and held that there is no need of TDS u/s. 194-I of the Act on the **lease premium paid for acquiring lease rights on immovable property** from MMRDA, treating it as rent. one-time non-refundable upfront charges paid by the assessee for the acquisition of lease hold rights over an immovable property could not be taken to constitute rental income in the hands of the lessor.
- **CBDT had also issued circular No. 35/2016 dt. 13-10-2016 stating that upfront charges/one time charges for long term lease are not rent.**

## **TDS ON RENT – SECTION 194-I**

- **ITAT Mumbai in the case of DCIT(TDS) V. Bright Outdoor Media P. Ltd.** vide ITAT NO. 4008/Mum/2015 dt. 12-5-2017 AY 12-13, followed the judgment in the case of M/s. Madisons Communications Pvt. Ltd., ITA No. 4991 & 4992/Mum/2013 dated 29/10/2014 and held that the assessee was liable to deduct tax on payment made for **advertising and hoarding u/s 194C of the Act and not U/s 194-I** and followed the CBDT circular 715 dt. 8-8-95.

## **TDS ON RENT – SECTION 194-I**

- **ITAT Kolkatta in the case of Mcc Pta India Corpn. P. Ltd. V. ACIT(TDS)** vide ITA 152/Kol/2016 dt. Dt. 18-7-2018 AY 2012-13 held that, “**wharfage charges paid to the Kolkata Port Trust is not rent** and no TDS is liable to be deducted under the provisions of section 194-I of the Act, but covered U/s 194C”.

## TDS ON RENT – SECTION 194-I

- **Bombay HC in the case of CIT(TDS) V. Jet Airways I. Ltd.** 23-4-2019 in ITA/628/2018/BOM held that, we uphold the order of ITAT and CIT(A) wherein they held that for **lounge charges**, “The assessee did not have exclusive use to the lounge for its customers. The customers of the Airlines along with customers of other Airlines of specified categories, would be allowed to use all such facilities. Section 194-I of the Act governs the situation where a person is responsible for paying any rent. In such a situation deduction of tax at source while making such payment is obligated. We do not find that the revenue is correct in invoking section 194-I of the Act. Hence affirmed the views of the ITAT that, “the Hon'ble ITAT was justified in holding that the use of lounge premises paid by the assessee were payments for contract of work under **section 194C** of the I.T. Act and not in the nature of rent as per section 194-I of the I.T. Act”

## **TDS ON PAYMENT FOR ACQUISITION OF IMMOVABLE PROPERTY – SECTION 194-IA**

- **Nature of payment:** Consideration for transfer of **immovable property** (not being a rural agricultural land) to a **resident transferor**.
- **Threshold:** No deduction where the consideration is less than **Rs. 50 Lakhs**
- **Rate of tax:** 1% **(0.75% w.e.f 14.05.2020 to 31.03.2021)**
- **Consideration** (w.e.f. 1.9.2019) – includes club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property

## TDS ON PAYMENT FOR ACQUISITION OF IMMOVABLE PROPERTY – SECTION 194-IA

- TDS u/s. 194-IA is not required to be deducted in case of joint buyers if individual **buyer's share** is less than 50 Lakhs. - **Vinod Soni vs. ITO (Delhi ITAT)** - ITA No. 2736/Del/2015.
- TDS u/s. 194-IA is not required to be deducted in case of **joint sellers (co-owners)** if share of each co-owner is less than 50 Lakhs - **Oxcia Enterprises Pvt. Ltd. vs. DCIT (Jodhpur ITAT)** - ITA No. 291/Jodh/2018.
- TAN not required.
- Challan-*cum*-statement in **Form No. 26QB** to be filed within 30 days from the end of the month in which TDS is deducted and TDS Certificate in **Form No. 16B** to be given to deductee within 15 days.
- If the immovable property is **purchased as a stock in trade** and TDS u/s. 194-IA is not deducted, then 30% of the purchase price will be disallowed u/s. **40(a)(ia)**.

## TDS ON PAYMENT OF RENT BY INDIVIDUAL OR HUF – SECTION 194-IB

- **Nature of payment:** Rent payable by an individual or HUF (not liable u/s. 194-I)
- **Threshold:** No TDS for Rent upto **Rs. 50,000 per month** or part of the month
- **Rate of tax:** 5% (3.75% w.e.f 14.05.2020 to 31.03.2021)
- TDS to be deducted at the time of credit of rent for the month of **March or the last month of tenancy**, whichever is earlier.
- TAN not required.
- Challan-*cum*-statement in **Form No. 26QC** to be filed within 30 days from the end of the month in which TDS is deducted and TDS Certificate in **Form No. 16C** to be given to deductee within 15 days.
- TDS u/s. 194-IB is also required to be done by persons covered u/s. 44AD and 44AE whose turnover does not exceeds Rs. 1 Crore or Rs. 50 Lakhs, as the case may be.

## TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J

Nature of payment	Threshold limit	Rate of tax	Rate of tax (w.e.f 14.05.2020 to 31.03.2021)
Fees for professional services	Rs. 30,000	10%	<b>7.5%</b>
Fees for technical services and payment to call centers	Rs. 30,000	<b>2%</b> (for FTS -10% upto FY 19-20)	<b>1.5%</b>
Remuneration or fees to Director (other than 192)	NIL	10%	<b>7.5%</b>
Royalty	Rs. 30,000	10%	<b>7.5%</b>
Non-compete fees	Rs. 30,000	10%	<b>7.5%</b>



## **TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J**

- Reimbursement of expense – TDS not liable to be deducted on pure reimbursements when separate bill is raised.
- **Fees for professional services** means services rendered by person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or **technical consultancy** or interior decoration or advertising or film artist.
- TDS u/s. 194J not to be deducted on **subsequent sale of software** without modification – **Notification No. 21/2012** dtd. 13.06.2012.
- As per Finance Act, 2020, In respect of fees for technical services (not being professional services) TDS is required to be deducted @2%. (1.75% w.e.f 14.05.2020 to 31.03.2021)

## **TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J**

- **High Court of Karnataka in the case of PCIT V. Tally Solutions P. Ltd.** vide ITA/199/Kar/2017 & 952/2017 dt. 16-12-2020 AY 2009-10 & 11-12. Assessee stated that Section 40(a)(i) and (ia) of the Act provides for disallowance in respect of amounts claimed as deduction on which tax has not been deducted or paid after deduction under Chapter XVII-B of the Act and the provision does not apply to a **claim for depreciation**, which is not in the nature of expenditure but is an allowance. It is also urged that depreciation is not an outgoing expenditure and therefore, provisions of Section 40(a)(i) or (ia) of the Act are not attracted. It is also urged that depreciation is a statutory deduction available to the assessee on the asset, which is wholly or partly owned by the assessee and used for the purpose of business or profession.

## **TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J**

- High court held that The depreciation is not an outgoing expenditure and therefore, provisions of Section 40(a)(i) and (ia) of the Act are not applicable. The **depreciation is an allowance and not an expenditure**, loss or trading liability. CIT(A) also held in favour of the assessee that the payment has been made by the assessee for an **outright purchase of Intellectual Property Rights** and **not towards royalty** therefore, the provision of Section 40(a)(ia) of the Act is not attracted in respect of a claim for depreciation. HC held that substantial question of law framed by a bench of this court is answered against the revenue and in favour of the assessee.

## **TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J**

- **ITAT Mumbai in the case of Red Chillies Entertainment P. Ltd. V. ACIT vide ITA No. 1577/Mum/2013 dt. 31-5-2016 AY 09-10 held that since the payment made by the assessee is in kind, the provisions of section 194J are not applicable.**

## **TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J**

- **Honorable Bombay High Court in the case of CIT V. Reliance Life Insurance Co. Ltd. on 18-6-2019** in ITA 500/2017/Bom/ held that, “The CIT (Appeals) and the Tribunal examined the nature of expenditure and came to the conclusion that the assessee had hired the services for various **works such as storage of data, scanning of documents, processing charges, call centre operations etc.** Looking to the nature of services outsourced, it was held that the same were basically clerical services of repetitive nature of work and payments were therefore, **neither for managerial nor for technical services.** Having perused the documents on record and looking to the nature of services described, we do not find that the Tribunal has committed any error. The work outsourced was in the nature of clerical work. No question of law arises”. And held that **such payments are covered U/s 194C and not 194J.** In the result appeal of the revenue was dismissed.

## **TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J**

- **Delhi Tribunal in the case of DCIT v. Parasrampuriah Synthetics Ltd.** [20 SOT 248] wherein the Tribunal, while dealing with the issue relating to applicability of s. 194J of the Act in respect of the payment towards AMC contract, observed as under: "In the present case, it is seen that there may be use of services of technically qualified persons to render the services but that itself do not bring the amount paid as 'fees for technical services' within the meaning of Explanation 2 to section 9(l)(vii). The amounts paid are towards annual maintenance contract of certain machinery or for converting POY into textured/twisted yarn. The technology or the technical knowledge of the persons is not made available to the assessee but only by using such technical knowledge services are rendered to the assessee. In such a case, it cannot be said that the amount is paid as 'fees for technical services'. Rendering services by using technical knowledge or skill is different than charging fees for technical services. In a latter case, the technical services are made available due to which the assessee acquired certain right which can be further used. In the present case, it is not so. The persons rendering certain services has only maintained machinery or converted yarn but that knowledge is not now vested with the assessee by which itself it can do research work. In the circumstances, the amount paid cannot be considered as fees for technical services within the meaning of section 194J of the Act.

## **TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J**

- **In the case of Kandla Port Trust Vs. DCIT, 50 SOT 109, the Rajkot Bench** held:- A perusal of annual maintenance contract between assessee and M/s McNally Bharat Engineering Company Ltd, OTIS Elevators, we notice that the AM contractor shall carry out all repairs as per detailed description in the agreements. From these agreements we did not find that these contracts were in respect of managerial or technical or consultancy services. Thus, it is clear that these agreements were related to annual maintenance of machineries and not for technical services. The revenue in view of the fact that the contractors have utilized services of technical persons presumed that the assessee made payments for technical services. For this presumption we do not agree with the revenue. **It may be technical services for contractor but not for the assessee.** The case of assessee is simply a case of annual maintenance of machineries for section 194J is not applicable, we therefore hold accordingly.

## **TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J**

- **ITAT Bangalore in the case of S. N. BUILDERS & Developers V. ACIT 27-11-2019** vide ITAT 627/Bang/2019/ A.Y. 2014-15, affirmed views of “Hon'ble Gujarat High Court in the case of Principal CIT vs. Sanghi Infrastructure Ltd. (257 Taxman 371)(Guj.) where provision for expense claim was held as under:
- "Where provision was made by assessee for expenses for which bills were not received during year under consideration, no section 40(a)(ia) disallowance could be made for non- deduction of TDS."
- In the present case, no bills and invoices were raised by the creditors and no liability of payment arose. Hence we, followed the judicial decisions and are of the opinion that the assessee is under no obligation to make payment and no TDS is deducted and accordingly we direct the AO to delete the addition and allow the grounds of appeal of the assessee



## LOWER RATE CERTIFICATE

- **ITAT Mumbai in the case of KINETIC advertising p** lt. v. ACIT 7-10-2020 vide ITA/3194/Mum/2019/AY 2013-14 held followed the case of Tata Communications Ltd. Vrs. DCIT' (ITA No. 7084 & 7085/Mum/2017) in which it was held that:- the assessee has deducted tax at the rates specified in the certificates issued in **Form no.13**, for the entire payment made to the concerned parties during the year under consideration even in respect of payments made in excess of amount specified in Form no.13. The issue before us is, whether for deducting tax at lower rate on the payments exceeding the amounts specified in the certificates issued in form no.13, r/w section 197(2) and rule 28AA, the assessee can be treated as assessee in default for short deduction of tax. In this regard, the specific contention of the assessee is, as per section 197 of the Act, the certificate to be issued by the Assessing Officer under sub-section (2) is person specific and not income specific.
- Contd.....**

## LOWER RATE CERTIFICATE

- It is observed, the Tribunal, Kolkata Bench, in 21st Century Securities Ltd. (ITA No. 464/Kol/2014), after interpreting the provisions of section 197 of the Act as well as rule 28AA has held that neither under section 197 of the Act nor in rule 28AA, there is reference to any income to be specified in the certificate to be issued for deduction of tax at lower rate. Thus, the Tribunal has ultimately held that in such circumstances, if the assessee continues to deduct tax at the rate specified in the certificate, even, in respect of payment made over and above the sum specified in the certificate, it cannot be treated as assessee in default for short deduction of tax. In our view, the aforesaid decision of the Co-ordinate Bench squarely applies to the facts of the present case. In the absence of any contrary decision having been brought to our notice by learned Departmental Representative, we are inclined to follow the decision of the Co- ordinate Bench referred to above and hold that the assessee cannot be treated as assessee in default for short deduction of tax.

## **TDS ON COMPENSATION ON ACQUISITION OF IMMOVABLE PROPERTY – SECTION 194LA**

- **Nature of payment:** Payment for compensation on **compulsory** acquisition of immovable property (other than any agricultural land)
- **Threshold:** No TDS upto Rs. 2,50,000/-
- **Rate of tax:** 10% (7.5% w.e.f 14.05.2020 to 31.03.2021)
- TDS u/s. 194LA is not required to be deducted in case the payment is exempt under Section 96 of the **RFCTLARR Act, 2013** (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013)

## **TDS ON PAYMENT OF CERTAIN SUMS BY INDIVIDUAL OR HUF – SECTION 194M (w.e.f. 1.9.2019)**

- **Deductor:** An Individual or HUF (other than those who are **required to deduct TDS** u/s. **194C** or **194H** or **194J**)
- **Nature of Payment:**
  - Works Contract (including supply of labour for carrying out any work)
  - Commission or brokerage
  - Fees for professional services
- **Threshold:** No TDS upto Rs. 50 Lakhs in a FY.
- **Rate of TDS:** **5%** (3.75% w.e.f 14.05.2020 to 31.03.2021), recipient can apply for lower rate.
- TAN not required.
- Challan-*cum*-statement in **Form No. 26QD** to be filed within 30 days from the end of the month in which TDS is deducted and TDS Certificate in **Form No. 16D** to be given to deductee within 15 days.

## **TDS ON PAYMENT OF CERTAIN SUMS BY INDIVIDUAL OR HUF – SECTION 194M (w.e.f. 1.9.2019)**

- **Example:** If an individual or HUF who is not liable to TDS u/s. 194C because his business turnover is not exceeding 1 crore or professional fees not exceeding Rs. 50 Lakh or for **building construction or residential house** to a **works contractor** (with material or without material) and makes payment of **Rs. 50 Lakh or more in a year** then he will be **liable to deduct TDS u/s. 194M @5%** (3.75% w.e.f 14.05.2020 to 31.03.2021) TDS on whole payment as per Sec. 194M.
- Thus, if payment to Works Contractor for construction of any building or residential house is Rs. 60 Lakhs, then TDS of Rs. 2,25,000/- (@3.75% of entire Rs. 60 Lakhs) shall be deducted.

## **TDS ON PURCHASE OF GOODS :-**

**W.E.F. 1-7-2021 U/S 194Q**

- **Nature of transaction covered : Purchase of goods :-** w.e.f. 1-7-2021
- **Who is liable to deduct :-** any person being a buyer whose total sales, **gross receipts or turnover** of the **business** exceeds Rs. 10 crores in immediately preceding financial year purchasing any **goods of Rs. 50 Lakh** or more in any previous year from a **resident seller**, shall
- **From whom to deduct :-** seller from whom the goods is being purchased, at the time of **credit or payment whichever is earlier** deduct an amount equal to 0.1% of such **sum exceeding Rs. 50 Lakh**.
- **Rate of Tax:** 0.1% of the amount exceeding Rs. 50 Lakhs.

## **TDS ON PURCHASE OF GOODS :-**

**W.E.F. 1-7-2021 U/S 194Q**

- TDS u/s. 194Q is required to be deducted at the **time of payment or credit whichever is earlier**.
- **Eg.** If Amount of purchases in a FY is Rs. 60 Lakhs, then TDS is applicable only on Rs. 10 Lakhs.
- The proposed section shall **not apply** to a transaction on which— (a) tax is deductible under any of the provisions of this Act; and (b) tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.

## **POWER OF CBDT TO ISSUE GUIDELINES – Section 194Q(3) w.e.f 1<sup>st</sup> July 2021**

- 194Q(3) :- If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.
- Purchase of immovable property is not a goods therefore no TDS U/s 194Q.



## Section 194Q – Whether turnover of Rs. 10 Crores includes GST ?

- For the purpose of determining applicability of Turnover of Rs. 10 Crores as per Explanation to Section 194Q, **the turnover limit of Rs. 10 Crores shall be determined excluding the amount of GST collected on Sales.**
- **Example:**
  - Total Sales for the Financial Year 2020-21 (excluding GST) is **Rs. 9 Crores.**
  - GST Collected on Sales @18% is **Rs. 1.62 Crores.**
  - Total Amount (inclusive of GST) is **Rs. 10.62 (Rs. 9 Crores + Rs. 1.62 Crores).**
  - In the above example, the assessee would **not be covered** under the provisions of Section 194Q since his turnover is Rs. 9 Crores only, which is below the threshold limit of Rs. 10 Crores.

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## Section 194Q – How to determine the limit of Rs. 50 Lakhs ?

- The buyer is liable to deduct TDS from the seller if the purchases in the financial year **(including purchases before 1<sup>st</sup> July, 2021)** exceeds Rs. 50 Lakhs.
- In respect of the Financial Year 2021-22, the purchases or payments made before 1<sup>st</sup> July, 2021 **(even if it exceeds Rs. 50 Lakhs)** shall not be liable to TDS u/s. 194Q.
- However, **to calculate the threshold of Rs. 50 Lakhs:- purchases before 1<sup>st</sup> July, 2021 shall be included to determine the applicability of TDS u/s. 194Q.**
- TDS is also required to be deducted at the time of payment of **advance for purchases of goods.**
- **Threshold of Rs. 50 Lakh – EVERY YEAR FOR EVERY seller.**

## Section 194Q – Whether limit of Rs. 50 Lakhs is exclusive of GST or inclusive of GST ?

- The applicability of the provisions of Section 194Q of the Act shall be determined with reference to **purchases** during a financial year.
- deduction of tax is to be made with reference to payment or credit for purchases whichever is earlier , and not with reference to purchases only. **the total amount of purchases (excluding GST) is liable for TDS. (CBDT Cir. 23/2017 Excl. GST on services)**
- Example:
  - Date of Purchases of Goods : 3<sup>rd</sup> July, 2021
  - Purchase Value (excluding GST) : Rs. 55 Lakhs
  - GST Amount @ 18% : Rs 9.9 Lakhs
  - Total Invoice Value : 64.9 Lakhs
  - Date of payment for purchases value : 1<sup>st</sup> December, 2021
  - **TDS to be deducted on Rs. 5 Lakhs on 3rd july, 2021 @0.1% - i.e. Rs. 500/- only.**

**Section 194Q – Whether to deduct at the time of purchases or at the time of payment if any of this event occurred before 1<sup>st</sup> July, 2021**

- Section 194Q provides that TDS is required to be deducted at the time of payment or credit of the purchase value, if purchases had been made before 1<sup>st</sup> July, 2021 but payment has been made on or after 1<sup>st</sup> July, 2021 then no TDS on this amount at the time of payment.
- if payment as an advance had been made before 1<sup>st</sup> July, 2021 but purchase invoice has been raised by seller on or after 1<sup>st</sup> July, 2021 then no TDS on this amount at the time of entry of purchase invoice.

## TDS ON PURCHASES FROM MOTOR VEHICLE MANUFACTURER

- For the purpose of TCS Para 4.5.2.(i) of the CBDT circular 17/2020 states that:

“Receipt of Sale consideration from a dealer would be subjected to TCS under sub-section (1H) of the Act, if such sales are not subjected to TCS (~~covered~~) under sub-section (1F) of section 206C of the Act.

Sec. 194Q(5) states that, The provisions of this section shall not apply to a transaction on which :—

(a) tax is deductible under any of the provisions of this Act; and

(b) tax is collectible under the provisions of section 206C other

than a transaction to which sub-section (1H) of section 206C applies

## **194Q Vs. 206C(1H)**

- **If TCS u/s. 206(1H) as well as TDS u/s. 194Q is applicable on the same transaction, only TDS u/s. 194Q will be applicable and TCS u/s. 206C(1H) will not be applicable.**
- **TDS is not required to be collected on GST Component [Circular No. 23/2017]**
- **Buyer cannot apply for Lower deduction Certificate u/s. 197.**

## EXAMPLE 194Q Vs. 206C(1H)

### Example 1:

**Turnover of buyer : Rs. 15 Crores.**

**Transaction Value : Rs. 60 Lakhs.**

**TDS @ 0.1% on Rs. 10 Lakhs u/s. 194Q. (i.e. amount exceeding 50 Lakhs)**

### Example 2:

**Turnover of Seller : Rs. 20 Crores**

**Turnover of Buyer : Rs. 5 Crores**

**Transaction Value : Rs. 1 Crore**

**TCS @ 0.1% u/s. 206C(1H) to be collected by seller since buyer is not liable to deduct TDS u/s. 194Q.**

-

## **Higher TDS/TCS for non-filers Section 206AB, 206CCA**

Person covered under this section is a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years, person shall not include a non-resident who does not have a permanent establishment in India



## **Higher TDS/TCS for non-filers Section 206AB, 206CCA**

If any sum or income is liable to TCS or TDS (other than 192, 192A, 194B, 194BB, 194LBC, 194N) and the deductee or collectee has not filed his return for immediately preceding two assessment year and TDS/TCS in each year exceeds Rs. 50,000/- then TDS/TCS at twice the rate specified in the relevant provision of the Act; or at twice the rate or rates in force; or at the rate of five per cent, whichever is higher. If the provision of section 206AA/206CC is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA/206CC.

## Section 194Q (Applicable w.e.f 1<sup>st</sup> July, 2021)

Applicability of TDS u/s. 194Q and TCS u/s. 206(1H) on Transaction of Value of Rs. 75 Lakhs:-

Sr. No.	Turnover of Seller of preceding FY	Turnover of Buyer of preceding FY	Applicability of Section 206C(1H) viz-a-viz. 194Q
1.	Rs. 2 Crores	Rs. 20 Crores	Only TDS u/s. 194Q
2.	Rs. 50 Crores	Rs. 5 Crores	Only TCS u/s. 206C(1H)
3.	Rs. 15 Crores	Rs. 15 Crores	Only TDS u/s. 194Q. No TCS as per 2 <sup>nd</sup> Proviso to Section 206C(1H)
4.	Rs. 8 Crores	Rs. 8 Crores	No TDS u/s. 194Q. No TCS u/s. 206C(1H).

## TDS ON PAYMENT TO NON RESIDENTS – SECTION 195

- **Nature of payment:** Any sum chargeable under Income tax Act, not being Salary
- **Threshold:** Nil
- **Rate of tax:** As per rates in force (Part-II of the First Schedule of the Finance Act)
- Application can be made of **lower withholding** u/s. 195(2) by the payer or u/s. 197 by the recipient.
- **Purchase of immovable property from non-resident:** TDS is required to be deducted u/s. 195 and **not** u/s. 194-IA.
- 15CB not required to be furnished if remittance does not exceed Rs. 5,00,000 in a year. However, TDS is required to be deducted and 15CA - Part A is required to be uploaded.
- **Section 206AA** not to apply if basic details, Tax residency certificate and its TIN in the foreign country is given – **[Rule 37BC]**

## TDS u/s. 195 - OTHER SUMS

- **Applicability:** TDS to be deducted on **any sum chargeable under the provisions of Income Tax Act, 1961** not being income chargeable under the head 'Salaries'. (E.g. Payments such as interest, royalty, fees for technical services are liable for tax deduction u/s. 195 of the Act)
- **Payer:** Any person (both Resident and Non-resident)
- **Payee:** Non-residents / Foreign Company
- **Threshold limit: NIL i.e. No Threshold limit.**
- No TDS u/s. 195 on payment of Income chargeable under the head 'Salaries' or payments covered u/s. 194LB or 194LC or 194LD.
- TDS to be deducted at the time of **payment or credit, whichever is earlier.**

## SECTION 9 – DEEMED TO ACCRUE OR ARISE IN INDIA

- As per the provisions of Section 5(2)(b) of the Act, the total income of a non-resident also includes all income which **accrues or arises** or is **deemed to accrue or arise in India** to the non-resident.
- **To check whether the income of the non-resident is deemed to accrue or arise in India – We have to refer Section 9.**
- If the income is deemed to accrue or arise in India, then the payer is liable to withhold taxes in India.

## **SECTION 9(1) – CLAUSE (ii), (iii) & (iv)**

**Following shall be deemed to accrue or arise in India:**

- **Section 9(1)(ii)** – Income which falls under the head "Salaries", if it is earned in India, i.e. when the services are rendered in India **[Tax deductible u/s. 192]**
- **Section 9(1)(iii)** – Salary payable by the Central Govt. to a **citizen of India** for services rendered outside India **[Tax deductible u/s. 192]**
- **Section 9(1)(iv)** – Dividend paid by an Indian company outside India

## **SECTION 9(1)(v) – INTEREST**

**Section 9(1)(v)** – Income by way of **interest** payable by a **Resident** shall be deemed to accrue or arise in India except if amount used for business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India

## **SECTION 9(1)(vi) – ROYALTY**

**Section 9(1)(vi)** – Income by way of **royalty** payable by a **Resident** shall be deemed to accrue or arise in India except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.



## **SECTION 9(1)(vii) – FEES FOR TECHNICAL SERVICES**

**Section 9(1)(vii)** – Income by way of **fees for technical services** payable by a **Resident**, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.

## **SECTION 9(1)(viii) –SUM OF MONEY**

**Section 9(1)(viii)** – Income arising outside India, being **any sum of money** referred to in Section 2(24)(xviiia), paid on or after 5<sup>th</sup> July, 2019 by a resident to a non-resident / foreign company shall be deemed to accrue or arise in India.

**Section 2(24)(xviiia)** includes in Income - any sum of money covered u/s. **56(2)(x)** of the Act.

However, Gift of any sum of money **from relative** shall not be liable for withholding tax obligation u/s. 195.

## **SECTION 9(1)(i) – Income other than Interest / Royalty FTS / Salaries/ Dividend**

**Section 9(1)(i)** – All income accruing or arising, whether directly or indirectly, through or from

- **Business connection in India**
- **Property in India**
- **Asset or source of income in India**
- **Transfer of a Capital asset situate in India**

## EXPLANATION TO SECTION 9

Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this section, income of a **non-resident** shall be deemed to accrue or arise in India under **clause (v) [Interest]** or clause (vi) **[Royalty]** or clause (vii) **[Fees for technical services]** of sub-section (1) and shall be included in the total income of the non-resident, **whether or not**:

- **The non-resident has a residence or place of business or business connection in India; or**
- **The non-resident has rendered services in India.**

## WITHHOLDING TAX OBLIGATION u/s. 195

If the payment to non-resident or a foreign company is covered u/s. 9 of the Act and chargeable to tax, the provisions of Section 195 of the Act shall come into play.

As per **Section 195(1)** – Tax is required to be deducted at the time of payment or credit, whichever is earlier at the **rates in force**.

Further, **TDS u/s. 195 is also required to be withheld at the time of making provision on accrual basis** the payee is identified and amount is ascertainable.

## **RATES IN FORCE – Section 2(37A)(iii)**

**Rate or Rates in force means** - The rates of income tax specified in the

- **Finance Act of the relevant previous year**, or
- **DTAA** (Double Taxation Avoidance Agreement)

**Section 90(2)** - The provisions of the Act or the DTAA, whichever is **more beneficial to the assessee** shall be applied.

**Surcharge and Education Cess** – Not required to be added separately if the rates mentioned in DTAA are applied.

## RATES IN FORCE – Finance Act, 2020

Some Important rates mentioned in the Finance Act, 2020 for the purpose of withholding tax u/s. 195 are as under:

- **Dividend** – 20%<sup>#</sup>
- **Royalty** – 10%<sup>#</sup>
- **Fees for technical services** – 10%<sup>#</sup>
- **Interest** (other than 194LB/194LC/194LD) – 20%<sup>#</sup>

<sup>#</sup> The above rates shall be increased by education cess @4% and applicable surcharge to corporate/non-corporate assessee.

Rates mentioned in DTAA should be applied if they are more beneficial.

## PERMANENT ESTABLISHMENT

Any person who is responsible for paying any sum being royalty or fees for technical services to a non-resident / foreign company carrying on business through a **Permanent Establishment (PE)** in India shall deduct tax u/s. 195 of the Act at the rate of tax at applicable rates.

**Thus, for payments to Foreign Companies having a PE in India:**

If amount exceeds Rs. 1 Crore: 40% + 4% Cess + 2% Surcharge (42.432%)

If amount exceeds Rs. 10 Crores: 40% + 4% Cess + 5% Surcharge (43.68%)



## **LOWER / NIL DEDUCTION CERTIFICATE**

### **– Application By Payer u/s. 195(2)**

- Application to be made by the the **Payer**.
- **When?** – When the payer considers that the whole of such sum would not be income chargeable in the case of the recipient
- The Assessing Officer shall determine the appropriate proportion of such sum, on which tax is required to be deducted u/s. 195 of the Act.
- **Nil Deduction Certificate** can also be obtained u/s. 195(2) by the payer.

## **NIL DEDUCTION CERTIFICATE**

### **– Application By Payee u/s. 195(3)**

- The recipient of income (Payee) can apply to the Assessing Officer for receiving payment without deduction of tax at source.
- For. E.g. In case of transfer of Capital Asset, if the payee wants to claim exemption u/s. 54 or 54F, he can apply to the Assessing Officer for receiving payment without deduction at source.

## **NIL/LOWER DEDUCTION CERTIFICATE u/s. 197 - FORM 13**

- The recipient of income can apply to the Assessing Officer for Lower Deduction Certificate u/s. 197 of the Act.
- Application to be made in prescribed **Form No. 13** electronically.
- Lower Rate to be determined keeping in view the estimated total income, total income of previous 3 years, taxes paid for the current year.
- Tax to be deducted by the payer at the rate mentioned in Lower Deduction Certificate issued by the AO.

## 15CA - 15CB CERTIFICATION REQUIREMENTS u/s. 195(6)

- As per Section 195(6) - The person responsible for paying to a non-resident / foreign company, any sum, **whether or not chargeable under the provisions of this Act**, shall **furnish the information** relating to payment of such sum, in such form and manner, as may be prescribed.
- **Rule 37BB** and **Form No. 15CA - Part A to Part D, Form No. 15CB** and **Form No. 37CC** have been prescribed.

## 15CA - 15CB CERTIFICATION REQUIREMENTS u/s. 195(6)

Sr. No.	Chargeable / Not chargeable to Tax in India	Conditions	Applicable Form/(s)
1.	Chargeable to tax	Aggregate payment during the financial year does not exceeds Rs. 5 Lakhs	Form 15CA – Part A
2.	Chargeable to tax	Assessee has obtained a Lower Deduction Certificate u/s. 197 or Certificate u/s. 195(2) or 195(3) from the AO	Form 15CA – Part B
3.	Chargeable to tax	Aggregate Payment exceeds Rs. 5 Lakhs and Certificate by AO u/s. 197 or 195(2) or 195(3)	Form 15CB along with Form 15CA – Part C
4.	Not Chargeable to tax	-	Form 15CA – Part D

## **RULE 37BB – Exemption**

- As per Rule 37BB, particulars in Form No. 15CA and/or Form No. 15CB (if applicable) is required to be made, whether or not any sum is chargeable to tax in India or not.
- As per rule 37BB No information is required to be furnished **(not even Form 15CA - Part D)** by an **individual** if it does not require prior approval of RBI or by any other person if it does not require prior approval of RBI as 33 items mentioned in the RBI LRS list . However, practically the banks may insist for the same.

## PRIOR RBI APPROVAL NOT REQUIRED IN FOLLOWING

- **Prior RBI Approval is not required** for transactions within limit of **\$2,50,000** for private visits to any country (except Nepal and Bhutan)
- Gift or donation
- Going abroad for employment
- Emigration
- Maintenance of close relatives abroad
- Travel for business/ conference/ specialized training/ medical treatment/ studies abroad
- Any other current account transaction

## 15CA – PART D NOT REQUIRED FOR BELOW 33 ITEMS

Sl. No.	Purpose code as per RBI	Nature of payment
1	S0001	Indian investment abroad - in equity capital (shares)
2	S0002	Indian investment abroad - in debt securities
3	S0003	Indian investment abroad - in branches and wholly owned subsidiaries
4	S0004	Indian investment abroad - in subsidiaries and associates
5	S0005	Indian investment abroad - in real estate
6	S0011	Loans extended to Non-Residents
7	S0101	Advance payment against imports
8	S0102	Payment towards imports - settlement of invoice
9	S0103	Imports by diplomatic missions
10	S0104	Intermediary trade
11	S0190	Imports below Rs.5,00,000 - (For use by ECD offices)



## 15CA – PART D NOT REQUIRED FOR BELOW 33 ITEMS

Sl. No.	Purpose code as per RBI	Nature of payment
12	SO202	Payment for operating expenses of Indian shipping companies operating abroad
13	SO208	Operating expenses of Indian Airlines companies operating abroad
14	S0212	Booking of passages abroad - Airlines companies
15	S0301	Remittance towards business travel
16	S0302	Travel under basic travel quota (BTQ)
17	S0303	Travel for pilgrimage
18	S0304	Travel for medical treatment
19	S0305	Travel for education (including fees, hostel expenses etc.)
20	S0401	Postal services
21	S0501	Construction of projects abroad by Indian companies including import of goods at project site

## 15CA – PART D NOT REQUIRED FOR BELOW 33 ITEMS

Sl. No.	Purpose code as per RBI	Nature of payment
22	S0602	Freight insurance - relating to import and export of goods
23	S1011	Payments for maintenance of offices abroad
24	S1201	Maintenance of Indian embassies abroad
25	S1202	Remittances by foreign embassies in India
26	S1301	Remittance by non-residents towards family maintenance and savings
27	S1302	Remittance towards personal gifts and donations
28	S1303	Remittance towards donations to religious and charitable institutions abroad
29	S1304	Remittance towards grants and donations to other Governments and charitable institutions established by the Governments
30	S1305	Contributions or donations by the Government to international institutions

## 15CA – PART D NOT REQUIRED FOR BELOW 33 ITEMS

Sl. No.	Purpose code as per RBI	Nature of payment
31	S1306	Remittance towards payment or refund of taxes
32	S1501	Refunds or rebates or reduction in invoice value on account of exports
33	S1503	Payments by residents for international bidding.

## FORM 15CB – PRACTICAL ASPECTS

- **Determine applicability of Section 195** - Ascertain the identity of payee – Whether resident/non-resident?
- **Determine nature of payment** - Whether Royalty/ fees for technical services / Interest / etc.
- Ascertain the chargeability and rate of tax as per the provisions of Income Tax Act.
- To claim beneficial rate as per DTAA as per Section 90(2), obtain **Tax Residency Certificate** from the payee. Tax Residency Certificate is provided u/s. 90(4).
- Obtain **Form No. 10F** duly certified from the payee.

# Tax Residency Certificate



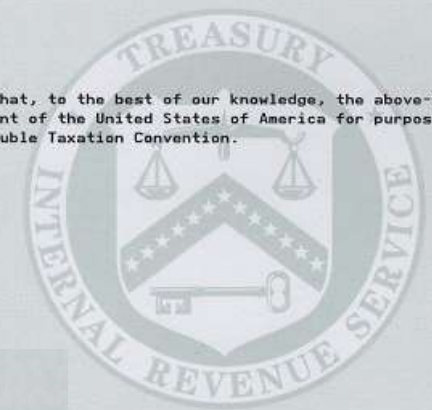
CERTIFICATION  
PROGRAM

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
PHILADELPHIA, PA 19255

Date: June 4, 2018

Taxpayer:   
TIN:   
Tax Year: 2017

I certify that, to the best of our knowledge, the above-named taxpayer  
is a resident of the United States of America for purposes of the Greece  
- U.S.A. Double Taxation Convention.



I certify that, to the best of our knowledge, the above-named taxpayer  
is a resident of the United States of America for purposes of the Greece  
- U.S.A. Double Taxation Convention.

Joseph Dianto  
Field Director, Accounts Management

## Details required in Form No. 10F

<i>Sl.No</i>	<i>Nature of information</i>	<i>:</i>	<i>Details #</i>
(i)	Status (individual, company, firm etc.) of the assessee	:	
(ii)	Permanent Account Number or Aadhaar Number of the assessee if allotted	:	
(iii)	Nationality (in the case of an individual) or Country or specified territory of incorporation or registration (in the case of others)	:	
(iv)	Assessee's tax identification number in the country or specified territory of residence and if there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident	:	
(v)	Period for which the residential status as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A is applicable	:	
(vi)	Address of the assessee in the country or territory outside India during the period for which the certificate, mentioned in (v) above, is applicable	:	

## PENALTY FOR NOT FURNISHING 15CA AND 15CB

- **Section 271-I** : Penalty of **Rs. 1 Lakh** for not furnishing information in **Form 15CA** and **Form 15CB** u/s. 195(6) of the Act or for furnishing **inaccurate information** in **Form No. 15CA**.
- **Section 271J** : Penalty of **Rs. 10,000** upon Chartered Accountant for furnishing **incorrect information** in Form 15CB.

## SECTION 206AA read with RULE 37BC

The provisions of Sec. 206AA shall not apply on payment in the nature of interest, royalty, fees for technical services, payment on transfer of capital asset if the payee furnishes the following:

- **Name, e-mail id, contact number**
- **Address** in the country of residence
- **Tax Residency Certificate (TRC)**
- **Tax Identification Number** in such country. If not available, then a **unique number** on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.



## **SECTION 206AA read with RULE 37BC**

- ITAT DELHI in the case of Air India Ltd. V. ITO(TDS)(INTL.) 23-4-2021 ITA No.2260/Del./2017. (ASSESSMENT YEAR : 2013-14) held that, “following the order passed by the coordinate Bench of the Tribunal in cases of DDIT (IT-II), Pune vs. Serum Institute of India Ltd., DCIT vs. M/s. Infosys BPO Ltd. and the judgment of Hon'ble Delhi High Court in case of Danisco India Pvt. Ltd. vs. UOI, we are of the considered view that Id. CIT (A) has erred in holding that in this case, provisions contained u/s 206AA overrides beneficial provisions of DTAA between India and Neitherland. Consequently, assessee has rightly deducted the tax @ 10% as per provisions contained under DTAA, as section 206AA cannot have overriding effect on DTAA, hence no demand is payable by the assessee. Hence, question framed is decided in favour of the assessee.

## **Declaration Regarding Permanent Establishment or Place of Effective Management from the PAYEE**

- In most of the cases, Payer might not be aware about the existence of Permanent Establishment of payee in India. Thus, it is advisable to obtain a declaration from payee regarding existence/non-existence of its **permanent establishment /place of effective management** in India to determine the correct rate of withholding tax.

## **RULE 26 – EXCHANGE RATE**

- **Applicability** – For the purpose of deduction of tax at source on any income payable in **foreign currency**.
- For **Conversion of amount in foreign currency into INR**.
- **Rate of Exchange** – **SBI TT Buying Rate** (Telegraphic transfer) as on the date on which the tax is required to be deducted at source.
- Rate of Tax shall be applied on the resultant amount in INR.
- If TDS is deducted at the time of credit and payment is made at a subsequent date, then TDS is not applicable on foreign exchange difference.

## SECTION 195A – INCOME PAYABLE ‘NET OF TAX’

- In cases, where the burden of tax is being borne by the **Payer**, then tax shall be deducted as if the amount payable under the agreement is the amount ‘net of tax’ after deducting tax at source.
- Eg. **Invoice in respect of Fees for Technical Services: \$1,000**  
(Exchange Rate: Rs.80 per \$)(**Rs. 80,000**)
- **TDS deductible @ 10.40%** [as per Section 115A(1)(b)(B)]
- Thus, amount of **Rs. 80,000** shall be equivalent to **89.6%** [100 -10.40%]
- Thus, **Grossed up Amount = Rs. 89,286** [Rs. 80,000 ÷ 89.6%]
- **TDS = Rs. 9,286** [Rs. 89,286 – Rs. 80,000] as per **Section 195A**.

## TDS ON PURCHASE OF IMMOVABLE PROPERTY FROM NON RESIDENT – Section 194-IA or Section 195 ?

- As per the provisions of Section 194-IA, TDS is required to be deducted @1% if the value of immovable property is Rs. 50 Lakhs or more.
- However, the provisions of Section 194-IA do not apply when the seller is a non-resident. Provisions of Section 195 will be applicable.
- No threshold for TDS if property purchased from non-resident. TDS is required to be deducted even if consideration is less than 50 Lakhs.
- **Rate of tax: 20% on Sales Consideration** (as increased by 4% Health and Education Cess and applicable surcharge)
- Certificate u/s. **195(2) by buyer** or **195(3) by seller** can also be obtained.

## TDS ON PAYMENT OF RENT TO NON-RESIDENT OWNER OF PROPERTY – Section 194-I or Section 195 ?

- If Rent (whether for commercial premises or for property used for residential purposes) is payable to a non-resident, then the payer is required to withhold tax u/s. 195 of the Act.
- **Threshold limit: NIL**
- The payer shall **not be eligible to obtain benefit of threshold** of Rs. 2,40,000 in case of rent of business premises u/s. **194-I** or threshold of rent of Rs. 50,000 per month u/s. **194-IB** of the Act.
- Rate of TDS 31.2% (30%+4% of tax)
- Even if property is used for **residential purpose**, **payer will have to obtain TAN and file Form No. 27Q quarterly.**

## CONSEQUENCES OF NOT DEDUCTING TAX u/s. 195

- **Section 40(a)(i):** If any person responsible for paying any sum (such as interest/royalty/FTS/etc.) outside India or to a non-resident is liable to deduct tax at source, fails to do so, or after deducting, fails to deposit the same on or before the due date u/s. 139(1), then **100% of such sum shall be disallowed u/s. 40(a)(i).**
- It shall be allowed subsequently in the year of deduction/deposit.
- **w.e.f. 1.9.2019:** No Disallowance if the recipient of income (payee) has
  - Furnished return u/s. 139
  - Has taken into account such sum for computing his income
  - Has paid the tax due on such income.

## **TDS ON CASH WITHDRAWALS – SECTION 194N** **(As amended by Finance Act, 2020 w.e.f 1<sup>st</sup> July 2020)**

### **Nature of payment: Cash withdrawal**

Aggregate amount of cash withdrawal	If the recipient has FILED return of income for <b>ANY</b> of the 3 previous years (i.e. AY 2019-20, <b>or</b> AY 2018-19, <b>or</b> AY 2017-18) <sup>#</sup>	If the recipient has NOT FILED return of income for <b>ALL</b> of the 3 previous years (i.e. AY 2019-20, <b>and</b> AY 2018-19, <b>and</b> AY 2017-18) <sup>#</sup>
Upto Rs. 20 Lakhs	NIL	Nil
More than Rs. 20 Lakhs but upto Rs. 1 Crore	NIL	2%
More than Rs. 1 Crore	2%	5%

**Applicable rate for TDS u/s. 194N can be verified from the e-filing portal.**



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### News & Updates

**30/09/2020 New!**

CBDT issues Notification on Extension of time limit for filing of AY 2019-20 under the Income Tax Act, 1961. [Click here for the notification](#) (330 KB)

**30/09/2020 New!**

Form 35 is re-enabled to file appeal in accordance with the Faceless Appeal Scheme, 'Save draft' will be enabled shortly.

**25/09/2020**

CBDT Notifies Faceless Appeal Scheme ([Click here to see the Notification](#)) The Filing of Appeal in Form 35 Is being disabled temporarily to enable changes in accordance with the Scheme and will be made available shortly.

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Individual Registered  
Users

: **88994214**



Verification of applicability u/s 194N

PAN \*

Mobile Number \*

☐ I hereby declare that I will be using above information only for the purpose of deducting TDS u/s 194N on behalf of banking company/Co-operative Society/Post office. I agree that I will be liable for misuse of the information.

Continue

Cancel

Verification of applicability u/s 194N

TDS is deductible @ 2% if cash withdrawal exceeds Rs.1 Crore.

## **TDS ON CASH WITHDRAWALS – SECTION 194N**

**(As amended by Finance Act, 2020 w.e.f 1<sup>st</sup> July 2020)**

- **Deductor:**
  - Banking Company
  - Co-operative Bank
  - Post Office
- Limit of Cash withdrawal is to be calculated per bank and **not per branch**.
- If the recipient has filed his return of income of ANY of the 3 previous years, then, no TDS upto cash withdrawal of Rs. 1 Crore.

## **TDS ON CASH WITHDRAWALS – SECTION 194N** **(As amended by Finance Act, 2020 w.e.f 1<sup>st</sup> July 2020)**

- The recipient **CANNOT** apply for lower deduction certificate u/s. 197 and **CANNOT** furnish Form No. 15G/15H.
- TDS not required on payments to registered commission agent or trader, operating under **Agriculture Produce Market Committee (APMC)** who has certified that the cash withdrawal is for the purpose of making payments to the farmers on account of purchase of agriculture produce. – Notification 70/2019 and CBDT Circular No. 14 of 2020 dated 20<sup>th</sup> July, 2020.
- **As per Section 197B introduced vide Taxation & Other Laws (Relaxation & Amendment of certain provisions) Act, 2020 – No reduction in rate of TDS u/s. 194N**

## **TDS ON PAYMENT OF CERTAIN SUMS BY E-COMMERCE OPERATOR TO E-COMMERCE PARTICIPANT** (Introduced by Finance Act, 2020 w.e.f 1<sup>st</sup> October 2020)

- Section 194-O has been introduced vide Finance Act, 2020.
- **Nature of payment:** On Payment by E-commerce operator to E-commerce participant **for sale of goods or provision of service over electronic platform**
- **Threshold:** No TDS u/s. 194-O where **gross amount of sales/service** through the e-commerce platform does not exceeds **Rs. 5 Lakhs**.
- **Rate of tax:** 1% **(0.75% w.e.f 01.10.2020 to 31.03.2021)**
- **Rate of TDS if No PAN :** **5% as per First proviso to Section 206AA.**
- For the purpose of determining applicability of Section 194-O for the FY 2020-21, the Sales/Gross receipts prior upto 30th September, 2020 shall also be included.

## INTEREST ON TDS

Interest chargeable u/s. 201(1A) should be levied from the date of deduction of TDS to the date of actual payment of TDS.

**Example:**

Date of Deduction – **15-11-2020**

Date of Deposit – **10-12-2020** (Due Date – 7-12-2020)

Period of Interest – **1 Month @1.5%**, since the actual difference between both the days does not exceeds 1 month.

Refer:

**Bank of Baroda vs. CIT** [2017] 88 taxmann.com 103 (Ahmedabad – Trib.)

**UTI Mutual Fund vs. DCIT**, CPC-TDS (ITA No.2295/Mum/2018 dated **01.07.2019**)



## **One months relief of interest in case of delay payment of TDS**

The Hon'ble ITAT - Ahmedabad Bench in the case of **Bank of Baroda v. Deputy Commissioner of Income-tax [2017] 88 taxmann.com 103 (Ahmedabad - Trib.)** held that the interest chargeable under section 201(1A) of the Income-tax Act should be levied from the date of deduction of tax to the date on which such tax is actually paid to the Government.

Following are the examples that may help to understand the levy of interest u/s. 201(1A):-

- 1.** Date of Deduction – 05-11-2017  
Due Date of depositing TDS – 07-12-2017  
Actual Date of Deposit – 07-12-2017  
Period of Interest - No Interest shall be levied as the TDS is deposited within the prescribed time limit.
- 2.** Date of Deduction – 05-11-2017  
Due Date of depositing TDS – 07-12-2017  
Actual Date of Deposit – 10-12-2017  
Period of Interest - 2 Months, as the period from which the tax is deducted to the date on which such tax is actually paid exceeds one month.
- 3.** Date of Deduction – 15-11-2017  
Due Date of depositing TDS – 07-12-2017  
Actual Date of Deposit – 12-12-2017  
Period of Interest - Period from which the tax is deducted to the date on which such tax is actually paid does not exceeds one month. Accordingly, only one month's interest u/s. 201(1A) shall be levied.
- 4.** Date of Deduction – 05-11-2017  
Due Date of depositing TDS – 07-12-2017  
Actual Date of Deposit – 10-01-2018  
Period of Interest - 3 Months

**Conclusion:** Levy of interest u/s. 201(1A) for the second month can arise only if the period of time between the date on which tax was deducted and the date on which tax was paid to the Government exceeds one month.

## CONSEQUENCES OF NOT DEDUCTING TAX AT SOURCE

- If TDS not deducted, or after deduction, not deposited upto due date of filing of return on any amount, then **30%** of such sum will be disallowed u/s. **40(a)(ia)**. In case the payee is **NR / Foreign Co.**, 100% of such sum will be disallowed u/s. **40(a)(i)**.
- Such sum will be allowed in the year in which tax has been deducted subsequently.
- However, no disallowance u/s. 40(a)(ia) and **Section 40(a)(i)** shall be made if the recipient of such income has filed his return of income within the time prescribed u/s. **139(1)** after including the said income and has paid the tax due thereon and recipient has to furnish CA Certificate in **Form No. 26A** electronically. However, **Payer shall be liable for interest u/s. 201(1A) @ 1% p.m. or part thereof.**



## **SURVEY BY TDS CHARGES**

**Any verification or survey u/s 133A of the Act by the TDS charge shall be conducted by its own officers.**

**Where the TDS charge is headed by the Pr.CCIT of the region or by the CCIT (TDS), the verification or survey action shall be approved by the Pr.CCIT of the region or the CCIT (TDS), as the case may be and shall be conducted by the officers of the TDS charge.**

## **Time limit for TDS Assessments**

**Time limit for TDS Orders:** 7 years from the end of financial year in which payment is made or credit is made or 2 years in case of correction statements, whichever is later. No time limit specified for TCS orders.

**Vide Finance Bill, 2021, time limit for assessment / reassessment has been reduced. However, no such reduction in time limit is provided for TDS / TCS Assessments.**

## **TDS / TCS SURVEY ON CHARITABLE AND RELIGIOUS INSTITUTIONS / GOVT. DEPARTMENTS**

**As per Sec. 133A(2A) Income tax authority can carry out survey at any office or any other place where business or profession is carried on, for verifying that TDS/TCS has been deducted or collected in accordance with the law. But TDS/TCS survey cannot be carried out at a charitable or religious trust or institution or at the office of any Central or State Government or local authority because no business or profession is being carried out by them.**

## **TIME LIMIT OF ORDER U/S 200A, 201 UNCHANGED**

**As per Sec. 200A processing of TDS/TCS statement can be done within one year from the end of the financial year in which the statement is filed. As per Sec. 201 an order deeming a person to be an assessee in default for failure to deduct or for short deduction from a resident person can be passed within 7 years from the end of the financial year in which the payment is made or credit is given or within 2 years from the end of financial year in which correction statement as per provision to Sec. 200(3) is delivered, whichever is later, e.g. if any TDS statement is filed in F.Y. 2017-18 its order U/s 201 for non or short deduction can be passed upto 31-3-2025. So time limit of 7 years is still unchanged. In case of non payment of TDS there is no time limit, i.e. if tax was deducted in F.Y. 2009-10 but not deposited till 31-3-2021 then proceedings U/s 201 can be initiated at any time i.e. unlimited time.**

## CONSEQUENCES OF NON-COMPLIANCE OF TDS PROVISIONS

- **Short deduction** - Disallowance u/s. 40(a)(ia) can only be made for non-deduction and **not for short deduction of tax**. However, assessee will be liable to pay interest u/s. 201(1A).
- **Prosecution u/s. 276B** – If TDS deducted but not paid – rigorous imprisonment : 3 months to 7 years and fine.
- **Late fee u/s. 234E @ Rs. 200/day** – For delay in furnishing TDS statements
- **Penalty u/s. 271H** – Incorrect TDS or TCS statements– **Rs. 10,000 to Rs. 1 Lakh**.

## CONSEQUENCES OF NON-COMPLIANCE OF TDS PROVISIONS

- **Penalty u/s. 271C** – Equal to the whole or part amount of TDS not deducted.
- Kerala High Court in the case of Subscriber Chit Fund P. Ltd. V. CIT, Kochi vide ITA/26/Ker/2016 dt. 23-3-2021 allowed the appeal of assessee and held that non- remittance of tax deducted at source U/s 194C of Chapter XVIIIB of the Act is not covered by Section 271C(I)(b) of the act to attract penalty U/s 271C.

## PAYMENT OF TAX, QUARTERLY STATEMENT AND FURNISHING TDS/TCS CERTIFICATE

Quarter ending on	Due Date for Quarterly TDS Statement in Form No. 24Q/26Q/27Q	Due Date to issue TDS Certificate in Form No. 16A	Due Date for Quarterly TCS Statement in Form No. 27EQ	Due Date to issue TCS Certificate in Form No. 27D
30 <sup>th</sup> June	31 <sup>st</sup> March, 2021	15 <sup>th</sup> August	<b>31<sup>st</sup> March, 2021</b>	15 <sup>th</sup> April, 2021
30 <sup>th</sup> September	31 <sup>st</sup> March, 2021	15 <sup>th</sup> November	<b>31<sup>st</sup> March, 2021</b>	15 <sup>th</sup> April, 2021
31 <sup>st</sup> December	31 <sup>st</sup> January, 2021	15 <sup>th</sup> February	<b>15<sup>th</sup> January, 2021</b>	30 <sup>th</sup> January, 2021
31 <sup>st</sup> March	31 <sup>st</sup> <b>May, 2021</b>	15 <sup>th</sup> June (Due date for issuing <b>Form 16</b> FY 20-21 is also 15 <sup>th</sup> June)	<b>15<sup>th</sup> May, 2021</b>	30 <sup>th</sup> <b>May, 2021</b>

### Due date to deposit:

**TDS : 7<sup>th</sup> day of next month (30<sup>th</sup> April for TDS deducted in the month of March)**

**TCS : 7<sup>th</sup> day of next month (for TCS collected in the month of March – 7<sup>th</sup> April)**

**Due dates for TDS/TCS returns for Q1 and Q2 of FY 2020-21 extended till 31<sup>st</sup> March, 21.**

## TDS DUE DATES EXTENSION

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- Payment of tax deducted under Section 194-IA, Section 194-IB and Section 194M of the Income-tax Act, 1961 and filing of challan-cum-statement for such tax deducted, which are required to be paid and furnished by 30th April 2021 under Rule 30 of the Income-tax Rules, 1962, may be paid and furnished on or before 31st May 2021.



## 15G- 15H DUE DATES

Date of ending of the quarter of the financial year	Due Date
30 <sup>th</sup> June	15 <sup>th</sup> July of the Financial Year
30 <sup>th</sup> September	15 <sup>th</sup> October of the Financial Year
31 <sup>st</sup> December	15 <sup>th</sup> January of the Financial Year
31 <sup>st</sup> March	30 <sup>th</sup> April of the Financial Year immediately following the financial year in which declaration is made.

**THANK YOU !**

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