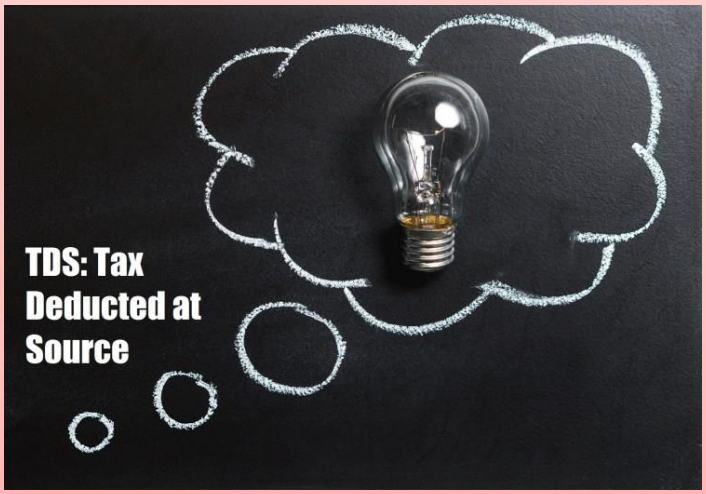
TDS: A 3-DEE System

Deduct, Deposit and Declare



A Practical Approach to TDS & TCS

(Amended upto 30.06.2021)

(THIRD EDITION)

R.S. KALRA

Chartered Accountant

TDS: A 3-DEE System

DISCLAIMER:

The views contained in this book are the personal views of the author and do not necessarily represent the views of the Income-tax Department or of any other department or authority. Before reaching to any conclusion in respect of the matters stated/views expressed herein, readers are advised to consult the concerned provisions of the related law. The author shall not be responsible for any loss—financial or otherwise— to the readers. While every effort has been made to not allow any errors or omissions to crepe in the book If you notice any errors or glaring omissions, please let me know: ca.rskalra@yahoo.com. Better an errata than never.

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ABOUT THE AUTHOR

Breaking the cliche of not indulging in family business, Ravinder moved the steering wheel of his life towards chartered accountancy profession after graduating from Bachelors of Commerce from DAV College, Jalandhar. And simultaneously done his Masters of Commerce from Himachal Pradesh University. Fulfilling his innate desire for knowledge he moved on to add another feather in his hat by doing Bachelors of Law.

Ravinder won various accolades of success to his name but all this was not built overnight, these laurels were achieved by sleepless nights and rigorous efforts and on his journey of acquiring and sharing of knowledge he contributed to the profession being chairman of Jalandhar Branch of NIRC of ICAI from 1995-1998, Chairman Jalandhar branch of NIRC of ICAI for the year 2008-2009, Member Regional Tax Advisory Committee of CBDT, New Delhi, Member Direct Tax Committee of ICAI for the Year 2011-2012, Special Invitee Direct Tax Committee of ICAI for the Year 2012-2013,Member Indirect Tax Committee of ICAI for the Year 2013-2014,Member Board of Studies of ICAI of 2014-15,Senate Member of Guru Nanak Dev University, Amritsar from 01.07.2014 to 30.06.2016, Special Invitee of Committee on Economic, Commercial Laws & WTO, and Economic Advisory of ICAI for the Year 2017-2018..At present he is on the panel of authors of Tax Guru.

Pandemic had stopped the world in unimaginable way but it could not halt Ravinder from sharing, he wrote three books i.e. “Know When to say No to Cash Transactions”, “Practical Approach to Presumptive Taxation” and “TDS: A 3-Dee System” and gave the professionals and other readers the much needed clarity on various topics on direct taxes.

Acknowledgment

First and foremost I would like to thank God. In the process of putting this book together I realized how true this gift of writing is for me. You have given me the power to believe in my passion and pursue my dreams. I could never have done this without the faith I have in you, the Almighty. I express my gratitude to **Mahamandleshwar Swami Shanta Nand Ji** for their ever showering blessings and inspiration.

Secondly I express heartfelt gratitude to my readers even if an ounce adds to their knowledge it makes all the efforts worthwhile.

Thirdly, this revised edition of the book, let me acknowledge, would not have been possible without the valuable inputs of and concerted efforts of my dear friends and well-wishers, especially CA J.P. Bhatia,CA S.S.Kalra, CA Rajesh Mehta (Indore),CA Jignesh Parikh (Ahmedabad), CA Arvind Tuli (Chandigarh), CA H.S. Makkar, CA Gagandeep Kaur, CA Jasmeet Singh and my team members Ritik Chopra, Shubham Beri and S.Karanjot Singh

Last but not least, without the cheerful support of family and friends; this book would not have materialised. Thank you!

CA R.S. KALRA

FOREWORD BY CA (Dr.) GIRISH AHUJA

I've known CA R.S.Kalra for more than twenty years. I got to know him more when he was Chairman of Jalandhar Branch of NIRC. He is humble, forward looking and pragmatic. He raised smart questions whenever I was delivering Seminars. So, it was no surprise to me that he has come out with books that resolved almost every query of the reader relating to the subject.

In last few years the economy has expended with the increasing number of taxpayers from various sectors, which has been boosting the government coffers. The rising number of taxpayers has put pressure on the need of guidance to them and my professional colleague has been discharging the social responsibility for last three decades through his articles.

As the title of the book implies, *Tax Deducted at Source: 3 Dee System*, the 3 D's consist of Deduct, Deposit & Declare. It is a futile exercise for the deductor but affects deductee in varied ways. A whole lot of sections for different kind of incomes followed by different rates for different categories and there are further sub categories making it complicated task for the deductor fearing behemoth penalties, the present volume has attempted to pull some of these strands together into a credible tapestry.

The efforts of CA Kalra seem to have fructified in the present volume since the tabular presentation gives the reader bird's eye view and FAQ's are adding to the understanding even more. The case laws cited give the desired authenticity to certain views where confusion persists.

I congratulate CA R.S.Kalra for his commendable endeavour to bring out this wonderful book.

I wish him great success in this venture.

MESSAGE

Income Tax Act, 1961 came into force 60 years ago. However, every Finance Act makes some amendments in it, which substantiates the ever flexible nature of the subject. There are certain topics such as Tax Deducted at Source **(TDS**) and Tax Collected at Source **(TCS)** which are of extensive practical use. In order to thoroughly understand the diverse aspects of such crucial topics, a specialised book is definitely required not only by the tax professionals but by the tax administrators as well. In order to cater to the interest of large number of stakeholders, my dear friend *CA. R.S. Kalra of Jalandhar* has written an exclusive book on "*Practical Approach to TDS and TCS".* The book has been written in lucid language for better understanding of complex topics. Further, the book contains practical examples and relevant judicial pronouncements at appropriate places. A minute reading of the book reveals the rich experience of more than three decades of the author. I am sure that book will prove to be very useful for all the professionals in the discharge of their professional duties. Finally, I wish the Author a great success in his journey as an author.

CA Ashok Batra

New Delhi

MESSAGE

Tax Deducted at Source (TDS) and Tax Collected at Source (TCS) comprises of integral part of the Income Tax Act with capacious and pragmatic practical applications, which makes it vital for both Taxman and Professional Consultants to have a comprehensive understanding of this crucial topic. In order to facilitate the understanding of a broad gauge of professionals and representatives, my cherished friend CA R S Kalra has penned a book on “Practical Approach to TDS and TCS”. The book is a reflection on the author’s vast professional experience spanning over three decades, where the author has examined and simplified the provisions of TDS and TCS using judicial pronouncements, examples and solutions to some of the most intricate issues faced by the practicing professionals in their practice due to implications of constant amendments to the Act. I would like to congratulate the author for this alluring book and wish him the best for his future.

Sanjay Kumar Agarwal

New Delhi

Message by Koffee Group

TDS is tedious but you do not need coffee on repeat to understand its labyrinth provisions, Kalra had done that for you in the present volume. He possesses a unique skill to explain highly complicate and intricate issues in a very simple language exercising economy of words. He is able to put focus on the central theme of a complicated tax issue.

We laud his efforts and wish him good luck in this venture.

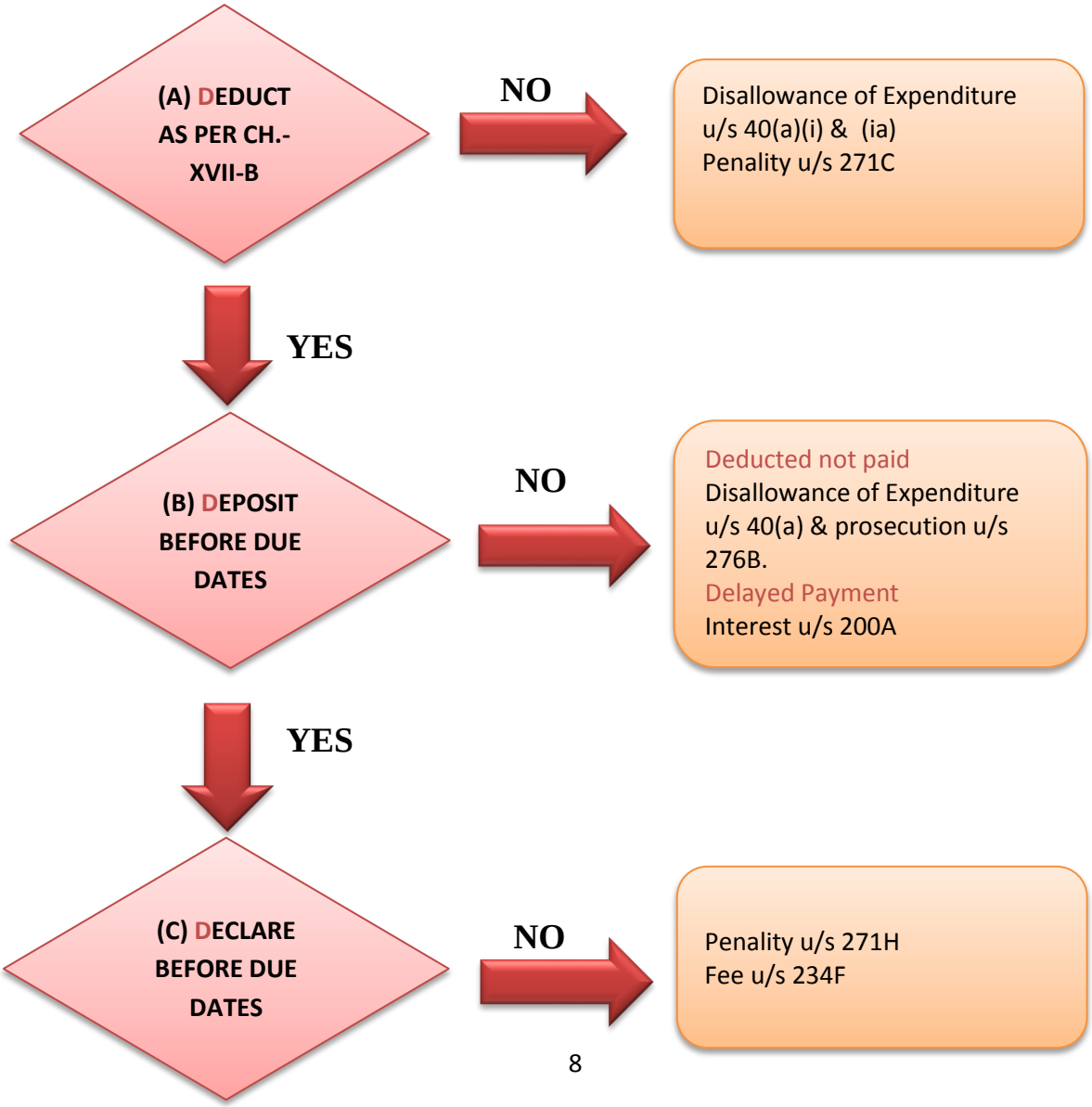
Adv. Dinesh Sarna	CA Rajeev Makol	CA (Dr.) Ashwani Gupta
CA Ashwani Randeva	CA Ashwani Jindal	CA Manoj Soni
CA Gurleen Singh Sahni	CA Parampreet Kaur	CA Snigdha Sarna

THREE DEE SYSTEM

Deduct ⟶ **As Per Provisions of Ch. XVII-B**

Deposit ⟶ **within Due Dates**

Declare ⟶ **By Filing TDS Statements**



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(A) Rate of Tax Deduction at Source (TDS)

[DEDUCT] TDS RATES APPLICABLE FOR F.Y. 2021-22 (A.Y. 2022-23)

Section	Nature of Payment	Threshold Limit for deduction tax	Rates of TDS applicable for the period or Basic Cut off (Individual/Company and others New Rate %)				Remarks
			Individual	Company	Other	If No PAN or Invalid PAN (Rate)	
Employment (Salary) related TDS							
192	**Salary**	As per Slab	Slab Rates	Slab Rates		30	*Option to choose between new and old tax slabs regime for salaried employees*
192A	**Premature withdrawal from Employee Provident Fund (Payment of accumulated balance of provident fund which is taxable in the hands of an employee)**	No deduction if amount is less than *Rs. 50,000*	10	NA		20	*TDS provisions u/s 192A will be applicable when withdrawal of accumulated balance in Recognized Provident Fund is to be included in the total income -10% in case of Resident and -10.40% in case of Non-Resident*
Interest related TDS							
193	***Interest on securities***	*Rs. 5,000*	10	10	-	20	*Threshold limit for interest paid on debentures is Rs. 5,000. Threshold*

							limit for interest on 7.75% GOI Savings (Taxable) Bonds 2018 is Rs. 10,000.
194A	***Interest other than interest on securities – Banks Time deposits, Recurring deposit and Deposit in Co-op Banks***	*Senior Citizen Rs. 50,000* • *Others Rs. 40,000*	10	-	-	20	-
Gambling/Lottery/Horse Race related TDS							
194B	***Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort***	*Rs. 10,000*	30	30		30	
194BB	***Income by way of winnings from horse races***	Rs. 10,000	30	30		30	*Race-income other than horse races like camel races etc. is not covered by this section*
Contract related TDS							
194C	***Payment to Contractors***	*-Single payment : Rs. 30,000* *- Aggregate payment: Rs. 100000*	1	2		20	

	Contract – Transporter not covered under 44AE	*- Single payment : Rs. 30,000 - Aggregate payment: Rs. 1,00,000*	1	2		20	*TDS is to be deducted at the rate of 2.0% if the payee is an AOP or BOI.*
Commission related TDS							
194D	***Insurance commission***	Rs.15,000	5	10		20	
194G	***Commission on sale of lottery tickets***	15000	5	5		20	
194H	***Commission or brokerage***	15000	5	5		20	
Rent related TDS							
194I	Rent						
	194-I(a) Plant & Machinery	Rs. 2,40,000	2	2		20	
	194-I(b) Land or building or furniture or fitting	Rs. 2,40,000	10	10		20	
194IB	**Payment of rent by certain individuals or Hindu undivided family**	*Rs. 50,000 per month*	5			20	*No TDS if rent is Rs.50,000 per month or part of the month*

Immovable property related TDS							
194IA	***Transfer of certain immovable property other than agriculture land***	Rs. 50,00,000	1	1		20	*The Threshold Limit is Rs.50,00,000 for the payment on transfer of certain immovable property other than agricultural land.*
194IC	***Payment of monetary consideration under Joint Development Agreements***		10	10		20	
194LA	***TDS on compensation for compulsory acquisition of immovable Property***	Rs. 2,50,000	10	10		20	*No tax will be deducted if payment is made in respect of any award or agreement which has been exempted from levy of income-tax u/s 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.*
Fees for professional, technical, royalty, etc. related TDS							
194J	***Fees for professional service***	Rs. 30,000 (separately for each)	10%	10%		20%	
	Fees for technical service						
	Royalty						
	Non-compete income						
	Sitting fees or commission paid to Independent or Non-executive Director	No Limit					

	Fees for Technical Services-Resident Indian & Companies	Rs. 30,000 (separately for each)	2%	2%		20%	
	Business of the operation of Call Centre						
	Royalty- in the nature of consideration for sale, distribution or exhibition of Cinematographic films						
Payment in relation with life insurance policy, deposit under National Savings Scheme, Mutual Fund or Unit Trust of India related TDS							
194	**Payment of Dividend**	*Rs. 5,000*	10	10	-	20	
194DA	***Payment in respect of life insurance policy, the tax shall be deducted on the amount of income comprised in insurance pay-out***	Rs. 1,00,000	5	5		20	*Section 194DA is not applicable in case of amount is exempt u/s 10(10D) i.e. the Sum is received at the time of maturity of policy or Death benefit received. Form 15G/15H can be given wherever applicable.*
194EE	***Payment in respect of deposit under National Savings scheme***	Rs. 2,500	10	10		20	• *Resident Indians & Domestic Companies – 10%* • *Non Resident – 10% + Cess + Surcharge (If Applicable)*
194K	***Payment of any income in respect of Units of Mutual fund as per section***		10	10		20	*Units of Mutual Fund have been specified under section 10(23D) of Income Tax Act, 1961.*

	10(23D) or Units of administrator or from a specified company						*"Administrator", "specified company" and "specified undertaking" are specified u/s 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.*
Business Trust related TDS							
194 LBA(1)	***Business trust shall deduct tax while distributing, any interest received or receivable by it from a SPV or any income received from renting or leasing or letting out any real estate asset owned directly by it, to its unit holders***		10	10		20	*Interest payment from a SPV and Distribution of dividend by a Business Trust, to Resident unit holders shall be liable for TDS @ 10%. Whereas, in case of Non-Resident payee, TDS on dividend shall be @ 10% & that on interest payment shall be @ 5%.*
194 LBA(2)	***Distribution of, any interest received or receivable from SPV by Business trust***						*The TDS at the rate of 5.20% is applicable on Non-resident Indians and foreign company in the case of business trust shall deduct tax while distributing any interest income received or receivable by it from a SPV to its unit holders*

194 LBA(3)	***Distribution of, any income received from renting or leasing or letting out any real estate asset owned directly by Business trust***						*The TDS at the rate of 31.20% and 41.60%is applicable on Non-resident Indians and foreign company respectively.*
Non Resident related TDS							
194E	***Payment to non-resident sportsmen/ sports association***		20	20		20	*The rate of TDS shall be increased by applicable surcharge and Health & Education cess.*
194 LB	***Payment of interest on infrastructure debt fund to Non Resident***		5	5		20	*The TDS at the rate of 5.20% is applicable on Non-resident Indians and foreign company in the case of Payment of interest on infrastructure debt fund.*
194LBB	***Investment fund paying an income to a unit holder [other than income which is exempt under Section 10(23FBB)]***		10	10		30	*The TDS at the rate of 10%, 31.20%, 10%, and 41.60% will be applicable on resident Indians, Non-Resident Indians, Domestic Companies and foreign companies respectively.*
194LBC	***Income in respect of investment made in a securitization trust (specified in Explanation of section115TCA)***		25	10		30	*The TDS at the rate of 25% , 31.20%, 10%, and 41.60% will be applicable on resident Indians, Non- Resident Indians, Domestic*

							Companies and foreign companies respectively.
195	***Payment of any other sum to a Non-resident***						• *The TDS at the rate of 20.80% is applicable on income from investments made by a NRI.* • *The TDS at the rate of 10.40% is applicable on income from long -term capital gains under Section 115E for a NRI* • *The TDS at the rate of 10.40% is applicable on Income from long -term capital gains.* • *The TDS at the rate of 15.60% is applicable on Short -term capital gains under Section 111A* • *The TDS at the rate of 20.80% is applicable on any other income from long -term capital gains* • *The TDS at the rate of 20.80% is applicable on Interest payable on money borrowed in foreign currency*

							• *The TDS at the rate of 10.40% is applicable on Income from royalty payable by the Government or an Indian concern.* • *The TDS at the rate of 10.40% is applicable on Income from royalty other than that which is payable by the Government or an Indian concern.* • *The TDS at the rate of 10.40% is applicable on Income from fees for technical services payable by the Government or an Indian concern.* • *The TDS at the rate of 31.20% is applicable on Any other source of income*
E-commerce related TDS							
194O	***Applicable for E-Commerce operator for sale of goods or provision of service facilitated by it through its digital or***	*Rs.5,00,000*	1	1		20	No TDS is to be deducted in case of individual or HUF if the gross amount of sale or services during the PY is upto Rs. 5,00,000

	electronic facility or platform.						
Purchase of goods related TDS							
194Q	***Deduction of tax at source on payment of certain sum for purchase of goods***	*Rs 50,00,000*	0.10	0.10			
Others							
194F	***Payment on account of repurchase of unit by Mutual Fund or Unit Trust of India***		20	20		20	*Resident Indians & Domestic Companies – 20%* *Non Resident – 20% + Cess + Surcharge (If Applicable)*
194M	***Payment of commission, brokerage, contractual fee, professional fee to a resident person by an Individual or a HUF who are not liable to deduct TDS under section 194C, 194H, or 194J.***	*Rs.50,00,000*	5	5		20	*The threshold Limit of Rs.50,00,000 payment of commission, brokerage, contractual fee, professional fee to a resident person by an Individual or a HUF who are not liable to deduct 5% TDS by the resident Indians and Domestic Companies respectively.*
194N	***Cash withdrawal***		2	2		20	
194P	**Deduction of tax in case of specified senior citizen.**						Note No. 1

Notes:

1. Following conditions needs to be satisfied-
   1. The senior citizen is resident in India and of the age of 75 years or more during the previous year;
   2. He has only pension income and may also have interest income from the same bank (specified bank – to be notified by the CG) in which he is receiving his pension income;
   3. He shall be required to furnish a declaration to the specified bank. The declaration shall be containing such particulars, in such form and verified in such manner, as may be prescribed.
   4. Specified bank would be required to compute income after giving effect to deductions allowable under Chapter VI-A and rebate under section 87A and deduct Income Tax on the base of rates in force.
2. Once all done, there will not be requirement of furnishing return of income for this assessment year
3. In case of non-availability of PAN :- TDS shall be at the rate specified or rate of 20% whichever is higher
   TDS on Non-Filers of ITR under section 206AB (applicable w.e.f 01.07.2021)

In case of PAN	**Higher of the following rates :-** **1. Twice the rate specified in the relevant provision of the Act; or** **2. Twice the rate or rates in force; or** **3. At the rate of 5%**
In case of non-availability of PAN	Higher of the following rates :- 1. Twice the rate specified in the relevant provision of the Act; or 2. Twice the rate or rates in force; or 3. At the rate of twenty percent

TCS Rates for Financial Year 2021-22(A.Y.2022-23)

TCS RATES			
Section	**Nature of Payment**	**Threshold Limit of Payment**	**Rates**
206C (1)	Sale of Scrap		1.00%
206C (1)	Sale of Tendu Leaves		5.00%
206C (1)	Sale of Timber obtained under a forest lease or other mode		2.50%
206C (1)	Sale of Any other forest produce not being a Timber or tendu leaves		2.50%
206C (1)	Sale of Alcoholic Liquor for Human Consumption		1.00%
206C	Sale of Indian made for foreign liquor		1.00%
206C (1C)	Lease or license of Parking lot, toll plaza, mining & quarrying		2.00%
206C (1)	Sale of Minerals,coal lignite, Iron ore by a trader		1.00%
206C (1F)	Sale Value of Motor vehicle whether in cheque or in any other mode of receipt	Exceeding Rs. 10 Lakhs per transaction	1.00%
206C	Foreign remittance through Liberalised Remittance Scheme (LRS) of exceeding Rs. 7 Lakh in a		0.5% (applicable from 01.10.2020)

	financial year if remitted amount is out of loan obtained from any financial institution u/s 80E for the purpose of pursuing any education		
206C	Foreign remittance through Liberalised Remittance Scheme (LRS) of exceeding Rs. 7 Lakh in any other case		5% (applicable from 01.10.2020)
206C	Selling of overseas tour package		5% (applicable from 01.10.2020)
206C	Sale of goods (Other than those being exported) of value exceeding Rs. 50 Lakh in previous year whose total Sale/ gross receipts / turnover from business exceeds Rs 10 Crore during immediately financial year	Rs. 50 Lakhs	0.1% (applicable from 01.10.2020)

Note: -	
In case of non-availability of PAN :-	Higher of the following rates :- 1. Twice the rate specified in the relevant provision of the Act; or 2. At the rate of 5%
TCS on Non-Filers of ITR under section 206CCA (applicable w.e.f 01.07.2021)	Higher of the following rates :- 1. Twice the rate specified in the relevant provision of the Act; or 2. At the rate of 5%

(B) DATE TO DEPOSIT
[DEPOSIT]

TAX DEDCUTED AT SOURCE (TDS)	TAX COLLECTED AT SOURCE (TCS)
7th day of next month (30th April for TDS deducted in the month of March)	7th day of next month (for TCS collected in the month of March – 7th April)

(C) PAYMENT OF TAX, QUARTERLY STATEMENT AND FURNISHING TDS/TCS CERTIFICATE
[DECLARE]
Financial Year 2020-21

Quarter ending on	Due Date for Quarterly TDS Statement in Form no. 24Q/26Q/27Q	Due Date for Quarterly TCS Statement in Form no. 27EQ
30th June,2020	31St March,2021	31St March,2021
30th September,2020	31st March,2021	31St March,2021
31st December,2020	31st January, 2021	15th January, 2021
31st March,2021	15th July, 2021	15th May, 2021

INTRODUCTION

TEDIOUS TDS

When I used to be in school our teacher wanted to disciple us, so he made following monitors:-

a. Uniform monitor

b. Discipline monitor

c. Project monitor

And all these were headed by class monitor

One fine day somebody whispered this idea into government's ears and he said, "why to struggle to discipline each and every assessee, why not make different monitors for different classes like Salary Monitor Section 192, Interest Monitor Section 194A, Non Resident Monitor Section 195 and the list goes on.

1. Introduction

The provisions of TDS (Tax Deducted at Source) and TCS (Tax Collected at Source) are Governed by Chapter XVII (Section 190 to 206CCA) of the Income Tax Act, 1961 ("the Act"). TDS/ TCS is one kind of advance tax from payee point of view. Payee will get tax credit for the same. TDS/TCS is a mechanism built up to trace taxpayers in the Country and collection of tax in smooth manner. Payer is under an obligation to comply with TDS provisions. Currently, the Income-tax Act has 36 provisions which require deduction of tax at source from various payments. The number has been increased to 38 by the Finance Act, 2021. If all these provisions are projected in a table, they may look like a Periodic Table of Element. There are a few transactions or payments which may be covered under multiple provisions and to find out the relevant provision, the deductor will have to solve a complex theorem.

2. Time

The government uses TDS as a tool to collect tax in order to minimize tax evasion by taxing the income (partially or wholly) at the time it is generated rather than at a later date.

3. Applicability

TDS is applicable on the various incomes such as salaries, interest received, commission received etc. TDS is not applicable to all incomes and persons for all transactions.

4. Rates of TDS

Different rates of TDS have been prescribed by the Income Tax Act for different payments and different categories of recipients.

5. Concept

TDS works on the concept that every person making specified type of payments to any person shall deduct tax at the rates prescribed in the Income Tax Act at source and deposit the same into the government's account.

6. Deductor

The person who is making the payment is responsible for deducting the tax and depositing the same with government. This person is known as '**deductor**'.

7. Deductee

The person who receives the payment after the tax deduction is called '**deductee**'.

8. FORM 26 AS

The deductor is duty bound to deposit the TDS with the government. Once deposited this amount reflects in the Form 26AS of individual deductees on the TRACES website linked to the income tax department's e-filing website. **Form 26AS** is a statement which shows the amount of tax deducted and deposited in a person's name/PAN. An individual can, therefore, view/check the TDS from incomes paid to him by viewing this Form 26AS. Each deductor is also duty bound to issue a TDS certificate certifying how much amount is deducted in the deductee's name and deposited with the Government.

In simple words , we can say that every deducter is acting on behalf of the government to collect taxes and to deposit the same with the Government. In the Finance Act,2021,the deducter has been given In short every deductor is now a “Monitor” who has not only to catch the culprits but also to punish them; and if he fails to punish them, he will be punished with short deduction, interest penalty and prosecution!

Due date of payment of TDS/ TCS

TDS is required to be paid to the credit of Central Government on monthly basis.

• TDS payment needs to be done on or before 7th day of succeeding month e.g., TDS need to be paid on or before 7th June 2021 for whatever TDS/TCS deducted/ collected during of May 2021.

• For calculating interest liability for late payment of TDS, only Bank Tender date (i.e., clearance date) appearing on payment challan is considered and not the date when the payment is initiated by the company.

• If there is a holiday on due date i.e., 7th day, then payment must be done before the due date.

• The due date for invoice booking during March is 30th April.

TDS only applicable above a threshold level

One must remember that TDS on specified transactions is deducted only when the value of payment is above the specified threshold level. No TDS will be deducted if the value does not cross the specified level. Different threshold levels are specified by the Income Tax department for different payments such as salaries, interest received etc. For example, there will be no TDS on the total interest received on FD/FDs from a single bank if it is less than Rs 10,000 in a year from that bank. Also**,** GST should be excluded while deducting TDS. [Circular No.23/2017 dated 19th July 2017].

TDS: Advantages and Disadvantages

While TDS is reputed to be a powerful instrument for addressing the problem of tax evasion, as a tax administration mechanism, it has both advantages as well as disadvantages. Any TDS system, unless it is designed to minimise these inherent flaws, will fail to facilitate tax administration or improve revenue collection ostensibly. Therefore, familiarisation with both advantages and disadvantages of TDS systems is important lest the expected benefits from TDS functions be lost.

Advantages

1. The intent of the law is more conveniently fulfilled since the tax flow should parallel income flow more closely than without TDS.
2. Since tax is collected prior to receiving income, compliance is improved and enforcement costs are reduced.
3. Because of improved cash-flow, government's day-to-day borrowing needs are eased.
4. Among those within the TDS net, the tax burden is shared more equitably.
5. Since tax collection responsibility is shared by the collection agents, tax officers can devote more time and resources to other functions of tax administration such as expanding the universe of taxpayers, audit and scrutiny, and so on.

Disadvantages

1. The inequity implied in the inability to capture potentially large taxpayers in the TDS net, and the relatively lower success in withholding tax on certain forms of income of lower income brackets.
2. For a developing country in particular, the inadequacy of trained tax administrators may be further deepened by the addition of the TDS function needing extra staff, infrastructure and processing particularly to check bogus tax deduction claims, short deductions and short payments to the exchequer.
3. The possible excessive burden on the taxpayers in terms of obtaining certificates TDS from deductors, filling additional (and often complicated) tax forms, followed by long waits for refunds.
4. The burden on deductors implied by the free service of withholding carried out for the tax department even when it may be difficult to obtain the necessary withholding forms and even while they may be subject to two scrutinies (audits) by the tax department: the usual as well as an additional one specifically for TDS.

Section 192 TDS on Salary

192. *(1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year.*

(1A) Without prejudice to the provisions contained in sub-section (1), the person responsible for paying any income in the nature of a perquisite which is not provided for by way of monetary payment, referred to in clause (2) of section 17, may pay, at his option, tax on the whole or part of such income without making any deduction therefrom at the time when such tax was otherwise deductible under the provisions of sub-section (1).

(1B) For the purpose of paying tax under sub-section (1A), tax shall be determined at the average of income-tax computed on the basis of the rates in force for the financial year, on the income chargeable under the head "Salaries" including the income referred to in sub-section (1A), and the tax so payable shall be construed as if it were, a tax deductible at source, from the income under the head "Salaries" as per the provisions of sub-section (1), and shall be subject to the provisions of this Chapter.

[(1C) For the purposes of deducting or paying tax under sub-section (1) or sub-section (1A), as the case may be, a person, being an eligible start-up referred to in section 80-IAC, responsible for paying any income to the assessee being perquisite of the nature specified in clause (vi) of sub-section (2) of section 17 in any previous year relevant to the assessment year, beginning on or after the 1st day of April, 2021, shall deduct or pay, as the case may be, tax on such income within fourteen days—

(i) after the expiry of forty-eight months from the end of the relevant assessment year; or

(ii) from the date of the sale of such specified security or sweat equity share by the assessee; or

(iii) from the date of the assessee ceasing to be the employee of the person,

whichever is the earliest, on the basis of rates in force for the financial year in which the said specified security or sweat equity share is allotted or transferred.]

(2) Where, during the financial year, an assessee is employed simultaneously under more than one employer, or where he has held successively employment under more than one employer, he may furnish to the person responsible for making the payment referred to in sub-section (1) (being one of the said employers as the assessee may, having regard to the circumstances of his case, choose), such details of the income under the head "Salaries" due or received by him from

the other employer or employers, the tax deducted at source therefrom and such other particulars, in such form and verified in such manner as may be prescribed, and thereupon the person responsible for making the payment referred to above shall take into account the details so furnished for the purposes of making the deduction under sub-section (1).

(2A) Where the assessee, being a Government servant or an employee in a company, co-operative society, local authority, university, institution, association or body is entitled to the relief under sub-section (1) of section 89, he may furnish to the person responsible for making the payment referred to in sub-section (1), such particulars, in such form and verified in such manner as may be prescribed, and thereupon the person responsible as aforesaid shall compute the relief on the basis of such particulars and take it into account in making the deduction under sub-section (1).

Explanation.—For the purposes of this sub-section, "University" means a University established or incorporated by or under a Central, State or Provincial Act, and includes an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956), to be a University for the purposes of that Act.

(2B) Where an assessee who receives any income chargeable under the head "Salaries" has, in addition, any income chargeable under any other head of income (not being a loss under any such head other than the loss under the head "Income from house property") for the same financial year, he may send to the person responsible for making the payment referred to in sub-section (1) the particulars of—

(a) such other income and of any tax deducted thereon under any other provision of this Chapter;

(b) the loss, if any, under the head "Income from house property",

in such form and verified in such manner as may be prescribed, and thereupon the person responsible as aforesaid shall take—

(i) such other income and tax, if any, deducted thereon; and

(ii) the loss, if any, under the head "Income from house property",

also into account for the purposes of making the deduction under sub-section (1) :

***Provided** that this sub-section shall not in any case have the effect of reducing the tax deductible except where the loss under the head "Income from house property" has been taken into account, from income under the head "Salaries" below the amount that would be so deductible if the other income and the tax deducted thereon had not been taken into account.*

(2C) A person responsible for paying any income chargeable under the head "Salaries" shall furnish to the person to whom such payment is made a statement giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof in such form and manner as may be prescribed.

(2D) The person responsible for making the payment referred to in sub-section (1) shall, for the purposes of estimating income of the assessee or computing tax deductible under sub-section (1), obtain from the assessee the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in such form and manner as may be prescribed.

(3) The person responsible for making the payment referred to in sub-section (1) or sub-section (1A) or sub-section (2) or sub-section (2A) or sub-section (2B) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

(4) The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, in cases where sub-rule (1) of rule 9 of Part A of the Fourth Schedule applies, at the time an accumulated balance due to an employee is paid, make therefrom the deduction provided in rule 10 of Part A of the Fourth Schedule.

[37](5) Where any contribution made by an employer, including interest on such contributions, if any, in an approved superannuation fund is paid to the employee, tax on the amount so paid shall be deducted by the trustees of the fund to the extent provided in rule 6 of Part B of the Fourth Schedule.

(6) For the purposes of deduction of tax on salary payable in foreign currency, the value in rupees of such salary shall be calculated at the prescribed rate of exchange.

1) Who is responsible to deduct tax u/s 192?

All persons paying salary are responsible to deduct TDS on income chargeable under the head "Salary". In other words none of the payer of Salary is excluded; Individual, HUF, Partnership firms, companies, cooperative societies, Trust and other artificial judicial persons have to deduct TDS on Salary.

2) Who is the payee?

Any employee having taxable income under the head "Salary" shall be treated as payee for TDS u/s 192. For application of Sec. 192, there must exist employer employee relationship between payer and payee.

For e.g

I. Director of company is not employee and as such no TDS u/s 192 on any amount paid to director

II. Part-Time Directors of the company, visiting professors & visiting doctors are covered u/s 194J and not covered u/s 192. The whole-time directors are employees of the company and hence TDS is deductible u/s 192.

Case laws:

- **PCIT(TDS) vs. National Health & Education Society [2019] 4112 ITR 404 (Bom):**
  Where there existed no relationship of employer and employee between assessee and Hospital Based Consultants (HBCs), provisions of section 192 would not be applicable
- **CIT(TDS) vs. Asian Heart Institute and Research Centre (P.) Ltd. [2019] 104 taxmann.com 125 (Bom):**
  Where assessee trust, running a hospital, shared receipts from patients with consultant doctors in fixed ratio, TDS was to be deducted under section 194J as such payment was professional fees

3) Is TDS deducted on Salary Paid to Non-resident Employees?

Yes, TDS to be deducted by employers on payments made to non-resident employee u/s 192.

4) When to Deduct TDS under Section 192?

Liability to deduct tax at source shall arise at the time of actual payment of salary and not at the time of accrual. Thus, the employer is not required to deduct tax at source when salary has not been paid but merely credited to the account of the employee. Although, as per section 15 the salary is taxable in the hands of the employee either at the time of actual receipt or at the time of accrual whichever is earlier.

5) Threshold limit

No tax is required to be deducted at source unless the estimated salary exceeds the maximum amount not chargeable to tax. No TDS u/s 192 if tax payable (after taking rebate u/s.87A) by the employee is **NIL.**

6) Rate of TDS under Section 192

Under section 192 there is no specific TDS rate. TDS to be deducted is calculated according to the tax slabs and rates thereof applicable to the financial year for which the salary is paid. The requirement of deducting TDS u/s 192 shall be worked out, after considering all the exemptions, allowances, rebate and deductions which are available to the employee.

TDS u/s 192 has to be deducted at the average of income tax computed on the basis of rates in force during the financial year. The total tax to be deducted on the estimated income of the employee for the relevant financial year is divided by the number of months of his employment. The amount so arrived is the monthly deduction of tax at source.

However, if the employee does not have PAN No., TDS shall be deducted **20%** without including Health & Education Cess, if the normal tax rate in this case is less than 20%.

7) Whether employer is also liable to deduct TDS on non-monetary perquisites?

Section 192 (1)(a) provides an option to employer to pay tax on behalf of employee on non-monetary perquisites, however it is not mandatory for the employer to pay so. For the purpose of paying tax by employer u/s 1(a) tax shall be determined at the average rate of income tax in force on the income chargeable under the head salaries including the value of non-monetary perquisites.

ILLUSTRATION*:*

Estimated Salary of an employee below 60 years of age is ₹8.00 lakh out of which ₹50,000/- is on account of non-monetary perquisites and the employer opts to pay the tax on such perquisites as per the provisions of the Income Tax Act, 1961. Total salary income chargeable to Tax is ₹8.00 lakhs. Employers are required to deduct perquisite tax for the A.Y. 2022-23 computed as follows:

Income Chargeable under the head "Salaries" inclusive of all perquisites	**₹8,00,000.00**
Tax on Total Salary (including Health & Education Cess)	₹65,000
Average Rate of Tax [(₹65000/₹800000) * 100]	8.125%
Tax payable on ₹50,000/ = (8.125% of ₹50,000)	₹4062.5
Amount required to be deposited each month	₹339(i.e.₹4062.5/12)

The tax so paid by the employer shall be deemed to be TDS made from the salary of the employee. This TDS contributed by employer is exempt in the hands of employee.

8) Excess or shortfall of TDS during the financial year

- 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)**(ITANo.78/2007)

- If TDS u/s.192 is not deducted in equal installments intentionally (not bonafide) 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.)** (ITANo.420/Ahd/2011)

9) Relief When Salary Is Paid In Arrears Or Advance –Section 89(1)

•Advance Salary and Arrears of salary-Taxable in the year of receipt.
•However, eligible to claim relief u/s. 89(1).
•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(1) 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(1) cannot be claimed**.

10) Other relevant points related to section 192

a. Every person responsible for paying salary income is first required to estimate the income chargeable under the head "Salaries". The value of the perquisites provided by the employers to their employees shall be determined under rule 3 and shall be taken in to account while estimating income under the head "Salaries".

b. Further, any income falling under section 10 (income which do not form part of total income) shall not be included in computing the income from salaries for the purpose of section 192 of the Act.

c. The person responsible for making payments shall also take into consideration amount deductible under section 80C, 80CCC, 80CCD, 80CCG, 80D, 80DD, 80DDB, 80E, 80EE, 80G, 80GG, 80GGA, 80TTA and 80U.

d. Section 192(2A) provides that deduction of tax at source is to be made after allowing relief u/s 89(1) and after considering the tax on perquisites agreed to be borne by employer.

e. Section 192(2D) further casts responsibility on the person responsible for paying any income chargeable under the head 'Salaries' to obtain from the assessee (employee), the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner for the purposes of –
   i. estimating income of the assessee (employee); or
   ii. computing tax deductible under section 192(1).

f. Section 192(2) provides that where an assessee is employed under more than one employer, then the assessee (employee) may choose the employer for deduction of tax at source. Thereupon, that employer shall deduct tax at source from the aggregate salary of an employee. For this purpose, employee is required to furnish details of salary due or received by him from other employer(s) in Form No. 12B to one of the employers (as chosen by him).

g. As per the provision of section 192(3), the person responsible for paying the salary may, at the time of deducting tax at source, increase or reduce the amount to be deducted for the purpose of adjusting any excess or deficiency arising out of previous deduction or non-deduction.

➢ 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 A.Y. 2020-21, if assessee owns more than 2 Self occupied houses, such other house or houses shall be deemed to have been let out and its annual value shall be computed in accordance with Section 23(1). [Prior to A.Y. 2020-21, if the assessee owned 2 houses, the other house had to be deemed to have been let out]
- Assessee can claim deduction of interest paid on borrowed capital u/s 24(b) of the Act.
- 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

h. In case if the employee furnishes to his employer, the details regarding his other incomes, investments, eligible deductions etc., then for the purpose of TDS u/s 192, the employer shall be bound to consider such information.

11) Tax to be deducted from other incomes of the employee

- The employee may declare his other incomes to the employer for the purpose of tax deduction at source under this section.
- If he wants to declare, then particulars of
  - **i.** other income (not being a loss) and tax deducted thereon
  - **ii.** the loss under the head "Income from house property"

  shall be submitted to the employer in a prescribed form and verified in a prescribed manner.
- On receipt of the same, employer shall deduct tax under section 192 after taking into account the other income.
- However, this shall not have the effect of reducing the tax deductible (except where the loss under the head "Income from house property" has been taken into account) from salary income below the amount that would be so deductible if the other income and tax deducted thereon had not been taken into account.

12) Whether benefit of lower deduction or no deduction of TDS is available u/s 192?

Yes. The assessee to whom the salary is payable may make an application in Form No. 13 to the Assessing Officer and if the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income tax at any lower rate or no deduction of income-tax, he may be given such certificate as may be appropriate.
W.E.F. 1-4-2010, as per section 206AA(4), no certificate under section 197 shall be granted unless the application made in Form No.13 under that section contains the Permanent Account Number of the applicant.

13) Whether provisions of Section 192 shall also apply to salary paid by non-resident employer to a non-resident employee for services rendered in India?

Yes, Provisions of Sec. 192 shall apply if the salary was paid for services rendered in India even though the employers as well as employee were non-resident and the payment is made outside India.

14) 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:

a) Exemption of 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

b) 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 bonafide 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 273 B- State Bank of India Vs. ACIT (TDS) [2019] 063 ITD 440 (Jaipur Trib.)

c) LTC Cash Voucher Scheme For Private Sector

Due to the Covid 19 Pandemic as the employees travel plans was disrupted, which means many were unable to claim their LTA. In view of this, on 29th October, 2020, this scheme of LTC Cash Voucher was extended to Private sector employees. In case of Private sector employees, the LTA eligibility is a partof their compensation and is being claimed by employees to avail tax benefit.

To avail this benefit the private sector employees need to fulfill the below mentioned conditions:

1. Employees to spend three times the amount of deemed LTC fare on the purchase ofgoods/services which are having a GST rate of 12% or above.
2. The maximum amount allowed will be to the extent of 3 times their LTA eligibility. The eligibility limit per person for claiming this benefit is Rs.36,000/
3. The family members should consist of Spouse, children, Parents and dependent brothers and sisters.
4. The amount must be spent during the period from 12th October 2020 to 31st March 2021.
5. The payments made towards purchase of such goods / services must be made through online mode which includes cheque, UPI , debit/credit card or net banking, etc.
6. Employees are required to submit the copy of the invoices to the employer which should contain GST Number of the Vendor and GST amount.

7. Employee should not have opted under new tax regime u/s 115BAC.

In case if the amount spent is less than the 3 times of the LTA eligibility, then the exemption will be allowed proportionately. If an employee chooses not to avail this scheme, can be able to claim the LTAcarry over benefit in the next financial year in addition to the eligibility for next block. The current LTA block period ends on 31st Dec 2021.

d) 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

e) Donations under sec. 80G – The donations are made under sec 80G (other than to a notified charitable institute) then the employer should allow that donation while calculating tax deductible. When donation is made to a notified public then the employer should not allow that donation while calculating tax deductible.

f) Other deductions- Deductions under sections 80C, 80CCC, 80CCD, 80CCG, 80D, 80DD, 80DDB, 80E, 80EE, 80GG, 80GGA, 80TTA, 80U.

15) TDS on Salary to Partners

Salary or remuneration paid to partners is not taxable in hands of partners as Salary but it is considered as income from business. No employer employee relationship exists between partner and partnership firm.

Explanation 2 of section 15 says that “Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as “salary”.

Therefore no TDS is to be deducted on salary paid to the partners

Some person argues that this provision only applies on salary paid to active partners Salary paid to inactive partners is not allowed as deduction to the partnership firm under section 40(b) but still it’s a business income for the partner. The above explanation doesn’t differentiate between active or inactive partner and thus salary paid to any partner is not liable to TDS.

16) TDS on Pension and Family Pension

There is difference between "Pension" and "Family Pension" for the purposes of Income Tax Act, 1961. The Income Tax treatment for "Pension" and "Family Pension" is different.

It is pertinent to point out that "Pension" received from a former employer is taxable under the head "Salary" since Section 17 of Income Tax Act specifically lays down in clause (ii) of sub-section (1) that "any annuity or pension" is included in "salary". Therefore, "Pension" is taxed in the same way as "Salary" is taxed.

On the other hand, "Family Pension" is taxed under Section 56 as "Income from Other Sources".

Now, Section 192 of Income Tax Act makes any income chargeable under the head "Salary" subject to Tax Deduction at Source (TDS). Since pension is also considered as Salary, therefore TDS is deducted on pension also, wherever applicable as per the prevailing rates.

On the other hand, Family Pension is not "Salary" but an "Income from Other Sources". Therefore, TDS cannot be deducted on Family Pension under Section 192. Moreover, there is no other Section in the Income Tax Act which makes it mandatory to deduct TDS on family pension. Therefore, there is no TDS deduction on Family Pension.

In case of pensioners of a 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]

17) 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 'Salary'. 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-1) DATED 22.05.1967
- Salary received by Chief Minister or a minister is taxable under the head 'Salary' – Lalu Prasad Vs. CIT (Patna) (2009) 316 ITR 186
- Daily allowance, Constituency allowance, etc. received by MP/MLA is exempt u/s 10(17).

18) TDS under section 192 and Section 115BAC

Tax rates u/s 115 BAC 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 115 BAC

- A person can opt under Section 115 BAC
  - 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 115 BAC.
- 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 115 BAC.

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

•**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 Section115BAC.
•Intimations 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 Section115BAC.
•**CBDT Circular No.C1 of 2020 dated April 13, 2020**

Landmark Judgements of Supreme Court

Tips collected by Hotel from customers and paid to employees did not amount to salary from employer and hence employer was not liable to deduct tax at source on such payments under section 192

Assessees were engaged in business of owning, operating, and managing hotels. Surveys conducted at business premises of assessees revealed that they had been paying tips to their employees but not deducting taxes thereon. Assessing Officer treated them as assessees-in-default under section 201(1). As per section 192(1), person responsible for paying an employee an amount which was to be regarded as employee's income was only employer. Further section 15(b) which talks about salaries provides that there should be a vested right in an employee to claim any salary from an employer. Tips being purely voluntary amounts that may or may not be paid by customers for services rendered to them would not, fall within section 15(b). Since tips were received by employer in a fiduciary capacity as trustee for payments that were received from customers which they disbursed to their employees for service rendered to customer, there was, therefore, no reference to contract of employment when these amounts were paid by employer to employee. Contract of employment not being proximate cause for receipt of tips by employee from a customer, same would be outside dragnet of sections 15 and 17. Thus tips so disbursed to employees could not be chargeable to tax as salary and thus employer was not liable to deduct tax at source from such payments. [In favour of assessee] (Related Assessment years : 2003-04 to 2005-06 - *[ITC Ltd. v. CIT (2016) 286 CTR 126 : 239 Taxman 372 : 68 taxmann.com 323 (SC)]*

Remuneration received by judges of High Court and Supreme Court is salary and it is taxable as income under head of 'Salaries'

The assessee was a Judge of the High Court. He filed his return for the assessment year 1978-79 on the basis that the salary that he received as a Judge was not liable to tax. The contention was rejected by the authorities below. On appeal to the Supreme Court :

Undoubtedly, prior to the amendment of articles 125 and 221 of the Constitution from 01.04.1986, Parliament could not have legislated on Judges salaries, but it could not be concluded there from that the salary of Judge was not taxable under the Act. The subject of the salary of a High Court and the Supreme Court Judges and the subject of tax on income are altogether different. The salary of a Judge of a High Court and the Supreme Court is income and is taxable by Act of Parliament in just the same manner as is the income of any other citizen. It is true that High Court and the Supreme Court Judges have no employer, but that, ipso facto, does not mean that they do not receive salaries. They are constitutional functionaries. Articles 125 and 221 of the Constitution deal with the 'salaries' of Supreme Court and High Court Judges respectively and expressly state that what the Judges receive are 'salaries'. Therefore, it was not possible to hold that what judges receive are not salaries or that such salaries are not taxable as income under the head of salary. in favour of Revenue (Related Assessment year : 1978-79) - *[Justice Deoki Nandan Agarwala v. Union of India (1999) 237 ITR 872 : 154 CTR 85 (SC)]*

Section 192A — TDS on Payment of Accumulated Balance Due to an Employee

192A. *Notwithstanding anything contained in this Act, the trustees of the Employees' Provident Fund Scheme, 1952, framed under section 5 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or any person authorised under the scheme to make payment of accumulated balance due to employees, shall, in a case where the accumulated balance due to an employee participating in a recognised provident fund is includible in his total income owing to the provisions of rule 8 of Part A of the Fourth Schedule not being applicable, at the time of payment of the accumulated balance due to the employee, deduct income-tax thereon at the rate of ten per cent :*

Provided *that no deduction under this section shall be made where the amount of such payment or, as the case may be, the aggregate amount of such payment to the payee is less than fifty thousand rupees:*

Provided further *that any person entitled to receive any amount on which tax is deductible under this section shall furnish his Permanent Account Number to the person responsible for deducting such tax, failing which tax shall be deducted at the maximum marginal rate.*

1) Who is responsible to deduct tax u/s 192A?

Tax is to be deducted by the trustees of Employees' Provident Fund Scheme, 1952 or any other person authorized under the scheme to make payment of accumulated sum to employees.

2) When to Deduct TDS under Section 192A?

Tax is deductible at the time of payment.

3) Which amount is subject to tax deduction?

a. Tax is deductible from accumulated lump sum payment when the employee has not rendered continuous service of 5 years (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.). RPF is exempt in the hands of the employee if the employee has resigned before completion of 5

years but he joins another employer who maintains recognized provident fund, and provident fund money with the current employer is transferred to the new employer.

b. Out of the lump sum payment, tax deduction shall be made on that portion of payment which is includible in the total income of the employee. Thus, tax deduction shall be made as under:-

Component of lump sum payment	Is this component taxable in the hands of employee not completing continuous 5 years of service?	Is it subject to TDS if other conditions of section 192A are satisfied?
Employer's Contribution	Taxable under head "Salary"	Subject to TDS
Interest on Employer's Contribution	Taxable under head "Salary"	Subject to TDS
Employee's Contribution	Not Taxable	No TDS required
Interest on Employee's Contribution	Taxable under head "Other Sources"	Subject to TDS

4) Threshold limit

Tax is not deductible where aggregate amount of taxable component of lump sum payment is less than **₹50,000.**

5) Rate of TDS under Section 192A

Tax is deductible at the rate of 10 per cent of taxable component of lump sum payment. However, if employee fails to furnish PAN, then tax shall be deducted at maximum marginal rate.

6) No deduction of tax at source

No deduction of tax is to be made if the recipient of income furnishes a declaration in writing in duplicate in prescribed form [Form No. 15G/15H].

7) 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

Section 193 — TDS from Interest on Securities

193. *The person responsible for paying to a resident any income by way of interest on securities shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax at the rates in force on the amount of the interest payable :*

Provided *that no tax shall be deducted from—*

(i) any interest payable on 4¼ per cent National Defence Bonds, 1972, where the bonds are held by an individual, not being a non-resident; or

(ia) any interest payable to an individual on 4¼ per cent National Defence Loan, 1968, or 4¾ per cent National Defence Loan, 1972; or

(ib) any interest payable on National Development Bonds; or

(ii) [***]

(iia) any interest payable on 7-Year National Savings Certificates (IV Issue); or

(iib) any interest payable on such debentures, issued by any institution or authority, or any public sector company, or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(iii) any interest payable on 6½ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, where the Bonds are held by an individual not being a non-resident, and the holder thereof makes a declaration in writing before the person responsible for paying the interest that the total nominal value of the 6½ per cent Gold Bonds, 1977, or, as the case may be, the 7 per cent Gold Bonds, 1980, held by him (including such bonds, if any, held on his behalf by any other person) did not in either case exceed ten thousand rupees at any time during the period to which the interest relates;

(iiia) [***]

(iv) any interest payable on any security of the Central Government or a State Government:

Provided *that nothing contained in this clause shall apply to the interest exceeding rupees ten thousand payable on 8% Savings (Taxable) Bonds, 2003 or 7.75% Savings (Taxable) Bonds, 2018 during the financial year;*

(v) any interest payable to an individual or a Hindu undivided family, who is resident in India, on any debenture issued by a company in which the public are substantially interested, if—

(a) the amount of interest or, as the case may be, the aggregate amount of such interest paid or likely to be paid on such debenture during the financial year by the company to such individual or Hindu undivided family does not exceed five thousand rupees; and

(b) such interest is paid by the company by an account payee cheque;

(vi) any interest payable to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), in respect of any securities owned by it or in which it has full beneficial interest; or

(vii) any interest payable to the General Insurance Corporation of India (hereafter in this clause referred to as the Corporation) or to any of the four companies (hereafter in this clause referred to as such company), formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), in respect of any securities owned by the Corporation or such company or in which the Corporation or such company has full beneficial interest; or

(viii) any interest payable to any other insurer in respect of any securities owned by it or in which it has full beneficial interest;

(ix) any interest payable on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the rules made thereunder.

Explanation—For the purposes of this section, where any income by way of interest on securities is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

Explanation 2.—[Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.]

1) Who is responsible to deduct tax u/s 193?

Any person responsible for paying any interest on securities to a resident is required to deduct tax at source.

2) When to Deduct TDS under Section 193?

Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.

For this purpose, credit to “Interest payable account” or “Suspense account” or any other name shall be deemed to be a credit of such income to the account of the payee.

For this purpose, “payment” can be in cash or by issue of a cheque or draft or by any other mode.

3) Meaning of interest on securities

Section 2(28B) defines interest on securities. It means:

a) interest on any security of Central Government or State Government

b) interest on debentures or

c) interest on other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act.

4) Rate of TDS under Section 193

As per section 193 read with Part II of First Schedule of Finance Act, tax is to be deducted @ 10**%** (7.5% w.e.f. 14.05.2020 to 31.03.2021) from the amount of interest.

a) No surcharge, plus Health & Education Cess shall be added to the above rates. Hence, tax will be deducted at source at the basic rate.

b) As per section 206AA(1), if the permanent account number is not provided by the deductee, the tax shall be deducted at the higher of the following rates, namely:—

i. at the rates specified in the relevant provisions of the Act
ii. at the rate or rates in force
iii. at the rate of 20%.

c) Further, as per section 206AA(4), no certificate under section 197 for deduction of tax at Nil rate or lower rate shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.

d) Similarly, declaration under 15G/15H shall not be valid if it does not contain the permanent account number of the declarant. In case any declaration becomes invalid, the deductor shall deduct the tax @ 20%.

5) When No Tax shall be deducted U/s 193?

In the following cases tax is **not** to be deducted under section 193:

A. Interest payable to insurance companies, etc.:

Any interest payable to:—

i. Life Insurance Corporation of India;
ii. General Insurance Corporation of India or any of four companies formed under it;
iii. Any other insurer, in respect of any securities owned by them, or in which they have full beneficial interest.

B. Interest paid or credited by widely held company not exceeding ₹ 5,000:

No tax is to be deducted at source if the following conditions are satisfied:

i. if debentures are issued by a widely held company;
ii. such debentures may or may not be listed on a stock exchange in India;
iii. interest is paid/payable to an individual or HUF who is resident in India; and
iv. interest is paid by account payee cheque; and
v. the amount or the aggregate of the amounts of such interest paid or payable during the financial year does not exceed ₹ 5,000.

C. **Any interest payable on any security issued by a company, where such security is in dematerialized form and is listed on a recognized stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder.**

D. **Interest paid or credited on 8% saving (Taxable) Bonds 2003 issued by the Central Government provided the interest on such bonds does not exceed ₹ 10,000.**

E. **Where a self-declaration under Form No. 15G/15H is furnished by a particular person [Section 197A (1A), (1B) and (1C)]:**

A person, other than a company or firm may furnish a declaration in writing in duplicate in new Form No. 15G to the payer to the effect that there is no tax payable on his Total Income. In this case, the payer shall not deduct any tax at source.

F. **Any payment made to New Pension System Trust [Section 197A (1E)]:**

No deduction of tax shall be made from any payment to any person for, or on behalf of, the New Pension System Trust referred to in section 10(44).

G. **No deduction of tax from specified payment to notified institutions, association or body, etc. [Section 197A (1F)]:**

No deduction of tax shall be made from such specified payment to such institution, association or body or class of institutions, associations or bodies as may be notified by the Central Government in the Official Gazette, in this behalf. No tax shall be deducted at source from the payments of the nature specified under section 10(23DA) received by any securitization trust.

H. **Certain entities required to file return under section 139(4A) or 139(4C) [Rule 28AB]:**

As per rule 28AB certain entities who are required to file their return of income under section 139(4A) or 139(4C) may apply under Form No. 13 for no deduction of tax at source provided certain conditions are satisfied.

I. **Certain entities whose income is unconditionally exempt under section 10:**

In case of certain entities whose income is unconditionally exempt under section 10 and who are statutorily not required to file return under section 139 there will be no requirement for TDS since their income is in any way exempt.

Section 194 — TDS on payment of dividend

194. *The principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, shall, before making any payment [by any mode] in respect of any dividend or before making any distribution or payment to a shareholder, who is resident in India, of any dividend within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of section 2, deduct from the amount of such dividend, income-tax [at the rate of ten per cent] :*

Provided *that no such deduction shall be made in the case of a shareholder, being an individual, if—*

(a) the dividend is paid by the company by [any mode other than cash]; and

(b) the amount of such dividend or, as the case may be, the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during the financial year by the company to the shareholder, does not exceed [five thousand] rupees:

Provided further *that the provisions of this section shall not apply to such income credited or paid to—*

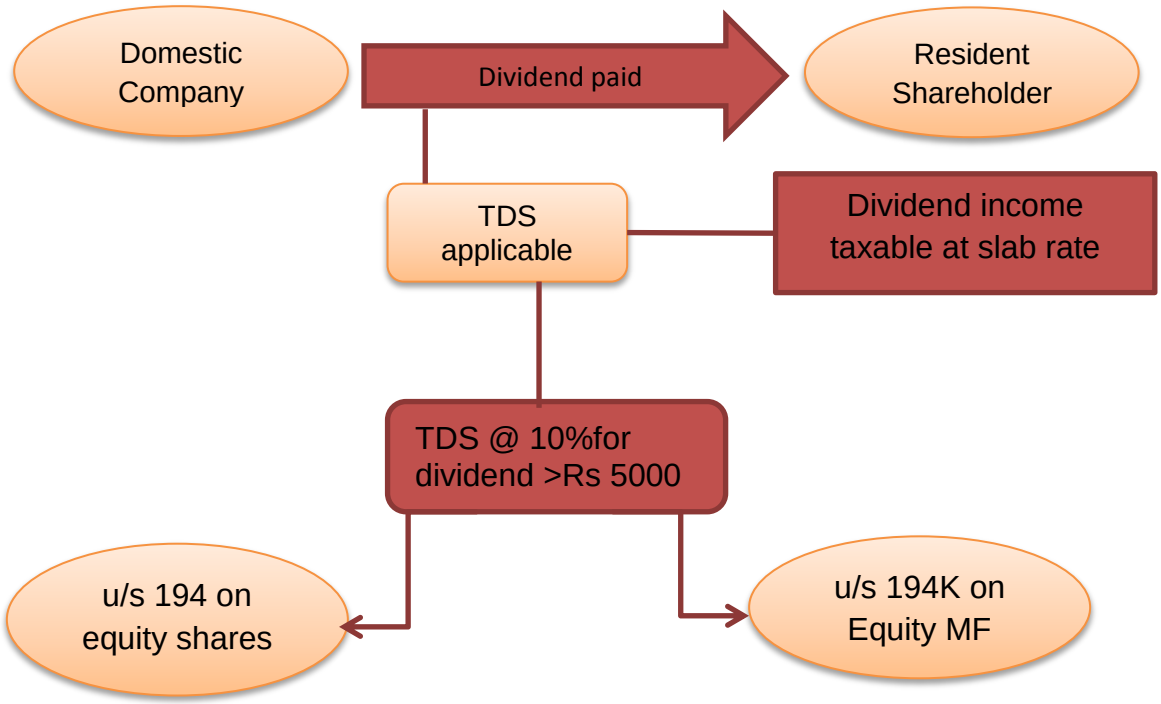
(a) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), in respect of any shares owned by it or in which it has full beneficial interest;

(b) the General Insurance Corporation of India (hereafter in this proviso referred to as the Corporation) or to any of the four companies (hereafter in this proviso referred to as such company), formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), in respect of any shares owned by the Corporation or such company or in which the Corporation or such company has full beneficial interest;

(c) any other insurer in respect of any shares owned by it or in which it has full beneficial interest;

(d) a "business trust", as defined in clause (13A) of section 2, by a special purpose vehicle referred to in the Explanation to clause (23FC) of section 10;

(e) any other person as may be notified by the Central Government in the Official Gazette in this behalf.]



1. Who is responsible to deduct tax u/s 194? The principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of any dividend (including dividends on preference shares) to a shareholder, who is resident in India, is required to deduct tax at source. Finance Act, 2021 added two additional categories

w.e.f 01.04.2021which will be exempted from deduction of tax source from dividends: - A business trust as defined in clause (13A) of section 2, by special purpose vehicle referred to in Explanation to clause (23FC) of Section 10 - any other person notified by the Central Government in the Official Gazette in this behalf

2. What is threshold limit u/s 194?

No deduction upto Rs**. 5000**, if dividend is paid by any mode, other than cash.

3.When to Deduct TDS under Section 194?

Such tax shall be deducted before making payment of dividend.

4.Rate of TDS under Section 194

Tax is to be deducted at the rate of 10% (7.5% w.e.f. 14.05.2020 to 31.03.2021). If the recipient of income doesn't furnish his PAN to deductor, then TDS is to be deducted at the rate of 20%.

5.Other Points-

Only Individual Shareholder can furnish Form No. 15G or 15H, as the case maybe.

- No deduction on dividend paid to LIC, GIC or any other connected insurer.

Summary

Particular	Rate of TDS	Remarks
Resident Shareholders	• 10% (presently reduced to 7.5% until 31st March 2021) if dividend amount exceeds INR 5,000 • 20% in absence of PAN	• No TDS if Form 15G/15H submitted • No TDS for specified Insurance companies/Mutual Funds and AIF
Non Resident Shareholders (Other than FPI)	20% plus applicable surcharge and cess or rates as per DTAA whichever is beneficial	• Surcharge restricted to maximum 15% • TRC to be obtained with declaration for PPT, beneficial ownership, No PE/POEM in India
FPI	20% plus applicable surcharge and cess	
Compliance Requirements		• Filing TDS Return and Issuing TDS Certificates • Form 15CA in case of all payment to Non Residents • CA Certificate in Form 15CB in case payment to Non Residents exceeds INR 5 Lakhs

Section 194A — TDS on Interest (other than Interest on Securities)

194A. *(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :*

Provided *that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed [one crore rupees in case of business or fifty lakh rupees in case of profession] during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.]*

Explanation.—For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(2) [Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.]

(3) The provisions of sub-section (1) shall not apply—

(i) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person referred to in sub-section (1) to the account of, or to, the payee, does not exceed—

(a) [forty] thousand rupees, where the payer is a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution, referred to in section 51 of that Act);

(b) [forty] thousand rupees, where the payer is a co-operative society engaged in carrying on the business of banking;

(c) [forty] thousand rupees, on any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf; and

(d) five thousand rupees in any other case:

Provided *that in respect of the income credited or paid in respect of—*

(a) time deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); or

(b) time deposits with a co-operative society engaged in carrying on the business of banking;

(c) deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;

the aforesaid amount shall be computed with reference to the income credited or paid by a branch of the banking company or the co-operative society or the public company, as the case may be :

***Provided further** that the amount referred to in the first proviso shall be computed with reference to the income credited or paid by the banking company or the co-operative society or the public company, as the case may be, where such banking company or the co-operative society or the public company has adopted core banking solutions:*

***Provided also** that in case of payee being a senior citizen, the provisions of sub-clause (a), sub-clause (b), and sub-clause (c) shall have effect as if for the words "[forty] thousand rupees", the words "fifty thousand rupees" had been substituted.*

Explanation.[***]

(ii) [***]

(iii) to such income credited or paid to—

(a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or

(b) any financial corporation established by or under a Central, State or Provincial Act, or

(c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or

(d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or

(e) any company or co-operative society carrying on the business of insurance, or

*(f) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette: [**Provided** that no notification under this sub-clause shall be issued on or after the 1st day of April, 2020;]*

(iv) to such income credited or paid by a firm to a partner of the firm;

(v) to such income credited or paid by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society;

Explanation.—For the purposes of this clause, "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(vi) to such income credited or paid in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf in the Official Gazette;

(vii) to such income credited or paid in respect of deposits (other than time deposits made on or after the 1st day of July, 1995) with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(viia) to such income credited or paid in respect of,—

(a) deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank;

(b) deposits (other than time deposits made on or after the 1st day of July, 1995) with a co-operative society, other than a co-operative society or bank referred to in sub-clause (a), engaged in carrying on the business of banking;

(viii) to such income credited or paid by the Central Government under any provision of this Act or the Indian Income-tax Act, 1922 (11 of 1922), or the Estate Duty Act, 1953 (34 of 1953), or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Super Profits Tax Act, 1963 (14 of 1963), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), or the Interest-tax Act, 1974 (45 of 1974);

(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;

(ixa) to such income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed fifty thousand rupees;

(x) to such income which is paid or payable by an infrastructure capital company or infrastructure capital fund or [infrastructure debt fund or] a public sector company or scheduled bank in relation to a zero coupon bond issued on or after the 1st day of June, 2005 by such company or fund or public sector company or scheduled bank;

(xi) to any income by way of interest referred to in clause (23FC) of section 10:

*[**Provided** that a co-operative society referred to in clause (v) or clause (viia) shall be liable to deduct income-tax in accordance with the provisions of sub-section (1), if—*

(a) the total sales, gross receipts or turnover of the co-operative society exceeds fifty crore rupees during the financial year immediately preceding the financial year in which the interest referred to in sub-section (1) is credited or paid; and

(b) the amount of interest, or the aggregate of the amounts of such interest, credited or paid, or is likely to be credited or paid, during the financial year is more than fifty thousand rupees in case of payee being a senior citizen and forty thousand rupees in any other case.]

Explanation 1.—For the purposes of clauses (i), (vii) and (viia), "time deposits" means deposits (including recurring deposits) repayable on the expiry of fixed periods.

[Explanation 2.—For the purposes of this sub-section, "senior citizen" means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year.]

(4) The person responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

(5) The Central Government may, by notification in the Official Gazette, provide that the deduction of tax shall not be made or shall be made at such lower rate, from such payment to such person or class of persons, as may be specified in the said notification.

Explanation.—[Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.]

1) Who is responsible for tax deduction (payer)?

Following persons are responsible to deduct tax at source on interest other than interest on securities to a resident person –

- Any person, other than Individual or HUF; or
- An individual or a HUF, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed Rs. 1 crore in case of business or Rs. 50 lakh in case of profession during the financial year immediately preceding the financial year in which such interest is credited or paid.

Note: No tax shall be deducted at source if during the financial year, if interest payable by the payer to payee does not exceed ₹ 5,000. Therefore if any partnership firm, LLP, Company, AOP, society pays interest exceeding the threshold limit, it is required to deduct TDS.

LIABILITY TO DEDUCT TAX AT SOURCE BY INDIVIDUAL AND HUF

- **Liability to deduct tax at source under section 194A, 194C, 194H, 194I and 194J was first introduced by the Finance Act, 2002 by inserting various proviso to the respective sections.**

  Proviso to section 194A(1), Proviso to Section 194C(1), Second Proviso to 194H(1), Second Proviso to Section 194I(1), Second Proviso to 194J(1) were inserted by Finance Act, 2002 w.e.f. 01-06-2002

  "*Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under section 44AB (a)/(b) during the financial year immediately preceding the financial year in which such sum is credited or paid, shall be liable to deduct income-tax under this section.*"

- **Finance Act, 2020 amended all the above sections w.e.f. 01-04-2020, and after amendment, above proviso reads as under:**

  Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the one crore rupees in case of business or fifty lakh rupees in case of profession ***[Substituted by FA, 2020 w.e.f. 01.04.2020]*** *during the financial year immediately preceding the financial year in which such sum is credited or paid, shall be liable to deduct income-tax under this section.*

- **Impact of Amendment**

  - The effect of above amendment is that individual or Hindu undivided family are required to deduct tax at source under section 194A, 194C, 194H, 194I and 194J if total sales, gross receipts or turnover exceed

    (A) one crore rupees in case of business or

    (B) fifty lakh rupees in case of profession

    during the financial year immediately preceding the financial year in such sum is credited or paid.

  - As a result, the individual or HUF carrying on business and whose total sales, gross receipts or turnover exceeds Rs. 1 crore but does not exceed Rs. 2 crore in preceding financial year and opted for section 44AD of the Act are now liable to deduct tax at source under section 194A, 194C, 194H, 194I and 194J w.e.f. 01-04-2020.

  - Similarly, the individual or HUF engaged in plying, hiring and leasing of goods carriages and whose total sales, gross receipts or turnover exceeds Rs. 1 crore in preceding financial year and opted for section 44AE of the Act are now liable to deduct tax at source under section 194A, 194C, 194H, 194I and 194J w.e.f. 01-04-2020.

ILLUSTRATION-

Mr. A, proprietor of AB enterprises made turnover of ₹ 150 lakhs during previous year 2019-20, his turnover for the year ended 31-03-2021 was ₹ 85 lakhs. Decide whether he is liable to deduct tax at source under section 194A in PY 2020-21?

Since Mr. A's turnover exceeds ₹ 100 lakhs in the immediately preceding financial year i.e. FY 2019-20, he is liable to deduct tax at source under section 194A in the previous year 2020-21, irrespective of his turnover being less than ₹ 100 lakhs in the Financial year 2020-21. He will not be required to deduct tax for the FY 2021-22 as his turnover for the FY 2020-21 is below ₹ 100 Lakhs.

2) Who is the recipient?

A resident person

3) What is the nature of payment covered?

Interest other than interest on securities

4) When is tax to be deducted?

At the time of credit or payment, whichever is earlier.

5) What is the rate of tax deduction?

i) 10% (7.5% w.e.f. 14.05.2020 to 31.03.2021)
ii) 20% (if no PAN is furnished)
No surcharge, plus Health & Education Cess shall be added to the above rates. Hence, tax will be deducted at source at the basic rate.

6) When TDS on Interest (other than Interest on Securities) under section 194A not deductible?

TDS under section 194A is not deductible where the aggregate amount of interest credited/paid (or likely to be credited/paid) during the FY does not exceed the amount given below:

Payer	Threshold limit (₹) (w.e.f. 01.04.2019)	Threshold limit (₹) for Senior Citizen (w.e.f. 01.04.2018)
Banking company (on time deposit)	40,000	50,000
Co-operative society carrying on banking business (on time deposit)	40,000	50,000
Co-operative whose turnover exceeds Rs 50 Crores during the previous financial year	40,000	50,000
Post office (on SCSS)	40,000	50,000
Any other person	5,000	5,000

Time deposits shall include recurring deposits within its scope for the purposes of deduction of tax under section 194A (w.e.f. 01.06.2015). However, the existing threshold limit of ₹40,000 for non-deduction of tax shall also be applicable in case of interest payment on recurring deposits to safeguard interests of small depositors.

7) How threshold limit on interest income under section 194A computed?

Until 31st May, 2015, the threshold limit was computed with reference to the income credited/paid by a branch of the banking company or co-operative society, as applicable.

W.e.f. 1st June 2015, the computation of interest income for the purposes of deduction of tax under section 194A should be made with reference to the income credited/paid by the banking company or the co-operative society or the public company (i.e. all branches) which has adopted core banking solutions.

8) When provisions of under section 194A are not applicable?

Tax u/s 194A is not deductible in the following cases:

1) The aggregate amount of interest credited/paid (or likely to be credited/paid) during the FY does not exceed the specified threshold limit as given in the above table.

2) Interest is paid/credited to any banking company, co-operative bank, public financial institutions, LIC, UTI, an insurance company, co-operative society carrying the business of insurance or notified institutions.

3) Interest is paid/credited by the firm to its partner(s).

ILLUSTRATION-

M/s. X & Co., partnership firm, pays ₹ 15000 as interest on capital to partner Mr. R, a resident in India and ₹ 25000 as interest on capital to partner Mr. N, a non-resident.

In such a case, as per section 194A tax is not to be deducted from interest paid or payable by a partnership firm to its partner, who is resident in India. Hence, the firm need not deduct tax at source from payment of interest to its partner, Mr. R.
However, payment of interest by the firm to its non-resident partner is not governed by Section 194A. The same is governed by Section 195, which requires deduction of tax at source from interest paid or payable to any non-resident.

4) Interest is paid/ credited in respect of deposits under the schemes of Post Office (Time Deposits), Post Office (Recurring Deposits), Post Office Monthly Income A/c, Kisan Vikas Patra, NSC VIII Issue, Indira Vikas Patra. Interest on PPF account is exempt u/s 10. Hence no TDS required.

5) Interest paid/credited in respect of deposits (by non-members) with a primary agricultural credit society or primary credit society or co-operative land mortgage bank or co-operative land development bank. In order to extend the scope of this section to interest paid by large co-operative society, it is amended to provide that a co-operative society referred to in sub section (3)(v) or (viia) shall be liable to deduct income-tax, if-

a. the total sales, gross receipts or turnover of the co-operative society exceeds ₹ 50 crore during the financial year immediately preceding the financial year in which the interest is credited or paid; and
b. the amount of interest, or the aggregate of the amount of such interest, credited or paid, or is likely to be credited or paid, during the financial year is more than ₹ 50,000 in case of payee being a senior citizen and ₹ 40,000, in any other case.

6). Interest paid/credited by Central Govt. under different provisions of Direct Taxes.

7). Interest paid/credited on compensation awarded by the Motor Accidents Claim Tribunal if the aggregate amount does not exceed ₹50,000. Threshold limit of ₹50,000 is applicable separately where interest is to be shared by 2 or more claimants. (w.e.f. 1st June 2015, deduction of tax u/s 194A from interest payment on the compensation amount awarded by the Motor Accident Claim Tribunal shall be made only at the time of payment, if the amount of such payment or aggregate amount of such payments during the FY exceeds ₹50,000.)

8). Income paid/payable by an infrastructure capital company/fund or public sector company in relation to zero coupon bonds.
9). Interest paid/payable by an Offshore Banking Unit on deposits made (or borrowings) on/after Apr 1, 2005, by a person who is resident but not ordinarily resident in India
10). Interest referred to in section 10(23FC)*.

***Section 10(23FC)-**

Any income of a business trust by way of interest received or receivable from special purpose vehicle.

Explanation.—*For the purposes of this clause, the expression "special purpose vehicle" means an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be*

11). Amendment w.e.f 01.04.2021 – Tax shall not be deducted on income in relation to zero coupon bond issued by infrastructure debt fund.

9) When is tax deducted at nil rate or lower rate?

A. <u>When a declaration is submitted in form 15G/15H u/s 197A</u>:

If a declaration is submitted u/s 197A by the recipient to the payer along with his/her PAN, then no tax is deductible .

B. <u>When an application is submitted in form 13 u/s 197</u>:

As per provisions of section 197, the recipient can apply in **form no.13** to the Assessing Officer to get a certificate authorizing the payer to deduct tax at lower rate (or deduct no tax, if certain conditions are satisfied). There is no time limit for application and it can be filed at any time before actual deduction of tax. If the recipient does not have PAN, he cannot apply for the certificate.

The certificate shall be issued, directly to the person responsible for paying income, on a plain paper, under an advice to the applicant. The certificate cannot be issued with retrospective effect. The recipient may furnish copy of such certificate to the person responsible for paying the income for lower/no deduction of tax at source.

10) TDS under Section 194A on Interest payable by consignors to their commission agents

Tax is to be deducted at source even where such interest is paid under an arrangement whereby the commission agent retains for himself/herself the interest due to him/her at the time of paying to the consignor the moneys due to him/her on account of the consignment.

11) TDS under Section 194A on Cheque discounting charges

Provisions of sec 194A are not applicable in case of cheque discounting charges as such charges are different from interest payments.

12) Whether Tax shall be deducted under section 194A of the act on interest on Fixed Deposits made in the name of Registrar General of Court?

- **The CBDT has made following observation in its Circular No. 23/2015, dated 28-12-2915 on the above issue:**
  In the case of **UCO Bank in Writ Petition No. 3563 of 2012** (available on NJRS at 2014) and **CM No. 7517/2012** vide judgment dated 11/11/2014, the Hon'ble Delhi High Court has held that the provisions of section 194A do not apply to fixed deposits made in the name of

Registrar General of the Court on the directions of the Court during the pendency of proceedings before the Court. In such cases, till the Court passes the appropriate orders in the matter, it is not known who the beneficiary of the fixed deposits will be. Amount and year of receipt is also unascertainable. The Hon'ble High Court thus held that the person who is ultimately granted the funds would be determined by orders that are passed subsequently. At that stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient. The High Court has also quashed Circular No. 8 of 2011**.**

- **Clarification from CBDT:**

  The Board has accepted the aforesaid judgment. Accordingly, it is clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.

13. In whose name TDS shall be made when interest income accrued to minor child and both the parents have deceased?

The Principal Director General of Income tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A (5), specified that in case of minors where both the parents have deceased, TDS on the interest income accrued to the minor is required to be deducted and reported against PAN of the minor child unless a declaration is filed under Rule 37BA (2) that credit for tax deducted has to be given to another person.

14. Whether a partnership firm is liable to deduct Tax on a sum paid as interest on loan borrowed from Indian branch of a foreign bank?

Section 194A provides that tax is not required to be deducted at source from interest credited or paid to any banking company to which the **Banking Regulations Act, 1949** applies. A foreign bank operating in India is governed by the **Banking Regulations Act, 1949.** Therefore, a partnership firm is not required to deduct tax at source from interest on loan payable to Indian Branch of the Foreign Bank.

15. Whether Tax is required to be deducted on interest on deposits made under Capital Gains Accounts Scheme,1988 where depositor has deceased?

TDS on interest on deposits made under Capital Gains Accounts Scheme, 1988 where depositor has deceased-Notification No. 8/2017, dated 13-09-2017 It has been brought to the notice of CBDT that in cases of deceased depositor who has made deposits under the Capital Gains Accounts Scheme, 1988; the banks are deducting TDS on the interest earned on such

deposits in the hands of the deceased depositor and issuing TDS certificates in the name of the deceased depositor, which is not in accordance with the law. Ideally in such type of situations, the TDS certificate on the interest income for and upto the period of death of the depositor is required to be issued on the PAN of the deceased depositor and for the period after death of the depositor is required to be issued on the PAN of the legal heir. Under Rule 31A(5) of the Income-tax Rules, 1962, the DGIT (Systems) is authorised to specify the procedures, formats and standards for the purposes of furnishing and verification of the statements or claim for refund in Form 26B and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements or claim for refund in Form 26B in the manner so specified. In exercise of the powers delegated by the CBDT under Rule 31A(5), the PDGIT (Systems) has specified that in case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased:

(i) TDS on the interest income accrued for and upto the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and

(ii) TDS on the interest income accrued for the period after death of the depositor is required to be deducted and reported against PAN of the legal heir, unless a declaration is filed under Rule 37BA(2) to that effect.

16. Whether Tax is required to be deducted where interest is paid for delayed payments of trade liability?

Interest paid for delayed payments of trade liability is out of ambit of section 2(28A).

2(28A) *"interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised ;*

From the aforesaid provisions of section 2(28A) of the Act, it may be seen that '*Interest*' contemplated thereunder, is payable in respect of '*Moneys borrowed*' or '*Debt incurred*'.

In support of our query we can also submit the following arguments-

(i) As per section 61 of the Sale of Goods Act, 1930, the interest payable for the delay in payment of sale consideration of the goods sold, will be of the nature of **damages** or **special damages** and obviously, the same will not fall within the purview of the definition of '*Interest*', as contemplated under section 2(28A) of the Act and accordingly, no tax will be deductible at source under Chapter XVII-B of the Act, in respect thereof.

Besides, in case of suit filed by the seller of goods, the interest payable for the delay in the payment of sale consideration of the goods, will form part of the *judgement-debt*, which is not liable to TDS, under the provisions of Chapter XVII-B of the Act.

(ii) The interest payable by the purchaser for delay in payment of purchase consideration of goods, will partake the nature and character of purchase consideration in the hands of the purchaser. This view is supported by the judgement of Bombay High Court, in the case of *CIT Vs Vidyut Corporation [2010] 324 ITR 221 (Bom).*

Further, no tax is deductible at source under Chapter XVII-B of the Act, in respect of payment by way of purchase consideration of goods on the part of the purchaser thereof. Therefore, no tax will be deductible at source, in respect of the aforesaid interest payable by the purchaser for delay in payment of purchase consideration of goods.

(iii) Besides, interest payable for delay in payment of purchase consideration, in respect of a capital asset, being part of purchase consideration of the capital asset, will not be liable to TDS, under the provisions of Chapter XVII-B of the Act.

On the same analogy, the interest payable by the purchaser for delay in payment of purchase consideration of goods will also not be liable to TDS, under the provisions of Chapter XVII-B of the Act.

(iv) Further, in the light of the judgement of the Mumbai Bench of the Tribunal, in the case of *Central Bank of India Vs JCIT [2006] 284 ITR (AT) 240 (Mum),* the debt incurred, if at all, in respect of sale / purchase consideration of goods, will be quite different from a debt created between the lender and borrower of money.

Therefore, the debt incurred in respect of the sale / purchase consideration of goods, will not fall within the purview of the expression, '*Debt incurred'*, as contemplated under section 2(28A) of the Act.

Section 194B — TDS on winnings from Lottery, Game Shows, and Puzzle etc.

194B. *The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort in an amount exceeding ten thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force :*

Provided *that in a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.*

1) Who is responsible to deduct tax u/s 194B?

The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle, card game and other game of any sort in an amount exceeding ₹ 10,000 shall, deduct income-tax thereon at the rates in force.

Therefore, no tax is to be deducted where the amount of winning from each lottery, crossword puzzle, card game, etc. does not exceed ₹ 10,000.

Provided that If the winning is wholly in kind or it is partly in kind & partly in cash and the cash balance is not sufficient enough to meet the TDS liabilities, then Payer shall release the prize only if either-

1. He has collected the amount equivalent to TDS amount from the payee.
2. He insists the payee to make the payment of TDS on his own & submit the proof to the payer.

2) When to Deduct TDS from winning from Lottery, Card Games etc. u/s 194B?

- At the time of payment of such income.
- Where lottery or prize money, etc. is paid in installments, the deduction of tax is to be made at the time of actual payment of each such installment.
- No Deduction/Expenditure is allowed from such Income.
- No deduction under section 80C or 80D or any other deduction/allowance is allowed from such income.

3) Rate of TDS under Section 194B

Rate of TDS is 30%.

No surcharge and Health & Education Cess shall be added. Hence, TDS shall be deductible at basic rates.

ILLUSTRATION-

A T.V. channel pays ₹ 8 lakh as prize money to the winner of a quiz programme, "Kaun banega Crorepati"? Whether T.V. channel is responsible to deduct tax at source on the prize money so distributed?

The prize money so distributed falls within the meaning of "winning from any card game and other game of any sort" and therefore, under section 194B, the person responsible for paying the same, shall at the time of payment; deduct tax at 30% provided prize money exceeds ₹ 10,000.

Considering the above, T.V. channel is responsible to deduct tax at source on the prize money so distributed under section 194B of the Act.

4) No TDS on Bonus or Commission payable to Lottery Agents

If out of winning amount of lottery, etc., any bonus or commission is paid/payable to lottery agents or sellers of lottery tickets, or sales made by them, no income tax is to be deducted for that amount paid and tax will therefore be deducted after deducting such bonus and commission.

Example-

Mr. M wins a lottery price of ₹ 1,10,000. A sum of ₹ 6,000 is deducted for payment to the lottery agent. Tax will be deducted on ₹ 1,04,000 after allowing bonus/ commission paid to agent.

5) Points to be noted:

- If prize is given partly in cash and partly in kind then tax on whole prize (i.e. aggregate of cash and value of prize in kind) shall be deducted from the cash prize.
- If prize is given in kind only (or cash prize is not sufficient), then payer should ensure that tax has been paid on such income before releasing such prize.
- Where a certain percentage has to be forgone either in favour of Government or an agency conducting lotteries, then such portion is not subject to deduction of tax at source.
- Where an agent receives the prize money on unsold ticket or becomes entitled to an unclaimed prize, it shall form part of his business income and therefore not liable for tax deduction u/s 194B

• If prize money is paid in installments, then tax shall be deducted at the time of payment of each installment.
• Tax shall be deducted on payment of commission, etc. to the lottery agent u/s 194G and not u/s 194B.

Section 194BB — TDS on Winning from Horse Races

194BB. *Any person, being a bookmaker or a person to whom a licence has been granted by the Government under any law for the time being in force for horse racing in any race course or for arranging for wagering or betting in any race course, who is responsible for paying to any person any income by way of winnings from any horse race in an amount exceeding ten thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force.*

1) Who is responsible to deduct tax u/s 194BB?

Any person, who is responsible for paying to any person any income by way of winnings from any horse race an amount exceeding ₹10,000 shall deduct income-tax at the rates in force. Any person here means a book maker or a person to whom a license has been granted by the Government under any law for the time being in force for horse racing in any race course or for arranging for wagering or betting in any race course.

2) When to Deduct TDS under Section 194BB?

At the time of payment of such income.

3) Rate of TDS under Section 194BB

Rate of TDS is 30%.

No surcharge and Health & Education Cess shall be added. Hence, TDS shall be deductible at basic rates.

4) Is it possible to get the payment without Tax Deduction or with Lower Tax Deduction under this section?

Not Possible

Points to be noted

1. Any person, here means a book-maker or a person to whom a license has been granted by the Government for horse racing or arranging for wagering, betting in any race course.

2. Race-income other than horse races like camel races etc. is not covered by this section.

194B and 194BB

194B	194BB
Winning from lottery or crossword puzzle or card game and other game of any sort	Winning from horse race
30%	30%
Every person responsible for paying any person	Book maker or a person whom license has been issued by government for horse racing or for wagering
TDS shall be deductible if the amount exceeds Rs. 10,000	TDS shall be deductible if the amount exceeds Rs. 10,000
Liable to deduct the time of payment	Liable to deduct the time of payment
If the winning is wholly in kind or partly in kind, Then the available cash shall be used to pay the taxes first	

Section 194C — TDS on Payment to Contractor

194C. *(1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—*

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation, tax shall be deducted at source—

(i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed thirty thousand rupees :

Provided *that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds one lakh rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.*

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any

time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.

Explanation.—For the purposes of this section,—

(i) "specified person" shall mean,—

(a) the Central Government or any State Government; or

(b) any local authority; or

(c) any corporation established by or under a Central, State or Provincial Act; or

(d) any company; or

(e) any co-operative society; or

(f) any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

(g) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India; or

(h) any trust; or

(i) any university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or

(j) any Government of a foreign State or a foreign enterprise or any association or body established outside India; or

(k) any firm; or

(l) any person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, if such person,—

(A) does not fall under any of the preceding sub-clauses; and

(B) [has total sales, gross receipts or turnover from business or profession carried on by him exceeding one crore rupees in case of business or fifty lakh rupees in case of profession] during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor;

(ii) "goods carriage" shall have the meaning assigned to it in the Explanation to sub-section (7) of section 44AE;

(iii) "contract" shall include sub-contract;

(iv) "work" shall include—

(a) advertising;

(b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

(c) carriage of goods or passengers by any mode of transport other than by railways;

(d) catering;

[(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, being a person placed similarly in relation to such customer as is the person placed in relation to the assessee under the provisions contained in clause (b) of sub-section (2) of section 40A,]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].'

1) Who is responsible to deduct tax u/s 194C?

Any specified person responsible for paying any sum to any resident-contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract.

Following are the specified persons –

a. The Central Government or any State Government; or

b. Any local authority; or

c. Any corporation established by or under a Central, State or Provincial Act; or

d. Any company; or

e. Any co-operative society;

f. Any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

g. Any society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India; or

h. Any trust; or

i. Any University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University u/s 3 of the University Grants Commission Act, 1956; or

j. Any Government of a foreign State or a foreign enterprise or any association or body established outside India; or

k. Any firm; or

l. Individual or a HUF or an association of persons or a body of individuals (if not covered by aforesaid cases), has total sales, gross receipts or turnover from business or profession carried on by him exceeding ` 1 crore in case of business or ` 50 lakh in case of profession during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor.

Note: However, no individual or a HUF shall be liable to deduct income-tax where amount is credited or paid exclusively for personal purposes of such individual or any member of HUF.

2) When tax cannot be deducted

Case 1: When following conditions are satisfied then tax cannot be deducted:

i. Any sum credited or paid in pursuance of any contract, the consideration for which does not exceed ₹ 30,000; and
   Tax point: The limit of ₹ 30,000 is on individual contract.
ii. Where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year does not exceed ₹ 1,00,000

Case 2: When following conditions are satisfied then tax cannot be deducted:

a. Amount is paid or payable to a resident contractor during the course of plying, hiring or leasing goods carriage (here-in-after referred to as transport operator).
b. Such operator furnishes his Permanent Account Number (PAN) to the payer.
c. Where such contractor owns 10 or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his PAN to the person paying or crediting such sum.
Taxpoint: Tax is not required to be deducted even if amount of payment exceeds Rs. 1,00,000/-

a. When tax shall be deducted

At the time of payment or crediting the party, whichever is earlier.

Amount paid or credited during the financial year	TDS Applicability
Upto Rs. 30,000	No
More than Rs. 30,000 in a single transaction	Yes
More than Rs. 1,00,000 in aggregate	Yes

This can be explained using the following examples:

ILLUSTRATION -

	Situations	Whether TDS to be deducted
1.	Single contract of ₹ 30,000 in the year	No
2.	Two contracts of ₹ 30,000 each in the year	No
3.	Three contracts of ₹ 40,000 each in the year	Tax to be deducted on ₹1,20,000
4.	Single contract of ₹ 40,000 in the year	Yes
5.	Five contracts of ₹ 14000 each in the year	No
6.	Six contracts of ₹ 20000 each in the year	Tax to be deducted on ₹1,20,000
7.	Five contracts of ₹ 20,000 each in the year	No

ILLUSTRATION - AB Ltd has made following payments on various dates to CD Ltd. towards work done under different contracts

Contract Number	Date of Payment	Amount (₹)
1.	**05.05.2020**	**20000**
2.	**06.06.2020**	**15000**
3.	**08.08.2020**	**25000**
4.	**10.12.2020**	**25000**
5.	**29.01.2021**	**17000**

As per section 194C(5), tax has to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds 30,000 in a single payment or 1,00,000 in aggregate during the financial year.

Therefore, in the given case, even though the value of each individual contract does not exceed 30,000, the aggregate amount exceeds 1,00,000. Hence, tax is required to be deducted at source on the whole amount of 1,02,000 from the last payment of 17,000 towards Contract No.5 on account of which the aggregate amount exceeded 1,00,000.

b. Which works contract is covered under Section 194C?

Contract shall include sub-contract.

• "Work" shall include —

a. advertising;

b. broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

c. carriage of goods and passengers by any mode of transport other than by railways;

d. catering.

e. manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, being a person placed similarly in relation to such customer as is the person placed in relation to the assessee 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.

Where any sum is paid or credited for carrying out any work mentioned in (e), tax shall be deducted at source:

(iii) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(iv) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

c. Difference between Contract for Sale and Contract for Work

Contract for Sale – In case of contract for sale, the main object in contract is the transfer of property and the delivery of the possession of a movable property even though goods might have been manufactured as per the requirement and specification of the client. The article has an identifiable existence prior to its delivery to the purchaser, and the title of the property vests with the purchaser only upon delivery.

Contract for Work- The principal object of the contract is one of work and labour even though some material might have been used in the execution of the contract. In case of Contract for work, the product is brought into existence by applying work and labour and materials are consumed in execution of the work.

Amendment in the definition of "work"

- Supply of labour for works contract.
  Current definition of "work" includes a unit Manufacturing by using material purchased from such customer but excluded if material is not purchased directly from such customer.

- Some Assesses were using the escape clause of the section by getting the contract manufacturer to procure the raw material supplied through its **related parties**. As a result, a substantial amount of income was escaping the tax net.
- Definition of "work" has been amendment for the purpose of TDS under Section 194C. To provide that in a contract manufacturing, the raw material provided by the assessee or its associate shall fall within the purview of the 'work' under Section 194C.

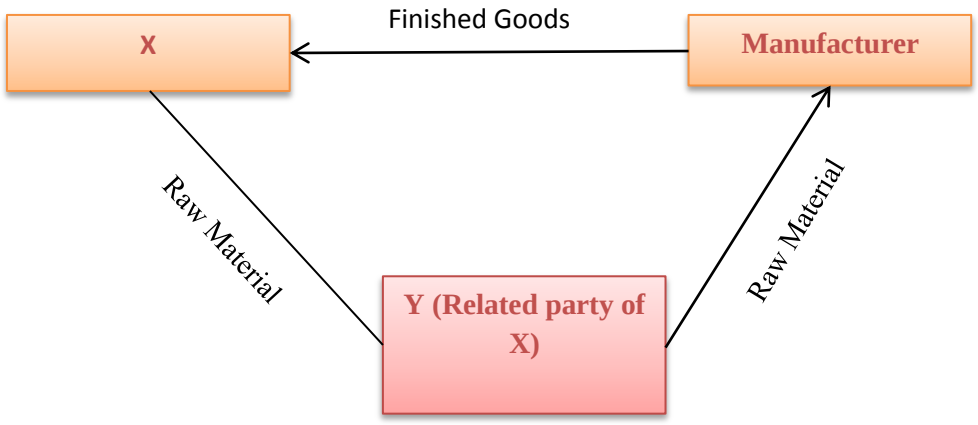


ILLUSTRATION - A LTD. has entered into a contract to buy shirts from B Ltd. as per the designs & specifications given to it. For this A Ltd. sold necessary raw material to B Ltd. For the previous year 2020-21, B Ltd. has raised following invoices on A ltd.

Date	Invoice no.	Qty.	Value of Raw Material	Labour Charges	Total Bill ₹
14/10/20	**1020/20-21**	**10,000**	-	-	**60,000**
31/11/20	**1255/20-21**	**20,000**	**80,000**	**45,000**	**1,25,000**

In present case A Ltd. is required to deduct TDS on ₹ 60000 for the invoice no. 1020/20-21 while in invoice no. 1255/20-21 TDS to be made on ₹45,000 only.

Important Notes - TDS on Payments to Contractors - u/s 194C

(i) The deduction of TDS from payments made to non-resident contractors will be governed by the provisions of section 195.

(ii) The deduction of TDS will be made from sums paid for carrying out any work or for supplying labour for carrying out any work. In other words, the section will apply only in relation to:

a. works contracts and

b. labour contracts and

C. will not cover contracts for the sale of goods.

(iii) Contracts for rendering professional services professionals cannot be regarded as contracts for carrying out any "work" and, accordingly, no deduction of income-tax is to be made from payments relating to such contracts u/s 194C. Separate provisions for fees for professional services have been made u/s 194].

➢ Case Law:

a) Malayalam Communications Ltd vs. Income tax Officer (TDS) [2019] 175 ITD 433 (Cochin - Trib.):

Where assessee made payments to various artists like singers, musicians etc. who participated in reality shows hosted by it as guests or judges, tax was required to be deducted at source u/s 194C.

b) Principal Commissioner of Income-tax (TDS) vs. National Health & Education Society [2019] 103 taxmann.com 286 (Bom):

Where contract between assessee and Call Center operator was in nature of a 'works contract' and not of a technical or professional nature, payments towards call centre expenses would be covered u/s 194C and not u/s 194J

c) CIT (TDS) vs. Saifee Hospital [2019] 104 taxmann.com 64 (Bom):

Where assessee-hospital made payments for services rendered towards maintenance of its medical equipments for proper and long functioning, it was required to deduction TDS u/s 194C not u/d 194J

d) CIT vs Dabur India Ltd.[2006] 283 ITR 197 (Delhi):

Purchase of printed packing material is a ‘Contract of Sale’ and not ‘Works contract’. Thus, not liable for TDS u/s 194C.

d.When to Deduct TDS under Section 194C?

Any person responsible for making payment to resident contractor/sub-contractor should deduct tax at the time of actual payment to the payee or at the time of credit to the accounts of the payee, whichever is earlier.

3) Rate of TDS under Section 194C

A. 1%, if payment is made to an Individual or HUF (0.75% w.e.f. 14.05.2020 to 31.03.2021)
B. 2%, if payment is made to any other person (1.5% w.e.f. 14.05.2020 to 31.03.2021)
The tax shall be deducted at these rates without including the surcharge, Health & Education Cess @ 4%.
However, if PAN of recipient is not available, then tax shall be deducted at the rate of 20% in accordance with the provisions of Section 206AA.

4) Section 194C- Payments to Transporters

Finance Act, 2015 make an amendment in the provisions of section 194C of the Act to expressly provide that the relaxation under sub-section (6) of section 194C of the Act from Non-Deduction of TDS on Payment made to a Transporter shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to a contractor who is engaged in the business of transport i.e. plying, hiring or leasing goods carriage and who is eligible to compute income as per the provisions of Section 44AE of the Act (i.e a person who is not owning more than 10 goods carriage at any time during the previous year) and who has also furnished a declaration to this effect along with his PAN.

From the above discussion, it is crystal clear that only a person who is engaged in the business of goods carriage is entitled for the benefit of no TDS under section 194C(6). To establish himself as a goods transporter he must own at least 1 truck else he will not qualify for the benefit so given under section 194C(6). When a person undertakes any transportation contract who does not own any truck or goods carriage and arranges trucks from other truck owners he cannot be said to be a person engaged in the business of transport i.e. plying, hiring or leasing goods carriage and he is also not eligible to compute income as per the provisions of section 44AE. In this case even if such a person gives a declaration of owning less than 10 trucks (zero number of trucks), he will not be given the benefit of non-deduction of TDS under section 194C(6).

Meaning of Goods Carriage:

Goods carriage means-

1. Any motor vehicle constructed or adapted for use solely for the carriage of goods;

Or

2. Any motor vehicle not so constructed or adapted, when used for the carriage of goods.

The term “motor vehicle” does not include vehicles:

(a) Having less than 4 wheels and
(b) With engine capacity not exceeding 25cc

(c) vehicles running on rails or
(d) Vehicles adapted for use in factory or in enclosed premises.

No TDS from transporter: If the amount of payment is being made to a contractor during the course of business of plying, hiring or leasing goods carriages, then no tax is required to be deducted from such payments if -
(a) such contractor owns ten or less goods carriages **at any time during the previous year** and
(b) furnishes a declaration to that effect along with his Permanent Account Number (PAN), to the payer.

1. There is no prescribed form or format of declaration. It can be given simply on the letter-head of the transporter with his seal and signature.

2. If the transporter does not furnish the PAN then no such declaration can be filed and tax shall be deducted at 20 per cent as per section 206AA.

3. This benefit of non-deduction of tax is only applicable for a transporter engaged in the business of plying, hiring or leasing goods carriages.

4. The relaxation under sub-section (6) of section 194C of the Act from non-deduction of tax shall only be applicable to the **payment in the nature of transport charges** (whether paid by a **person engaged in the business of transport or otherwise**) made to an contractor who is **engaged in the business of transport** i.e. plying, hiring or leasing goods carriage and who is eligible to compute income as per the provisions of section 44AE (i.e a person who is not owning more than 10 goods carriage at any time during the previous year) and who has also **furnished a declaration to this effect along with his PAN**. This is as per the amendment by Finance Act, 2015 w.e.f. 01.06.2015. (*Prior to this amendment, the benefit of non-deduction of TDS is applicable to all the transporters irrespective of their size.*)

5. The capacity of goods carriages have been made irrelevant.

6. The payer must furnish the details of payment to transporter in the quarterly statement of TDS to be filed with the income-tax department. [Sec. 194C(7). In this context following case laws are notable:

In **ACIT vs. Mr. Mohammed Suhail, Kurnool in ITA No. 1536/Hyd/2014**, order dated 13.02.2015, it was specifically held that the provisions of section 194C(6) are independent of section 194C(7), and just because there is violation of provisions of section 194C(7), disallowance under section 40(a)(ia) does not arise if the assessee complies with the provisions of section 194C(6). Further, in **Soma Rani Ghosh vs DCIT (ITA No. 1420 /KOL/ 2015), ITAT Kolkata** it was held that if the assessee complies with the provisions of Section 194C(6), no disallowance u/s 40(a)(ia) is

permissible, even there is violation of the provisions of Section 194C(7). This is applicable even if aggregate payment in a FY exceeds Rs.1,00,000

Payment for transportation of passengers: Agreement for hiring services of contractors for rendering transportation services for goods and passengers by buses, cars, sumos, utility vans, etc., where the assessee do not take the possession of those vehicles from the contractor and the responsibility of operating and maintaining the vehicles is of the contractor comes within the meaning of work and tax is deductible under section 194C and not under section 194-I. [***CIT vs. Reliance Engineering Associates (P.) Ltd. (Tax Appeal No. 2286 of 2010) Gujarat High Court***]

Note- The exemption u/s 194C(6) is available only to the contractors engaged in the business of business of plying, hiring or leasing goods carriages. This exemption is not applicable for passenger transport contractors

A co-operative society was formed by the truck owners and it entered into contract with company for transportation. The company deducted TDS u/s. 194C(2). Whether the company was liable to deduct TDS on amount paid to truck-owners in terms of Sec. 194C(2) ?

Sec. 194C(2) dictates that the deduction is required only in case of a sub-contract. The relationship between company and its members was not that of a contractor and a subcontractor. The society was nothing more than a conglomeration of truck operators themselves. There was no sub-contract

Detailed Analysis of Section 194C(6):

The real intention of the Law maker has been explained **vide circular no. 19/2015 dated 27.11.2015 issued by the Central Board of Direct Taxes**.

Para 43.5 of the circular reads as follows
"The condition of not owning more than ten goods carriages by the transporter is required to be fulfilled on the date on which the amount is credited or paid, whichever is earlier. In case a transporter does not own ten goods carriages on the date on which the amount is credited or paid but becomes owner of ten goods carriages later in the previous year, the payer shall not be required to deduct tax from the payment made to the transporter during the period of the previous year when he was not owning more than ten goods carriages. However, the tax shall be required to be deducted from the payment made during that part of the previous year during which the transporter owned more than ten goods carriages**."**

Para 43.4 of the Circular reads as follows
"Further, this exemption from TDS is applicable only in respect of transport charges received for plying, hiring or leasing of goods carriage (s) owned by the transporter. Therefore, if a person receives payment in respect of plying, hiring or leasing of goods carriage (s) which are not owned by him, he shall not be entitled to claim exemption from TDS in respect of these payments**."**

Declaration Under Section 194C (6)

To,
Name of the Payer
Address of the Payer

Declaration Under Section 194C (6) For Non–Deduction of TDS

I, Name of vehicles owner, Proprietor/ Partner/ Director of M/s Name of the company or firm and address of the company, (hereinafter "The Contractor") do hereby make the following **declaration as required by sub section (6) of section 194C of the Income Tax, 1961** for receiving payments from the payer without deduction of tax deduction at source (TDS).

1. That name of party authorized to make this declaration in the capacity as proprietor/ partner/ Director.
2. That the contractor is engaged by the payer for hiring or leasing of goods carriage for its business.
3. That I have not own more than ten goods carriage vehicles as on date.
4. That if the number of goods carriages owned by the contractor exceeds ten at any time during the previous year, the contractor shall forthwith, in writing intimate the prater of this fact.
5. That the Income Tax Permanent account number (PAN) of the contractor is PAN of Payee .A self-attested photocopy of the same is furnished to the payer along with this declaration.

Place: Sign

Dated: (Name of Declarant)

Verification

I _____do hereby verify that the contents of paragraphs one to five above are true to my own knowledge and belief and no part of it is false and noting material has been concealed in it.

Place: Sign

Dated: (Name of Declarant)

Payment to school bus contractors by schools- The assessee school enters into an agreement with the transport contractor for a simple activity of carrying its students and staff from their homes to the school and similarly from school to their homes. The assessee has no responsibility whatsoever regarding the buses to be utilized for that purpose which was the sole responsibility of the transport contractor. The transport contractor only was liable to keep and maintain the required number of buses for such activity at their own expenses with the specified standards. Therefore, the said contract is purely in the nature of services rendered by the transport contractor to the assessee. It was held that the provisions of Sec. 194-I could not be applied in this case and tax has to be deducted at source under the provisions of sec. 194C of the Act. [***ACIT (TDS) vs. Delhi Public School (ITA Nos. 4878 & 4879/DEL/2012), ITAT Delhi***]

TDS on freight charges shown separately on Invoice: The assessee had a responsibility of marketing the goods of M/s Tata Steel after purchasing the same from them. M/s Tata Steel raised invoice on the assessee as per the list price to be published by Tata Steel. The amount of freight was found to be shown separately in the invoices. It was held that it was a transaction of goods per se and cannot be segregated for the purposes of payment of expenses by way of freight. Therefore such freight amounts charged separately cannot be liable for deduction of tax at source under Section 194(C) of the Act since there is no agreement for carriage or transportation of goods between the assessee and the manufacturer. It forms a part of the cost of goods only. [CIT vs. Bhagwati Steels (Income Tax Appeal No.693 of 2009) (P&H)]

a. **Will Tax be Deductible at Source on the GST amount charged in the bill?**

   No tax is to be deducted on the "GST on services" component if separately charged in the bill. GST for these purposes shall include IGST, CGST, SGST and UTGST

b. **TDS at lower rate**

   According to Section 194C where the AO is satisfied that the total income of contractor or sub-contractor justifies the deduction of income-tax at any lower rate or no deduction of income-tax, as the case may be, the AO shall, on application made by the contractor or sub-contractor in this behalf give to him such certificate as may be appropriate.

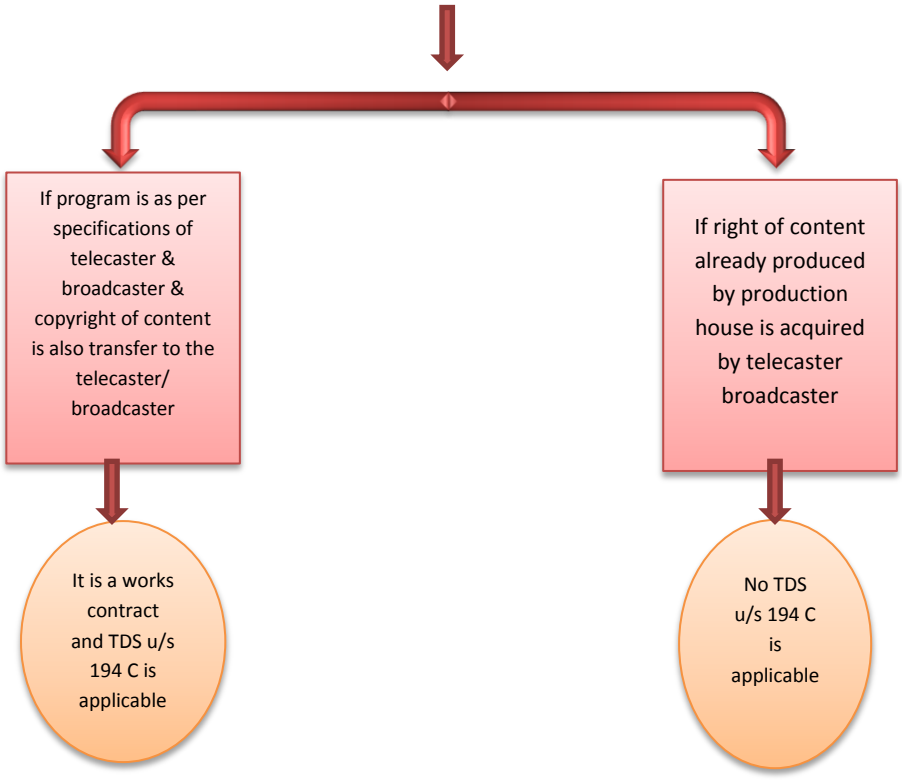
   ILLUSTRATION – A, an individual whose total sales in business during the year ending March 31, 2020 was ₹1.25 crore, paid ₹ 8 lakhs by cheque on February 15, 2021 to a contractor for construction of his premises in full and final settlement. No amount was credited earlier to the account of the contractor in the books of A.

   An individual is required to deduct tax at source if his turnover exceeds Rs. 1 Crore in the preceding financial year. In the given case, since receipts of Mr. A exceeds Rs. 1 Crore in

Financial year 31.03.2020 (Preceding year), he is required to deduct tax at source on payment made to contractor i.e., on ₹ 8 Lakhs at the applicable rate in force.

TDS on advertisement

- If payment is made by client to Advertisement agency, it is work contract and TDS u/s 194C is applicable.
- If payment is made by advertisement agency to TV channel/newspaper Company, no TDS u/s 194C.
- Payment made by TV channel/ Newspaper company to advertisement agency for booking/procuring/canvassing for advertisement, payment is treated as discount & not commission so TDS u/s 194H is not applicable.
- Payment made by TV channel/broadcassters to production house for production of content program



CASE LAWS:

Case Law : Payment towards annual maintenance contracts for lifts and air conditioners is not technical services-

Deduction of tax as contractor is justified payment cannot be treated as fees for technical services.[S. 194J, 260A]

Dismissing the appeal of the revenue the Court held that the assessee had made payments only in respect of maintenance contracts which related to minor repairs, replacement of some spare parts, greasing of machinery, etc. these services did not require any technical expertise, and therefore, could not be categorized as "technical services" as contemplated under section 194J and that the assessee had correctly deducted TDS u/s 194C which applied to payments made to contractors. No question of law arose.

(AY. 2000-01 to 2009-10) CIT v. Mumbai Metropolitan Regional Development Authority. (2018) 408 ITR 111/258 Taxman 164 / 304 CTR 776/ 170 DTR 97 (Bom.) (HC) Editorial: SLP of revenue is dsmssed due to low tax effect, CIT v. Mumbai Metropolitan Regional Development Authority (2019) 262 Taxman 451 (SC)

Case Law: Supply of sugar cane by farmers at the gate of the factory of the assessee was a part of the sale transaction and, therefore, the assessee was not liable to deduct TDS.

During year, assessee, a manufacturer of sugar, made payments to transporters and did not deduct TDS on said payments. Both Assessing Officer and Commissioner (Appeals) held that the assessee was liable to deduct TDS u/s 194C on the above payments.

Tribunal held that the assessee was not liable to deduct TDS on aforesaid payments

High Court held that in view of an earlier decision of Gujarat High Court made in Tax Appeal No. 211 of 2006, dated 1 12-2014, wherein it had been held that supply of sugar cane by farmers at gate of factory of assessee was a part of the sale transaction and, therefore, assessee was not liable to deduct TDS. Order of Tribunal deserved to be confirmed.

(AY. 2003-04) CIT v.Khedut Sahakari Khand Udyog Mandi Ltd. (2016) 76 taxmann.com 117 (Guj.) (HC) Editorial : SLP filed against order was dismissed, ACIT v. Khedut Sahakari Khand Udyog Mandi Ltd. (2016) 243 Taxman 522 (SC)

Case Law: Payments to Crane Trucks

The assessee hired two Diesel-hydraulic truck mounted mobile cranes on contract basis and deducted TDS on payment of hiring charges. A.O. treated crane fitted truck as plant and machinery and held provisions of Sec. 1941 were applicable. The Tribunal held since crane trucks which were

designed for special services falls within category of motor trucks and not machinery; hence provisions of Sec. 194C were applicable.
(AY.2008-09) Oil India Ltd. v. Dy. CIT (2013) 145 ITD 513/94 DTR 273 / 158 TTJ 1 (Jodh.) (Trib.)

Case Law: Specific provision would prevail over general one - Maintenance work -Provisions of section 194C is applicable and not section 194J.

Assessee-company had entered into contracts with various parties for maintenance work of its various equipment, installations, viz., air-conditioners, lifts, etc. Same being contractual maintenance work, assessee deducted TDS u/s 194C.
Revenue claimed that the above work was of technical nature and the same would be covered under section 194J and, thus, raised demand for short-falling tax deducted as well as for interest thereon u/s 207(1) and 201(1A).
Since the word 'work' is defined u/s 194C in an inclusive manner to include certain specified services, viz., advertising, catering, broadcasting and telecasting, etc. present type of maintenance work would also clearly fall within the ambit of 'work'.
Where it was clarified from bills issued by contractors that work like maintenance of equipment, cleaning, and checking of parts, etc. was of routine in nature and required less technical skills, the assessee had correctly deducted tax at source u/s 194C.
Where there are two provisions, i.e., section 194C and section 194J, the first one is general and the other is specific covering a particular transaction, the specific provision would prevail over a general one.
(AYS. 2007-08 to 2009-10) ITO .v. Bharat Sanchar Nigam Ltd. (2014) 64 SOT 138 / 45 taxmann.com 124 (Mum.) (Trib.)

Case Law: Contractors - Sub-Contractors - Society of truck owners - Members

Assessee, a cooperative society was formed by the truck owners and it entered into contracts with companies for transportation. The company deducted TDS @ 2%.
Thereafter the assessee-society paid the amount to the truck owners on the basis of work done after deducting a nominal amount for administrative expenses. The relationship between the assessee and its members was NOT that of a contractor or a sub-contractor. The assessee was formed as a matter of convenience. The society was nothing more than a conglomeration of truck operators themselves. The truck owners were virtual owners of the society even though the society was a distinct legal entity.

The society was formed only because the companies were not ready to deal with individual truck owners. The society did not even retain profits. There was no sub-contract hence, no liability to deduct tax at source.

Ambuja Darla Kashlog Mangu Transport Co-op. Society v. CIT (2010) 188 Taxman 134 / (2009) 227 CTR 299 / 31 DTR 49/188 Taxman 134 (HP) (High Court) TDS on Payments to Contractors - u/s 194C

Section 194D — TDS on Insurance Commission

194D. *Any person responsible for paying to a resident any income by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance) shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :*

Provided *that no deduction shall be made under this section from any such income credited or paid before the 1st day of June, 1973:*

Provided further *that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed fifteen thousand rupees.*

1) Who is responsible to deduct tax u/s 194D?

The tax must be deducted by the entity that makes the payment to the resident person, as remuneration/ rewards, by the way of commission or for the following purposes:

- Soliciting or obtaining insurance business
- Continuance, renewal or revival of policies of insurance.

2) When to Deduct TDS under Section 194D?

The tax on insurance commission under Section 194D is to be deducted at the earlier of following events:

- At the time of credit of commission in the account of the payee, or
- The payment in cash or cheque or in kind.

3) Rate of TDS under Section 194D

- TDS u/s 194 D on Insurance Commission made to a resident whether they are individual, company or any other category of persons is deducted at the rate of 5%. (3.75% w.e.f. 14.05.2020 to 31.03.2021)

- Surcharge or H&E Cess will not be added to these rates. Therefore, the tax will be deducted at source at the basic rates mentioned above.
- The rate of TDS will be 20% in cases where the deductee has not quoted PAN.

4) When is TDS not liable to be deducted under 194D?

There are two instances when TDS is not deducted under Section 194D:

1. Commission paid does not exceed Rs. 15,000
2. Self-declaration under Form 15G/ 15H

5) Non-deduction or lowered rate of tax deduction

An individual who receives a commission can make an application in Form 13 to the Assessing Officer for a certificate authorizing the payer not to deduct tax or to deduct tax at a lower rate. In accordance with section 206AA(4), no certificate under Section 197 for non-deduction or lowered rate of deduction will not be given unless the application also provides the PAN of the applicant.

6) Reinsurance not covered by section 194D

Reinsurance differs from insurance in a number of ways and the most important is that there is no contractual relationship between the Direct Insured and the Reinsurer. There are separate contracts involved—one between the Insured and the Insurer and another between the Insurer and the Reinsurer. Insurer has to pay all valid claims to the insured, irrespective of whether the insurer can recover the same from his reinsurer. When a Reinsurance company gets business from insurance company at premium less “Commission”, the “Commission” is not subject to TDS under section 194D, as it is not payable to an agent for procuring insurance business.

Similarly, when “Profit Commission” is payable by an Reinsurance Company to an insurance company, after the expiry of the term of insurance, in respect of such cases where there is no claim during the operation of the reinsurance treaty, TDS under section 194D is not required.

Section 194DA — TDS on Payment in respect of Life Insurance Policy

194DA. *Any person responsible for paying to a resident any sum under a life insurance policy, including the sum allocated by way of bonus on such policy, other than the amount not includible in the total income under clause (10D) of section 10, shall, at the time of payment thereof, deduct income-tax thereon at the rate of [five per cent on the amount of income comprised therein] :*

Provided *that no deduction under this section shall be made where the amount of such payment or, as the case may be, the aggregate amount of such payments to the payee during the financial year is less than one hundred thousand rupees.*

1) Who is responsible to deduct tax u/s 194DA?

Any person responsible for paying to a resident any sum under a life insurance policy, including the sum allocated by way of bonus on such policy, other than the amount not includible in the total income under section 10(10D), shall deduct income-tax thereon.

2) When to Deduct TDS under Section 194DA?

Tax shall be deducted at the time of payment thereof.

3) Rate of TDS under Section 194DA

The rate of tax u/s 194DA is 5% (3.75% w.e.f. 14.05.2020 to 31.03.2021) on "only Income Part" of the payment made under LIP. [Applicable from September 1, 2019] (That is after deducting the amount of insurance premiums paid by the insured person from the total sum received from Insurance Company).

In case if deductee does not provide the PAN details with the Life Insurance Companies, then there will be a TDS of **20%**.

4) Threshold Limit

No deduction under this section shall be made where the amount of such payment or, as the case may be, the aggregate amount of such payments to the payee during the financial year is less than ₹1,00,000**.**

ILLUSTRATION- Mr. Sham took insurance policy on 26th July, 2015 for ₹ 2,20,000/-. He paid premium of ₹ 55,000/- every year. On 25th July, 2020 he received ₹ 2,50,000/- (including bonus) as the maturity proceeds. State whether TDS provisions are applicable or not.

Policy is taken after 1st April, 2012. Hence, amount of deduction allowed on premium should not exceed 10% of the sum assured. In this case, the sum assured was ₹ 2,20,000/- so amount of premium should not exceed ₹ 22,000/-. However actual premium paid (₹ 55,000/-) is more than ceiling limit (₹ 22,000/-). Hence, the proceeds are taxable.

As per Section 194DA, since the proceeds are more than ₹ 1,00,000/- TDS provisions are applicable. Hence the insurance company will deduct TDS @ 5% of ₹ 30,000/- i.e. ₹ 1,500/- while making the payment of the maturity proceeds.

5) Exemptions u/s 10 [10(D)]

As per sec 10 [10(D)] of the Income Tax Act any sum received under the Life Insurance Policy including the sum allocated by way of bonus on such policy is exempted whether received from Indian or a Foreign Company. However, this section has following exceptions to it:

- Any sum received under section 80DD (3) or 80DDA (3).
- Any sum received under a Keyman Insurance Policy.
- If Policy is bought after 1st April 2003 but before 31st April 2012: the premium paid is 20% more than the sum insured.
- If Policy is bought after 1st April 2012: the premium paid is 10% more than the sum insured.
- Life insurance policy bought for the persons with disability or person with severe disability as per section 80U or those suffering from ailments or disease as specified in section 80DDB after 1st April 2013 if premiums are more than 15% of sum assured.

There is no maximum limit for claiming the exemption under Sec 10 [10(D)] unless the above-mentioned conditions are not fulfilled. Also, the above exceptions are not applicable on death claims or any amount received on the death of the insured.

6. When a declaration is submitted in form 15G/15H u/s 197A:

If a declaration is submitted u/s 197A by the recipient to the payer along with his/her PAN, then no tax is deductible

Points to be kept in mind

- For the purpose of calculating the actual capital sum assured, the following shall not be taken into the account:

➢ the value of any premiums agreed to be returned; or

➢ any benefit by way of bonus or otherwise, over and above the sum actually assured, which is to be or may be received under the policy by any person.

- Any amount received from the Foreign Life insurance company is also eligible for deduction.

- Keyman insurance policy means a life insurance policy taken by a person on the life of another person who is connected to the business as an employee or other capacities, either in the present or in the past.

- It may be noted that while computing the amount taxable out of the maturity proceeds, the premium paid by the assessee shall be excluded

ILLUSTRATION- Examine the taxability and applicability of TDS provisions in the following cases:

(i) Mr. Jasmeet, a resident received Rs. 7,50,000 on 30.04.2020 on maturity of her life insurance policy taken on 01.05.2007. The policy sum assured is Rs. 1,00,000 and annual premium being Rs. 22,500.

In this case, since the annual premium of Rs. 22,500 exceeds Rs. 20000, being 20% of the sum assured of Rs. 1,00,000, in respect of policy taken before 01.04.2012, the maturity proceeds of Rs. 7,50,000 received by Mr. Jasmeet on 30.04.2020 would not be exempt under section 10(10D) in his hands. Tax shall be deducted @ 5% on (Rs. 7,50,000 less premium Rs. 22,500 * 13 years = Rs.2,92,500) Rs. 4,57,500.

(ii) Miss Jasmine, a resident received Rs. 3,50,000 on 01.05.2020 on maturity of her life insurance policy taken on 10.04.2012. The policy sum assured is Rs. 50,000 and annual premium being Rs. 16,000.

In this case, the annual premium of Rs. 16,000 exceeds Rs. 5,000, being 10% of sum assured of Rs. 50,000, in respect of a policy taken on or after 01.04.2012 and consequently, the maturity proceeds of Rs. 3,50,000 received on 01.05.2020 would not be exempt under Section 10(10D) in the hands of Miss Jasmine. Tax shall be deducted @ 5% on (Rs. 3,50,000 less premium Rs. 16,000 * 8 years = Rs. 1,28,000) Rs. 2,22,000.

Section 194E

TDS on Payments to Non-Resident Sportsmen or Sports Association

194E. *Where any income referred to in section 115BBA is payable to a non-resident sportsman (including an athlete) or an entertainer who is not a citizen of India or a non-resident sports association or institution, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of twenty per cent.*

1) Who is responsible to deduct tax u/s 194E?

Any person responsible for making following payment shall deduct tax at source:-

2) When to Deduct TDS under Section 194E?

Tax is to be deducted at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.

For this purpose, "payment" can be in cash or by issue of a cheque or draft or by any other mode.

3) Rate of TDS under Section 194E

The rate of tax deduction u/s 194E is 20% (Plus Surcharge and Health & Education Cess @ 4%.

Payee	Nature of income
(a) Non – resident foreign citizen sportsman (including an athlete)	Income is by way of- a. participation in India in any game (other than card game or gambling, etc.); or b. advertisement; or c. contribution of articles relating to any game or sport in India in newspapers, magazines or journals
(b) Non – resident sports association or institution	Any amount guaranteed to be paid or payable in relation of any game (other than card game, etc.) or sport played in India.
(c) Non- resident foreign citizen entertainer	Income is from his performance in India.

Section 194EE

TDS on Payments in respect of Deposit under National Savings Scheme

194EE. *The person responsible for paying to any person any amount referred to in clause (a) of sub-section (2) of section 80CCA shall, at the time of payment thereof, deduct income-tax thereon at the rate of ten per cent :*

Provided *that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to the payee during the financial year is less than two thousand five hundred rupees :*

Provided further *that nothing contained in this section shall apply to the payment of the said amount to the heirs of the assessee.*

1) **Who is responsible to deduct tax u/s 194EE?**

The person responsible for paying to any person any amount standing to the credit of such person under National Savings Scheme (to which section 80CCA was applicable) together with interest accrued thereon, shall deduct income-tax thereon on such amount at the time of its payment.

2) **When to Deduct TDS under Section 194EE?**

Tax is deductible at the time of payment**.**

3) **Rate of TDS under Section 194EE**

Rate of TDS under Section 194EE will be 10%(7.5% w.e.f. 14.05.2020 to 31.03.2021)

4) **When No TDS is Deductible under Section 194EE?**

In the following cases, Tax is Not Deductible :

1. **PAYMENT UP TO ₹ 2,500 –**

   Where the amount of payment or the aggregate amount of payments in a financial year is less than ₹ 2,500, tax is not deductible under section 194EE.

2. **PAYMENT TO LEGAL HEIRS -**

   Where the payment is made to the heirs of the deceased assessee (depositor), no tax shall be deducted at source.

3. **DECLARATION TO THE PAYER IN FORM NO. 15G OR 15H [Section 197A]**

   If a declaration is submitted under section 197A by the recipient to the payer, then no tax is deductible in a few cases.

Section 194F

TDS on Payments on account of repurchase of units by Mutual Fund or Unit Trust of India

194F. *The person responsible for paying to any person any amount referred to in sub-section (2) of section 80CCB shall, at the time of payment thereof, deduct income-tax thereon at the rate of twenty per cent.*

1) Who is responsible to deduct tax u/s 194F?

The person responsible for paying to any person any amount referred to in section 80CCB.

2) When to Deduct TDS under Section 194F?

Tax is deductible at the time of payment.

3) Rate of TDS under Section 194F

The rate of tax deduction u/s 194F is 20%.(15% w.e.f. 14.05.2020 to 31.03.2021)

Section 194G

TDS on Commission on Sale of Lottery Tickets

194G. *(1) Any person who is responsible for paying, on or after the 1st day of October, 1991 to any person, who is or has been stocking, distributing, purchasing or selling lottery tickets, any income by way of commission, remuneration or prize (by whatever name called) on such tickets in an amount exceeding fifteen thousand rupees shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.*

(2) [***]

(3) [***]

Explanation.—For the purposes of this section, where any income is credited to any account, whether called "Suspense Account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

1) Who is responsible to deduct tax u/s 194G?

Any person responsible for paying any income by way of commission, remuneration or prize (by whatever name called) on stocking, distributing, purchasing or selling lottery tickets, shall be responsible to deduct tax at source.

2) When to Deduct TDS under Section 194G?

Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.

For this purpose, credit to “Suspense account” or any other name shall be deemed to be a credit of such income to the account of the payee.

For this purpose, “payment” can be in cash or by issue of a cheque or draft or by any other model

3) Rate of TDS under Section 194G

The rate of tax deduction u/s 194G is **5%**(3.75% w.e.f. 14.05.2020 to 31.03.2021)

- No surcharge and Health & Education Cess shall be added to the above rates. Hence, tax will be deducted at source at the basic rate.
- The rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee.

4) Threshold limit

Tax is required to be deducted under this section only if payment is exceeding **₹ 15,000**.

5) Where TDS under Section 194G is either Not to be Deducted or to be Deducted at Lower Rate [Section 197]

The assessee case make an application in Form No. 13 to the Assessing Officer and obtain from him such certificate as may be appropriate authorising the payer to deduct tax at nil rate or at lower rate.

As per section 206AA(4), no certificate under section 197 for deduction of tax at Nil rate or lower rate shall be granted unless the application made under that section contains the Permanent Account Number (PAN) of the applicant.

Section 194H — TDS on Commission and Brokerage

194H. *Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent :*

Provided *that no deduction shall be made under this section in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of, or to, the payee, does not exceed fifteen thousand rupees :*

Provided further *that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed [one crore rupees in case of business or fifty lakh rupees in case of profession] during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section:*

Provided also *that no deduction shall be made under this section on any commission or brokerage payable by Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited to their public call office franchisees.*

Explanation.—For the purposes of this section,—

(i) "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

(ii) the expression "professional services" means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA;

(iii) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) ;

(iv) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting

shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

1) What is the meaning of words "Commission or brokerage" for the purpose of section 194H?

Commission or brokerage includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person:

(a) for services rendered (not being professional services), or

(b) for any services in the course of buying or selling of goods, or

(c) in relation to any transaction relating to any asset, valuable article or thing, not being securities.

2) Who is responsible to deduct tax u/s 194H?

Any person, (other than individual or a Hindu undivided family) who is responsible for paying, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, deduct income-tax thereon.

However An individual or a HUF is liable to deduct TDS under section 194H, if total sales, gross receipts or turnover exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such commission is credited or paid.

3) When to Deduct TDS under Section 194H?

It will be deducted at the time of credit of such income to the account of the payee or to any account, whether called suspense account or by any other name or at the time of payment, of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

4) Rate of TDS under Section 194H

The rate of TDS is **5%**.(3.75% w.e.f. 14.05.2020 to 31.03.2021) No surcharge and Health & Education Cess @ 4% shall be added to the above rates. Hence, the tax will be deducted at source at the basic rate. The rate of TDS will be 20% in all cases if PAN is not quoted by the deductee.

5) Under what circumstances TDS u/s 194H is not deductible?

- No deduction shall be made under this section in a case where the amount or the aggregate amounts of such income to be credited or paid during the financial year does not exceed **INR 15,000**.
- The Person can make an application to the assessing officer under section 197 for deduction of tax at NIL rate or at a lower rate.
- Any brokerage or commission amount paid by BSNL/MTNL to their public call office franchisees.

6) Additional Points

- **Commission received by Travel Agents liable to TDS U/s 194H-**
  Commission and supplementary commission received by the travel agents from Airlines are liable to tax deduction at source under section 194H.

- **SIM Cards -**
  Bharti Airtel Ltd. vs DCIT [2015] 372 ITR 33 (Karnatka HC): Discount given by a mobile cellular operator to its distributors in the course of selling of SIM cards and recharge coupons under pre-paid scheme of getting a connection are not liable to TDS under section 194H.
- **Advertisement Commission paid by Doordarshan to its Agents-**
  Advertisement commission paid by Doordarshan to its agents is subject to tax deduction at source under section 194H.

  Case Law:
  Director, Prasar Bharati vs. CIT [2018] 403 ITR 161 (SC): Section 194H would be applicable to payments made by assessee, a government organization running TV channel called 'Doordarshan', to advertising agencies to secure more business as these were in nature of 'commission' paid to agencies as defined in Explanation appended to section 194H.

- **Discount given to Stamp Vendors -**
  No TDS is applicable on discount given to Stamp Vendors for purchasing stamps in bulk quantity.
- **Payment made by Television Channels/Newspapers to Advertising Agency -**
  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. It is trade discount but not commission.
- **Bank Guarantee Commission**

  CIT vs. Larsen & Toubro Ltd [2019] 260 Taxman 271 (Bom): Bank guarantee commission is not in nature of commission paid to an agent but it is in nature of bank charges for providing one of banking service. Thus, S. 194H not applicable.

- **Target incentives to dealers for increasing sale of their products**

  PCIT vs. Shalimar Chemical Works Ltd. [2018] 257 Taxman 590 (Calcutta): Where assessee paid target incentives to dealers for increasing sales of its products, since there was no relationship of principal and agent between assessee and distributors, assessee was not required to deduct tax at source under section 194H while making said payments
- **Discount offered to distributors for promotion of sales** cannot be treated as commission liable to TDS u/s.194H-**Nokia India (P.) Ltd.vs DCIT (DelhiTrib.) [ITANo.5791/Del/2015]**

Section 194I — TDS on Rent

194-I. *Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of—*

(a) two per cent for the use of any machinery or plant or equipment; and

(b) ten per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:

Provided *that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed [two hundred and forty thousand rupees] :*

Provided further *that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed [one crore rupees in case of business or fifty lakh rupees in case of profession] during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section :*

Provided also *that no deduction shall be made under this section where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in clause (23FCA) of section 10, owned directly by such business trust.*

Explanation.—For the purposes of this section,—

(i) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—

(a) land; or

(b) building (including factory building); or

(c) land appurtenant to a building (including factory building); or

(d) machinery; or

(e) plant; or

(f) equipment; or

(g) furniture; or

(h) fittings,

whether or not any or all of the above are owned by the payee;

(ii) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

1) What is the meaning of 'rent' according to Section 194-I?

- 'Rent' means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of either separately or together any:-
  a) land; or
  b) Building (including factory building); or
  c) Land appurtenant to a building (including factory building); or
  d) Machinery; or
  e) Plant; or
  f) Equipment; or
  g) Furniture; or
  h) Fittings
  Whether or not any or all of the above are owned by the payee.

- Sub-letting is also covered.

- No TDS on 'Refundable Deposits'. However, 'Non- Refundable Deposits' shall attract TDS under this section. Moreover, where any such rent is credited to 'suspense account' or to any other account shall also be liable to deduct tax at source.

- 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)**

2) What Payment is Covered u/s 194I?

Rent includes service charges: - Service charges payable to business Centre's are covered under the definition of rent, as they cover payments by whatever named called.

TDS requirement where rent not payable on monthly basis: - Sec. 194I does not mandate that the tax deduction should be made on a month-to-month basis. Therefore, if the crediting of the rent is done on a quarterly basis, the deduction at source will have to be made on a quarterly basis only. Where the rent is paid on a yearly basis, deduction also will have to be made once a year on the basis of the actual payment or credit.

Charges regarding cold storage facility: - In the case of cold storage where milk, ice cream, and vegetables, are stored, the payment may be styled as charges for use of plant and not for use of the building. The arrangement between customer & cold storage owners is contractual in nature, as the contract includes provision of cooling facilities, security services and other miscellaneous utilities. Therefore TDS is to be deducted u/s 194C, and not u/s 194I. [**CBDT Circular No. 1/ 2008 .]**

Hall rent paid by an association for use of it:- Since the association is assessed as an association of persons and not as an individual or HUF, the obligation of tax deduction will be there, provided payment for the use of hall exceeds ₹2,40,000

Payments to hotels for holding seminars including lunch:- Where hotels do not charge for use of premises but charge for catering/meal only, the provisions of Sec. 194I would not apply. However, Sec.194C would apply for catering part.

Payment for warehousing charges is liable for TDS u/s 194-I **[CBDT Circular No. 718 dated 22.08.1995.]**

Payments for hotel accommodation on regular basis is liable for TDS u/s.194-I– **CBDTCircularNo.5/2002**

3) Who is responsible to deduct tax u/s 194I?

The person (not being an Individual or HUF) who is responsible for paying any income to a resident by way of rent is liable to deduct tax at source.

However an individual or a Hindu undivided family is liable to deduct TDS u/s 194I if total sales, gross receipts or turnover exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such rent is credited or paid.

In case the aggregate of the amount of such income credited/paid or likely to be credited/paid during the financial year by the aforesaid person to the account of or to the payee exceeds **₹2,40,000/-**[Including Advance Rent & Arrears of Rent] (w.e.f. 01/04/2019).
TDS threshold for deduction of tax on rent is increased from ₹1,80,000 to ₹ **2,40,000** for FY2019-20.

4) When to Deduct TDS under Section 194I?

Tax is required to be deducted at source at the time of credit of 'income by way of rent' to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

5) Rate of TDS under Section 194I

No.	Nature of Payment	TDS %
1.	Rent of Plant, Machinery or Equipment	2 % (1.5% w.e.f. 14.05.2020 to 31.03.2021)
2.	Rent of land, building or furniture or fitting	10 % (7.5% w.e.f. 14.05.2020 to 31.03.2021)

- No surcharge and Health & Education Cess shall be added to the above rates. Hence, tax will be deducted at source at the basic rate.
- The rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee.

6) Under what circumstances TDS u/s 194I is not deductible?

Amount payable/paid not exceeding ₹ 2,40,000 during the financial year- No tax is required to be deducted in case the amount of rent due or paid does not exceed ₹2,40,000.

- **Sharing or proceeds of film exhibition between a film distributor and a film exhibitor owning a cinema theatre**- In case of a film exhibitor and film distributor contract, the share of the exhibitor is on account of composite services. The distributor does not take cinema building on lease or sub-lease or tenancy or under an agreement of similar nature. The payment made is not rental in nature.
- **Where the payee is the Government at agency**- A person making payment to Government is not required to deduct tax at source under Section 196. The payments made to statutory authorities and local authorities are exempt from tax and hence not tax deductible.
- **Wharfage Charges**- **Angre Port (P) Ltd vs. ITO [TS-219-ITAT-2019(PUN)]:** Wharfage Charges in common parlance are shipping fees for carrying on loading/unloading along the river front. Wharfage charges paid by assessee-company [engaged in providing port facilities for shipment of cargo] to the Maharashtra Maritime Board (MMB) could not be equated with 'rent'. MMB did not own the 'water' or 'waterfront' as it belongs to the State Government, thereby the Board could not have leased, sub-leased or created any tenancy for the use of the said water, as also there was no arrangement/contract between the assessee and the Board for the use of land/water. Thus, S. 194I not applicable
- **Lounge Services**- **CIT vs. Jet Airways (India) Ltd [TS-231-HC-2019(BOM)]:** Payment by assessee for usage of lounge space at the airport is not rent liable for TDS u/s. 194-I. The payment for certain services, need not be seen in isolation. The real character of the service provided and for which the payment is made, would have to be judged. The dominant part of the service is to provide quiet, comfortable and a clean place for customers to spend some spare time and providing refreshments/beverages is only an

incidental activity. Observing that the lounge is not exclusively used by assessee's customers, but even customers of other airlines would be allowed to use the facility, the High Court held that the payment does not contain an element of rent. High Court upheld the assessee's conduct of deducting tax u/s 194C.

7) Will tax be deducted from GST included in rent?

GST paid by the tenant does not partake the nature of income of landlord. The landlord only acts as a collecting agency for Government for collection of GST. Therefore tax deduction at source (TDS) under Sec. 194-I of the Income-tax Act would be required to be made on the amount of rent paid/payable without including GST.

ILLUSTRATION-

Ram Limited has taken a 3500 Sq. ft. flat on rent from Sham Limited to set up its Branch office. The rent payable to Sham Limited for the flat is ₹65,000 per month plus applicable GST. Ram Limited wishes to know whether tax is required to be deducted at source under Section 194-I from gross amount of rent including GST?

Vide **Circular No. 23/2017** the CBDT has clarified as under:

In the light of the fact that even under the new GST regime, the rationale of excluding the tax component from the purview of TDS remains valid, the Board hereby clarifies that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid or payable without including such 'GST on services' component.

Therefore, in the given case, the TDS is not to be deducted on the gross amount including GST. It shall be deducted only on the rent excluding GST i.e. ₹ 7,80,000.

8) Whether the limit of ₹ 2,40,000 for non-deduction of tax at source applicable in case of each co-owner?

Where the share of each co-owner in the property is definite and ascertainable, the limit of ₹2,40,000 will be applicable to each co-owner separately. **[CBDT Circular No. 715 dtd.08.08.1995]**

Section 194IA — TDS on Purchase of Immovable Property

194-IA. *(1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax thereon.*

(2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

(3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

Explanation.—For the purposes of this section,—

(a) "agricultural land" means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

[(aa) "consideration for transfer of any immovable property" shall include all charges of the nature of 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;]

(b) "immovable property" means any land (other than agricultural land) or any building or part of a building.

1) Preamble and Rational behind inserting Section 194-IA:

Under section 195, on transfer of immovable property **by a non-resident**, tax is required to be deducted at source by the transferee. However, prior to 01-06-2013 there being no such requirement on transfer of immovable property by a resident except in the case of compulsory acquisition of certain immovable properties u/s 194LA, Finance Act, 2013 has inserted new section 194-IA to introduce TDS on consideration on transfer of immovable properties **by a resident transferor.**

2) Section 194-IA:

This section was made applicable from 1.6.2013. Where the **'immovable property'** was acquired before 1.6.2013 but any installment has been paid on or after 1.6.2013 TDS will have to be deducted subject to satisfaction of other conditions. Any person, being **a transferee**, responsible for paying (other than the person referred to in section 194LA, relating to compensation in case of compulsory acquisition of property) **to a resident transferor any sum** by way of consideration for **transfer of any immovable property** being any land (other than agricultural land) or any building or part of a building shall be liable to deduct tax **@ 1%** at the time of credit of such sum to the account of the transferor, or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

Provision Illustrated:

TDS on any sum by way of consideration for transfer of any immovable property is required to be deducted by the transferee on the total amount in case the value of the property sold is more than Rs.50 Lakhs. For example, if the property sold is worth Rs.90 Lakhs, the TDS would be deducted on Rs.90 Lakhs and not on Rs.40 Lakhs. TDS on property in this case @1% would be Rs.90,000. No surcharge or health and education cess shall be added to the above rates. Hence, tax will be deducted at source at the basic rate. The rate of TDS will be 20% in all cases, if PAN is not quoted.

3) Who is responsible to deduct tax u/s 194IA?

Any person, being a transferee responsible for paying (other than the person referred to in section 194LA) to a **resident** transferor any sum by way of consideration for transfer of any immovable property (**other than agricultural land**), is liable to deduct tax at source under this section.
Therefore, if the immovable property is purchased from a non-resident person for any value, no TDS is required to be deducted under this section. However, TDS shall be deducted under Section 195.

ILLUSTRATION:
Mr. Singh, non-resident, sold his building situated at Nakodar, Punjab to Mr. Sharma for a total consideration of ₹ 1.35 crore.
In such a case, Mr. Sharma will make the payment to Mr. Singh after deduction of tax @20% plus surcharge and Health & Education Cess @ 4% (on the LTCG computed) under Section 195. Section 194-IA does not apply where the payment is made to a non-resident.

ILLUSTRATION:

Mr. Kumar, resident in India, sold his house situated in Rajasthan, to Mr. Gupta who is resident of USA for a total consideration of ₹ 2 crores.

In such a case, Mr. Gupta is required to deduct TDS @ 1% under section 194-IA while making payment to Mr. Kumar.

4) When to Deduct TDS under Section 194IA?

Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.

For this purpose, "payment" can be in cash or by issue of a cheque or draft or by any other mode.

5) Threshold Limit u/s 194IA

No tax is deductible where the consideration paid or payable for the transfer of an immovable property is less than **₹ 50,00,000.**

6) Rate of TDS under Section 194IA

Tax shall be deducted at the rate of 1%.(0.75% w.e.f. 14.05.2020 to 31.03.2021)

- No surcharge and Health & Education Cess shall be added to the above rates. Hence, tax will be deducted at source at the basic rate.
- The rate of TDS will be 20% in all cases, if PAN is not quoted.
  Case Law: Pushkar Prabhat Chandra Jain vs. UOI [2019] 262 Taxman 118 (Bom): If payer, after deducting tax, fails to deposit it in Government revenue, measures can always be initiated against such payers once seller of property suffers TDS at hands of payer purchaser; seller could not again be asked to pay same again

7) Immovable Property is partly financed by Bank/Lender

In case the immovable property is partly financed by bank/lender then TDS will be required to be deducted by the transferee on the entire amount of consideration irrespective of the amount of financing. As per section 194IA "any person, being a transferee…" is liable to deduct tax at source. When any loan availed from bank, the Bank can't be said to be transferee even if it is providing funds to the buyer. Therefore, the whole TDS will be deducted by the buyer from the amount paid by him to seller and the bank will not be held responsible to deduct TDS on payment made by him on buyer's behalf.

ILLUSTRATION*:*

If M purchased an immovable property of ₹ 60 lakh which is financed by bank for ₹ 40 lakhs and he has contributed ₹ 20.00 lakh. The TDS is to be deducted and deposited by Mr M is ₹ 60 lakhs @ 1% = ₹ 60,000/-. So Bank will pay to the transferor ₹ 40 lakhs and Mr M will pay ₹ 19.40 lakhs (₹ 20

lakhs – ₹ 0.60 lakhs). If the payment is made in installments then the amount shall be deductible in proportionate to the installment paid.

While the builder allotted a Flat, the consideration includes payment for Car Parking, Permanent Membership of Club, Electricity meter & line laying charges and other incidental charges. Whether the consideration includes above payment for TDS? [Applicable from September 1, 2019]

TDS is applicable on these payments, since these payments are part of consideration and condition for transfer of immovable property. However if any refundable deposit is made for maintenance of Flat / club and other facilities, the same cannot be considered for TDS.

ILLUSTRATION*:-*

Mr. A Purchased a residential house property for ₹ 2 crores, which comprised of following consideration:
1. Towards purchase of immovable property: ₹ 160 lakhs
2. Towards car parking: ₹ 20 lakhs
3. Towards water and electricity facility: ₹ 20 lakhs

If payment is made on or before June 30, 2019, Mr. X shall deduct tax at the rate of 1% on ₹ 160 lakhs i.e. ₹ 1,60,000. If payment is made on or after September 1, 2019, the tax shall deducted on total consideration of ₹ 200 lakhs, i.e. ₹ 2,00,000.

8) Whether provision will apply in case of transfer of Share in a society resulting in transfer of rights in the property?

On reasonable interpretation of the provision, it should apply on transfer of share. Transfer of share in the society effectively results in transfer of immovable property and such transfer for a consideration shall be interpreted and all the provisions of section 194IA are applicable.

9) Whether purchase of property in auction by a bank or financial institution pursuant to default in payment of loan by the owner of the property will be subject to TDS under Section 194IA?

This is a situation where, the sale of immovable property by the bank or financial institutions will be on behalf of the defaulter and the defaulter is the transferor. Under provisions of income tax act, such auction sale, the defaulter borrower shall be liable to pay capital gain tax on sale of the property. Therefore the provisions of section 194IA for deduction of tax at source shall be applicable.

10) Transferee:

The section applies even to a non-resident buyer or even to a buyer who is an agriculturist. Other conditions being satisfied, **the section will apply even when the purchaser / transferee is a family member / relative of the seller / transferor. However, the purchaser / transferee should not be a person referred to in section 194LA.** If the purchaser / transferee is a person referred to in section 194LA, such a person is not required to deduct tax under this section.

Scenario where the Provision is not applicable:

In the following cases tax is not to be deducted at source under section 194-IA:

a. The immovable property transferred is a rural agricultural land.
b. The immovable property has been compulsory acquired under any law.
c. The total amount of consideration for the transfer of immovable property is less than Rs.50,00,000/-
d. Where the transferor is a Non-Resident. In this case section 195 will be attracted.

11) Meaning of Immovable Property:

The terms have been defined at various places. Section 194-IA of The Income Tax Act, 1961 **"Immovable property" means** any land (other than agricultural land) or any building or part of a building situated in India Section 269UA of The Income tax Act, 1961

"Immovable property" means—

i. any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also.

Explanation.—For the purposes of this sub-clause, "land, building, part of a building, machinery, plant, furniture, fittings and other things" include any rights therein

ii. **any rights in or with respect to any land or any building** or a part of a building (whether or not including any machinery, plant, furniture, fittings or other things therein) which has been constructed or which is to be constructed, accruing or arising from any transaction (whether by way of becoming a member of, or acquiring shares in, a cooperative society, company or other association of persons or by way of any agreement or any arrangement of whatever nature), not being a transaction by way of sale, exchange or lease of such land, building or part of a building

12) Section 3(26) of General Clauses Act, 1897

“Immovable property" shall include land, **benefits to arise out of land**, and things attached to the earth, or permanently fastened to anything attached to the earth; Based on above. one can conclude that the definition of Immovable Property as per Section 194-IA is a **restrictive definition** and very specific with its intent and not an inclusive definition. The above definition is also significantly different from the definition of immovable property under Section 269UA (d) r/w Section 2(47) (v) and (vi) of the Income Tax Act wherein the term immovable property would include rights in or with respect to such immovable property

Therefore, there would be no requirement of deducting Tax at Source under section 194-IA on payments made by a transferee to a **‘Confirming Party’,** as he is **not the transferor** of ”immovable property” as defined under section 194-IA.

Further it may be noted that in Dy. CIT v. Tejinder Singh [2012] 19 taxmann.com 4/50 SOT 391 (Kol. - Trib.), the Tribunal held that the phrase 'land or buildings or both' will not include rights in land or buildings or both such as tenancy rights. In ITO v. Yasin Moosa Godil [2012] 20 taxmann.com 424 (Ahd. - Trib.), it was held that transfer of 'booking rights' in a flat is not transfer of 'land or buildings or both'. It appears that transfers of interest as above shall not attract TDS.

The section **does not mention** that the **immovable property should be situated in India**. Therefore, a literal interpretation would be that the immovable property could be situated anywhere may be in India or may be outside India. Further, the term **`agricultural land’ has been defined to mean agricultural land situated in India.** The fact that agricultural land in India is excluded from immovable property could be understood in two ways – one that from the immovable property in India exclusion is to be made of agricultural land in India and the other could be that from the immovable property **wherever situated** only the agricultural land in India is excluded. Thus, two interpretations are possible. However, if a view is taken that the section applies even in respect of immovable property situated outside India then the position will be that a buyer who is outside India and who is neither a citizen of India nor a resident of India who is buying immovable property located outside India from a resident of India, will be required to deduct income-tax under the provisions of the Act. **Therefore, it would mean that it is expected of every person dealing with a resident of India to be aware of the provisions of the Indian laws.** Assuming that such a buyer is aware of these provisions and decides to comply with the provisions of this section, he will have to obtain a PAN so as to be able to make payment of the amount of TDS. **A question would arise as to whether the Government of India can cast an obligation on a non-resident to deduct tax from payments made by him for purchase of a property which is situated outside India.** The only nexus which such a transferor has with India being that he is

buying immovable property from a person who is a resident of India. In case of default in complying with the provisions of this section, the buyer would be regarded as an assessee-in-default and would be liable to pay interest and penalty as well. Such an interpretation may not be upheld by Courts. **Therefore, it appears that the section would apply to only immovable property situated in India.**

13) Agricultural land:

'Agricultural land' means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of section 2(14)(iii). Items (a) and (b) of section 2(14)(iii) are as under:

"Agricultural land situate—**in any area which is comprised within the jurisdiction of a municipality** (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or in any area within the distance, measured aerially,— not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of **more than ten thousand but not exceeding one lakh**; or not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of **more than one lakh but not exceeding ten lakh**; or not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and **which has a population of more than ten lakh.**

14) Meaning of Consideration:

The Finance (No. 2) Act, 2019 has amended the Explanation to section 194-IA to provide that the term "consideration for transfer of any immovable property" shall **include** all charges o**f the nature of:**

a. club membership fee,
b. car parking fee,
c. electricity and water facility fees,
d. maintenance fee,
e. advance fee, or
f. any other charges of similar nature,
which are incidental to transfer of the immovable property.
In the context, the definition of consideration for transfer of any immovable property **is inclusive** and it includes **'all charges of the nature of ……';** therefore, it would include all charges similar in

nature which are specifically included in the definition**. 'Of similar nature'** could mean **charges having some resemblance but not same**.

Having regard to the object, it can be said that the definition seeks to cover:

a. Price paid or payable for the transfer of immovable property;

b. Chargers for additional facilities

c. Other Charges such as Processing fee, preference charges, external development charges, , firefighting charges, generator charges refer **Praveen Gupta [2012] 20 taxmann.com 308(Delhi) (ITAT)**

Thus it can be concluded that along with the transfer of immovable property, if the transferee makes any other payment as consideration for or enjoyment and use of the property including the common property and other facilities/amenities and benefits which may be conferred, such payment or consideration would be part of the consideration for transfer of immovable property.

This definition has been inserted by the Finance (No. 2) Act, 2019, w.e.f. 1-9-2019. As this section does not contain any provision as in other sections falling under Chapter XVII-B where TDS is required to be deducted even when the amount is credited to suspense account or any other account and further, the transferee may not be required to keep books of account, so he may not credit the sum to the account of transferor. However, the obligation to deduct tax cannot be postponed beyond date of payment of consideration. Therefore, it appears that even if the transaction is completed before 1-9-2019, if the account of the transferor is not credited in the books of transferee, then the TDS is required to be deducted under the amended provision in respect of the sum payable on or after 1-9-2019 as consideration for transfer of immovable property

15) One Seller and Multiple Buyers

Honourable Delhi ITAT in the case of Vinod Soni v ITO (2019) 101 taxmann.com 190 (Del - Trib) has held that where assessee purchased an immovable property alongwith three other members of family for Rs.1.50 crores, in view of fact that share of each co-owner came to Rs.37.50 lakhs which was under threshold limit prescribed by section 194-IA, assessee was not required to deduct tax at source while making payment in question. In this case, the Honourable tribunal Observed that provisions of section 194-IA (2) of the Act state that **"no deduction under sub-section(1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees".** The Tribunal further observed as under;

"The law cannot be interpreted and applied differently for the same transaction, if carried out in different ways. The point to be made is that, the law cannot be read as that in case of four separate purchase deeds for four persons separately, section 194-IA was not applicable, and in case of a single purchase deed for four persons section 194-IA will be applicable."Finally the tribunal gave its verdict in favour of the Assessee.

One Buyer and Multiple Sellers:

Honorable Jodhpur ITAT in the case of M/s. Oxcia Enterprises Private Limited, ITA No.291/Jodh/2018 has held that the sale consideration has to be divided equally into two by virtue of sec. 46 of the Transfer of Property Act which prescribed that where immovable property is transferred for a consideration by persons having distinct interest therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally. So, in this case, since there is no contract to the contrary could be pointed out by the Ld. DR for Revenue, in this case consideration for each transferor comes to Rs.30,06,000/- each, which is below the prescribed limit of Rs.50 lacs given by the statute as aforesaid and, therefore, in the light of the same, we are of the opinion in the facts as discussed, supra, that the provisions of sec. 194- IA of the Act are not applicable in the instant case and, therefore, provisions of section 194-IA of the Act are not attracted.

However at this stage one need to consider the Provisions of Section 230A which has been Omitted by Finance Act, 2001 (w.e.f. 1-6-2001) however the language of Section 230A and judgments delivered in relation to Section 230A are important which are discussed hereunder

In case of more than 1 buyer/1 seller, Form 26Q has to be filled in separately for each buyer-seller combination.

In case of 1 buyer and 2 sellers - 2 forms have to be submitted, and in case of 2 buyers and 2 sellers - 4 forms have to be submitted for their respective share in property. For example: If there is 1 buyer (B) and 2 sellers (S1 and S2 having share 1:1) and the value of property is Rs. 60 Lakhs, then 2 Forms 26Q will be filed between B and S1 and B and S2 amounting to Rs. 30 Lakhs each.

Acquisition through Loan:

Where the lender makes the payment of the loan amount directly to the seller, he may remit 99% of the loan amount directly to the lender and balance 1% can be given to the buyer who will

deposit the TDS. Alternatively, the lender may make the entire payment of the loan to the seller and the TDS may be deposited by the buyer himself.

Payment in Installments:

The provision of Section 194-IA would apply even to payment of consideration in installments. The argument that the Seller and Buyer do not have the status of a "Transferor" and "Transferee" till the point of transfer, is not tenable and may not hold before judicial authorities. The credit for the TDS on installments will be taken by the Transferor only in the year in which the income on which tax was deducted at source would be offered to tax as per Section 197 r.w. Rule 37 BA(3).

Exchange:

It is significant to note that Section 194-IA refers to **"any sum by way of consideration"** and further refers to "credit of **such sum** to account of the transferor" or "at the time of payment of **such sum**". The qualifying word appears to be "sum". It is to be noted that the Supreme Court has in the case of **H. H. Sri Rama Verma v CIT (1990) 187 ITR 308** has held that the word **"sum"** refers to the amount of money paid taking the above analogy into consideration it could be well argued that payment of consideration in any other mode other than through a sum of money would be outside the purview of Sec 194-IA.

Section 194-IA vis as vis Section 45(3) and Section 45(4):

Scenario referred to in Section 45(3):

Revenue may forward following arguments:

a. Definition of Person as given u/s 2(31) includes Firm. Hence Firm is a separate assessee.

b. When a partner brings in his immovable property as a capital contribution to the firm, the said immovable property becomes the firm's property under the explicit provisions of Section 14 of the Indian Partnership Act, 1932.

c. Further such a transfer of immovable property is also capable of being registered under the provisions of Indian Registration Act, 1908.

d. As per Section 45(3), the profits or gains arising from the transfer of capital asset held by a person, to a firm or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year, in which

such a transfer takes place and, for the purposes of computation of capital gain in the hands of the partner/member, the amount recorded in the books of account of the firm, association or body of individuals for such capital asset shall be deemed to be the full value of the consideration

e. Hence TDS is required to be deducted u/s 194-IA on the amount recorded in the books of account of the firm, association or body of individuals for such capital asset.

Arguments in Favour of Assessee:

a. The judgement of the Apex Court, in the case of *N. Khadervali Saheb Vs N. Gudu Sahib (Decd) [2003] 261 ITR 1 (SC)* is very relevant. It was held in this case that a firm is not an independent entity. It is only a compendious name given to the partnership for convenience and the partners are the real owners of the assets of the firm.

b. As per Transfer of Property Act, 1882, "Transfer of Property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and "to transfer property" is to perform such act. In this section "living person includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals. Thus in case of Firm, Properties are registered in name of partners on behalf of Partnership Firm.

c. As per the judgment in the case of CIT v. B.C. Srinivasa Setty [1981] 128 ITR 294 (SC) when his personal assets merge into the capital of the partnership firm, a corresponding credit entry is made in the partner's capital account in the books of the partnership firm, but that entry is made merely for the purpose of adjusting the rights of the partners inter se when the partnership is dissolved or the partner retires. It evidences no debt due by the firm to the partner. Indeed the capital represented by the notional entry to the credit of the partner's account may be completely wiped outof the losses which may be subsequently incurred by the firm, even in the very accounting year in which the capital account is credited.

d. It is also a well settled proposition of law that a partner of a firm does not have a specific right to a specific property of the firm and has only a "partnership interest" in the firm which by itself is movable property and therefore it is not possible to determine the consideration received by the partner for converting his exclusive interest into a shared interest by contributing the property owned by him as his capital contribution into a firm.

e. As one of the essential requirements for applicability of the provisions of section 194-IA as mentioned in above i.e the determination of the quantum and flow of consideration between the transferor and transferee is not met, the provisions of Section 194-IA of the income tax will not be applicable in this case.

f. Assessee can also argue that Section 194-IA refers to "any sum by way of consideration" and further refers to "credit of such sum to account of the transferor" or "at the time of payment of such sum". The qualifying word appears to be "sum". It is to be noted that the Supreme Court has in the case of H. H. Sri Rama Verma v CIT (1990) 187 ITR 308 has held that the word "sum" refers to the amount of money paid taking the above analogy into consideration it could be well argued that payment of consideration in any other mode other than through a sum of money would be outside the purview of Sec 194-IA.

Scenario referred to in Section 45(4):

It is to be noted that there is an explicit provision under Section 45(4) of the Income Tax Act, wherein the distribution of Capital assets on the dissolution of a firm/AOP/BOI or otherwise to its partners or members will be chargeable to tax as the income of the firm/AOP/BOI under the head Capital Gain. **The said provision is applicable for the limited purpose of determining the Capital Gain assessable on the firm/AOP/BOI and cannot be extended for any other purpose**. Upon dissolution, the firm ceases to exist, then follows the making up of the accounts, then discharge of debts and liabilities and thereupon distribution, division or allotment of assets takes place inter se between the erstwhile partners by way of mutual adjustment of rights between them. The distribution, division or allotment of assets to the erstwhile partners, is not done by the dissolved firm. In this sense there is no transfer of assets by the assessee (dissolved firm) to any person. Thus in case where there is a distribution of immovable property to a partner or member as the case may be**, post dissolution of the firm/AOP/BOI and it is done for the purpose of settlement of mutual rights amongst the partners**, **there would be an incidence of Capital Gain under Section 45 (4) as mentioned above. However, as the firm is already dissolved there will be no "transferor" as on the date of distribution of assets to the partners and hence the provisions of Section 194-IA will not apply.** In view of the above set of arguments, one may conclude that this issue may invite a lot of litigations in future if not adequately clarified by the CBDT. The compiler of this document is however of the opinion that TDS is not applicable in the scenarios covered u/s 45(3) and even also u/s 45(4).

Section 194- IA vis a vis Section 50C:

Section 50C of The Income tax Act states that where the consideration received or accrued as a result of transfer of land or building or both is less than the stamp duty value declared by the State

Government then in such cases **for the purposes of computation of capital gains under section 48** of shall be the value so accepted by the State Government. The question here may arise that what will happen to the provisions of section 194-IA relating to deduction of tax at source? Whether TDS would be deductible on the actual consideration or will be deductible on the value stipulated under section 50C?

Where the actual consideration price is less than the stamp duty value referred to in section 50C, tax will have to be deducted on the actual consideration price and not the stamp duty value as the reference of the stamp duty value is only for the purpose of computation of capital gain.

TDS Obligation in case of Dual Agreements vs Composite Agreement for purchase and construction of immovable property194-IA, vis a vis 194C and 194M:

There is a prevalent practice in the Real Estate industry especially in projects for construction of apartments or villa development, for the transferor and the transferee to enter into dual agreements, one for sale of divided/ undivided share of land and the other for construction of the super built area as an apartment or villa as the case may be. In such cases, as far as the consideration for divided/undivided share of land is concerned the provisions of Section 194-IA would be squarely applicable if such consideration is Rs.50,00,000/- (Rupees Fifty Lakhs only) or more. As far as the payment towards construction of the super built up area is concerned the said arrangement would amount to a works contract and the provisions of Section 194C of the Income Tax Act would be squarely applicable As per amended provisions of Section 194C, w.e.f. 1.4.2020, individuals and HUF whose total sales/turnover/receipts from the business/profession exceed Rs.1 crore in case of business or Rs.50,00,000 in case of profession shall be required to deduct tax at source. However no individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family. However at this juncture it may please be noted that Finance (No. 2) Act, 2019, w.e.f 01-09-2019, has inserted a new provision, namely, section 194M, in Chapter XVII-B, to provide that any person being an individual or HUF (other than those to whom provision of section 194C or 194H or 194J applies) is responsible for paying any sum to a resident for carrying out any work or fees for professional services or as commission or brokerage, deduct tax @ 5% of such amount, if such payment exceeds Rs. 50,00,000 during a financial year. However, such person is not required to obtain Tax Deduction Account Number for the purpose. In other word, TDS can be deposited on basis of his PAN.

Scenario illustrated:

A combined reading of the above could lead to an inference that where there is a dual agreement for purchase of land for say Rs.40 Lakhs and an agreement of construction of house for residence for say Rs 45 Lakhs between an individual/HUF and the owner/developer/builder, there is no requirement for deducting Tax at Source under the provisions of Section 194-IA, 194 C and Section 194M of the Income Tax Act.

The issue which needs clarity is in the case where the transferee/buyer has discharged his obligation towards TDS by making the deduction u/s 194C/194M on payments being made towards construction, would he be liable to deduct tax at source again at the point of the super built area being conveyed to him as an immovable property u/s 194-IA. In view of the **CBDT Circular No 720 dated 30-8-1995**, it appears that as the buyer/transferee has already discharged his obligation towards the entire payment for construction which represents the consideration for the super built area u/s 194C/194M during the construction period, he cannot be called upon to deduct tax once again on the same consideration under the provisions of Section 194-IA.

In the case of a composite agreement for sale being entered into between the Owner/Developer/Builder i.e., the Resident transferor for the sale of undivided/divided share of land and Super Built Area as an immovable property, the transferee would have to deduct Tax at Source under provisions of Section 194-IA on the combined value of consideration if the same is Rupees Fifty Lakhs and above. A clarification is awaited from CBDT to remove undue litigations in future.

Section 194-IA vis a vis 194-IC and Joint Development Agreement:

Under the existing provisions of section 45, capital gain is chargeable to tax in the year in which transfer takes place except in certain cases. The definition of 'transfer', inter alia, includes any arrangement or transaction where any rights are handed over in execution of part performance of contract, even though the legal title has not been transferred. In such a scenario, execution of Joint Development Agreement between the owner of immovable property and the developer triggers the capital gains tax liability in the hands of the owner in the year in which the possession of immovable property is handed over to the developer for development of a project.

When case falls u/s 45(5A):

With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer, the Act has inserted a new sub-section (5A) in section 45 which can be explained as under: Section 45(5A) has been inserted with effect from assessment year

2018-19 to provide for a special provision for computation of capital gains in case of an assessee transferring a capital asset pursuant to a joint development agreement.

Elaborating, the section 45(5A) applies if all the following conditions are fulfilled:

a. The assessee is an individual or an HUF;

b. Capital gains arise to the assessee from transfer of a capital asset;

c. The capital asset is a land or building or both;

d. The transfer is made under a specified agreement;

e. Such land or building or both are transferred to the developer by an individual or an HUF; and

f. The assessee has **not** transferred his share in the project on or before the date of issue of the certificate of completion ("CC") for the whole or part of the project as issued by the competent authority.

If the aforesaid conditions are satisfied, then—

a. the full value of the consideration received or accruing as a result of the transfer of the capital asset shall be equal to

i. the stamp duty value of the above referred share in land or building or both on the date of issue of the completion certificate; plus

ii. consideration received in cash, if any

b. the capital gains shall be chargeable to income tax as income of the previous year in which the above referred certificate of completion is issued by the competent authority. Thus if the above conditions are satisfied, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority and under such scenario the transfer is said to have taken place u/s 2(47)(v) in the year on execution of the Joint Development Agreement.

TDS Obligation on Developer:

W.e.f 01-06-2017 as per Section 194-IC, notwithstanding anything contained in section 194-IA, any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under the agreement referred to in sub-section (5A) of section 45, shall at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount

equal to 10% of such sum as income-tax thereon. If the PAN is not provided by the recipient of the consideration, the rate of TDS as per section 206AA shall be 20% instead of 10%. It may be noted that in the above case, tax will be deducted at source under the specified agreement at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, but the credit of such tax deducted at source will be available to the individual or HUF, as the case may be, at the time when the capital gain is computed as per section 45(5A)(i.e. previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority). In this case, the deductee will have to carry forward such tax deducted at source and claim the credit of the same in the previous year in which the capital gain becomes taxable.

TDS Obligation on Buyer towards Developer:

The buyer is required to deduct TDS u/s 194-IA to the extent of the amount paid by the buyer for undivided share of land which is conveyed by the developer to the buyer of an apartment subject to satisfaction of the other conditions.

When case does not fall u/s 45(5A):

But assume a scenario where the case does not fall in the scope of Section 45(5A). In such as case, if we assume that the developer has been given limited rights in the form of license to develop the property then no TDS u/s 194-IA is required to be deducted on the amount paid to a developer by a buyer of an apartment pertaining to the developer's share in a development agreement, to the extent of the amount paid by the buyer for undivided share of land which is conveyed by the developer to the buyer of an apartment by using the general power of attorney given by the Owner of the property to execute deeds of conveyance on his behalf in favour of such buyers, as **the developer is conveying only his development rights on the property**. However **there will be TDS obligation u/s 194-IA** in case of the view being taken that the immovable property has already been transferred in favour of the Developer to the extent of the Developer's Share as on the date of entering into the development agreement. This may invite litigations in future if adequately not clarified by CBDT.

Does Consideration include GST?

Consideration for the purpose of section 194-IA should be for the transfer of an immovable property and amounts charged towards GST are statutory obligations mandated by law which arise in the course of construction of the immovable property and are not in any way a part of the consideration for transfer of immovable property.

The CBDT has clarified by issuing Circulars from time to time that tax is not required to be deducted on Service tax/GST component [*Circular No. 4/2008, dated 28-4-2008, Circular No. 1/2014, dated 13- 1-2014, Circular No.23/2017 dated 19-7-2017*]. Rajasthan High Court has held that tax is not required to be deducted in such cases [*CIT (TDS) Jaipur* v. *Rajasthan Urban Infrastructure* [2013] 37 taxmann.com 154/218 Taxman 10 (Mag.) (Raj.)]. Hence, it can be said that tax is not required to be deducted on GST component, if the amount of consideration and GST are separately reflected in the Tax invoice.

Application for certificate for lower deduction of tax or no deduction of tax under section 197:

It is noted that section 197 of the Income Tax Act has not been amended to include section 194IA within its ambit and neither is there any change incorporated in Form No.13. Under the circumstances, the transferor cannot obtain relief under section 197of the Income Tax Act with regard to the tax to be deducted at source by the Transferee under section 194IA.

Time Limits and Procedure of depositing TDS and Issue of TDS Certificate:

Both transferee and transferor must have Permanent Account Number (PAN). Transferee is not required to hold/obtain TAN for payment of TDS.

Online payment of TDS is mandatory. Online payment of challan is available on TIN NSDL website. Any sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of 30 days w.e.f. 1.6.2016 (earlier it was 7 days) from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QB. Where assessee purchased 96 flats and made payments towards same after deducting tax at source under section 194IA, since assessee itself had filed separate TDS statements under section 200(3) in Form 26QB in respect of TDS deducted in respect of every individual transaction relating to purchase of each flat, Assessing Officer was justified in levying fee under section 234E on account of delay in filing statements in respect of each flat, while processing such statements under section 200A. Refer **Corner view Construction & Developers (P.) Ltd [2019] 109 taxmann.com 68 (Mumbai - Trib.)** Where in respect of purchase of property, assessee deposited tax at source under section 194-IA and also filed a statement to that effect **much prior to date when section 234E came into existence i.e. 1-6-2015**, impugned order levying fee under section 234E for violation of section 200(3) was to be **set aside Meghna Gupta [2018] 99 taxmann.com 334 (Delhi - Trib.)**

The person responsible for deduction of tax under section 194-IA shall furnish the certificate of deduction of tax at source in Form No.16B to the payee within 15 days from the due date for furnishing the challan-cum-statement in Form No.26QB under rule 31A after generating and downloading the same from the web portal specified by the Principal Director General or Director

General of Income-tax (System) or the person authorised by him. Refer **'Bar against direct demand on assessee':**

The purchasers paid the petitioner only Rs. 8 crores 91 lakhs retaining Rs. 9 lakhs towards TDS. The department does not argue that this amount of Rs. 9 lakhs so deducted is not in tune with the statutory requirements. It appears undisputed that the deductions did not deposit such amount in the Government revenue. Under the circumstances, the petitioner is asked to pay the said sum again, since the department has not recognized this TDS credit in favour of the petitioner. Section 205 carries the caption 'Bar against direct demand on assessee'. The section provides that where tax is deducted at the source under the provisions of Chapter XVII, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

The situation arising in the present petition is that the department does not contend that the petitioner did not suffer deduction of tax at source at the hands of payer, but contends that the same has not been deposited with the Government/revenue. As provided under section 205 and in circumstances of the instant case, the petitioner cannot be asked to pay the same again. It is always open for the department and in fact the Act contains sufficient provisions, to make coercive recovery of such unpaid tax from the payer whose primary responsibility is to deposit the same with the Government revenue scrupulously and promptly. If the payer after deducting the tax fails to deposit it in the Government revenue, measures can always be initiated against such payers The revenue is correct in pointing out that for long after issuing notice under section 266(3), the petitioner has not brought this fact to the notice of the revenue which led the revenue to make recoveries from the bank account of the petitioner. In that view of the matter, at the best the petitioner may not be entitled to claim interest on the amount to be refunded. Under the circumstances, the respondents should lift the bank account attachment. Further, the respondent should refund a sum of Rs. 3.68 lakhs to the assessee. Pushkar Prabhat Chandra Jain [2019] 103 taxmann.com 106 (Bombay)

Failure to Deduct the TDS:

Failure to deduct tax under this section may result in the person i.e. the transferee being deemed to be an assessee in default. Failure to deduct tax will attract interest and penalty. Also, provisions of section 40(a)(ia) will be attracted with effect from assessment year 2015-16.

Section 194IB — TDS on Rent of Property

194-IB. *(1) Any person, being an individual or a Hindu undivided family (other than those referred to in the second proviso to section 194-I), responsible for paying to a resident any income by way of rent exceeding fifty thousand rupees for a month or part of a month during the previous year, shall deduct an amount equal to five per cent of such income as income-tax thereon.*

(2) The income-tax referred to in sub-section (1) shall be deducted on such income at the time of credit of rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

(3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

(4) In a case where the tax is required to be deducted as per the provisions of section 206AA [or section 206AB], such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

Explanation.—For the purposes of this section, "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.

1) Who is responsible to deduct tax u/s 194IB?

Any person, being an individual or a Hindu undivided family (not covered under section 194I), responsible for paying to a resident any income by way of rent exceeding **₹ 50,000** for a month or part of a month during the previous year, shall deduct income-tax thereon at the rates in force. For the purposes of this section, “rent” means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.

TDS u/s 194IB is also required to be deducted by the person covered u/s 44AD and 44ADA whose turnover does not exceeds Rs. 1 Crore or Rs. 50 Lakhs, as the case maybe.

2) When to Deduct TDS on rent of property under Section 194IB?

The income-tax referred above shall be deducted on such income at the time of credit of rent, for the last month of the previous year or the last month of tenancy, if the property is vacated

during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

3) Rate of TDS under Section 194IB

Section 194-IB provides that tax at a rate of **5%**(3.75% w.e.f. 14.05.2020 to 31.03.2021) should be deducted by the Tenant, Payer or Lessee at the time of making payment of rent to, Lesser, Landlord or Payee.

The tax so deducted has to be deposited to the Government Account through online by any of the authorized bank branches.

The provisions of section 203A relating to requirement of obtaining TAN No**.** shall not apply to a person required to deduct tax in accordance with the provisions of this section.

In case, the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

Amended in Finance Act 2021-

w.e.f 01.07.2021 in case tax is required to be deducted as per provision of Section 206AA (Non-furnishing of PAN) or Sec 206AB (Higher rate of TDS for non-filers) such deduction shall not exceed the rent payable for last month of previous year or last month of tenancy as case may be

4) Other Points

- Challan-cum-statement in Form no. 26QC will have to be submitted.
- TDS certificate is to be issued in Form 16C by the person deducting tax within the specified due dates.
- TDS u/s 194IB is to be deducted only if payment is made to resident. In case rent is paid to non-resident owner, TDS u/s 194IB shall not be deducted.
- Tenant may be resident or non-resident. Both are liable to deduct TDS u/s 194IB.
- Rent paid by the tenant may be for residential or commercial purpose.
- TDS is to be deducted even if rent paid exceeds Rs.50,000 for only one month in a year. Example-Rent paid from April 2021 to January 2022 is Rs. 45,000 per month. Rent paid for February and March 2022 is Rs. 55,000 per month. TDS @ 5% is to be deducted on the whole amount i.e Rs. 5,60,000.

ILLUSTRATION-

Mr.Shan, a salaried employee, pays rent of Rs 62,000 per month to Mr. Rehan. Is he required to deduct Tax at source for the financial year 2020-21?

Mr. Shan pays rent exceeding Rs 50,000 per month in the financial year; therefore he is liable to deduct tax at source @5% of such rent. Thus, Rs 37200 (Rs 62000*5%* 12 months) has to be deducted from rent payable for March, 2021.

- **In above case if Mr. Shan vacated the premises on 30th November 2020, what will be his liability?**

  If Mr. Shan vacated the premises on 30th November 2020, then tax of Rs 24800 (Rs 62000*5%***8 months**) has to be deducted from the rent payable for November 2020.

- **In above case if Mr. Shan vacated the premises on 31st March 2021, but Mr. Rehan did not furnish his PAN, what will be his liability?**

  If Mr. Rehan does not provide his PAN to Mr. Shan then tax of ₹ 148800 (₹.62000***20%***12months) or rent of that month i.e.62000 whichever is less has to be deducted from the rent payable for March, 2021.

ILLUSTRATION-

Turnover of Mr. Chaman in F.Y. 2019-20 was Rs. 1.25 crores. In the F.Y. 2020-21, turnover was Rs. 80 Lakhs. He has paid rent of Rs. 60,000/- per month. Whether TDS will be deducted u/s 194I(b) or 194IB?

Answer: TDS u/s 194I(b) is to be deducted by an individual/HUF tenant, if his turnover/ gross receipts in the preceding F.Y. exceeds Rs. 1 crore. TDS is to be deducted at the rate of 10% if the rent paid during the year exceeds Rs. 2.40 Lakhs.
TDS u/s 194IB is to be deducted by an individual/ HUF tenant, if his turnover/ gross receipts in the preceding F.Y. are below Rs. 1 crore (Rs. 50 Lakhs in case of professional).
In the F.Y. 2020-21 TDS is to be deducted u/s 194I(b) as the turnover in the preceding Financial Year exceeds Rs. 1 crore.
In the F.Y. 2021-22, TDS u/s 194IB is to be deducted as the turnover in the preceding F.Y. is less than Rs. 1 crore.

Section 194IC — TDS on Payment Made Under Specified Agreement

194-IC. *Notwithstanding anything contained in section 194-IA, any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under the agreement referred to in sub-section (5A) of section 45, shall at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax thereon*

1) **Who is responsible to deduct tax u/s 194IC?**

   Any person responsible for paying to a resident any sum by way of consideration under the specified agreement under section 45(5A) i.e. under the Joint Development Agreement, shall deduct tax at source.

2) **What is meant by the Joint Development Agreement?**

   Joint Development Agreement is an agreement between two people i.e. the owner of the land or building and another person who is given the permission to build a real estate project and in return, he or she must give a share to the owner or the payment in cash must be done.

3) **Rate of TDS under Section 194IC**

   Given below is the rate of tax that must be deducted under the section 194IC- 10 percent (7.5% w.e.f. 14.05.2020 to 31.03.2021) if the receiver has the PAN 20percent, if there is no PAN of the receiver.

4) **Under what circumstances TDS u/s 194IC is not deductible?**

   Tax deduction at source shall not be made in respect of that part of consideration which is in kind under the specified agreement.

5) **When to Deduct TDS under Section 194IC?**

   Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time or payment thereof, whichever is earlier. For this purpose, “payment” can be in cash or by issue of a cheque or draft of by any other mode.

Section 194J — TDS on Professional or Technical Fees

194J. *(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of—*

(a) fees for professional services, or

(b) fees for technical services, or

(ba) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or

(c) royalty, or

(d) any sum referred to in clause (va) of section 28,

shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to [81][two per cent of such sum in case of fees for technical services (not being a professional services), or royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films and ten per cent of such sum in other cases], as income-tax on income comprised therein :

Provided *that no deduction shall be made under this section—*

(A) from any sums as aforesaid credited or paid before the 1st day of July, 1995; or

(B) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed—

(i) thirty thousand rupees, in the case of fees for professional services referred to in clause (a), or

(ii) thirty thousand rupees, in the case of fees for technical services referred to in clause (b), or

(iii) thirty thousand rupees, in the case of royalty referred to in clause (c), or

(iv) thirty thousand rupees, in the case of sum referred to in clause (d) :

Provided further *that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed [82][one crore rupees in case of business or fifty lakh rupees in case of profession] during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section :]*

Provided also *that no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax on the sum by way of fees for professional services in case*

such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family:

Provided also *that the provisions of this section shall have effect, as if for the words "ten per cent", the words "two per cent" had been substituted in the case of a payee, engaged only in the business of operation of call centre.*

(2) [***]

(3) [***]

Explanation.—For the purposes of this section,—

(a) "professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section;

(b) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

(ba) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;

(c) where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

1) Analysis of Section 194J

Every person other than an individual or a HUF, who is responsible for paying to a resident any sum by way of –

(i) fees for professional services; or

(ii) fees for technical services; or

(iii) any remuneration or fees or commission, by whatever name called, other than those on which tax is deductible under section 192, to a director of a company; or

(iv) royalty, or

(v) non-compete fees referred to in section 28(va) shall deduct tax at source at the rate of

(a) 2% in case of fees for technical services (not being professional services) or royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films; and

(b) 10% in other cases

(c) However, in case of a payee, engaged only in the business of operation of call centre, the tax shall be deducted at source @2%

2) Time of deduction

The deduction is to be made at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

Where any sum is credited to any account, whether called suspense account or by any other name, in the books of accounts of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and tax has to be deducted accordingly**.**

3) Threshold limit for deducting tax

- Tax has to be deducted in case the payment is greater than ₹ 30,000 during the year. Such ₹30,000 is the maximum limit which is applicable to each item or payment independently.

Example: Firm XYZ paid ₹ 25,000/- as fees for technical services and ₹ 20,000/- as professional charges to Mr. Red. Here firm XYZ is not liable to deduct TDS from payments made to Mr. Red as ₹ 30,000/- limit is separate for each item, namely fees for technical services and professional charges.

- TDS under this section is also applicable on commission or remuneration or fees given to a company's director. In these cases, the ₹30,000 limit is not applicable.

4) When to Deduct TDS under Section 194J?

The tax should be deducted at the time of passing such entry in the accounts or making the actual payment of the expense, whichever earlier.

5) Rate of TDS under Section 194J

Nature of payment	Threshold limit	Rate of tax
Fees for professional services	Rs. 30,000	10%
Fees for technical services and payment to call centers	Rs. 30,000	2% (for FTS- 10% upto FY 19-20)
Remuneration or fees to Director (other than 192)	NIL	10%
Royalty	Rs. 30,000	10%
Non-compete fees	Rs. 30,000	10%

Finance Act : TDS on Royalties where such royalty is in the nature of consideration for sale, distribution or exhibition of a cinematographic film will also be subjected to TDS @ **2%**

6) Applying for TDS at a Lower Rate

According to Section 197, the person receiving payment can apply for a reduction of rate in TDS, through filling in the Form 13 and sending it to the assessing officer. If approved by the officer, a certificate stating a deduction in the TDS is issued to the assessee.

7) Non-applicability of TDS under section 194J

(i) An individual or a Hindu undivided family is not liable to deduct tax at source. However, an individual or HUF, whose total sales, gross receipts or turnover from business or profession carried by him exceeds ` 1 crore in case of business or` 50 lacs in case of profession in the financial year immediately preceding the financial year in which the fees for professional services or fees for technical services is credited or paid is required to deduct tax on such fees.

Note - It may be noted that individuals and HUFs are not required to deduct tax at source under section 194J on royalty and non-compete fees even if turnover in the preceding year exceeds Rs. 1 crore in case of business or receipts exceed Rs. 50 Lacs in case of profession.

Further, an individual or Hindu Undivided family, shall not be liable to deduct income- tax on the sum payable by way of fees for professional services, in case such sum is credited or paid exclusively for personal purpose

Meaning of "Professional services"

"Professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the CBDT for the purposes of section 44AA or of this section.

(A) Maintenance of books of account by 'specified (including notified) professionals'

Section 44AA(1) prescribes for compulsory maintenance of such books of accounts and other documents which will enable the Assessing Officer to compute his total income in accordance with the provisions of this Act. sub-section (1) applies to the followings-

1. A person carrying on a legal profession
2. A person carrying on a medical profession
3. A person carrying on engineering or architectural profession
4. A person carrying on the profession of accountancy
5. A person carrying on the profession of technical consultancy
6. A person carrying on the profession of interior decoration

7. Any other profession as notified by the Board. The CBDT has notified the following professions u/s44AA(1) of the Act.

(1) A person carrying on the **profession of an authorised representative or film artist**. [**Notification No. SO 17(E) dated 12-1-1977**]

"Authorised representative" means a person who represents any other person, on payment of any fee or remuneration, before any tribunal or authority constituted or appointed by or under any law for the time being in force, but does not include an employee of the person so represented or a person carrying on a legal profession or a person carrying on the profession of accountancy.

"Film artist" means any person engaged in his professional capacity in the production of a cinematograph film, whether produced by him or by any other person, as -

(i) an actor ;
(ii) a cameraman ;
(iii) a director, including an assistant director ;
(iv) a music director, including an assistant music director ;
(v) an art director, including an assistant art director ;
(vi) a dance director, including an assistant dance director ;
(vii) an editor ;
(viii) a singer ;
(ix) a lyricist ;
(x) a story writer ;
(xi) a screen-play writer ;
(xii) a dialogue writer; and
(xiii) a dress designer.

2. The profession of company secretary [Notification No. SO 2675 dated 25-9-1992]
"Company Secretary" means a person who is a member of the Institute of Company Secretaries of India in practice within the meaning of sub-section (2) of section 2 of the Company Secretaries Act, 1980 (56 of 1980).
3. The profession of information technology [Notification No. SO 385(E) dated 4-5-2001]

Interpretation of Fee for Professional Service

As per definition given under Income Tax Act, following attributes are required to classify a service as “Professional Services”:

1. Service is provided by a person;
2. Service is provided in the course of carrying out any profession;

3. Such service falls under the list of professions given in definition itself or it falls under any other profession notified for Section 44AA. These attributes are discussed below in detail:

a. **Service is provided by a person**

- Definition of FPS clearly states that "Professional Service" is the one which is rendered by a person. Whereas, no such word is mentioned in the definition of FTS.
- Section 2(31) of Income Tax Act defines the word "person" as:

"person" includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

- So, as per definition given, a person can either be an individual or HUF or Firm or any other artificial person.
- However, activities mentioned in the definition of FPS are more into intellectual and artistic nature and the same can be provided by a person only and not by any artificial person.

ii. **"In course of Carrying out any profession"**

- Profession is a business type which requires intellectual skills only. Further, all professional institutions permit their member professionals to practise in the capacity of Individual or Firm (Proprietorship Firm or Partnership Firm or Limited Liability Partnership Firm). Rationale behind such a condition is that artificial persons have independent liability from its directors and employees. However, in case of profession, complete onus lies on a person providing service. Therefore, professionals can't be differentiated from their associated liability and therefore, they are permitted to practise either in individual name or under name of firm.

It is to be noted that FPS will be applicable to the cases where services are provided by individual or firm of individuals. However, Hon'ble Delhi High Court and Bombay High Court have interpreted the term person used in the definition of professional services is not restricted to the individual or firm of individuals and can be extended even to artificial person or corporate bodies. However, both these decisions were issued in the contest of payment made by Third Party Administrators ('TPA') to Hospitals.

However, considering existing legal position as per above mentioned High Court decisions professional services rendered even by an artificial person and body corporate will be covered in the definition of FPS.

It is to be noted that certain Sports personnel (Sports Persons, Umpires and Referees, Coaches and Trainers, Team Physicians and Physiotherapists, Event Managers, Commentators, Anchors and Sports Columnists) were notified as professionals by CBDT vide Notification No. 88/2008 dated 21-08-2008. However, this is notified under section 194J of the Income Tax Act, 1961 and not under section 44AA(1). Hence, for the purpose of section 44AA, they will be covered under section 44AA(2). These professionals are not entitled to opt for 44ADA.

Example: A City football Club has engaged Mr. Dev, a resident in India, as its coach at a remuneration of `10 lacs per annum. The club wants to know from you whether it is liable to deduct tax at source from such remuneration.

SOLUTION

Section 194J requires deduction of tax at source @10% from the amount credited or paid by way of fees for professional services, where such amount or aggregate of such amounts credited or paid to a person exceeds Rs. 30,000 in the F.Y. 2021-22. As per Explanation (a) to section 194J, professional services include services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purposes of section 194J.

Accordingly, the CBDT has, vide Notification No.88 dated 21.8.2008, in exercise of the powers conferred by clause (a) of the Explanation to section 194J notified the services rendered by coaches and trainers in relation to the sports activities as professional services for the purposes of section 194J.

Therefore, the club is liable to deduct tax at source under section 194J from the remuneration payable to the Coach, Mr. Dev.

Meaning of "Fees for technical services"

Explanation (b) to section 194J provides that the term 'fees for technical services' shall have the same meaning as in Explanation 2 to section 9(1)(vii). The term 'fees for technical services' as defined in Explanation 2 to section 9(i)(vii) means any consideration (including any lump sum consideration) for rendering of any of the following services:

1. managerial,

2. technical or

3. consultancy services (including the provision of services of technical or other personnel)

but does not include consideration for any service which would be income of the recipient under the head "Salaries".

Note- As per the Supreme Court judgment in CIT v. Bharti Cellular LTD. (SC), technical service would include services rendered by a human. It would not include any service provided by machines or robots.

Whether TDS u/s 194J is to be deducted on management and maintenance of System

The person paying fee for managing and maintaining a system will be liable to deduct TDS u/s 194J. [CIT vs Kotak Securities and DCIT vs Angel Broking Ltd.]. The assessee paid fee to BSE for "Bolt" system as "transaction charges" (in the nature of managing and maintaining the system). It was held that TDS is to be deducted on amount paid as transaction charges as such payments are included in definition of "fees for technical services". Hence TDS u/s 194J will apply.

Whether TDS on payment to a Recruitment Agency For services rendered will be deducted under section 194C or 194J?

Section 194C apply to a contract for carrying out any work which results into a tangible product. Payments to recruitment agencies are in the nature of payments for services rendered. Hence, TDS will be deducted under section 194J and not 194C.

Meaning of 'Technical Consultancy

The technical consultancy has not been specifically defined. We can draw our conclusion from indication from Section 9. Fees for Technical Services (FTS) is defined as any consideration for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be

income of the recipient chargeable under the head Salaries. The dictionary meaning of the same comes to:

Managerial: Services relating to a manager or to the functions, responsibilities, or position of management.

Technical: Services relating to, or involving the practical, mechanical, or industrial arts or the applied sciences.

Consultancy: the act of offering expert or professional advice in a field.

TUV Bayren (India) Ltd. dated 06.07.2012 in ITAT Mumbai In the said case, the Hon'ble Tribunal has defined the scope of the aforesaid terms in the following manner: Technical services require expertise in technology and providing the client such technical expertise. • Managerial services is used in the context of running and management of the business of the client. • Consultancy is to be understood as advisory services wherein necessary advice and consultation is given to its clients for the purpose of client's business.

• Conclusion - It is thus clear that every service cannot be called a "technical service" merely because some technicality or technical knowledge is involved in providing the service. • Likewise, the scope of "managerial service" and "consultancy service" is also restricted in as much as such services can be covered under FTS only when the service is provided in the context of running and management of client's business. It is the act of offering expert or professional advice in a field. • Recognised course or qualification may be a good criteria to evaluate whether any service would qualify.

Applicabilty of provisions of Sec 44ADA in case tds has been deducted u/s 194J

Shri Arthur Bernard Sebastine Pais V. Deputy Commissioner Of Income-Tax, CPC, Bengaluru - Bangalore ITAT (2019). In this case TDS was deducted u/s 194J. The assessee had offered income under 44AD. There was CPC mismatch and was assessed under sec 44ADA. The ITAT held that fees of technical services as enumerated in section 194J is a very broad term which encompasses any services in the nature of managerial, technical or consultancy services. Though the deduction of tax on fees paid to Assessee has been done u/s 194J as mandated by the Act, the services rendered by the Assessee do not fall under section 44AA(1) which is a pre-condition to tax the receipts @ 50% on presumptive basis under section 44ADA. The Assessee cannot be said to be providing technical consultancy as mentioned in section 44AA(1) of the act.

Reimbursement of expense

– TDS not liable to be deducted on pure reimbursements when separate bill is raised.

- If there is no income embedded in payment, the TDS provision would not apply as the TDS is only an alternative method of collection of taxes

Dismissing the appeal of the revenue the Court held that; Since no income was reflected in balance sheet and Profit & Loss account of HSL towards payment made by assessee and it was reimbursement of expenses incurred on cost to cost basis by assessee, it could not be treated as in default. Court also observed that if there is no income embedded in a payment, then TDS provisions would not apply as TDS is only an alternative method of collection of taxes; reimbursement cannot be deducted out of bill amount for purpose of TDS. Under the circumstances, the assessee falls outside the scope of S. 194J read with S. 200 during the relevant assessment years.

Circular No. 715, dated 3-8-1995.(AY. 2008-09 to 2010-11) CIT v. Kalyani Steels Ltd. (2018) 254 Taxman 350/163 DTR 513/ (2019) 308 CTR 400 (Karn.)(HC) CIT v. Mukund Ltd (2018) 254 Taxman 350/163 DTR 513/(2019) 308 CTR 400 (Kan.)(HC)

Case Law :

Though the assessee had made provision for audit fees and claimed the same as a deduction, it contended that the provisions of section 194J would not apply to audit fees, as question of payment to auditor would arise only after signing of accounts which took place after year-end.

Noting the provisions of section 194J, requiring deduction of tax at source either at time of credit of expenditure to account of payee or at time of payment whichever is earlier, the Tribunal held that since the assessee had made provision for audit fees to the account of the payee, provisions of section 194J were clearly attracted and non-deduction of tax at source would automatically invite disallowance u/s 40(a)(ia)

Fins Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT - (2018) 92 taxmann.com 79 (Chen) - ITA Nos. 2027 & 2028 (CHNY) of 2017 dated 08.02.2018

ILLUSTRATION-

XYZ Co., a partnership firm took consultancy from an engineer located at Sydney. The firm has paid fees of ₹ 80000 to the engineer. Should the firm deduct Tax at source under section 194J from the fees paid to the engineer?

In this case, the professional fees are paid to non-resident and hence, tax is not to be deducted under section 194J. However, section 195 requires deduction of tax at source from payment made to non-resident if such payment is chargeable to tax. Hence, the firm may be required to deduct tax at source under section 195. For such purpose provisions of tax treaty was to be considered.

Meaning of "Royalty"

Royalty means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head Capital gains) for:

a. the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property

b. the imparting of any information concerning the working of, secret formula or process or trade mark or similar property or the use of, a patent, invention, model, design,

c. the use of any patent, invention, model, design, secret formula or process or trade mark or similar property

d. the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ie. the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB

f. the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or videotapes for use in connection with television or tapes for use in connection with radio broadcasting but not including consideration for the sale, distribution or exhibition of cinematographic films (these words will omit w.e.f. 01.04.2021) or

g. the rendering of any services in connection with the activities referred to in above sub-clauses

Threshold Limit

Provided that no deduction shall be made under this section where:
the amount of such sum or the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed: 30,000

Rate of TDS- 10 %

(2% where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films)
Note: Due to COVID-19 pandemic, the rate of TDS has been reduced from 2% to 1.50% and 10% to 7.5% for the period from 14.05.2020 to 31.03.2021.

TDS u/s.194J not to be deducted on subsequent sale of software without modification– **Notification No.21/2012 dtd. 13.06.2012.**

Meaning of "non-compete fee"

(referred in clause (va) of section 28)

Any sum (non-compete fee) referred to in clause (va) of section 28

Section 28(va): Any sum, whether received or receivable (in cash or kind) under an agreement for:

a. not carrying out any activity in relation to any business or profession

or

b. not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services:

Provided that sub-clause (a) shall not apply to:

i. any sum, whether received or receivable (in cash or kind) on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business or profession, which is chargeable under the head "Capital gains"

ii. any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations Environment Programme, in accordance with the terms of the agreement entered into with the Government of India.

Threshold Limit

Provided that no deduction shall be made under this section where:

the amount of such sum or the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed 30,000

Rate of TDS-10 %

Note: Due to COVID-19 pandemic, the rate of TDS has been reduced from 2% to 1.50% and 10% to 7.5% for the period from 14.05.2020 to 31.03.2021.

Whether the amount paid to "Model" is liable to deduction of TDS u/s 194J or 194C?

In the case of **DCIT (TDS) Vs Kodak India (P) Ltd. (ITAT Mumbai)** the issue under consideration is whether the services, the modeling, rendered by Ms. Katrina Kaif constitutes professional service and the fee paid to her for modeling with the purpose of marketing of the camera products of the assessee liable for TDS u/s 194J?

Undisputedly, Ms. Katrina Kaif has received the said fee not in connection with production of a cinematographic film and the same received admittedly for modeling. She has not received the sum for acting in an autographic Film. Receipts for all modeling and acting skills of an individual do not attract the said section 194J, unless, they are part of the production of a cinematographic film. In the original sense of the modeling, the same may be a profession and the receipts earned by such models may be professional receipts. But the fact is that modeling is not a defined or notified profession either in the Income tax Act, 1961 or in the Notifications, In fact, there are many such un-notified professions and as such ones cannot be brought under the provisions of section 194J of the Act. In the instant, admittedly, the services rendered have nothing to do with the production of a cinematographic film. Further, before parting with the order, it is pertinent to mention that a person can have many skills i.e acting skills in Films, modeling skills for display of merchandise, singing skills etc. and such person can make earning out of such skills. It is not that total earning of that person in lieu of services rendered must attract the provisions of section 194J of the Act. Therefore, the taxable receipts u/s 194J of the Act are services-specific and not person specific. Therefore, the impugned payments made by the assessee to Matrix India on behalf of Ms Katrina Kaif do not attract the provisions of section 194J of the Act.

Applicability of Section 194J in case of Medical Professionals

TPA'S liable to deduct tax under section 194J on payment to hospitals on behalf of insurance companies

The CBDT has, through Circular No.8/2009 dated 24.11.2009, clarified that TPAs (Third Party Administrator's) who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc. This is because the services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable to payments made by TPAs to hospitals etc.

Case Law: TPA's liable to deduct TDS u/s 194J on payment to hospitals on behalf of insurance companies.

The Tribunal held that Third Party Administrator (TPA), who were responsible for making payment to hospitals for rendering only medical services to policy holders under various medical

insurance policies issued by several insurers, were liable to deduct tax at source under section 194J from payments made to hospitals.
It concluded that only professional services relating to medical services alone would be liable for deduction of TDS under section 194J and not payment towards bed charges, medicines used on patients, transportation charges, implants, consumables etc. which are reimbursements and thus the issue was squarely covered vide CBDT Circular No 8/2009.
Vipul Medcorp TPA vs ACIT- (2018) 97 taxmann.com 670 (Delhi-Trib)- ITA No 4398 of 2013, 3234 of 2014 & 4756 of 2015 dated 04.09.2018

Case Law: Payments to retainer doctors would be subject to TDS under section 194J and not under section 192.

Dismissing the appeal of the revenue, the Tribunal held that; Payments to retainer doctors would be subject to TDS under section 194J and not under section 192. There is no master and servant relationship.
(AY. 2013-14) ACIT v. Fortis Healthcare Ltd. (2016) 157 ITD 746 (Chd.) (Trib.)
or
Fees paid to consultant doctors is not salary-Tax is deductible under section 194J

Consultant doctors were employed in the hospital in addition to full-time resident doctors. The consultant doctors were rendering services under contract. They declared professional fees in their returns and paid tax thereon. Fees paid to them was not salary and tax was deductible under section 194J and not under section 192. Since there was no loss to the Revenue, levy of interest was not justified.
AY.2007-08) CIT (TDS) v. Apollo Hospitals International Ltd. (2013) 359 ITR 78 (Guj.) (HC)

Case Law : Hospitals and Doctors- No employer and employee relation-Provisions of section 192 are not applicable.

The Assessee Company was running a hospital. It engaged certain professional doctors to provide full time services to the patients as per contract for service entered with them. The professional doctors shared fees received from the patients, their remuneration was not fixed and they were free to render service to the patients as they considered appropriate in terms of time or duration.

The assessee company deducted tax u/s 194J from the payments made to them treating the payments as professional fees.
AO held that there was employer and employee relationship between assessee and doctors and tax was to be deducted at source u/s. 192.

The CIT(A) analysed the agreement with doctors and hospital. He found that the doctors enjoyed complete professional freedom, they define working protocol, have free hand in treatment of patients and there was no control of the hospital by way of any direction to the doctors on the treatment of patients. Doctors fixed their own OPD hours and were available on call in case of emergency. They were working in their professional capacity and not as employees.

Therefore, Commissioner (Appeals) held that A.O. was not right in concluding that there existed an employer -employee relationship between the hospital and the professional doctors. Thus, invocation of section 192 was not justified.

On appeal Tribunal observed and held that there does not exist employer-employee relationship between the assessee appellant and the persons providing professional services. On consideration of the agreement in its entirety evident that it is not a case of employer employee relationship between the assessee appellant and the doctors. Hence, Tax was to be deducted at source under section 194J as professional charges.
(AYS.2009-10, 2010-11) Dy. CIT (TDS) .v. Ivy Health Life Sciences (P.) Ltd. (2014) 146 ITD 486 / (2013) 31 taxmann.com 236 (Chd.) (Trib.)

Case Law: Doctors receiving fixed or variable remuneration, with or without written contracts, are professionals and cannot be treated as employees as per their terms and conditions

Payments were made by the Assessee, a charitable trust managing a hospital, to doctors. The payments were either fixed or variable, with or without written contract. The AO alleged that such doctors were employees of the assessee and tax ought to be deducted u/s 192 and not u/s 194J. It was held by the HC that the terms and conditions of the doctors would be crucial and material.

The doctors drawing fixed or variable remuneration could not be treated as regular employees since benefits like provident fund, retirement benefit, etc. were not paid to them. They could not be considered to be employees merely because they were required to spend a fixed time at hospital, treat fixed number of patients or attend them as indoor patients and out patients.

The doctors were free to carry on their private practice but beyond hospital timings.
(AY. 2008-09) CIT v. Grant Medical Foundation (2015) 375 ITR 49/275 CTR 253 / 116 DTR 45 (Bom.) (HC)

Case Law: Remuneration paid to a visiting doctor was variable with number of patients attended by him.

Tribunal held that remuneration paid to visiting doctors was variable with number of patients attended by them. The payments made to them would be subjected to TDS u/s 194J and not as salary u/s 192.

(AY. 2011 - 2012 to 2013 - 2014) Hosmat Hospital (P.) Ltd. v. ACIT (2016) 160 ITD 513 (Bang.) (Trib.)

Case Law: Hospital - Consulting Doctors

Where a hospital engaged consulting doctors and provided them with chambers with secretarial assistance and fee was collected from outpatients and paid to consultants each day after deducting certain amount towards rent and secretarial assistance, it was not a case of payment of professional fees and neither section 192 nor section 194J was attracted and the hospital cannot be treated as assessee in default for not deducting tax from such payments.

ACIT v. Indraprastha Medical Corp. Ltd. (2010) 128 TTJ 500 / 35 DTR 535/33 SOT 261 (Delhi) (Trib.)

Case: Maintenance of operation theatre and surgical equipment's system tax to be deducted as per provisions of section 194J and not as per section 194C.

Assessee, a medical College, entered into contracts with various parties to maintain operation theatre and surgical equipments, RO system, CT scan machine, MRI machine, medical equipment lift sterilisation and as well as to provide services of anti-termite treatment all these services cannot be provided in routine and normal manner, but require technical expertise or professional skills and therefore, provisions of S. 194J attracted to these contracts. Appeal of revenue was allowed.
(AYS. 2008-09 and 2009-10) ITO .v. Accounts Officer, Govt. Medical College, Jammu (2014) 146 ITD 648 / (2012) 22 taxmann.com 149 (Asr.) (Trib.)

Section 194K — TDS on Income in Respect of units of Mutual Fund

194K. *Any person responsible for paying to a resident any income in respect of—*

(a) units of a Mutual Fund specified under clause (23D) of section 10; or

(b) units from the Administrator of the specified undertaking; or

(c) units from the specified company,

shall, at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent:

Provided *that the provisions of this section shall not apply—*

(i) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person responsible for making the payment to the account of, or to, the payee does not exceed five thousand rupees; or

(ii) if the income is of the nature of capital gains.

Explanation 1.—For the purposes of this section,—

(a) "Administrator" means the Administrator as referred to in clause (a) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

(b) "specified company" means a company as referred to in clause (h) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

(c) "specified undertaking" shall have the meaning assigned to it in clause (i) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002).

Explanation 2.—For the removal of doubts, it is hereby clarified that where any income referred to in this section is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

1) Who is responsible to deduct tax u/s 194K?

a) Any person responsible for making the payment to a resident in respect of
b) units of a Mutual Fund specified under clause (*23D*) of section 10 or of the Unit Trust of India,
c) units from the Administrator of the specified undertaking; or (c) units from the specified company

d) units from the specified company, shall,

where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person responsible for making the payment to the account of, or to, the payee does not exceed five thousand rupees; or (ii) if the income is of the nature of capital gains.

2) When to Deduct TDS under Section 194K?

At the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

3) Threshold Limit for deducting TDS?

Tax has to be deducted in this section if the payment is more than Rs.5000

4) Rate of TDS Under section 194 K?

Deduct income-tax thereon at the rate of **10%.** (7.5% w.e.f. 14.05.2020 to 31.03.2021)

5) Non applicability of Section 194 K

(i) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person responsible for making the payment to the account of, or to, the payee does not exceed five thousand rupees; or

(ii) if the income is of the nature of capital gains

6) 194K- Income in respect of units

With effect from	**April 1,2020**
Applicability	Any income in respect of • Units of MF u/s 10(23D) • Units from specified company • Units from specified undertakings
Tax rate	**10%**
Threshold Limit	Aggregate amount exceeds Rs. 5,000
Liable to deduct	At the time of credit or payment, whichever is earlier

Section 194LA — TDS on Payments of Compensation on Acquisition of certain Immovable Property

194LA. *Any person responsible for paying to a resident any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land), shall, at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax thereon:*

Provided *that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed two lakh and fifty thousand rupees:*

Provided further *that no deduction shall be made under this section where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013).*

Explanation.—For the purposes of this section,—

(i) "agricultural land" means agricultural land in India including land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(ii) "immovable property" means any land (other than agricultural land) or any building or part of a building.

Analysis of Section 194LA

This section is effective from 1-10-2004 which provides as follows;

a. Any person responsible for paying any sum **to a resident** is required to deduct tax at source;

b. The payment must be in the nature of **compensation** or **the enhanced compensation** or **the consideration** or **the enhanced consideration** on account of **compulsory acquisition**, under any law for the time being in force, **of any immovable property**, other than agricultural land;

c. The tax must be deducted at the **rate of 10 per cent.** No surcharge or health and education cess shall be added to the above rates. Hence, tax will be deducted at source at the basic rate. The rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee.

d. The tax shall be deducted at the time of payment of the sum in cash or by issue of the cheque or of draft or by any other mode, whichever is earlier;

e. No deduction is required where the amount of such payment or the total amount of such payment does not exceed **Rs. 2.5 lakh, during the financial year**; and

f. For the purpose :

Immovable property means **any land** (excluding agricultural land) or any building or part of a building;

agricultural land means agricultural land in India, **wherever** situated [i.e., including land situate in any area referred to in section 2(14)(iii)(a)/(b)]**Thus Agricultural land even if situated in urban area is excluded from the term immovable property**.;

g. The TDS is required **only** in case of **compulsory acquisition under any law**. In other words, for purchase of any immovable property, tax is **not** required to be deducted at source, where such purchase is from a resident.

h. The limit for no deduction is fixed with reference to the payments made during a financial year and not the aggregate payments in respect of the acquisition of the land. To illustrate, if the land is acquired, say, for Rs. 1,95,000 in the financial year 2019-20, no deduction is required. If the compensation is enhanced by Rs. 50,000 in the next financial year, no tax is required to be deducted since the aggregate payment during the next financial year does not exceed Rs. 2.5 lakh.

i. Finance Act, 2017 has inserted new proviso after the Explanation to provide that no deduction of tax under the section is required, if the payment is made in respect of any award or agreement which has been exempted from levy of income tax under section 96 of "**Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013**"

j. The assessee to whom compensation is payable may make an application in Form No. 13 for obtaining a certificate for deduction of tax at any lower rate or no deduction of tax, as the case may be.

1) Who is responsible to deduct tax u/s 194LA?

Any person, who is responsible for paying, on or after 1.10.2004, to a resident, any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land) shall, deduct income-tax thereon.

"Immovable property" means any land (other than agricultural land) or any building or part of a building.

2) When to Deduct TDS under Section 194LA?

Tax is deductible at the time of payment of aforesaid sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

3) Rate of TDS under Section 194LA

The rate of tax deduction u/s 194LA is 10%(7.5% w.e.f. 14.05.2020 to 31.03.2021) of such compensation.

1. No surcharge and Health & Education Cess shall be added to the above rates. Hence, tax will be deducted at source at the basic rate.
2. The rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee

4) Where No TDS under Section 194LA is to be Deducted?

- No deduction shall be made under this section in a case where the amount of such payment or as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed **₹2,50,000.**
- No deduction shall be made under this section where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

5) Other key points related to section 194LA

Agricultural land for the purpose of this section means agricultural land in India situated in any area. Therefore, tax cannot be deducted in respect of compensation payable on account of compulsory acquisition of agricultural land situated in urban area.

6) Points to be noted

1. Agricultural land means agricultural land in India.
2. Immovable property means any land (other than agricultural land) or any building or part of a building.
3. Deduction shall not be made where payment is made in respect of any award or agreement which has been exempted from levy of income-tax u/s 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Section 194LB

TDS on Income by way of Interest from Infrastructure Debt Fund

194LB. *Where any income by way of interest is payable to a non-resident, not being a company, or to a foreign company, by an infrastructure debt fund referred to in clause (47) of section 10, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.*

1) Who is responsible to deduct tax u/s 194LB?

Any person who makes payment of interest [which is payable by an infrastructure debt fund, as per section 10(47)] to a non-resident (not a company/ foreign company) is required to deduct tax at source.

2) When to Deduct TDS under Section 194LB?

It will be deducted at the time of credit of such income to the account of the payee or at the time of payment of such sum in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

3) Rate of TDS under Section 194LB

The rate of TDS shall be 5% of such gross interest plus surcharge.

1. Surcharge shall be added if applicable.
2. Health & Education Cess @ 4% shall be added to the above rates plus surcharge if applicable.
3. The provisions of section 206AA shall not apply to a non-resident, not being a company, or to a foreign company, in respect of payment of such interest subject to such conditions as may be prescribed.

4) Is it possible to get the payment without Tax Deduction or with Lower Tax Deduction under this section?

Tax cannot be deducted at lower rate. Hence, section 197 shall not be applicable in this case.

Section 194LBA — TDS on Certain Income from Units of a Business Trust

194LBA. *(1) Where any distributed income referred to in section 115UA, being of the nature referred to in [***] clause (23FC) or clause (23FCA) of section 10, is payable by a business trust to its unit holder being a resident, the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.*

(2) Where any distributed income referred to in section 115UA, being of the nature referred to in [***] clause (23FC) of section 10, is payable by a business trust to its unit holder, being a non-resident (not being a company) or a foreign company, the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent [89][in case of income of the nature referred to in sub-clause (a) and ten per cent in case of income of the nature referred to in sub-clause (b), of the said clause]. [(2A) Nothing contained in sub-sections (1) and (2) shall apply in respect of income of the nature referred to in sub-clause (b) of clause (23FC) of section 10, if the special purpose vehicle referred to in the said clause has not exercised the option under section 115BAA.]

(1) *Where any distributed income referred to in section 115UA, being of the nature referred to in clause (23FCA) of section 10, is payable by a business trust to its unit holder, being a non-resident (not being a company), or a foreign company, the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.*

1) Who is responsible to deduct tax u/s 194LBA?

Any person who makes payment of income [as per section 115UA] which is payable by a business trust to its unit holder is required to deduct tax at source. Such unit holder can be a resident, non-resident (but not a company).

2) When to Deduct TDS under Section 194LBA?

The time of deduction is earlier of, the credit of income to the account of the payee (receiver) or actual payment (in cash, cheque, draft or another mode).

3) Rate of TDS under Section 194LBA

S.No.	Particulars	Rate
1.	Distribution of dividend income (w.e.f.01.04.2020) & income referred u/s 10(23FC) & 10(23FCA) to **resident**	10%(7.5% w.e.f. 14.05.2020 to 31.03.2021)
2.	Distribution of dividend income (w.e.f. 01.04.2020) & income referred u/s **10(23FC)(a)** to **non-resident**	5%
3.	Distribution of income referred u/s **10(23FC)(b)** to **non-resident**	10%
4.	Distribution of income referred u/s **10(23FCA)** to **non-resident**	Rates in Force

Section 194LBB — TDS on Income in Respect of Units of Investment Fund

194LBB. *Where any income, other than that proportion of income which is of the same nature as income referred to in clause (23FBB) of section 10, is payable to a unit holder in respect of units of an investment fund specified in clause (a) of the Explanation 1 to section 115UB, the person responsible for making the payment shall, at the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon,—*

(i) at the rate of ten per cent, where the payee is a resident;

(ii) at the rates in force, where the payee is a non-resident (not being a company) or a foreign company :

Provided *that where the payee is a non-resident (not being a company) or a foreign company, no deduction shall be made in respect of any income that is not chargeable to tax under the provisions of the Act.*

Explanation.—For the purposes of this section,—

(a) "unit" shall have the meaning assigned to it in clause (c) of the Explanation 1 to section 115UB;

(b) where any income as aforesaid is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be the credit of such income to the account of the payee, and the provisions of this section shall apply accordingly.

1) Who is responsible to deduct tax u/s 194LBB?

Any person who gives an income (as referred u/s 115UB) to a unit holder in respect of units held in an investment trust has to deduct tax under this section.

2) When to Deduct TDS under Section 194LBB?

The time of deduction is earlier of, the credit of income to the account of the payee (receiver) or actual payment (in cash, cheque, draft or another mode).

3) Rate of TDS under Section 194LBB

The rate of tax u/s 194LBB is 10% (if the payee is resident) (7.5% w.e.f. 14.05.2020 to 31.03.2021) and if the payee is non-resident (not a company) or a foreign company then tax will be as per the rates in force during FY.

Section 194LBC

TDS on Income in Respect of Investment in Securitization Trust

194LBC. *(1) Where any income is payable to an investor, being a resident, in respect of an investment in a securitisation trust specified in clause (d) of the Explanation occurring after section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon, at the rate of—*

(i) twenty-five per cent, if the payee is an individual or a Hindu undivided family;

(ii) thirty per cent, if the payee is any other person.

(2) Where any income is payable to an investor, being a non-resident (not being a company) or a foreign company, in respect of an investment in a securitisation trust specified in clause (d) of the Explanation occurring after section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon, at the rates in force.

Explanation.—For the purposes of this section,—

(a) "investor" shall have the meaning assigned to it in clause (a) of the Explanation occurring after section 115TCA;

(b) where any income as aforesaid is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be the credit of such income to the account of the payee, and the provisions of this section shall apply accordingly.

1) Who is responsible to deduct tax u/s 194LBC?

Any person who gives income to an investor with respect to investment in securitization trust is required to deduct tax under this section.

2) When to Deduct TDS under Section 194LBC?

The time of deduction is earlier of, the credit of income to the account of the payee (receiver) or actual payment (in cash, cheque, draft or another mode).

3) Rate of TDS under Section 194LBC

a. 25% (if the payee is resident Individual & HUF) (18.75% w.e.f. 14.05.2020 to 31.03.2021)

b. 30% (if the payee is resident other than individual or HUF) (22.50% w.e.f. 14.05.2020 to 31.03.2021)

At the rates in force [if the payee is non-resident (not being a company) or foreign company]

Section 194LC — TDS on Income by way of Interest from Indian Company or Business trust

194LC. *(1) Where any income by way of interest referred to in sub-section (2) is payable to a non-resident, not being a company or to a foreign company by a specified company or a business trust, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon at the rate of five per cent:*

*[**Provided** that in case of income by way of interest referred to clause (ib) of sub-section (2), the income-tax shall be deducted at the rate of four per cent.]*

(2) The interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company or the business trust,—

(i) in respect of monies borrowed by it in foreign currency from a source outside India,—

(a) under a loan agreement at any time on or after the 1st day of July, 2012 but before the 1st day of July, [2023]; or

(b) by way of issue of long-term infrastructure bonds at any time on or after the 1st day of July, 2012 but before the 1st day of October, 2014; or

(c) by way of issue of any long-term bond including long-term infrastructure bond at any time on or after the 1st day of October, 2014 but before the 1st day of July, [2023],

as approved by the Central Government in this behalf; or

(ia) in respect of monies borrowed by it from a source outside India by way of issue of rupee denominated bond before the 1st day of July, [2023; or]

[(ib) in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after the 1st day of April, 2020 but before the 1st day of July, 2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre, and]

(ii) to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or the bond and its repayment.

Explanation.—For the purpose of this section—

(a) "foreign currency" shall have the meaning assigned to it in clause (m) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);

(b) "specified company" means an Indian company;

[97]*[(c) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);*

(d) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43.]

1) Who is responsible to deduct tax u/s 194LC?

If an Indian company or a business trust pays income by way of interest to non-resident (not being a company) or foreign company, has to deduct TDS under this section.

2) Nature of Payment

- Interest payable by an Indian Company or a Business Trust in respect of monies borrowed by it in foreign currency from a source outside India,—

a. under a loan agreement at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2023(amended w.e.f. 01.04.2020); or

b. by way of issue of long-term infrastructure bonds at any time on or after the 1st day of July, 2012 but before the 1st day of October, 2014; or

c. by way of issue of any long-term bond including long-term infrastructure bond at any time on or after the 1st day of October, 2014 but before the 1st day of July, 2023 (amended w.e.f. 01.04.2020);, as approved by the Central Government in this behalf.

d. in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after the 1st day of April, 2020 but before the 1st day of July, 2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre, and";

e. Interest payable in respect monies borrowed by it from a source outside India by way of issue of rupee denominated bond before the 1st day of July, 2020.

3) When to Deduct TDS under Section 194LC?

At the time of credit of such income to the account of payee or at the time of payment whichever is earlier.

For this purpose, "payment" can be in cash or by issue of a cheque or draft of by any other mode.

4) Rate of TDS under Section 194LC

The rate of tax u/s 194LC is 4%(w.e.f. 01.04.2020)(plus Health & Education Cess @ 4%).

5) Other key points related to section 194LC

- Interest does not exceed the amount of interest calculated at the rate approved by Central Government in this behalf after considering the terms of bond or loan and its repayment.

- The provisions of section 206AA shall not apply in respect of payment of interest on long-term infrastructure bonds, as referred to in this section.

Section 194LD — TDS on Income by way of Interest on certain Bonds / Government Securities

194LD. *(1) Any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor, any income by way of interest referred to in sub-section (2), shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.*

[99]*[(2) The income by way of interest referred to in sub-section (1) shall be the interest payable,—*

(a) on or after the 1st day of June, 2013 but before the 1st day of July, 2023 in respect of the investment made by the payee in—

(i) a rupee denominated bond of an Indian company; or

(ii) a Government security;

(b) on or after the 1st day of April, 2020 but before the 1st day of July, 2023 in respect of the investment made by the payee in municipal debt securities:

Provided *that the rate of interest in respect of bond referred to in sub-clause (i) of clause (a) shall not exceed the rate as the Central Government may, by notification in the Official Gazette, specify.*

Explanation.—For the purpose of this section,—

(a) "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;

(b) "Government security" shall have the meaning assigned to it in clause (b) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

[1]*[(ba) "municipal debt securities" shall have the meaning assigned to it in clause (m) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);]*

(c) "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated the 9th August, 2011, as amended from time to time, issued by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).

1) Who is responsible to deduct tax u/s 194LD?

Any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor any income by way of interest.

2) Nature of Payment

a) Interest payable on or after the 1st day of June, 2013 but before the 1st day of July, 2023(Amended in Finance Act,2020) in respect of investment made by the payee in—

i. a rupee denominated bond of an Indian company ; or

ii. a Government security.

b) on or after the 1st day of April, 2020 but before the 1st day of July, 2023 in respect of the investment made by the payee in municipal debt securities

3) When to Deduct TDS under Section 194LD?

At the time of credit of such income to the account of payee or at the time of payment whichever is earlier.

For this purpose, “payment” can be in cash or by issue of a cheque or draft of by any other mode.

4) Rate of TDS under Section 194LD

The rates of TDS shall be 5%.

- Surcharge, wherever applicable plus Health & Education Cess @ 4% shall be added to the above rates.
- The rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee.
- The provisions of section 206AA shall not apply to a non-resident, not being a company, or to a foreign company, in respect of income by way of interest under this section subject to such conditions as may be prescribed.

5) Other key points related to section 194LD

- Rate of interest in respect of rupee denominated bond of an Indian company shall not exceed the rate as may be notified by the Central Government in this behalf.
- "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD.
- "Government security" shall have the meaning assigned to it in clause (b) of section 214b of the Securities Contracts (Regulation) Act, 1956.

- "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated the 9th August, 2011, as amended from time to time, issued by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992.

- If tax is deductible under this section, then provisions of section 195 and Section 196D are not applicable in respect of such payment.

Section 194M — TDS on payments of certain Sums by Individual and HUF

[Applicable from September 1, 2019]

194M. *(1) Any person, being an individual or a Hindu undivided family (other than those who are required to deduct income-tax as per the provisions of section 194C, section 194H or section 194J) responsible for paying any sum to any resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract, by way of commission (not being insurance commission referred to in section 194D) or brokerage or by way of fees for professional services during the financial year, shall, at the time of credit of such sum or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to five per cent of such sum as income-tax thereon:*

Provided *that no such deduction under this section shall be made if such sum or, as the case may be, aggregate of such sums, credited or paid to a resident during a financial year does not exceed fifty lakh rupees.*

(2) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

Explanation.—For the purposes of this section,—

(a) "contract" shall have the meaning assigned to it in clause (iii) of the Explanation to section 194C;

(b) "commission or brokerage" shall have the meaning assigned to it in clause (i) of the Explanation to section 194H;

(c) "professional services" shall have the meaning assigned to it in clause (a) of the Explanation to section 194J;

(d) "work" shall have the meaning assigned to it in clause (iv) of the Explanation to section 194C.

1) Why Section 194M is introduced?

As per the existing provisions of Section 194C , Section 194H and Section 194J, an individual or HUF, who are not liable to tax audit under Section 44AB(a)/44AB(b), shall not be required to deduct tax under these provisions. Thus, no tax is required to be deducted by an individual or HUF from payment made to contractor or professional in the following cases:

- Payment made for services received exclusively for personal purposes

- Payment made for services received for business or profession if payer is not subjected to tax audit u/s 44AB(a)/(b).

Due to this exemption, substantial payments made by individuals or HUFs in respect of contractual work, commission or for professional service were out of the purview of TDS, leaving a loophole for possible tax evasion.

2) Who is responsible to deduct tax u/s 194M?

Any person, being an individual or a Hindu undivided family (other than those who are required to deduct income-tax as per the provisions of section 194C, 194H or section 194J) responsible for paying any sum to any resident shall deduct TDS.

3) When to Deduct TDS under Section 194M?

TDS shall be deducted at the time of credit of such sum or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier

4) Rate of TDS under Section 194M

The rate of tax deduction u/s 194M is **5%** (3.75% w.e.f. 14.05.2020 to 31.03.2021) of such sum.

5) Nature of work performed

Payment should be for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract or by way of fees for professional services or by way of commission during the financial year

For the purposes of this section,—

a) "**contract**" shall have the meaning assigned to it in clause (iii) of the Explanation to section 194C;
b) " **commission or brokerage**" shall have the meaning assigned to it in section 194 H
c) "**professional services**" shall have the meaning assigned to it in clause (a) of the Explanation to section 194J;
d) "**work**" shall have the meaning assigned to it in clause (iv) of the Explanation to section 194C.

6) Threshold Limit of TDS under Section 194M

TDS shall be deducted only when such sum, or aggregate of such sums, exceeds **fifty lakh rupees** in a year. However, in order to reduce the compliance burden, it is proposed that such individuals or HUFs can deposit the tax deducted using their PAN and shall **not** be required to obtain TAN.

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.

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.

ILLUSTRATION-

Mr. XYZ, a salaried employee, acquired a plot of land on June 1, 2020 for ₹ 60 lakhs. For construction of a building on such land he paid ₹ 75 lakhs to a contractor on December 10, 2020, ₹ 65 lakhs to interior decorator on January 2, 2021 and ₹ 40 lakhs to another contractor for painting on March 15, 2021.

The tax be deducted by Mr. A has been enumerated in below table.

Particular	*Amount paid*	*Section*	*Rate of Deduction*	*Amount of TDS*
Acquisition of land	60,00,000	194-IA	1%	60,000
Construction	75,00,000	194M	5%	3,75,000
Interior Decoration	65,00,000	194M	5%	3,25,000
Painting *	40,00,000	-	-	-

* Since amount paid is less than ₹ 50 lakhs no tax is required to be deducted

Summary Table

194M		Payment of certain sums by certain Individuals or HUF
S NO.	**PARTICULARS**	**DESCRIPTION**
1.	Payer	Any Individual or HUF
2.	Payee	Any Resident in India
3.	Type of Payment	Payment for contract work (194C) OR Commission or brokerage (194H) OR Professional services (194J)
4.	Time of Deduction	Credit to A/c. OR Payment, whichever is earlier
5.	TDS Rate	5 %
6.	Limit	> 50,00,000

Section 194N — TDS on cash withdrawal from banks/post offices

[Applicable from September 1, 2019]

194N. *Every person, being,—*

(i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a co-operative society engaged in carrying on the business of banking; or

(iii) a post office,

who is responsible for paying any sum, being the amount or the aggregate of amounts, as the case may be, in cash exceeding one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent of such sum, as income-tax:

Provided *that in case of a recipient who has not filed the returns of income for all of the three assessment years relevant to the three previous years, for which the time limit of file return of income under sub-section (1) of section 139 has expired, immediately preceding the previous year in which the payment of the sum is made to him, the provision of this section shall apply with the modification that—*

(i) the sum shall be the amount or the aggregate of amounts, as the case may be, in cash exceeding twenty lakh rupees during the previous year; and

(ii) the deduction shall be—

(a) an amount equal to two per cent of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds twenty lakh rupees during the previous year but does not exceed one crore rupees; or

(b) an amount equal to five per cent of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds one crore rupees during the previous year:

Provided further *that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the first proviso shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification:*

Provided also *that nothing contained in this section shall apply to any payment made to—*

(i) the Government;

(ii) any banking company or co-operative society engaged in carrying on the business of banking or a post office;

(iii) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007):

***Provided also** that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the provision of this section shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification.*

1. Who is responsible to deduct tax u/s 194N?

Every person, being,—

(i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a co-operative society engaged in carrying on the business of banking; or

(iii) a post office,

who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts (savings/current)maintained by the recipient with it .

2. Who is the Payee?

TDS deduction on cash withdrawal u/s 194N is applicable to all taxpayers, including

- An Individual
- A Hindu Undivided Family (HUF)
- A Company
- A partnership firm or an LLP
- A local authority
- An Association of Person (AOPs) or Body of Individuals (BOIs)

3. Are there any exemptions to TDS on cash withdrawal u/s 194N?

No tax shall be deducted if amount is withdrawn from the bank or post office by following recipients:

1. Central or State Government
2. Banks

3. Co-op. Banks
4. Post Office
5. Banking correspondents
6. White label ATM operators
7. Other persons notified by the Govt. in consultation with the RBI

Such other person or class of persons as notified by Central Government

a) Cash Replenishment Agencies (CRA's) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's)
b) Commission agent or trader, operating under Agriculture Produce Market Committee (APMC), and registered under any Law relating to Agriculture Produce Market
c) The authorized dealer and its franchise agent and sub-agent and Full-Fledged Money Changer (FFMC) licensed by the RBI and its franchise agent.

4. When to Deduct TDS under Section 194N?

At the time of payment of such sum

5. Rate & Threshold limit of TDS under Section 194N

(i) If an individual receiving the money **has filed** income tax return for **any of the three years** immediately preceding the year, then TDS to be deducted is an amount equal to **2%** of withdrawal sum exceeding **one crore rupees**

(ii) If an individual receiving the money **has not filed** income tax return for **all the three years**, for which the time limit of filing return of income under Section 139(1) has expired, immediately preceding the year, then the TDS is **2%** on the cash payments/withdrawals of **more than Rs 20 lakh and up to Rs 1 crore**, and **5%** for withdrawal exceeding **Rs 1 crore**. (Amendment w.e.f 01.07.2020)

- It is to be noted that there is a difference of opinion regarding the returns of income for all of the three assessment years relevant to the three previous years, for which the time limit to file return of income u/s 139(1) has expired, immediately preceding the previous year in which the payment of the sum is made to him. In this connection, it is to be noted that the expiry of time limit u/s 139(1) is the cutoff date for the previous year in which the amount is withdrawn from the bank. It means that if the date of return u/s 139(1) has not expired ,then that assessment year is not to be taken in account. In this connection, it is to be noted that the correct way to interpret this would be to first consider date of payment i.e. date on which cash withdrawal is proposed to be made and then check for the three preceding assessment years where the due date for filing tax return under section 139(1) has expired. It means that in the year of cash withdrawal from the bank, the income tax return for the preceding

previous year shall not be considered till the expiry of time limit u/s 139(1) or such extended time by the Central Board of Direct Taxes.

Example: For cash withdrawals before 31 July 2021, return filing compliance to be seen for F.Y. 2017-18, 2018-19 & 2019-20. If the assessee has filed any one return out of the three returns, the first proviso to section 194N would not be applicable. It is irrelevant whether the return is filed in time or not. For cash withdrawals from 1 Aug 2021, the return filing status for F.Y. 2018-19, 2019-20 and 2020-21 is to be analyzed. [Note: The above due dates are only for illustrative purpose and actual extended dates are not considered]

Now a question arises that proviso uses the words *'for which the time limit of filing return of income under sub-section (1) of section 139 has expired'*. Whether these words require that only Return of Income filed under section 139(1) shall be considered and not Return of Income filed under section 139(4)? The answer to that is No. This is for the reason that the section nowhere states that the Return of Income for the previous years is to be filed under 139(1) of the Act. In this context, it is to be noted that the phrase *'for which the time limit of filing return of income under sub-section (1) of section 139 has expired'* is used to determine the three preceding previous years which should be considered to examine the Return filing status. The Act does not cast any obligation regarding the return to be filed before the due date u/s 139(1). Hence, return filed u/s 139(4) shall also be considered for the purpose of provision of sec 194N. Suppose for the A.Y. 2021-22, the time to file the return u/s 139(1) is 30 September 2021. A person filed return on 15 October 2021. The return filed after the due date shall also be considered. The returns for preceding previous years which have been filed u/s 139(4) will also be considered for the purposes of Sec 194N.

Aggregate amount of cash withdrawal	If the recipient has FILED return of income for ANY of the 3 previous years	If the recipient has NOT FILED return of income for ALL of the 3 previous years
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%

Illustration: Mr. Dheeraj has made the following withdrawals during the financial year 2021-22 He has not furnished his return of income for the previous year-2017-18, 2018- 19, 2019-20 and the due date for filing of return is already expired.

Date	Amount of Withdrawal	Aggregate amount withdrawn	Rate	Computation	Tax to be deducted
10/04/2021	18 Lakhs	18 Lakhs	-	-	-
20/05/2021	32 Lakhs	50 Lakhs	2%	(50-20)*2%	60,000
25/05/2021	25 Lakhs	75 Lakhs	2%	25*2%	50,000
31/05/2021	30 Lakhs	105 Lakhs	2% and 5%	(25*2%) + (5*5%)	75,000
25/06/2021	25 Lakhs	130 Lakhs	5%	(25*5%)	1,25,000

The recipient **cannot** apply for lower deduction certificate u/s 197 and cannot furnish form No. 15G/15H.

6. How 194N should be applied in case of cash withdrawals involving joint accounts?

This is a grey area where there could be multiple view-points. Let's consider an example: Husband and wife has individual accounts in a Bank. They also have a joint account in the same bank. Let's say they have withdrawn upto 92 lakhs from their individual accounts in cash. Now, the husband intends to withdraw Rs. 11 lakhs from their joint account in cash. In this case, one might argue that only 50% of cash withdrawal should be attributed towards husband and TDS may not be required, but this may not be appropriate. Whether Rs. 11 lakhs cash withdrawal is made by husband or wife, the limit should be treated as breached. This is so because both persons (in this case) are responsible for the operation of the account and qua each recipient the limit is reckoned from all accounts maintained in the bank. Even the banking software must be attuned to detect cash withdrawals breaching the specified threshold by duly considering cash withdrawals even in the joint accounts.

7. Is this section applicable to Non-resident?

The section applies to cash withdrawals made by resident as well as Non-resident. Therefore, if a NRI withdraws an amount of ₹ 150 lakhs on 15.02.2020 from his NRE Account maintained in India, the bank shall deduct TDS of ₹1,00,000.

8. Applicability of section when amount is withdrawn from one or more account maintained with same bank/cooperative bank?

Date of cash withdrawn	Cash withdrawn from saving account	Cash withdrawn from current account
01-04-2020	20,00,000	20,00,000
05-07-2020	5,00,000	10,00,000
31-08-2020	4,00,000	25,00,000
01-09-2020	50,00,000	45,00,000
01-03-2021	65,00,000	20,00,000
Total	1,44,00,000	1,20,00,000
Tax to be deducted	328000{ (1,44,00,000+1,20,00,000-10000000)*2%}	

As Section 194N has been inserted in Income-tax Act with effect from 01-09 2019, the tax shall be required to be deducted only after the said date. However, for the purpose of calculation of threshold limit of ₹ 1 crore, the aggregate amount of cash withdrawn from one or more accounts during the previous year shall be considered.

9. Applicability of section when amount is withdrawn from different branches of same bank?

The limit of Rs 1 crore has to be seen for cash withdrawals made from **all branches of a bank.**

Illustration- ABC LTD has withdrawn cash from following branches of Bank of India during the financial year on –

Dates	Branch	Amount
01.07.2020	Delhi Branch	₹70Lakhs
01.10.2020	Kolkata Branch	₹80Lakhs
01.12.2020	Chandigarh Branch	₹90Lakhs

- In this case the bank shall deduct TDS on 01.10.2020 at the rate of 2% on ₹50,00,000/- (1.50 crores –1 crore) i.e.₹1,00,000/- from the payment of ₹80,00,000/-.

Similarly bank shall deduct TDS on 01.12.2020 at the rate of 2% on ₹90,00,000/- i.e.₹1,80,000/- from the payment of ₹90,00,000/-.

10. Applicability of section when amount is withdrawn from different banks?

The cash withdrawals from two different banks shall not be aggregated for the limit of ₹ 1 Crore.

Illustration-

ABC LTD has withdrawn cash from following Banks during the financial year on –

Dates	Bank	Amount
01.07.2020	HDFC BANK	₹70Lakhs
01.08.2020	SBI BANK	₹70Lakhs
01.12.2020	BANK OF INDIA	₹70Lakhs

In this case neither of the banks is liable to deduct TDS under Section 194N.

11. Whether TDS is applicable for cash withdrawals made by Charitable Institutions, Clubs, AOPs, Trusts, Resident Welfare Associations, etc. from its bank accounts?

If cash withdrawals exceed the prescribed threshold, it is applicable in case of all persons in general. However, exceptions are clearly defined in the third proviso. TDS is not applicable in case of the Government, Co-operative society engaged in banking business, business correspondent or ATM operator of a banking company or co-operative society engaged in carrying on the business of banking and other notified persons. This means 194N is applicable in all other cases including Charitable Institutions, Clubs, AOPs, Trusts, Resident Welfare Associations, etc

Summary Table

194N	Payment of certain amounts in cash

S NO.	PARTICULARS	Description
1.	Payer	Banking Company, Co-op. Society {in Banking Bus.} or P.O.
2.	Payee	Any Person {includes Non-Resident also}
3.	Type of Payment	Cash withdrawn from one or more accounts maintained
4.	Time of Deduction	Payment of cash
5.	TDS Rate	2 %
6.	Limit	> 1,00,00,000 {1 Crore}
7.	Effective Date	w.e.f. - 01.09.2019

Recipient who has not filed R.O.I. for all of the 3 AY's relevant to 3 PY's, for which the time limit to file R.O.I. u/s. 139(1) has expired, immediately preceding the PY in which cash is withdrawn. The provisions will be modified as below -		
Limit	> 20,00,000 { 20 Lakhs}	
TDS Rates	Aggregate Withdrawal Amount in PY	TDS Rate
	Upto 20,00,000	NIL
	> 20,00,000 and < 1,00,00,000	2%
	> 1,00,00,000	5%
Effective from	On or after 01.07.2020	

Points to be noted

Tax deducted u/s 194N is not considered as deemed receipt of income.

Points which needs clarification by CBDT

1) Is TDS deductible on amount withdrawn in excess of 1 crore or on the entire amount if the withdrawals exceed 1 crore?

Substituted provisions by the Act No. 12 of 2020, w.e.f. 1-7-2020.

Payment of certain amounts in cash.

194N. Every person, being,

(i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a co-operative society engaged in carrying on the business of banking; or

(iii) a post office,

who is responsible for paying any sum, being the amount or the aggregate of amounts, as the case may be, in cash exceeding one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent of such sum, ~~of sum exceeding one crore rupees,~~ as income-tax:

Prior to its substitution, section 194N read as under :

"194N. Payment of certain amounts in cash.—Every person, being,—

(i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) a co-operative society engaged in carrying on the business of banking; or

(iii) a post office,

who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent of sum exceeding one crore rupees, as income-tax:

Opinion: from the reading of the aforesaid provisions we see that the words " of the sum exceeding one crore rupees" is missing in the new substituted law, which may lead to the interpretation that the TDs will be deductible on the entire amount if it exceeds 1 crore. For

example if amount withdrawn is 1.20 crore then it could imply that TDS is deductible on 1.20 crore. However after discussion with many leading Bankers I came to the understanding that practically even now the TDS is being deducted only on 20 lacs. It remains to be seen of the Income Tax department takes a different view.

2) Is Sec 194N applicable to cash withdrawal only through self cheque or under bearer cheque as well?

A simple reading of the Act may lead to a conclusion that Sec 194N The payment made by any payer from the accounts maintained by the taxpayer will only attract TDS under Section 194N. For instance, if a bank makes a cash payment of more than Rs 1 crore in an FY to its account holder (i.e any taxpayer) from the account maintained by him, then the bank will have to deduct TDS. But, if the taxpayer gives a bearer cheque (uncrossed) in the name of a person, say Mr A, and he withdraws cash from the individual's account, then will the TDS will not be deducted. From practical understanding and reading the intention of legislature it seems that any withdrawal from the account by the holder or anyone else will be liable for TDS u/s 194N

This is another debatable area. If one were to consider the intention behind the introduction of section 194N, (promoting digital economy and discouraging cash transactions) then TDS must also be applied on cash withdrawals by use of bearer cheques provided it breaches the threshold. However, the fundamental questions is - whether issue of bearer cheque is same as Cash withdrawal?

As the name itself suggests a bearer cheque is payable to the bearer of the cheque. A bearer could be any person other than the holder of the account.

A 'cheque' is defined under the Negotiable Instruments Act, as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. The fact that an instrument in writing separately recognized as 'cheque' is employed to direct the banker to disburse the amount, it must be treated differently than a mere cash withdrawal or a self-cheque.

Closer examination of the provisions of section 194N reveals that the focus is not on the type of instrument used to withdraw the funds, the emphasis is on whether cash is paid out of the account held by the person or not. Although withdrawal by bearer cheque is not same as cash withdrawal simpliciter, it culminates in payment of cash by the banker from the account maintained by the account holder. TDS is on "*aggregate of sums, in cash, in excess of one crore rupees*". There is no distinction based on the instrument employed for withdrawal. It is concluded that TDS is applicable on issue of bearer cheques as well.

Section 194O — TDS on E-commerce Operator

[***Payment of certain sums by e-commerce operator to e-commerce participant.***

194-O. *(1) Notwithstanding anything to the contrary contained in any of the provisions of Part B of this Chapter, where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform (by whatever name called), such e-commerce operator shall, at the time of credit of amount of sale or services or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant by any mode, whichever is earlier, deduct income-tax at the rate of one per cent of the gross amount of such sales or services or both.*

Explanation.—For the purposes of this sub-section, any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of deduction of income-tax under this sub-section.

(2) No deduction under sub-section (1) shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of an e-commerce participant, being an individual or Hindu undivided family, where the gross amount of such sale or services or both during the previous year does not exceed five lakh rupees and such e-commerce participant has furnished his Permanent Account Number or Aadhaar number to the e-commerce operator.

(3) Notwithstanding anything contained in Part B of this Chapter, a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), shall not be liable to tax deduction at source under any other provision of this Chapter:

Provided *that the provisions of this sub-section shall not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale or services referred to in sub-section (1).*

(4) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(5) Every guideline issued by the Board under sub-section (4) shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the e-commerce operator.

(6) For the purposes of this section, e-commerce operator shall be deemed to be the person responsible for paying to e-commerce participant.

Explanation.—For the purposes of this section,—

(a) "electronic commerce" means the supply of goods or services or both, including digital products, over digital or electronic network;

(b) "e-commerce operator" means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

(c) "e-commerce participant" means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce;

(d) "services" includes "fees for technical services" and fees for "professional services", as defined in the Explanation to section 194J.]

1) Who is responsible to deduct TDS under section 194O?

Any person, being E-commerce operator facilitating sale of goods or provision of services of an E-commerce Participant through its digital or electronic Facility or platform (by whatever name called).

2) Is there any definition for E-commerce, E-commerce Operator and E-commerce Participant?

Yes, Explanation to 194O have specifically defined below terms

a. Electronic Commerce means the supply of goods or services or both, including digital products over digital or electronic network.

b. E-commerce operator: means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is responsible for paying to e-commerce participant. (It's mandatory to fulfill both precondition which are conjunctive and not dis conjunctive i.e. person must own, operates or manage Digital/Electronic Facility or Platform.)

c. E-commerce participant means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.

3) What is the point of deduction of TDS u/s 194O?

Tax should be deducted either at the time of credit of amount of sale or services or both to the account of an e-commerce participant OR at the time of payment thereof to such e-commerce participant by any mode**,** whichever is earlier**.**

4) At what rate TDS has to be deducted u/s 194-O?

TDS is to be deducted at **1%** (0.75% w.e.f. 14.05.2020 to 31.03.2021) on the gross amount of sales or services or both**.** In Absence of Pan/Aadhaar, TDS is to be deducted @5% (Section 206AA have been amended accordingly). (It is pertinent to note that the section uses word "Gross amount of such Sales" which means e-commerce operator will require to deduct TDS on GST portion of sales and as well as on Commission and affiliation portion also which e-commerce operator himself will withheld)

A transaction in respect of which tax has been deducted by the e-commerce operator (or which is not liable to deduction due to threshold limit), shall not be liable to TDS under any other provisions. However, any amount received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale or services, other provision relating to TDS, if any, is applicable

5) Under what circumstances TDS u/s 194-O is not deductible?

No TDS is to be deducted, where e-commerce Participant is Individual or HUF and gross amount of such sale or services or both during the previous year does not exceed **five lakh rupees** AND e-commerce participant furnished Permanent Account Number or Aadhaar number to the e-commerce operator.

6) Whether the TDS is to be deducted for Non-Resident Selling good through Ecommerce Portal u/s 194O?

- E-commerce Participant is defined a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce. And thus No TDS is required to be deducted when Participant is Non Resident.
- If E-commerce operator is Non-resident, Equalisation Levy will be applicable.

7) Whether TDS is to be deducted if amount is directly collected by E-commerce Participant?

For all transaction which has been facilitated by E-commerce participant, TDS has to be deducted by E-commerce operator irrespective of mode of payment to E-commerce participant.

8) Whether Ecommerce Participant can apply for Lower deduction/No Deduction certificate u/s 197?

Yes, Consequent amendment has been made in Section 197. Ecommerce Participant can make application before TDS AO who has a jurisdiction over his/her/its case.

Example: ABC Ltd., BBC , XYZ and PQR Ltd. (e-commerce participants) supply goods in India through Ebay(a Singapore based website) owned by Ebay Ltd.. Ebay Ltd. wants to know tax to be deducted under section 194-O in the following different cases –
CASE 1 – During the financial year 2020-21, ABC Ltd. sells goods of Rs. 44 lakh through Ebay Ltd. Ebay Ltd. transfers Rs. 37.4 lakh (gross sales excluding GST: Rs. 44lakh minus commission: 15 percent) through RTGS on March 31, 2021.
CASE 2 – The above payment is made by Ebay Ltd. in 3 installments – Rs. 19.55 lakh on January 1, 2021, Rs. 7.65 lakh on March 1, 2021 and the balance of Rs. 10.2 lakh is transferred to the account of ABC Ltd. (in the books of Ebay Ltd.) on March 31, 2021 (actual payment is made through RTGS on May 18, 2021).
CASE 3 – In CASE 2, assume that the e-commerce participant is not ABC Ltd. but Mr.A, an individual.
CASE 4 – During the financial year 2020-21, Mr.B (an individual, e-commerce participant) supplies services (aggregate value of which is Rs. 4.5 lakh) through Ebay Ltd. BBC has furnished his PAN to Ebay Ltd.
CASE 5 – During the financial year 2020-21, XYZ (an individual, e-commerce participant) supplies goods (aggregate value of which is Rs. 5 lakh) through Ebay Ltd. XYZ has furnished his PAN to Ebay Ltd.
CASE 6 – PQR Ltd. is an e-commerce participant. It supplies goods in India through Ebay Ltd. (e., e-commerce operator). During the financial year 2020-21, PQR Ltd. sells goods of Rs. 60 lakh through Ebay Ltd., out of which Rs. 20 lakh is directly received by PQR Ltd. and Rs. 40 lakh is received first by Ebay Ltd. and later on it is remitted to PQR Ltd. on March 31, 2021. Commission of PQR Ltd. in the two cases is 15 percent. PQR Ltd. gets the payment directly from the customers as follows – -First payment of Rs. 18 lakh – It is received by PQR Ltd. on October 6, 2020. Second payment of Rs. 2 lakh – Received by PQR Ltd. on January 10, 2021. Amount of Rs. 40 lakh is remitted by Ebay Ltd. (after deducting 15 percent of Rs. 60 lakh as commission) to PQR Ltd. on March 31, 2021.

Solution – Gross payment (before deducting commission) is subject to TDS under section 194-O at the rate of 1% (in non-PAN cases, tax is deductible at the rate of 5%). However, if there is any GST indicated separately in the invoice, it shall be excluded for the purpose of TDS – Circular No. 23/2017 dated July 19, 2017. Tax is deductible under section 194-O in different CASEs as follows –

CASE 1 – Tax is deductible at the rate of 1% of Rs. 44 lakh (excluding GST) on March 31, 2021.

CASE 2 – One has to find out gross payment pertaining to Rs. 19.55 lakh, Rs. 7.65 lakh and Rs. 10.2 lakh (after excluding GST). In this CASE, tax is deductible as follows –

Date of payment to e-commerce participant and date of TDS	Net amount of payment Rs.	Gross amount (i.e., net amount ÷ 0.85) Rs.	Amount of TDS (Rs.)
January 1, 2021	19,55,000	23,00,000	23,000
March 1, 2021	7,65,000	9,00,000	9,000
March 31, 2021	10,20,000	12,00,000	12,000
Total	37,40,000	44,00,000	44,000

CASE 3 – e-Commerce participant is an individual. However, gross amount of sale through Ebay Ltd. during the year exceeds Rs. 5 lakh. Consequently, tax is deductible by Ebay Ltd. as discussed in CASE 2.

CASE 4 – e-Commerce participant is Mr.B (an individual). Gross amount of sales through e-commerce operator does not exceed Rs. 5 lakh. Consequently, tax is not deductible under section 194-O.

CASE 5 – e-Commerce participant is XYZ (an individual). Gross amount of sales through e-commerce operator does not exceed Rs. 5 lakh. Consequently, tax is not deductible under section 194-O.

CASE 6 – Even if the payment of Rs. 20 lakh is received directly by PQR Ltd. (e-commerce participant), tax will be deducted by Ebay Ltd. on the entire Rs. 60 lakh (after deducting GST). Schedule for tax deduction under section 194-O is as follows:

Payment of Rs. 18 lakh – It is received by PQR Ltd. on October 6, 2020. Date of tax deduction by Ebay Ltd. is October 6, 2020 (amount of TDS is Rs. 18,000, being 1%† of Rs. 18 lakh).

Payment of Rs. 2 lakh – It is received by C Ltd. on January 10, 2021. Date of tax deduction by Ebay Ltd. is January 10, 2021 (amount of TDS is Rs. 2,000, being 1%† of Rs. 2 lakh).

Amount of Rs. 40 lakh – Net amount of payment is Rs. 31 lakh (e., Rs. 40 lakh – commission which is 15% of Rs. 60 lakh). Tax is deductible by Ebay Ltd. on March 31, 2021 is Rs. 40,000 (being 1%† of Rs. 40 lakh).

9) Section 194-O Vs Equalisation Levy

Particulars	Section 194-O	Equalisation Levy
Who is liable to deduct and deposit	E-commerce operator is liable to deduct and deposit with CG	E-commerce operator is liable to deposit the levy with CG
Residential Status of Ecommerce Operator	Resident / Non –resident	Non Resident
Residential Status of Ecommerce participant	Resident	Non Resident and sale of goods and services should not be effectively connected with the PE in India
Customer	Can be resident on non – resident of India	Resident or non-resident as specified
Rate	1% of the gross amount of sale / Services / both	2% of consideration received or receivable by an ecommerce operator from supply of goods or services

TDS under Section 194O- CBDT issues Guidelines

To remove following difficulties for the applicability of section 194-O of the Act, the CBDT has issued circular no.17of 2020 on 29.09.2020

A. Applicability on transactions carried through various Exchanges:

It has been represented that there are practical difficulties in implementing the provisions of Tax Deduction at Source contained in section 194-0 of the Act in case of certain exchanges and clearing corporations. It has been stated that sometime in these transactions there is no one to one contract between the buyers and the sellers.

In order to remove such difficulties, it is provided that the provisions of section 194-0, of the Act shall not be applicable in relation to,-

(i) transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized

stock exchanges or recognized clearing corporation located in International Financial Service. Centre;

(ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC; and

For this purpose, (i) "recognized clearing corporation" shall have the meaning assigned to it in clause (i) of the Explanation to clause (23EE) of section 10 of the Act;

(ii) "recognized stock exchange" shall have the meaning assigned to it in clause (ii) of the Explanation 1 to sub-section (5) of section 43 of the Act; and

(iii) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005.

B. Applicability on payment gateway:

In e-commerce transactions, the payments are generally facilitated by payment gateways. It is represented that in these transactions, there may be applicability of section 194-0 twice i.e. once on e-main commerce operator who is facilitating sell of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service. To illustrate a buyer buys goods worth one lakh rupees on e-commerce website "XYZ". He makes payment of one lakh rupees through digital platform of "ABC". On these facts liability to deduct tax under section 194-0 may fall on both "XYZ" and "ABC".

In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-0 of the Act on a transaction, if the tax has been deducted by the e-commerce operator under section 194-0 of the Act, on the same transaction. Hence, in the above example, if "XYZ" has deducted tax under section 194-0 on one lakh rupees, "ABC" will not be required to deduct tax under section 194-0 of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

C. Applicability of on insurance agent or insurance aggregator:

It has been represented that insurance agents or insurance aggregators in many cases have no involvement in transactions between insurance company and the buyer for subsequent years. It has been represented that in subsequent years, the liability to deduct tax may arise on the insurance agents or insurance aggregators even if the transactions have been completed directly with the insurance company. This may result into hardship for the insurance agents/aggregators.

In order to remove difficulty it is provided that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 194-0 of the Act for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.

Example: Bajaj Allianz sales insurance policy through Policybazzar.com. Suppose in current year policybazzar.com collected insurance premium of 10 Lacs for first year of insurance so in this case policybazzar.com required to deduct TDS of Bajaj Allianz. In subsequent years policy holder directly making payment to Bajaj Allianz then Policybazzar.com not required to deduct TDS however Bajaj Allianz required to deduct TDS u/s 194D on commission paid to Policybazzar.com.

D. Calculation of threshold for the financial year 2020-21.

Since section 194-0 of the Act would come into effect from 1st October, 2020, it was requested to clarify how the various thresholds specified under this section shall be computed and whether the tax is required to be deducted in respect of amounts received before 1st October, 2020.

It hereby clarified that,-

(i) Since the threshold of five lakh rupees for an individual/ Hindu undivided family (being e-commerce participant who has furnished his PAN/Aadhaar) is with respect to the previous year, calculation of amount of sale or services or both for triggering deduction under section 194-0 of the Act shall be counted from 1st April, 2020. Hence, if the gross amount of sale or services or both facilitated during the previous year 2020-21 (including the period up to 30th Sept 2020) in relation to such an individual/ Hindu undivided family exceeds five lakh rupees, the provision of section 194-0 shall apply on any sum credited or paid on or after 1st October, 2020.

Practical Case Studies on Section 194O

Case Study 1 : Payment to Amazon

Mr. A is an e-commerce participant. He registers on Amazon and lists its product. On sale to Customer, amazon undertakes delivery of product. The seller is paid by Amazon after every 14 days after deducting referral fees, shipping fee and closing fees. The invoice of the seller along with GSTIN is sent to buyer.

Sale price: Rs. 2,000
Less: Service charges- 100
Amount remitted to seller: Rs. 1900

- Section 194-O is triggered as Amazon provides ecommerce facility. Amazon will deduct tax on entire gross sale i.e INR 2,000 even though net payment to seller is Rs 1900. The seller need not deduct tax on service fees retained by seller Amazon. There is similar mechanism for payment by Swiggy, Zomato, Flipkart, Book my show, Pharm Easy etc.

Case Study 2: Amazon – payment by e-wallet

Customer buys product on Amazon but makes payment through Paytm. The seller merely registers itself with Paytm to receive payment. Section 194-O applies only when sale of goods or services is facilitated by e-commerce operator. The words 'facilitated' are of wide import and accordingly providing wallet facility may be covered by above words. However for section 194-O to apply it is necessary that seller satisfies definition of e-commerce participant. E-commerce participant means a person resident in India selling goods or providing services or both through digital or electronic facility or platform for electronic commerce. In instant case, seller is not selling goods or providing service through electronic commerce. Electronic commerce is defined supply of goods or services or both through digital means.

- Since Paytm merely provides wallet service, payment made by Paytm to seller does not attract section 194-O. Payment by Amazon to Seller attracts TDS.
- It has been clarified by CBDT that no TDS is to be deducted when payment is made through e wallet.

Case Study 3: Payment to Ola

A vehicle owner registers himself on Ola. Ola allots ride based on its software. The pricing is decided by Software. Invoice is issued by Driver for ride and Convenience fees for ride and waiting is charged by Ola. In case of corporate account, entire invoice is issued by Ola. Ola pays rate per km and incentives to Driver. Driver incurs cost of car, petrol, maintenance etc . Some customers pay cash directly to driver.

E-com participant - Vehicle owner as he offers service on electronic platform.
E-com operator – Ola as it provides electronic facility and is responsible for paying Driver.

- Section 194-O is triggered. Ola will be required to deduct TDS on payments made to Vehicle Owner. Pursuant to Explanation to section 194-O, payment in cash made by customer to driver will be deemed to be payment made by Ola to vehicle owner.

Case Study 4: Purchase of IRCTC ticket

IRCTC has sole rights to book railway tickets online. IRCTC charges from the custmers for railway fare and IRTC service charge & convenience charge. IRCTC remits railway fare to Ministry.
Rail fare Rs. 1,500 IRCTC Chrgs Rs.15 Total Rs. 1,515
E-com participant – Ministry of Railway as it sells ticket (goods) through IRCTC
E-com operator – IRCTC as it provides electronic facility and is responsible for paying Railway

- Even though section 194O is triggered, But no TDS is deductible as section 196 makes section 194O non applicable to payment to Government.

Case Study 5: IRCTC ticket booking through Paytm

IRCTC has sole rights to book railway tickets online . Paytm offers railway booking facility .
E-com participant – IRCTC as it provides service of offering tickets of railway .
E-com operator – Paytm as it provides electronic facility and is responsible for paying Railway

- Section 194-O triggered as IRCTC services are provided through Paytm. Paytm will be required to deduct TDS under sec 194-O. IRCTC is not government and hence exemption under section 196 is not available

Amount on which 194-O applies :

- Base Railway fare amount
- Service charge
- Or both

➢ It seems section 194-O applies to entire amount consisting of base fair and service charge as section 194-O uses words 'gross amount' as against income used in section 194J leaving no scope of reimbursement. Section 194-O not applicable on payment made by IRCTC to railway.

➢ It has been clarified by CBDT that no TDS is to be deducted when payment is made through e wallet i.e. the payment gateway, TDS is to be deducted by the e commerce operator only.

Case Study 6: Air Ticket booking through Make My Trip

Mr. Shubham books ticket online. Make My Trip charges user air fare (which includes airline GST) and Make My Trip service charge. The invoice provides details of air fare charged by airline along with airline GST and Make My Trip charges are stated separately. Credit for GST charged by Airline can be claimed by user based on separate invoice issued by Airline which can be obtained from its website.

Fare/charges	**Amount**
Base Fare	4350
Tax and Other Charges:	
Passenger Service Fee	150
Airline GST	220
Other surcharge	80
Total Fare Rs.	4800
Other Charges and fees Rs.	300
IGST @ 18% Rs.	54
Total	**Rs. 5154**

E-com participant –Airline Companies as it is selling goods through digital or electronic facility for electronic commerce

E-com operator – MMT as it provides electronic facility and is responsible for paying Airlines

➢ Section 194-O triggered as MMT provides e-commerce facility. TDS is to be deducted by MMT on Total Fare payable to airline. Airlines need not deduct TDS on service provided by MTM.

Section 194P — TDS on Senior Citizen above 75 Years

194P. *(1) Notwithstanding anything contained in the provisions of Chapter XVII-B, in case of a specified senior citizen, the specified bank shall, after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A, compute the total income of such specified senior citizen for the relevant assessment year and deduct income-tax on such total income on the basis of the rates in force.*

(2) The provisions of section 139 shall not apply to a specified senior citizen for the assessment year relevant to the previous year in which the tax has been deducted under sub-section (1).

Explanation.—*For the purposes of this section,—*

(a) *"specified bank" means a banking company as the Central Government may, by notification in Official Gazette, specify;*

(b) *"specified senior citizen" means an individual, being a resident in India—*

(i) *who is of the age of seventy-five years or more at any time during the previous year;*

(ii) *who is having income of the nature of pension and no other income except the income of the nature of interest received or receivable from any account maintained by such individual in the same specified bank in which he is receiving his pension income; and*

(iii) *has furnished a declaration to the specified bank containing such particulars, in such form and verified in such manner, as may be prescribed.*]

Introduction:

The Finance Act, 2021 has inserted a new Section 194P to provide relief to a senior citizen who is 75 years or more from the burden of filing of return of income. It provides that if tax has been deducted under the newly inserted provision, such senior citizen shall be exempted from the requirement of furnishing return of income. This new provision is applicable from 01-04-2021.

Section 139 provides the situations in which the filing of return of income will be mandatory for an assessee.

An individual has no obligation to file the return of income if his income does not exceed the maximum exemption limit before claiming certain deductions and exemptions. Hitherto the Income-tax Act does not contain any provision exempting a resident assessee from the filing of return of income if his income exceeds the threshold limit and tax is deducted therefrom.

Conditions to be satisfied:

Section 194P(2) provides that a senior citizen will not be required to file the return of income if the following conditions are satisfied:
(a) Such senior citizen should be resident in India;
(b) His age during the relevant previous year is 75 years or more;
(c) His income includes only pension and specified interest income;
(d) The interest should be received or receivable from any account maintained by such individual in the specified bank;
(e) His pension income should be received in the same specified bank;
(f) Such bank deducts income-tax on such total income on the basis of the rates in force, after allowing deduction under Chapter VI-A and rebate under Section 87A; and
(g) Such individual furnishes a declaration to the specified bank containing such particulars, in such form and verified in such manner, as may be prescribed.

If the above conditions are satisfied, the resident senior-citizen shall not be liable to file his return of income for the assessment year relevant to the previous year in which tax has been deducted. This new provision is applicable from 01-04-2021. The banks will deduct the tax under this provision on or after 01-04-2021 and accordingly, the exemption from filing of return of income shall be available for the assessment year 2022-23 and onwards.

Family Pension:

When a pension is received by a dependent family member of the retired individual after his death, it is known as family pension and is taxable as 'income from other sources'. In other words, the amount received by a retired individual is considered as 'pension' and when after this death it is received by the family members, it is termed as 'family pension'.
As the meaning of the term 'Pension' has not been defined anywhere in the Income-tax Act, but due to its different treatment under the various provision, it may be said that the pension does not include a family pension.
However, as the objective behind such a proposal is to reduce the compliance burden of senior citizens, it is pleaded that family pension should also be eligible for this benefit. Thus, if an eligible senior citizen receiving the family pension after the death of her spouse, she should get the relief under this provision from the filing of return of income.
Exempt Income:
Considering the intention of the legislature, this provision should be read liberally. Thus, if a resident senior citizen is earning exempt income, like, interest on PPF, agriculture income, the share of profit from the partnership firm, etc. he should not be treated as ineligible for this provision.

Section 194Q — TDS on payment of certain sum for purchase of goods

[Deduction of tax at source on payment of certain sum for purchase of goods.

194Q. *(1) Any person, being a buyer who is responsible for paying any sum to any resident (hereafter in this section referred to as the seller) for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, deduct an amount equal to 0.1 per cent of such sum exceeding fifty lakh rupees as income-tax.*

Explanation.—For the purposes of this sub-section, "buyer" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income, such credit of income shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(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.

(4) Every guideline issued by the Board under sub-section (3) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and the person liable to deduct tax.

(5) 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.**]***

Introduction:

The Finance Act, 2020, inserted Sub-Section (1H) in Section 206C to provide for the collection of tax by a seller from the amount received as consideration for the sale of goods if it exceeds Rs. 50 lakhs in any previous year. On the similar lines, the Finance Act, 2021, has inserted a new Section 194Q to provide for deduction of tax by a buyer from the purchase of goods. As sale and purchase are the flip-side of a transaction, the applicability of two provisions on the same transaction may create a lot of doubts. With the introduction of this new section, the taxpayers are thinking that the concept of "Ease of doing business," seems to becoming the "Disease of doing business!"

1. Who is liable to deduct tax under Section 194Q?

The tax shall be deducted under Section 194Q by a buyer carrying on a business whose total sales, gross receipts or turnover from the business exceeds Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased. This provision shall be applicable from 01-07-2021. Thus, the liability to deduct tax under this provision in the financial year 2021-22 shall arise if the turnover of the purchaser was more than Rs. 10 crores in the financial year 2020-21. This section has following important points:
a.) There is a purchase of goods from a resident person;
b.) Goods are purchased for a value or aggregate of value exceeding Rs. 50 lakhs in any previous year; and
c.) The buyer should not be in the list of persons excluded from the provision for deduction of tax.

The tax shall not be deducted under this provision if the tax is deductible or collectible under any other provision except Section 206C(1H). Thus, if a transaction is subject to TCS under Section 206C(1H), the buyer shall have the first obligation to deduct the tax. If he does so, the seller will not have any obligation to collect the tax under Section 206C(1H). Therefore, 194Q overrides 206C (1H). Accordingly, in such case it is TDS that has to be deducted and not TCS.

2. Non applicability of section 194Q

The provisions of section 194Q are not applicable in following cases

(i) Where TDS need to be deducted under any other section then, TDS will not be deducted u/s 194Q and that other section will prevail.

Illustration: Suppose in case of Job Work Purchase, TDS is required to be deducted u/s 194C and side by side conditions of section 194Q also fulfils, then, TDS shall be deducted u/s 194C and not under section 194Q.

(ii) Where TCS charged by the Seller u/s 206C other than section 260C(1H)

Illustration: Suppose we purchased a motor vehicle for Rs. 90 Lac and TCS charged by the Dealer u/s 206C(1F), then no TDS shall be deducted u/s 194Q.

Mr. A purchased alcoholic liquor worth Rs. 80 Lakh to be served in his restaurant during the year from XYZ Wines Ltd. Mr. B has a turnover of more than Rs. 10 Crore in the previous FY.

In this case, Mr. A will not be required to deduct tax since Section 194Q is not applicable on transactions where tax is collectible u/s 206C except for sub-section (1H). The seller i.e. XYZ Wines Ltd. will collect tax @1% from Mr. A as per the provisions of 206C (1).

(iii) If a transaction is both within the purview of section 194O as well as section 194Q , tax is required to be deducted under section 194-O and not under section 194Q [As per CBDT Circular No. 13 of 2021 dated 30/06/2021]

(iv) Section 194Q not to apply on transactions in securities and commodities carried out through recognised stock exchanges or cleared and settled by recognised clearing corporations including those located in IFSC. [As per CBDT Circular No. 13 of 2021 dated 30/06/2021]

(v) Section 194Q not to apply on transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges. [As per CBDT Circular No. 13 of 2021 dated 30/06/2021]

(vi) Section 194Q is not applicable in the cases where the seller's income is entirely exempt from Income tax and would apply where seller's income is only partly exempt. Similarly, 206C(1H) would not apply to buyers who are exempt from income-tax. E.g., entities exempt u/s 10 or passed under special laws like RBI Act, ADB Act etc

(vii) Section 194Q not to apply in the year of incorporation of the buyer as buyer is required to have gross receipts or turnover in excess of Rs.10 Cr. in the financial year immediately preceding the financial year in which the transaction takes place [As per CBDT Circular No. 13 of 2021 dated 30/06/2021]

Note-Where Seller also liable to charge TCS on Sale of Goods u/s 206C(1H).

If Seller is liable to Collect TCS u/s 206C(1H) and buyer is also required to deduct TDS u/s 194Q on the same goods, in such situation question arises that whether Seller will collect TCS or buyer will deduct TDS? So, it is provided that then TDS provision u/s 194Q shall prevail. i.e., in that case, TDS shall be deducted by the buyer and seller shall not charge any TCS u/s 206C(1H).

3. Whether TDS will be deducted on Advance for purchase of Goods?

The answer to this question shall also be in Affirmative. TCS under 206C (1H) is to be collected at the time of receipt of consideration. It is to be noted that in the section the words "paying any sum to any resident for purchase of any goods" are used. There is a difference between the words- "any sum for purchase of goods" and "any sum for goods purchased". The former expression denotes that the purpose of payment is purchase-whether completed or not. The latter expression denotes payment for purchase completed. So, it can be concluded that the provisions of this section may get attracted even in case of advance received for purchase of goods. It is further to be noted that the tax shall be deducted from the purchases made by a buyer at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier. The tax shall be deducted even if the sum is credited to the 'Suspense Account'. It is worth mentioning that Section 194Q provides that TDS is required to be deducted at the time of payment or credit of the purchase value- whichever is earlier.

If purchases had been made before 1st July, 2021 but payment has been made on or after 1st July, 2021 then no TDS is to be deducted on this amount at the time of payment. If payment as an advance had been made before 1st July, 2021 but purchase invoice has been raised by seller on or after 1st July, 2021 then also no TDS is to be deducted on this amount at the time of entry of purchase invoice. CBDT Circular No. 13 of 2021 dated 30/06/2021 has further clarified that Section 194Q will not be applicable to cases where buyer has either credited or paid the amount to the seller before July 01, 2021.

4. At what rate tax is to be deducted?

The tax shall be deducted by the buyer of goods at the rate of 0.1% of the purchase value exceeding Rs. 50 lakhs if the seller has furnished his PAN, otherwise, the tax shall be deducted at the rate of 5%. The applicable rate of 0.1% is subject to fulfillment of conditions mentioned in the newly inserted section 206AB, in the Finance Act, 2021.

5. What are the conditions of section 206AB?

The Finance Act, 2021 has introduced a special provision of TDS in the Income Tax Act, 1961. Section 206AB has been inserted which will be applicable from July 01, 2021.

This new section requires deduction of TDS at the higher rate while making payment to the 'Specified person'. TDS rates would be higher of the following :

1. At twice the rate specified in the relevant provision of the Act; or
2. At twice the rate or rates in force; or
3. At the rate of 5%

Meaning of Specified person – A specified person is a person who has

(a) not filed the returns of income for both of the immediately preceding two years relevant to the year in which tax is required to be deducted or collected, as the case may be and due date prescribed under Section 139(1) to file such return has expired.

AND

(b) whose aggregate of tax deducted at source and tax collected at source in his case is INR **50,000** or more in each of these immediately preceding two years.
However, a specified person shall not include a non-resident who does not have a permanent establishment in India.
This provision is not applicable to deduction of tax at source under –
1. Section 192 - TDS on salary
2. Section 192A - TDS on payment towards accumulated balance due to an employee participating in recognised provident fund ('PF')
3. Section 194B - TDS on income from lottery or crossword puzzle
4. Section 194BB - TDS on income from horse races
5. Section 194LBC - TDS on income in respect of investment in securitization trust
6. Section 194N - TDS on cash withdrawal in excess of INR 20 Lakhs

6. Meaning of Sale:

As per Sale of Goods Act, 1930, 'Goods' means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale" Therefore, the tax is to be deducted under this provision from the purchase value of the following:
(a) Movable property;
(b) Any commodity;
(c) Shares or Securities;
(d) Electricity;
(e) Agriculture produce;
(f) Fuel;
(g) Motor vehicle;
(h) Liquor;
(i) Jewellery or bullion;
(j) Art or Drawings;
(k) Sculptures;
(l) Scraps;
(m) Forest produce, etc.

7. Meaning of turnover of the business

Total Turnover, Sales or Gross Receipts means turnover from the sale of goods as well as services provided by the business. Accordingly, if there is sale of scrap the same shall be included for calculating the threshold limit for this section. The turnover needs to be calculated Net of Sale Return and any Trade Discounts being offered as these are directly related to the sales. GST should not be included as a part of Turnover for calculating threshold limit as Income Tax Act has nowhere clarified the same. Going on the concepts that we follow for the applicability 44AB, it is safe to say same could be followed here too. Section 145A begins with “For the purpose of

determining the income chargeable under the head "Profits and gains of business or Profession" which makes this provision inapplicable for other purposes as it talks for limited purpose of calculating Income Chargeable.

It is to be noted that the provisions of 194Q are applicable in case of both revenue and capital goods. Immovable property is not "goods". TDS shall be deductible on consideration paid for purchase of immovable property (other than agricultural land) under section 194-IA and not under this section. TDS is deductible under that section if consideration is Rs. 50,00,000 or more. The obligation to deduct tax under this provision arises only when the payment is made to a resident seller. As in the case of import, the seller is a non-resident, the buyer will not have any obligation to deduct tax under this provision. However, the TDS under Section 195 may be required in respect of such transaction

It has been clarified by CBDT Circular No. 13 dated 30/06/2021 that turnover/ Gross receipts of 10 crores of buyer for applicability of this section 194Q will mean Turnover/ Gross receipts in business only. Hence receipts by way of rent, interest, capital gain etc if not considered as business income are not to be included

8. While computing the threshold of Rs. 50 Lakh for FY 2021-22, whether the transactions carried out between April 2021- June 2021 are to be included?

Though the TDS provision on purchase of goods is operative with effect from July 01, 2021, the provision casts an obligation to deduct tax at source when the total purchase during the previous year exceeds by Rs. 50 Lakhs. It has been clarified by CBDT Circular No. 13 of 2021 dated 30/06/2021 that purchases from April 01, 2021 to June 30, 2021 are to be included for the purpose of determination of threshold limit of Rs.50 lacs for the previous year. However, Section 194Q will not be applicable to cases where buyer has either credited or paid the amount to the seller before July 01, 2021

9. Is a buyer importing goods from outside India required to deduct tax at source under this section?

Section 194Q provides that any person, being a buyer who is responsible for paying any sum to any resident, being a seller, is required to deduct tax at source under this provision. Thus, the obligation to deduct tax under this provision arises only when the payment is made to a resident seller.

As in the case of import, the seller is a non-resident, the buyer will not have any obligation to deduct tax under this provision. The buyer may take a declaration regarding the residential status of the seller. However, the TDS under Section 195 or payment of Equalisation Levy may be required in respect of such transaction. In the case of purchase of goods through High Seas sales transaction, this exception may not be applicable as the High seas seller may be a resident.

10. Whether tax is required to be deducted under Section 194Q from the goods exported abroad?

Liability to deduct tax under this provision arises only when the payment is made to a resident seller. Residential status of the buyer, who is making payment, is not relevant under this provision. As in the transaction of export of goods, the seller is a resident but the buyer is a non-resident. The provisions of section 194Q shall not apply to a non-resident buyer who purchases goods from resident seller in India as it is not effectively connected with the permanent establishment of such non-resident.

11. Securities and Commodities

CBDT vide Circular No. 13 of 2021, clarified that provisions of Section 194Q shall not be applicable in relation to transactions in securities and commodities which are traded through recognised stock exchanges or cleared and settled by the recognised clearing corporation, including recognised stock exchanges or recognised clearing corporations located in International Financial Service Centre (IFSC).

12. Electricity

A transaction in electricity can be undertaken either by way of direct purchase from the company engaged in generation of electricity or through power exchanges. The CBDT vide Circular no. 13 has clarified that the transaction in electricity, renewable energy certificates and energy-saving certificates traded through power exchanges registered under Regulation 21 of the CERC shall be out of the scope of TDS under the provision of Section 194Q.

13 . Calculation of Limit of Rs. 50 Lakhs

CBDT vide Circular No. 13, dated 30/06/2021, has clarified that the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of purchases from April 01, 2021 to June 30, 2021 are to be included for the purpose of determination of threshold of Rs.50 lacs for the previous year.

14. Whether TDS to be deducted if the buyer is in service industry and he purchases goods from a seller?

The explanation of section 194Q describes the meaning of buyer. Buyer means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is made.

Section 2(13) of the Income Tax Act, 1961, contains an inclusive definition of the term “business”. “Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.” Hence we can infer that business includes services also and if the buyer is a service provider, he has to deduct TDS on purchase of goods, if other conditions are satisfied.

15. Are there any exceptions to this section?

Yes, TDS is not required to be deducted under this section if:

- tax is deductible under any other Section
- tax is collectible under the provisions of Section 206C other than a transaction on which 206C (1H) applies.

So accordingly, TDS liability under this section won't be triggered if you buy a Car for a value above Rs. 50 Lakhs as TCS would already have been collected from you.

16. Consequences of non-compliance

If buyer fails to deduct and deposit TDS at applicable rates, expenditure to the extent of 30% will be disallowed under Section 40a(ia) of the Act.

17. What if seller has multiple branches?

Needless to say, that the threshold criteria is to be seen PAN wise and not GSTN wise. Also the threshold limit needs to be calculated for each seller each year separately

18. Whether tax is required to be deducted on GST component included in purchase consideration?

There were arguments both in favour and against applicability of TDS on GST component. However, the **CBDT Circular No. 13 of 2021** dated 30/06/2021 has clarified that wherein amount is credited to the seller's account, and in terms of the agreement / contract between the buyer and seller, the GST component is indicated separately, TDS u/s 194Q is to be deducted on the amount credited without including GST. In case TDS u/s 194Q is to be deducted on payment to the seller, TDS has to be deducted on the whole amount i.e including GST because payment is earlier than credit.

CBDT while issuing clarification in context of section 206C(1H), has stated that since levy of TCS is on receipt of sales 'consideration' there should not be any adjustment on account of any indirect taxes. In case of section 194Q, tax is required to be deducted on sum payable to resident being value for purchase of goods and hence, applying the clarification by circular no. 13, TDS will not be deducted on GST component included in value of invoice.

19. Purchase & Sale from the same party (Barter system):

TDS liability will be there even if the buyer is not making any payment against its purchase but adjusting the amount against its sale to the same party.

20. Loading / Unloading, Freight, Insurance, etc:

If these amounts are reflected on the invoice then it may be considered as part of purchase value and may accordingly be liable for TDS. The amount of GST is not liable for TDS U/s 194Q.

21. Impact of Credit/Debit Notes:

a) A buyer has purchased a goods of Rs. 60 lakh and the amount is settled for Rs. 55 Lakh by issuing a debit note of Rs. 5 Lakh. TDS liability gets triggered at the time of payment or debit whichever is earlier & so the moment Rs. 60 Lakh is credited to the account of the seller, TDS liability is attracted. The reversal of TDS on Rs. 5 Lakhs may be adjusted in next purchase from buyer.

TDS u/s 194Q is made at the time of payment or credit whichever is earlier. Therefore, tax would have been already deducted on purchase return. In such case if the money is refunded by the seller or the credit note is issued by the seller, then the amount of TDS deducted may be adjusted against next purchase from the same seller. No adjustment will be required if the purchase return is replaced by goods, by the seller. [CBDT Circular No. 13 dated 30/06/2021]

b) If the discount is given in the bill itself, then the TDS would be required on an amount after discount only.

22. Whether a seller of goods can apply for lower / non-deduction certificate from tax authorities?

The provisions of section 197 empower the assessing officer to grant certificate to the recipient of income for non-deduction / deduction at a rate lower than specified rate of TDS. However, such provision is yet not made applicable to TDS on purchase of goods under section 194Q. Hence, the seller of goods would not be eligible for such benefit.

23. Working of Section 194Q

We can explain the provisions and their applicability with help of following case studies

Example:

PARTICULARS	Scenario 1	Scenario 2	Scenario 3
Turnover of Seller in FY 20-21	12	6	12
Turnover of Buyer in FY 20-21	6	12	12
Sale of goods during FY 21-22	32	2	2
Sales consideration paid during FY 21-22	1	1	1
Who is liable to deduct or collect tax during FY 21-22?	Seller	Buyer	Buyer
Rate of Tax	0.1%	0.1%	0.1%
Amount on which tax to be deducted or collected	0.5	1.5	1.5
Tax to be deducted or collected	5,000	15,000	15,000

24. Interplay between Section 206C(1H) and Section 194Q:

Second Proviso to Section 206C(1H) provides that if the buyer is liable to deduct tax under any other provision on the goods purchased by him from the seller and has deducted such amount, no tax shall be collected on the same transaction. Section 194Q(5) provides that no tax is required to be deducted by a person under this provision if tax is deductible under any other provision or tax is collectable under section 206C [other than a transaction on which tax is collectable under Section 206C(1H).

Though Section 206C(1H) excludes a transaction on which tax is actually deducted under any other provision(which will cover Section 194Q as well), but Section 194Q(5) does not create a similar exception for a transaction on which tax is collectible under Section 206C(1H). Thus, the buyer shall have the primary and foremost obligation to deduct the tax and no tax shall be collected on such transaction under Section 206C(1H). However, if the buyer makes a default, the liability to collect the tax gets shifted to the seller. The provisions of sec 194Q and sec 206C(1H) can be understood with the help of the following comparative study. It has been clarified by Circular No. 13 dated 30/06/2021 that once the buyer has deducted the tax on a transaction, the seller is not required to collect the tax u/s 206C(1H) on the same transaction. If, for any reason, tax has been collected by the seller u/s 206C(1H), before the buyer could deduct tax under section 194-Q on the same transaction, such transaction would not be subjected to tax deduction again by the buyer.

The circular has also clarified the hierarchy of section 194-O, 194Q and Section 206C(1H). If section 194-O is applicable to a transaction then 194Q and 206C(1H) will not apply. If 194Q is applicable then section 206C(1H) shall not be applicable. If section 194-O and 194Q are not applicable section 206C(1H) will be applicable

Example :

ABC & CO. sold goods to PQ Limited for Rs. 20 lakhs on 05.05.2021, Rs. 25 lakhs on 31.07.2021 and Rs. 10 lakhs on 01.10.2021.PQ Limited has paid the entire amount i.e. Rs. 55 lakhs on 01.02.2022.

CASE NO.	PARTICULARS	APPLICABILITY
CASE 1	Turnover of ABC & CO. in FY 2020-21 is Rs. 15 crores and that of PQ Limited is Rs. 18 crores.	*194Q is applicable, 0.1% TDS is required to be deducted on Rs. 5 lakhs on 01.10.2021*
CASE 2	Turnover of ABC & CO. in FY 2020-21 is Rs. 8 crores and that of PQ Limited is Rs. 15 crores.	*194Q is applicable, 0.1% TDS is required to be deducted on Rs. 5 lakhs on 01.10.2021*
CASE 3	Turnover of ABC & CO. in FY 2020-21 is Rs. 20 crores and that of PQ Limited is Rs. 5 crores.	*206C(1H) is applicable, 0.1% TCS is required to be collected on Rs. 5 Lakhs on 01.02.2022.*
CASE 4	Turnover of ABC & CO. in FY 2020-21 is Rs. 6 crores and that of PQ Ltd. is Rs. 8 crores.	*Neither 194Q nor 206C(1H) are applicable and hence there is no requirement of TDS/TCS.*

Comparison of Sec 194Q and 206C(1H) of Income Tax Act, 1961

Particulars	194Q	206C(1H)
Purpose	Tax to be *DEDUCTED*	Tax to be *COLLECTED*
Applicable to	Buyer/Purchaser	Seller
With effect from	01/07/2021	01/10/2020
When Deducted or collected	Payment or credit, whichever is earlier	At the time of receipt
Advances	TDS shall be deducted on advance payments made	TCS shall be collected on advance receipts
Rate of TDS/TCS	0.1%	0.1% (0.075% for FY 2020-21)
PAN not available	5%	1%
Triggering point	Turnover/Gross Receipts/Sales from the business of BUYER should exceed Rs.10cr during previous year (Excluding GST) Purchase of goods of aggregate value exceeding Rs.50Lakhs in P.Y. (The value of goods includes GST)	Turnover/Gross Receipts/Sales from the business of SELLER should exceed Rs.10cr during previous year (Excluding GST) Sale consideration received exceeds Rs.50Lakhs in P.Y. (The value of goods includes GST)
Exclusions	Yet to be notified by government	If Buyer is- Importer of goods Central/State Government, Local Authority An embassy, High Commission, legation, commission, consulate and trade representation of a foreign state.
When to deposit/collect	Tax so deducted shall be deposited with government by 7th day of subsequent month	Tax so collected shall be deposited with government by 7th day of subsequent month
Quarterly statement to be filed	26Q	27EQ
Certificate to be issued to seller/buyer	FORM 16A	FORM 27D

194Q: PAN of seller available- Rate: 0.1%, PAN of seller not available- Rate: 5%
206C(1H): PAN/ AADHAR of buyer available – Rate: 0.1%, PAN of buyer not available- Rate: 1

Example: *Values in crores

S No.	Seller Turnover FY 2020-21	Buyer Turnover FY 2020-21	Sale of Goods Upto 30/06/21	Sale of Goods After 30/06/21	Receipt for sale/ advance upto 30/06/21	Receipt for sale /advance after 30/06/21	Amount to be taxed	Section
1	8	5	0.70	0.40	0.60	0	Nil	-
2	9	12	0.40	0.50	0.54	0	0.40	194Q
3	14	8	0.40	0.50	0.57	0	0.07	206C(1H)
4	13	14	0.40	0.50	0.60	0	0.10	206C(1H)
							0.40	194Q
5	8	5	0.40	0.70	0.60	0.65	Nil	-
6	9	12	0.40	0.50	0.30	0.25	0.40	194Q
7	14	8	0.40	0.50	0.40	0.17	0.07	206C(1H)
8	17	7	0.70	0.30	0.60	0.20	0.30	206C(1H)
9	13	14	0.40	0.50	0.50	0.10	0.40	194Q
10	15	18	0.70	0.30	0.20	0.20	0.30	194Q
11	15	18	0	0	0.60	0.20	0.30	206C(1H)
12	15	18	0.70	0.30	0.65	0.45	0.15	206C(1H)
							0.30	194Q

25. After introduction of section 194Q, whether section 206C(1H) would be redundant?

For applicability of TCS U/s 206C(1H), turnover of the seller would be relevant whereas for TDS U/s 194Q, the turnover of the buyer would be relevant. Introduction of section 194Q doesn't make section 206C(1H) redundant. It may happen that the turnover of the buyer is less than Rs. 10 Cr and so the buyer may not be deducting TDS u/s 194Q and as a result seller would be required to collect TCS U/s 206C(1H). In case of interplay of sec. 194Q and sec.206C(1H),we have to see the provisions of section 194Q.

As per sec 194Q(5),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.*

Now it is clear from the above that there is no exemption from TDS if the TCS is collectable under Section 206C(1H) i.e., TCS on sales of goods. If TCS is collectable under any other sub section of section 206(C) **"except 206C(1H)"**then the TDS under this section is not applicable. Hence it is clear that there is an exception of this exemption and which is lying in section 206C(1H) and this section relates to TCS on sale of Goods. It has been clarified by CBDT Circular 13/2021 that if, for any reason, tax has been collected by the seller u/s 206C(1H), before the buyer could deduct tax under section 194-Q on the same transaction, such transaction would not be subjected to tax deduction again by the buyer.

Now take a look at the answer to the question which has been given in the proviso in section 206C(1H) which reads as" **Provided further** that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount."

Hence when TDS provisions on purchase of Goods are applicable on purchaser then TCS provisions on the same transaction is not applicable on seller it means where Section 194Q is applicable then there is an exemption from section 206C(1H).In such a situation, one problem may be there because the additional words **"has deducted such amount"** added to the words **"buyer is liable to deduct tax"** hence the actual exemption from TCS is dependent not only on liability of purchaser for deduction of TDS but on "actual deduction of TDS". This is somewhat a strange position of Law but practically problem can be resolved with better communication and coordination with the purchaser.

Suggested draft of letters/ declarations to be issued or to be given by each assessee have been prepared and same are attached herewith as per details given below:-

- Draft of letter to be issued to buyers asking them if their turnover in FY 2020-21 has been more than Rs.10 Crores and tax is deductible by them under section 194Q of the Act from payments of purchase consideration to be made by them exceeding Rs. 50 lacs, so that tax is not collected under section 206C(1H) of the Act. Draft of declaration to be given by buyers is also being given. (Annexure-A)

- Letter to be issued to venders / suppliers / sellers for the purpose of applicability of provisions of Sections 194Q and stating that tax will be deducted under above section and therefore, no action be taken by them under section 206C(1H) of the Act, if applicable to them. Draft of declaration to be given by venders/ supplier/ sellers is also being given. (Annexure-B)

Annexure - A

(On the Letterhead of Seller)

Date: 1st June, 2021

Buyer,

Address

Dear Sir / Madam,

We, _____, having PAN _____ hereby inform you that our total sales, gross receipts, or turnover from Business during FY 2020-21 has been more than Rs.10 Crore. Therefore, provisions of Section 206C(1H) are applicable for the purpose of collection of tax at source on receipt of sale consideration of goods purchased by you from our company during the current financial year on the amount exceeding Rs.50 lacs. In relation to compliance with above provisions we require following information / declaration from you: -

1. Section 194Q has been inserted in the Income Tax Act vide Finance Act 2021 with effect from 01.07.2021. As per above Section tax is required to be deducted at source from purchase consideration paid / credited on or after 01.07.2021 by you against purchases made from us, in case your total turnover during financial year 2020-21 has been more than Rs.10 Crores. In case you are liable to deduct tax under section 194Q of the Act, tax will not be collectible by our company under section 206C(1H) of the Act w.e.f. 01.07.2021. Please confirm that you are liable to deduct tax at source under section 194Q of the Act from payment of purchase consideration to be made / credited to us. On receipt of above confirmation, we will not be taking any action for collection of tax at source as per section 206C(1H) of the Act, otherwise we will be collecting tax from you as per above Section.
2. You are also requested to intimate to us your Permanent Account Number. In case you fail to provide your PAN, tax will be deducted at the rate of 1 percent instead of 0.1 percent in terms of Section 206CC of the Act.
3. Further, you are also required to confirm that in your case amount of TDS/TCS was Rs.50,000/- or more in previous years relevant to Assessment Years 2019-20 and 2020-20 and you have filed your returns of income for these assessment years. Please also provide acknowledgement numbers for filing the same, otherwise tax is required to be deducted at the rate of 5 percent in terms of Section 206CCA of the Act.

You may send to us your declaration in the enclosed draft on or before 15.06.2021 to enable us to take note of same and modify our accounting software accordingly. In case your declaration is not received by us by the above date, we will modify our software to collect tax at the rate of 5 percent and it would be difficult for us to take corrective action to reduce the rate during the current financial year.

For_____**Ltd.**

Authorised Signatory

Annexure – B

(On the Letterhead of Buyer)

Date: 1st June, 2021

To,

< Supplier's Name>

<Address>.

Dear Sir / Madam,

We, _____, having PAN _____ hereby inform you that our total sales, gross receipts, or turnover from Business during FY 2020-21 has been more than Rs.10 Crore. Therefore, provisions of Section 194Q inserted in the Income Tax Act vide Finance Act 2021 with effect from 01.07.2021 are applicable to our company. Hence, we shall be deducting tax at source at per provisions of above section from purchase consideration paid / credited on or after 01.07.2021 to you against supplies made by you. Deduction will be made at the rate of 0.1 percent of purchase consideration paid / credited exceeding rupees 50 lacs during the current financial year.

Since we are liable to deduct tax at source under section 194Q of the Act, you may ensure not to take any action to collect tax at source under section 206C(1H) of the Act w.e.f. 01.07.2021, in case provisions of section are applicable to you considering your amount of turnover and our purchases being of more than rupees fifty lacs. You are also requested to intimate your Permanent Account Number. In case you fail to provide your PAN, tax will be deducted at the rate of 5 percent instead of 0.1 percent in terms of Section 206AA of the Act.

Further, you are also required to confirm that in your case amount of TDS/TCS was Rs.50,000/- or more in previous years relevant to Assessment Years 2019-20 and 2020-20 and you have filed your returns of income for these assessment years, otherwise tax is required to be deducted at the rate of 5 percent in terms of Section 206AB of the Act.

You may send to us your declaration in the enclosed draft on or before 15.06.2021 to enable us to take note of same and modify our accounting software accordingly. In case your declaration is not received by us by the above date, we will modify our software to deduct tax at the rate of 5 percent and it would be difficult for us to take corrective action to reduce the rate during the current financial year.

For _____

Authorised Signatory

Section 195 — TDS on Non-Resident Payments

195. *(1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest referred to in section 194LB or section 194LC) or section 194LD or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries") shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :*

***Provided** that in the case of interest payable by the Government or a public sector bank within the meaning of clause (23D) of section 10 or a public financial institution within the meaning of that clause, deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode.*

[***]

Explanation 1.—For the purposes of this section, where any interest or other sum as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

Explanation 2.—For the removal of doubts, it is hereby clarified that the obligation to comply with sub-section (1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has—

(i) a residence or place of business or business connection in India; or

(ii) any other presence in any manner whatsoever in India.

(2) Where the person responsible for paying any such sum chargeable under this Act (other than salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application [13][in such form and manner to the Assessing Officer, to determine in such manner, as may be prescribed, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

(3) Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax under that sub-section, and where any such

certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

(4) A certificate granted under sub-section (3) shall remain in force till the expiry of the period specified therein or, if it is cancelled by the Assessing Officer before the expiry of such period, till such cancellation.

(5) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (3) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

(6) The person responsible for paying to a non-resident, not being a company, or to a 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.

(7) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Board may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application [in such form and manner to the Assessing Officer, to determine in such manner, as may be prescribed], the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.

1) **Who is responsible to deduct tax u/s 195?**

   Any person responsible for paying to a non-resident, not being a company, or to a foreign company, shall deduct income-tax thereon at the rates in force.

2) **Nature of Payment**

   a) Any interest (not being interest referred to in section 194LB, 194LC and 194LD)

   b) Any other sum chargeable under the provision of this Act (not being income chargeable under the head “Salaries”)

3) **When to Deduct TDS under Section 195?**

   At the time of credit of such income to the account of payee or at the time of payment, whichever is earlier.

   For this purpose credit to “Interest payable account” or “Suspense account” or any other name shall be deemed to be a credit of such income to the account of the payee.

   For this purpose, “payment” can be in cash or by issue of a cheque or draft of by any other mode.

If interest is payable by the Government or a public sector bank or a public financial institution, then tax deduction shall be made only at the time of payment thereof in cash or by cheque or draft or any other mode.

Second Provisio to Section 195(1) exempting TDS on dividend referred to in Section 115-O has been deleted.[Finance Act 2020]

4) Threshold limit

No threshold limit. However, tax shall be deducted on sum chargeable to tax. Therefore, if no sum is chargeable to tax in India, then no tax is required to be deducted.

5) Other sums under Section 195

- **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**.

6) Income 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.

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

  - ✓ **Section9(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]**

  - ✓ **Section9(1)(iii)**– Salary payable by the Central Govt. to a **citizen of India** for services rendered outside India **[Tax deductible u/s. 192]**

  - ✓ **Section9(1)(iv)**– Dividend paid by an Indian company outside India

- **SECTION 9(1)(v) –INTEREST**

  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**

  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 utilized 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**

  Income by way of **fees for technical services** payable by a **Resident**, except where the fees are payable in respect of services utilized 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**

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

  - ✓ **Section 2(24)(xviia)** 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**

  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 situated in India**

➢ **EXPLANATION TO SECTION 9**

For the removal of doubts, it is here by 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.**

7) 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 Section195 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%
  - ✓ **Royalty**–10%

- ✓ **Fees for technical services**–10%
- ✓ **Interest** (other than 194LB / 194LC / 194LD) –20%

- 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.

8) 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%)

9) 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.

10) 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.

11) 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 .

12) FORM 15CA & FORM 15CB

Introduction:

As per section 195 of the Income Tax Act, tax is required to be deducted for any sum which is taxable under the Income Tax Act. So when a person desires to make any payment or remit any money to non-resident, the bank will require to check whether the tax was paid or not. If not paid; it will be checked if it is certified by the Chartered accountant or the Assessing Officer. But there are at least 33 types of foreign remittance where assessee do not require any submission of Form 15CA or Form 15CB.

Need of 15CA and 15CB:

Earlier, the person making a remittance to Non-Resident was required to furnish a certificate in specified format circulated by RBI. Basic purpose was to collect the taxes at a stage when the remittance is made as it may not be possible to collect the tax from the Non-Resident at a later stage. Thus to monitor and track the transactions in an efficient manner, it was proposed to introduce e-filling of information in the certificates. Section 195 of Income tax act, 1961 mandates the deduction of Income tax from payments made to Non Resident. The person making the remittance to non – resident needs to furnish an undertaking (in form 15CA) accompanied by a Chartered Accountants Certificate in Form 15CB.

❖ 15CA

1. What is Form 15CA?

Form 15CA is a Declaration of Remitter and is considered as a tool for collecting information in lieu of payments which are chargeable for tax in the hands of recipient non-resident of India. This is starting of an effective Information Processing System which may be utilized by the Income tax Department to freely track the foreign remittances and their source to determine tax liability.

Financial Institutions are now more vigilant in seeking such Forms before remittance is effected since now as per revised Rule 37BB a duty is implied on them to furnish Form 15CA received from remitter to an income-tax authority for the uses of any proceedings under the Income-tax Act.

2. Parts of Form 15CA

- **Part A –** Section A of Form 15CA is filled in by the remitter when the payment or the total sum of the payment extended by the remitter to NRI recipient during a particular Financial Year is Rs. 5 Lakhs or less.
- **Part B –** Section B of Form 15CA is in the role when such payments are more than Rs. 5 Lakhs. Information is entered by the filer in Section B after acquiring a certificate from Assessing Officer (valid under section 197) or the order from Assessing Officer (valid under sub-section (2) or sub-section (3) of section 195).
- **Part C –** If such payments made during a particular FY exceed Rs. 5 Lakhs, the related information has to be entered in Section C of Form 15CA after acquiring the Tax Determination Certificate or Form 15CB from **authorized CA** (valid under sub-section (2) of section 288).
- **Part D –** Payments made by the remitter during a particular FY which is not referred to in sub-section 37BB or in other words **is not taxable** under law, the information related to such payments is to be entered in Section D of Form 15CA.

Note: Form 15CB is required to be filled only when the remittance exceeds Rs 5 Lakh in the said fiscal under the income tax act 1961.

Analysis:- A person responsible for making a payment to a non-resident or to a foreign company has to provide the following details –

i. When payment made is below Rs 5 lakh

For such payments information is required in Part A of Form 15CA

ii. When payment made exceeds Rs 5 lakh

1. Part B of Form 15CA has to be provided
2. Certificate in Form 15CB from an authorized CA.
3. Part C of Form 15CA

iii. When the payment made is not chargeable to tax under IT Act

1. Part D of Form 15CA
2. In the following cases, no submission of information is required
   - The remittance is made by an individual and it does not require prior approval of Reserve Bank of India [as per the provisions of section 5 of the Foreign Exchange Management Act, 1999 (42 of 1999) read with Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000]

There are at least 33 types of foreign remittances where you do not require any submission of Form 15CA or Form 15CB under rule 37BB:

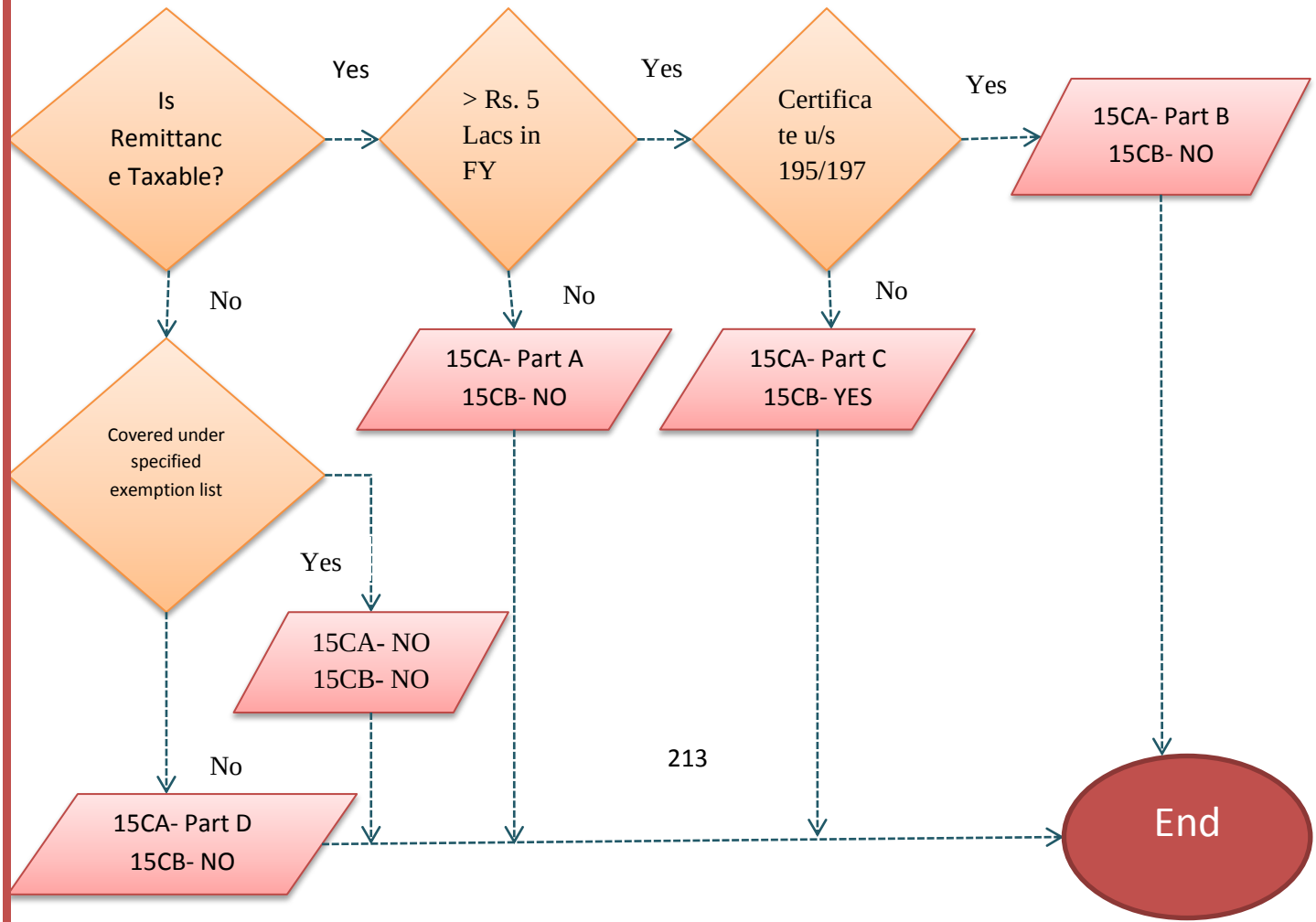
Sl. No.	Nature of Payment
1	Indian investment abroad – in equity capital (shares)
2	Indian investment abroad – in debt securities
3	Indian investment abroad- in branches and wholly owned subsidiaries
4	Indian investment abroad – in subsidiaries and associates
5	Indian investment abroad – in real estate
6	Loans extended to Non-Residents
7	Advance payment against imports
8	Payment towards imports- settlement of invoice
9	Imports by diplomatic missions
10	Intermediary trade
11	Imports below Rs.5,00,000- (For use by ECD offices)
12	Payment- for operating expenses of Indian shipping companies operating abroad.
13	Operating expenses of Indian Airlines companies operating abroad
14	Booking of passages abroad -Airlines companies
15	Remittance towards business travel.
16	Travel under basic travel quota (BTQ)
17	Travel for pilgrimage
18	Travel for medical treatment
19	Travel for education (including fees, hostel expenses etc.)
20	Postal Services
21	Construction of projects abroad by Indian companies including import of goods at project site
22	Freight insurance – relating to import and export of goods
23	Payments for maintenance of offices abroad
24	Maintenance of Indian embassies abroad

25	Remittances by foreign embassies in India
26	Remittance by non-residents towards family maintenance and savings
27	Remittance towards personal gifts and donations
28	Remittance towards donations to religious and charitable institutions abroad
29	Remittance towards grants and donations to other Governments and charitable institutions established by the Governments.
30	Contributions or donations by the Government to international institutions
31	Remittance towards payment or refund of taxes.
32	Refunds or rebates or reduction in invoice value on account of exports
33	Payments by residents for international bidding.

❖ 15CB

1. What is Form 15CB?

Form 15CB liability can be ascertained and certified by obtaining the Certificate from a Chartered Accountant in Form no. 15CB. This certificate has been prescribed under Section 195(6) of the Income-tax Act and is an alternate channel of obtaining Tax clearance apart from Certificate from Assessing Officer.



Section 195A — Income Payable "Net Of Tax"

195A. *In a case other than that referred to in sub-section (1A) of section 192, where under an agreement or other arrangement, the tax chargeable on any income referred to in the foregoing provisions of this Chapter is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon at the rates in force for the financial year in which such income is payable, be equal to the net amount payable under such agreement or arrangement.*

In a case other than that referred to in sub-section (1A) of section 192, Where under an agreement or arrangement, the tax chargeable on any income which is subject to tax deduction, is to be borne by the payer of income, then while deducting tax, such income shall be increased to such amount as would, after deduction of tax, be equal to the net amount payable under such agreement or arrangement.

Section 196B

TDS on long term capital gains (LTCG) from units referred to in section 115AB

196B. *Where any income in respect of units referred to in section 115AB or by way of long-term capital gains arising from the transfer of such units is payable to an Offshore Fund, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.*

a. Who is responsible to deduct tax u/s 196B?

Any person responsible for making payment to **Offshore Fund.**

b. Nature of Payment

a) Income from units referred to in section 115AB
b) Long-term capital gain arising from transfer of such units

c. When to Deduct TDS under Section 196B?

At the time of credit of such income to the account of payee or at the time of payment, whichever is earlier.

For this purpose, "payment" can be in cash or by issue of a cheque or draft of by any other mode.

d. Rate of TDS under Section 196B

The rate of tax deduction u/s 196B is 10 %(+SC+H&E Cess)

Section 196C — TDS on Income from foreign currency bonds or GDRs

196C. Where any income by way of interest or dividends in respect of bonds or Global Depository Receipts referred to in section 115AC or by way of long-term capital gains arising from the transfer of such bonds or Global Depository Receipts is payable to a non-resident, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof [24][by any mode], whichever is earlier, deduct income-tax thereon at the rate of ten per cent. [***]

1) Who is responsible to deduct tax u/s 196C?

Any person responsible for making payment to **Non-resident.**

2) Nature of Payment

(a) Interest on notified bonds referred to in section 115AC

(b) Dividends on Global Depository Receipts referred to in section 115AC

(c) Long-term capital gain arising from transfer of such bonds or Global Depository Receipts

3) When to Deduct TDS under Section 196C?

At the time of credit of such income to the account of payee or at the time of payment, whichever is earlier.

For this purpose, "payment" can be in cash or by issue of a cheque or draft of by any other mode.

4) Rate of TDS under Section 196C

The rate of tax deduction u/s 1946C is 10%(+ SC+H&E Cess)

5) Other key point related to Section 196C

No deduction shall be made in respect of dividend referred to in section 115-O.

Section 196D — TDS on Income of foreign institutional investors from securities

196D. *(1) Where any income in respect of securities referred to in clause (a) of sub-section (1) of section 115AD, not being income by way of interest referred to in section 194LD, is payable] to a Foreign Institutional Investor, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof [by any mode], whichever is earlier, deduct income-tax thereon at the rate of twenty per cent:*

***[Provided** that where an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A applies to the payee and if the payee has furnished a certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A, as the case may be, then, income-tax thereon shall be deducted at the rate of twenty per cent or at the rate or rates of income-tax provided in such agreement for such income, whichever is lower.**]*

[(1A) Where any income in respect of securities referred to in clause (a) of sub-section (1) of section 115AD, not being income by way of interest referred to in section 194LD, is payable to a specified fund [referred to in clause (c) of the Explanation to clause (4D) of section 10], the person responsible for making the payment shall, at the time of credit of such income to the account of the payee, or at the time of payment thereof by any mode, whichever is earlier, deduct the income-tax thereon at the rate of ten per cent:

***Provided** that no deduction shall be made in respect of an income exempt under clause (4D) of section 10.]*

(2) No deduction of tax shall be made from any income, by way of capital gains arising from the transfer of securities referred to in section 115AD, payable to a Foreign Institutional Investor.

i. Who is responsible to deduct tax u/s 196D?

Any person responsible for making payment to **Foreign Institutional Investors**

ii. Nature of Payment

Income in respect of securities referred to in section 115AD (not being interest referred to in section 194LD)

iii. When to Deduct TDS under Section 196D?

At the time of credit of such income to the account of payee or at the time of payment, whichever is earlier. For this purpose, “payment” can be in cash or by issue of a cheque or draft of by any other mode.

iv. Rate of TDS under Section 196D

The rate of tax deduction u/s 196D is 20% (+ SC+H&E Cess)

v. Other key point related to Section 196D

No deduction shall be made in respect of capital gains arising from transfer of such securities.

Section 197 — Certificate For Deduction at Lower Rate

197. *(1) Subject to rules made under sub-section (2A), where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or, as the case may be, at the time of payment at the rates in force under the provisions of sections 192, 193, 194, 194A, 194C,194D,194G, 194H, 194-I , 194J, 194K, 194LA, 194LBB, 194LBC [, 194M] [, 194-O] and 195, the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.*

(2) Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be.

(2A) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (1) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

(3) [***]

(1) What is Section 197?

Section 197 of the Income Tax Act, 1961 allows the taxpayer the facility of **NIL or Lower** tax rate deduction of TDS (or TDS exemption). In order to apply for this you need to submit Form 13 to the assessing officer. Also, this section strikes a delicate balance between the requirement of cash flow to the taxpayer and realizing the government dues at the earliest.

(2)Income Covered Under Section 197

Section 197 application can be made by the recipient of income in case of the following category of receipts where TDS is required to be made under the following Sections:

- Section 192 – Salary income
- Section 193 – Interest on securities

- Section 194 – Dividends
- Section 194A – Interest other than interest on securities
- Section 194C – Contractors income
- Section 194D – Insurance commission
- Section 194G – Commission/remuneration/prize on lottery tickets
- Section 194H – Commission or brokerage
- Section 194-I – Rent
- Section 194J – Fee for Professional or technical services
- Section 194LA – Compensation on acquisition of immovable property
- Section 194LBB – Income in respect of units of investment fund
- Section 194LBC – Income in respect of investment in securitization trust
- Section 194M – Contractors income, Commission, Fee for Professional or technical services
- Section 195 – Income of non-residents

(3) Eligibility for Making an Application Under Section 197

Application can be made where income of any person attracts TDS as per above mentioned sections and income of the recipient justifies non-deduction or lower deduction of income tax based on his estimated final tax liability.

(4) Timeline for Making the Application

Income-tax provision does not provide for a deadline to make an application under Section 197. However, as TDS is made on income of on-going financial year it is advisable to make an application at the beginning of financial year in case of regular income throughout the financial year and as and when the need arises in case of one-off incomes.

(5) Validity of an Application Made Under Section 197

Section 197 is issued for a particular financial year and stands valid from the date of issue and throughout the financial year unless cancelled by the assessing officer (TDS) before the expiry.

(6) Procedure for Making the Application Under Section 197

- An application for nil/lower deduction of TDS using the FORM 13 is required to be filed with the Assessing Officer (TDS) for seeking permission. Such Form 13 can be filed either online or manually.
- If the applicant satisfies the AO, he would process the issue of the certificate;
- The copy of this certificate can be attached to the invoice given to the deductor, and he can use this to justify the lower tax deduction.

Section 197A — No Deduction to be Made In Certain Cases

197A. *(1) Notwithstanding anything contained in section 194 or section 194EE, no deduction of tax shall be made under any of the said sections in the case of an individual, who is resident in India, if such individual furnishes to the person responsible for paying any income of the nature referred to in section 194 or, as the case may be, section 194EE, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil.*

(1A) Notwithstanding anything contained in section 192A or section 193 or section 194A or section 194D or section 194DA or section 194-I or section 194K, no deduction of tax shall be made under any of the said sections in the case of a person (not being a company or a firm), if such person furnishes to the person responsible for paying any income of the nature referred to in section 192A or section 193 or section 194A or section 194D or section 194DA or section 194-I or section 194K, as the case may be, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil.

(1B) The provisions of this section shall not apply where the amount of any income of the nature referred to in sub-section (1) or sub-section (1A), as the case may be, or the aggregate of the amounts of such incomes credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the maximum amount which is not chargeable to income-tax.

(1C) Notwithstanding anything contained in section 192A or section 193 or section 194 or section 194A or section 194D or section 194DA or section 194EE or section 194-I or section 194K or sub-section (1B) of this section, no deduction of tax shall be made in the case of an individual resident in India, who is of the age of sixty years or more at any time during the previous year, if such individual furnishes to the person responsible for paying any income of the nature referred to in section 192A or section 193 or section 194 or section 194A or section 194D or section 194DA or section 194EE or section 194-I or section 194K, as the case may be, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil.

(1D) Notwithstanding anything contained in this section, no deduction of tax shall be made by the Offshore Banking Unit from the interest paid—

(a) on deposit made on or after the 1st day of April, 2005, by a non-resident or a person not ordinarily resident in India; or

(b) on borrowing, on or after the 1st day of April, 2005, from a non-resident or a person not ordinarily resident in India.

Explanation.—For the purposes of this sub-section "Offshore Banking Unit" shall have the same meaning as assigned to it in clause (u) of section 2 of the Special Economic Zones Act, 2005.

(1E) Notwithstanding anything contained in this Chapter, no deduction of tax shall be made from any payment to any person for, or on behalf of, the New Pension System Trust referred to in clause (44) of section 10.

[(1F) Notwithstanding anything contained in this Chapter, no deduction of tax shall be made, or deduction of tax shall be made at such lower rate, from such payment to such person or class of persons, including institution, association or body or class of institutions, associations or bodies, as may be notified by the Central Government in the Official Gazette, in this behalf.]

(2) The person responsible for paying any income of the nature referred to in sub-section (1) or sub-section (1A) or sub-section (1C) shall deliver or cause to be delivered to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner one copy of the declaration referred to in sub-section (1) or sub-section (1A) or sub-section (1C) on or before the seventh day of the month next following the month in which the declaration is furnished to him.

1. What is Form 15G and Form 15H?

Form 15G and Form 15H are forms you can submit to prevent TDS deduction on your income, if you meet the conditions mentioned below. For this, PAN is compulsory. Some banks allow you to submit these forms online through the bank's website. Form 15H is for senior citizens, those who are 60 years or older; while Form 15G is for everybody else.

Form 15G and Form 15H are valid for one financial year. So, please submit these forms every year at the beginning of the financial year. This will ensure the bank does not deduct any TDS on your interest income.

- For FY 2020-21, in view of the spread of the disease COVID-19, taxpayers may not be able to submit the forms in the first week of April 2020. Hence, the government has extended the validity of the Form 15G and Form 15H expiring on 31 March 2020 up to 30 June 2020. Taxpayers can submit the Form 15G and Form 15H in the first week of July 2020. For the period beginning 1 April 2020 and up to 30 June 2020, the Form 15G and 15H submitted for FY 2019-20 will be valid proof for non-deduction of TDS. **Section 197A** of Income Tax Act, 1961 and **Rule 29C** of Income Tax Rules, 1962 contain the provisions related to the filing of Form 15G and Form 15H for non-deduction of income tax or TDS on certain incomes.
- Rule 29C rule prescribes the form to be furnished for non-deduction of income tax on certain incomes as below-

Rule 29c(1)- A declaration –
under section **197A(1)** or under section **197A(1A)** shall be in **Form No.15G** and under section **197A(1C)** shall be in **Form No.15H**.

- Section 197A(1) or section 197A(1A) applies to an Individual below 60 years of age. It also applies to non-Individuals.
  Section 197A(1C) applies only to Individuals who is a senior citizen.
- The provisions of Section 197A are discussed below:

❖ **Section 197A(1):** No deduction of income tax shall be made for -
Section 194 – TDS on dividend paid to a resident in India if exceeds Rs. 5,000. Section 194EE – TDS on payments in respect of deposits under National Savings Scheme, etc. if exceeds Rs. 2,500.
in case of –

- an Individual, who is resident in India,
- if such individual furnishes
- to the payer
- a declaration in writing in duplicate
- in the prescribed form and,
- verified in the prescribed manner,
- when-
- tax on his estimated total income of the previous year in which such income is includible is NIL.

Please note that here rebate u/s 87A is **not considered** for the purpose of this section.

❖ **Section 197A(1A):** No deduction for income tax shall be made for -
Section 192A – TDS on payment from Employees' Provident Funds if exceeds Rs. 50,000.
Section 193 – Interest on securities if exceeds Rs. 10,000 except securities held in dematerialized form and listed securities.
Section 194A – Interest other than interest on securities if exceeds Rs. 40,000 for bank and PO/Rs. 50,000 for senior citizen, and Rs. 5,000 from others.
Section 194D – TDS on Insurance Commission if exceeds Rs. 15,000
Section 194DA – TDS on Life Insurance Policy maturity proceeds if exceeds Rs. 1,00,000
Section 194I – TDS on Rent payment if exceeds Rs. 2,40,000
Section 194K – TDS on Payment of any income in respect of units of mutual fund if exceeds Rs. 5,000

in case of a person-

- not being a company or firm

- if such person furnishes a declaration
- in writing in duplicate
- in the prescribed form and
- verified in the prescribed manner.
- when-
- tax on his estimated total income of the previous year in which such income is includible
- is NIL

Please note that here rebate u/s 87A is **not considered** for the purpose of this section.

❖ **Section 197A(1B)**: The provisions of section 197A(1) or section 197A(1A) shall not apply –

- when the aggregate of income referred to above sections or
- the aggregate of the amount of such incomes-
- credited or paid or likely to be credited or paid
- during the previous year
- in which such income is to be included
- exceeds the basic exemption limit.

This provision means if the income for which **Form 15G** is being furnished such income shall not exceed the basic exemption limit. For example, in case of a bank, if payment of interest during a financial year exceeds the basic exemption limit(Rs. 2,50,000 at present) then Form 15G **cannot** be filed.

❖ **Section 197A(1C):** Contains filing of declaration for no deduction in the prescribed form for-

Section 194 – TDS on dividend paid to a resident in India if exceeds Rs. 5,000. Section 194EE – TDS on payments in respect of deposits under National Savings Scheme, etc. if exceeds Rs. 2,500.

Section 192A – TDS on payment from Employees' Provident Funds if exceeds Rs. 50,000.

Section 193 – Interest on securities if exceeds Rs. 10,000 except securities held in dematerialized form and listed securities.

Section 194A – Interest other than interest on securities if exceeds Rs. 40,000 for bank and PO/Rs. 50,000 for senior citizen, and Rs. 5,000 from others.

Section 194D – TDS on Insurance Commission if exceeds Rs. 15,000

Section 194DA – TDS on Life Insurance Policy maturity proceeds if exceeds Rs. 1,00,000

Section 194I – TDS on Rent payment if exceeds Rs. 2,40,000

Section 194K – TDS on Payment of any income in respect of units of mutual fund if exceeds Rs. 5,000

- by an individual **resident** in India
- who is a senior citizen.

- Thus, a non-resident senior citizen is expressly **prohibited** from filing of Form15H. In case of filing of Form 15G by a non-resident, it is impliedly prohibited, but for a senior citizen, it is **expressly** prohibited. The condition mentioned in section 197A(1B) is not applicable to a senior citizen filing Form 15H. In other words, Form 15H can be filed even if the aggregate of income referred to above sections exceeds the basic exemption limit which is Rs. 3,00,000 at present for a senior citizen and Rs. 5,00,000 for a very senior citizen but his **tax** on total income shall be nil.

  Please note that The CBDT has come up with "*Notification No. 41/2019/F. No. 370142/5/2019-TPL dated 22 nd May, 2019"* which reads as below:

  "Provided that such person shall accept the declaration in a case where income of the assessee, who is eligible for rebate of income-tax under section 87A, is higher than the income for which declaration can be accepted as per this note, but his tax liability shall be nil after taking into account the rebate available to him under the said section 87A." which means rebate u/s 87A is **considered** for the purpose of this section. This can be explained with the help of following comparative letter:-

Age	Interest Income	Other Income	Deductions	Taxable Income	15G/15H allowed?	Remarks
Below 60 Years	Rs. 3 Lakhs	Rs. 1 Lakh	Rs. 1.50 Lakhs	Rs. 2.50 Lakhs	15G not allowed	Interest income is above exemption limit of Rs. 2.50 Lakhs
	Rs. 2.50 Lakhs	Rs. 1.60 Lakhs	Rs. 1.50 Lakhs	Rs. 2.60 Lakhs	15G not allowed	Taxable income is above exemption limit of Rs. 2.50 Lakhs
	Rs. 2.50 Lakhs	Rs. 1.50 Lakhs	Rs. 1.50 Lakhs	Rs. 2.50 Lakhs	15G allowed	Both conditions satisfied
60 Years and above	Rs. 2.50 Lakhs	Rs. 2 Lakhs	Rs. 1.50 Lakhs	Rs. 3 Lakhs	15H allowed	Taxable income is within Rs. 3 Lakhs
	Rs. 2.50 Lakhs	Rs. 4.50 Lakhs	Rs. 1.50 Lakhs	Rs. 5.50 Lakhs	15H not allowed	Taxable income is both above exemption limit of Rs. 3 Lakhs and 5 Lakhs which means benefit of rebate u/s 87A also could not be availed
80 Years and above	Rs. 4 Lakhs	Rs. 2.50 Lakhs	Rs. 1.50 Lakhs	Rs. 5 Lakhs	15H allowed	Taxable income is within Rs. 5 Lakhs
	Rs. 4 Lakhs	Rs. 3 Lakhs	Rs. 1.50 Lakhs	Rs. 5.50 Lakhs	15H not allowed	Taxable income is above exemption limit of Rs. 5 Lakhs

	Taxable pre-mature withdrawal from provident fund [Section 192A]	Interest [Section 193 and 194A] or Rent [Section 194-I] or Insurance Commission [Section 194D]	Dividend [Section 194]	Payment in respect of life insurance policy [Section 194DA]	National Saving Scheme [Section 194EE]	Income in respect of units of mutual fund [Section 194K]
***Condition 1*- Who is recipient**	Individual	Other than a company or firm	Resident individual	Other than a company or firm	Resident individual	Other than a company or firm
***Condition 2*- What is tax on total income of the previous year**	Nil	Nil	Nil	Nil	Nil	Nil
***Condition 3*- How much is total of income covered by Sections 192A, 193, 194, 194A, 194D, 194DA, 194EE, 194-I and 194K**	Not exceeding the maximum amount not chargeable to tax					

Section 198 — Tax Deducted at Source shall be deemed to be income received

__198.__ All sums deducted in accordance with the foregoing provisions of this Chapter shall, for the purpose of computing the income of an assessee, be deemed to be income received :

***Provided** that the sum being the tax paid, under sub-section (1A) of section 192 for the purpose of computing the income of an assessee, shall not be deemed to be income received:*

*[**Provided further** that the sum deducted in accordance with the provisions of section 194N for the purpose of computing the income of an assessee, shall not be deemed to be income received.*

Tax deducted at source shall be deemed to be income received. Accordingly, it shall be considered for the purpose of computing the income of assessee.

E.g. Mr. C received interest of ₹ 54,000/- after deduction of ₹ 6,000/- as TDS. The income of Mr. C will be ₹ 60,000/- i.e including the portion of TDS.

However in the following two cases, Tax deducted will not form part of income-

- TDS contributed by the employer on non-monetary perquisites provided to employee u/s 192(1A).
- TDS deducted by banks, post offices, cooperative banks u/s 194N

Section 199 — Credit For Tax Deducted

199. *(1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.*

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given.

In pursuance of rules framed under section 199 of the Income Tax act, credit for tax deducted at source shall be given to the deductee for the assessment year for which such income is assessable.

- Where tax has been deducted at source and paid to the Central Government, and the income is assessable over a number of years, credit for tax deducted at source shall be allowed in the same proportion in which such income is offered for taxation.

- If the income on which tax has been deducted is assessable in the hands of a person other than the deductee, then tax credit will be given to such other person if deductee files a declaration with the deductor to that effect. Such declaration shall contain the name, address, PAN of the person to whom credit is to be given and reasons for giving credit to such person.

Section 200(1) & (2) — Time Limit for Deposit of Tax Deducted at Source

200. *(1) Any person deducting any sum in accordance with the foregoing provisions of this Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.*

(2) Any person being an employer, referred to in sub-section (1A) of section 192 shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs.

(2A) In case of an office of the Government, where the sum deducted in accordance with the foregoing provisions of this Chapter or tax referred to in sub-section (1A) of section 192 has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person, by whatever name called, who is responsible for crediting such sum or tax to the credit of the Central Government, shall deliver or cause to be delivered to the prescribed income-tax authority, or to the person authorised by such authority, a statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed.

Time limit for deposit of tax deducted at source with Government is as under:

Different situations	Time limit
Tax is deducted by an office of the Government and tax is paid **(a) Without production of an income-tax challan** **(b) By income- tax challan**	Tax shall be deposited on the same day on which tax is deducted. Tax shall be deposited on or before 7 days from the end of the month in which it was deducted. Or Income tax due under section 192(1A)
Tax is deducted by other than the office of the government **Where the amount is credited in the month of march** **Where amount is credited before 1st March.**	Tax shall be deposited by 30th April Tax shall be deposited within 7 days from the end of month in which it was deducted. Or Income tax due under section 192(1A)
Tax is deducted by a person under section 194IA, 194IB &194M	Tax shall be deposited within 30 days from the last date of month in which tax was deducted.

Tax is deducted by a person other than the office of the Government and the Assessing Officer (with prior approval of Joint Commissioner) has permitted quarterly deposit of tax deducted under sections 192,194A, 194D and 194H.	For the quarter ending 30th June: - Tax shall be deposited by 7th July. For the quarter ending 30th September: - Tax shall be deposited by 7th October. For the quarter ending 31st December: - Tax shall be deposited by 7th January. For the quarter ending 31st March: - Tax shall be deposited by 30th April.

Section 200(3) — Forms And Time Limit For Submitting Quarterly Statement of Tax Deduction (TDS Returns)

200(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:

***Provided** that the person may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be specified by the authority.*

Forms for quarterly statement of tax deduction

Any person deducting any sum in accordance with the foregoing provisions of this Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs. Further, quarterly TDS Return is required to be filed by the assessee who has deducted the TDS. TDS Returns include fields like TAN No., TDS Payment, amount deducted, type of payment, PAN No. etc.

Form No.	Particulars
Form 24Q	Statement for tax deducted at source from salaries
Form 26Q	Statement for tax deducted at source on all payments except salaries
Form 27Q	Statement for deduction of tax from interest, dividend or any other sum payable to non-residents
Form 26QB	For Section 194IA separate return is not required, challan cum return to be filed on Form 26QB to be deposited within a period of 30 days(w.e.f.01.06.2016) from the end of the month in which the deduction is made

Time Limit for filing the above quarterly statements of tax deduction (popularly known as TDS Returns)

A return of TDS is a comprehensive statement containing details of payment made and taxes deducted thereon along with other prescribed details. As per section 200(3) of the Act, the Due Date for filing TDS Return (both online as well as physical w.e.f. 01.06.2016) is as follows:

Quarter ending on	Due Date
30th June	31st July of the financial year
30th September	31st October of the financial year
31st December	31st January of the financial year
31st March	31st May of the financial year immediately following the financial year in which deduction is made

Note: 'Nil' TDS return is not mandatory, however to facilitate the deductors and update data government has provided a facility for declaring nil TDS return.

Section 203 TDS Certificate

203. *(1) Every person deducting tax in accordance with the foregoing provisions of this Chapter shall, within such period as may be prescribed from the time of credit or payment of the sum, or, as the case may be, from the time of issue of a cheque or warrant for payment of any dividend to a shareholder, furnish to the person to whose account such credit is given or to whom such payment is made or the cheque or warrant is issued, a certificate to the effect that tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted and such other particulars as may be prescribed.*

(2) Every person, being an employer, referred to in sub-section (1A) of section 192 shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed.

(3) [***]

Issue of TDS Certificate

Every person deducting tax at source is required as per Section 203 to furnish a certificate to the payee to the effect that tax has been deducted along with certain other particulars. This certificate is usually called the TDS certificate. Even the banks deducting tax at the time of payment of pension are required to issue such certificates. In case of employees receiving salary income including pension, the certificate has to be issued in Form No.16. In all other cases, the TDS certificate is to be issued in Form 16B. The certificate is to be issued in the deductor's own stationery. However, there is no obligation to issue TDS certificate in case of tax at source is not deducted /deductible by virtue of claims of exemptions/ deductions.

Form and Time Limit for issue of TDS Certificates

Form No.	Periodicity	Due Date
Form No.16 and Form No. 12BA	Annual	On or before May 31 of the financial year immediately following the financial year in which tax is deducted.
Form No.16A	Quaterly	Within 15 days from the due date of furnishing quarterly TDS returns.
Form No.16B	-	Within 15 days of furnishing challan in Form No.26QB

Issue of Duplicate Certificate

Where the original TDS certificate is lost, the deductee can approach the deductor for issue of a duplicate TDS certificate. The deductor may issue a duplicate certificate in Form No. 16 or Form 16A as the case may be. However such a certificate has to be certified as duplicate by the deductor. Further, the deductor may, at his option, use digital signatures to authenticate such certificates. In case of issue of such certificates the deductor shall ensure that-

a) The provisions of sub-rule (2) of Rule 31 regarding specification of TAN, PAN of deducteee book identification number; Challan identification number; receipt number of relevant quarterly statements etc. are complied with;
b) Once the certificate is digitally signed, the contents of the certificates are not amendable to change; and
c) The certificates have a control number and a log of such certificates is maintained by the deductor.

Section 200A — Processing of statements of tax deducted at source

200A. *(1) Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—*

(a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the statement; or

(ii) an incorrect claim, apparent from any information in the statement;

(b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;

(d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;

(e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

(f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor:

Provided *that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.*

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section.

Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner:

a. the sums deductible under this Chapter shall be computed after making any arithmetical error or an incorrect claim, apparent from any information in the statement.

b. the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

c. the fee, if any, shall be computed in accordance with the provisions of section 234E;

d. the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;

e. an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

f. the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor.

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Section 201 — Consequences of Non-Compliance to TDS

201. *(1) Where any person, including the principal officer of a company,—*

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided *that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a [payee] or on the sum credited to the account of a [payee] shall not be deemed to be an assessee in default in respect of such tax if such [payee]—*

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:]

Provided further *that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.*

(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,

and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200:

Provided *that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a [payee] or on the sum credited to the account of a [payee] but is not deemed to be an assessee in*

default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such [payee].

(2) Where the tax has not been paid as aforesaid after it is deducted, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A) shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given [or two years from the end of the financial year in which the correction statement is delivered under the proviso to sub-section (3) of section 200, whichever is later].

(4) The provisions of sub-clause (ii) of sub-section (3) of section 153 and of Explanation 1 to section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).

Explanation.—For the purposes of this section, the expression "accountant" shall have the meaning assigned to it in the Explanation to sub-section (2) of section 288.

Where any person, including the principal officer of a company, who is required to deduct any sum in accordance with the provisions of this Act; or referred to in sub-section (1A) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an **assessee in default** in respect of such tax. A deductor would broadly face the following consequences:

Sr. No.	Consequence	Section
1.	Interest	201(1A)
2.	Penalty	201(1),271C,271CA,271H, 272A,272BB
3.	Fees	234E
4.	Prosecution	276B,276BB
5.	Disallowance of expenses	40(a)(i)/(ii)

The same is divided into following parts:

- Provisions applicable to person deemed to be an “assessee in default”.
- Provisions applicable to a person not deemed to be an “assessee in default”.
- Penalties applicable, whether the Assessee is in default or not.
- Consequences for failure to furnish statements and other penalties.

A. Provisions applicable to person deemed to be an "assessee in default"

Levy of interest:-

- As per section 201 of the Income-tax Act, if a deductor fails to deduct tax at source or after the deducting the same fails to deposit it to the Government's account then he shall be deemed to be an assessee-in-default and liable to pay simple interest as follows:
  - **iii.** at **1%** for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and
  - **iv.** at **1.5%** for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid.
- Levy of interest is mandatory in nature: Levy of interest u/s. 201(1A) is mandatory and that the interest is to be paid whether the Assessee is an assessee in default or not.
- Interest – deduction as business expenditure: Whether the interest paid u/s 201(1A) can be claimed as deductible expenditure - Relying on the various judgments, it has been held that the interest paid u/s 201(1A) takes colour from its principal amount i.e., income tax and hence such interest cannot assume the character of business expenditure and hence is not allowable.

Levy of Penalty:

- Where a person is deemed to be an Assessee in default u/s. 201(1) then the Assessee is liable to pay penalty u/s. 221 in addition to the tax and interest u/s. 201(1A). The amount of penalty payable shall not exceed the amount of tax in arrears. Once a default occurs, penalty is payable even where the Assessee has subsequently paid the tax in arrears, whether before or after the imposition of the penalty. However, the Assessee is to be granted a reasonable opportunity of being heard to prove to the satisfaction of the ITO that the default was for good and sufficient reason**.**
- The term 'good and sufficient reasons' is not defined and depends upon the facts of each case. The following reasoning / circumstances have been considered as a good and sufficient reason by the courts:
  - ✓ TDS post deduction was not paid by the Assessee on account of a financial stringency. It was held as a good and sufficient reason in the matter of Sequoia Construction Co. Limited (Delhi High Court) (158 ITR 496).
  - ✓ Fair and honest estimate based on backdrop of various judicial decisions is a good and sufficient reason - Nestle India (ITAT Delhi)
  - ✓ However, TDS not deducted based on the ignorance - it was 'not' held to be a case of good and sufficient ground - Tata Chemicals Limited (Mum ITAT).

Disallowance of expenditure:

- As per section 40(a)(i) of the Income-tax Act, any sum (other than salary) payable outside India or to a non-resident, which is chargeable to tax in India in the hands of the recipient, shall not be allowed to be deducted if it is paid without deduction of tax at source or if tax is deducted but is not deposited with the Central Government till the due date of filing of return. However, if tax is deducted or deposited in subsequent year, as the case may be, the expenditure shall be allowed as deduction in that year.
- TDS is to be deducted and deposited before 7th of next month (or 30th April in case of payment in March) on sum payable as salary to any non-resident. Otherwise 100% of expense will be disallowed and shall not be allowed even if deposited after the due date.
- Similarly, as per section 40(a)(ia), any sum payable to a resident, which is subject to deduction of tax at source, would attract **30% disallowance** if it is paid without deduction of tax at source or if tax is deducted but is not deposited with the Central Government till the due date of filing of return. However, where in respect of any such sum, tax is deducted or deposited in subsequent year, as the case may be, the expenditure so disallowed shall be allowed as deduction in that year.
- **Note:** If the Assessee after deduction of TDS does not pay the same, then as per sub-section (2) of section 201, for the amount of tax not paid together with the simple interest - a charge is created on the assets of the person.

B. Provision applicable to a person not to be treated as "assessee in default"

A deductor who fails to deduct the whole or any part of the tax on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee-in-default in respect of such tax if such resident:

- has furnished his return of income under section 139 ;
- has taken into account such sum for computing income in such return of income; and
- has paid the tax due on the income declared by him in such return of income, and the deductor furnishes a certificate to this effect in Form No.26A from a chartered accountant.

Levy of interest: Levy of interest u/s. 201(1A) is mandatory in nature and that the interest (as discussed earlier) is to be paid whether the Assessee is an assessee in default or not.
Levy of Penalty: Penalty u/s. 221 is not payable where a person is not deemed to be an Assessee in default.

Disallowance of expenditure: Finance Act, 2012 w.e.f. 1.7.2012 has inserted second proviso to section 40(a)(ia), where it is provided that if a person is not an assessee in default as per section 201(1) then for the purpose of section 40(a)(ia) it will be deemed that the Assessee has deducted and paid the TDS on such amount and consequently no disallowance ought to be

carried out. Hence if a person is not deemed to be an assessee in default then there will be no disallowance u/s. 40(a)(ia).

Note: The proviso is inserted only with context to section 40(a)(ia) and there is no such amendment to section 40(a)(i). Therefore the provision of disallowance specified u/s 40(a)(i) would be applicable.

As per section 40(a)(i) of the Income-tax Act, any sum (other than salary) payable outside India or to a non-resident, which is chargeable to tax in India in the hands of the recipient, shall not be allowed to be deducted if it is paid without deduction of tax at source or if tax is deducted but is not deposited with the Central Government till the due date of filing of return. However, if tax is deducted or deposited in subsequent year, as the case may be, the expenditure shall be allowed as deduction in that year.

C. Penalties, whether the Assessee is in default or not

Section 271C Specific Penalty: It is a specific provision dealing with levy of penalty on failure to deduct the tax at source. Penalty u/s 271C is payable only where a person fails to deduct the tax as required to be deducted. The amount of penalty payable u/s. 271C is equal to the amount of the tax which the person has failed to deduct. Penalty u/s. 271C is not imposable if the Assessee proves the reasonable cause u/s 273B for the failure of the person to deduct TDS.

Issue: Where there is default in deduction of TDS penalty is payable under sec.271C or sec. 221 or both?

→Section 271C is a specific provision dealing with assessee's failure of non-deduction or short-deduction of tax, therefore, to the extent a default is covered by the specific provision of section 271C, such default cannot be subject-matter of penalty under section 221(1).

Section 276B Prosecution: The assessee could also be prosecuted for the non-complying with the requirements of deducting and paying the TDS. However, the criminal proceedings can be initiated only when the default is of non-payment and not where the default is restricted to non- deduction of TDS. The prosecution u/s.276B is rigorous imprisonment for at least 3 months and upto 7 years along with amount to be paid as fine.

Note: No Prosecution where Penalty dropped.

D. Consequences for failure to furnish statements and other penalties

Section 271H [Penalty]:

- The provisions of section 271H levying the penalty are applicable in case of failure to deliver a quarterly statements being TDS/TCS Returns u/s. 200(3) / 206C(3) respectively, before the due of date of filing said returns; or submitting incorrect

information in the statement. The penalty will be imposed minimum of ₹ 10,000/- to maximum ₹ 1,00,000/-.

- **Note:** No Penalty u/s 271H if there is Reasonable Cause for failure.
- **Exception** – No penalty shall be levied for the failure to submit the statement if it is proved that the statement has been delivered / submitted before the expiry of one year from the due date of filing the said return u/s. 200(3)/206C(3).

Section 234E [Fees]:

- The provision of section 234E of the Act provides for levy of a fee of ₹ 200/- for each day's delay in filing the statement of TDS. It is to be paid before the furnishing of the return of TDS. However, the amount of fee liable to be paid shall not exceed the amount of TDS.
- **Note:** The levy of the fee u/s. 234E mandatory in nature irrespective of the fact that there exists a reasonable cause of failure.

Section 272BB:

Section 272BB provides for imposition of penalty on non-compliance of provisions of section 203A. Therefore a penalty will be imposed where a person fails to:

- obtain the tax deduction account number or tax collection account number;

  or
- fails to quote such number as required

The amount of penalty payable u/s. 272BB is be ₹10,000/-.

Note: No order imposing the penalty shall be passed unless an opportunity of being heard is given in the matter to such person.

Section 203A — Tax Deduction and Collection Account Number

203A. *(1) Every person, deducting tax or collecting tax in accordance with the provisions of this Chapter, who has not been allotted a tax deduction account number or, as the case may be, a tax collection account number, shall, within such time as may be prescribed, apply to the Assessing Officer for the allotment of a "tax deduction and collection account number".*

(2) Where a "tax deduction account number" or, as the case may be, a "tax collection account number" or a "tax deduction and collection account number" has been allotted to a person, such person shall quote such number—

(a) in all challans for the payment of any sum in accordance with the provisions of section 200 or sub-section (3) of section 206C;

(b) in all certificates furnished under section 203 or sub-section (5) of section 206C;

(ba) in all the statements prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (3) of section 200 or sub-section (3) of section 206C;

(c) in all the returns, delivered in accordance with the provisions of section 206 or sub-section (5A) or sub-section (5B) of section 206C to any income-tax authority; and

(d) in all other documents pertaining to such transactions as may be prescribed in the interests of revenue.

(3) The provisions of this section shall not apply to such person, as may be notified by the Central Government in this behalf.

- Every person, deducting tax or collecting tax, who has not been allotted a tax deduction account number or, as the case may be, a tax collection account number, shall, within one month from the end of the month in which tax was deducted or collected, apply to the Assessing Officer for the allotment of a "tax deduction and collection account number".
- The above number shall be quoted in -
  a. all challans for the payment of tax deducted at source or tax collected at source.
  b. all TDS or TCS certificates issued under the Act
  c. all the TDS and TCS returns prepared and delivered under the Act
  d. all other documents pertaining to such transactions as may be prescribed in the interests of revenue.
- The provisions of this section shall not apply to such person, as may be notified by the Central Government in this behalf.

Section 206AA — Mandatory Requirement of Furnishing PAN

206AA. *(1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—*

(i) at the rate specified in the relevant provision of this Act; or

(ii) at the rate or rates in force; or

(iii) at the rate of twenty per cent:

*[**Provided** that where the tax is required to be deducted under section 194-O, the provisions of clause (iii) shall apply as if for the words "twenty per cent", the words "five per cent" had been substituted:]*

[Provided further** that where the tax is required to be deducted under section 194Q, the provisions of clause (iii) shall apply as if for the words "twenty per cent", the words "five per cent" had been substituted.**]

(2) No declaration under sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A shall be valid unless the person furnishes his Permanent Account Number in such declaration.

(3) In case any declaration becomes invalid under sub-section (2), the deductor shall deduct the tax at source in accordance with the provisions of sub-section (1).

(4) No certificate under section 197 shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.

(5) The deductee shall furnish his Permanent Account Number to the deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

(6) Where the Permanent Account Number provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his Permanent Account Number to the deductor and the provisions of sub-section (1) shall apply accordingly.

(7) The provisions of this section shall not apply to a non-resident, not being a company, or to a foreign company, in respect of—

(i) payment of interest on long-term bonds as referred to in section 194LC; and

(ii) any other payment subject to such conditions as may be prescribed.

1) What is Section 206AA?

Section 206AA has been inserted to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates –

a. applicable rate of TDS or
b. at the rate of 20%

2) Additional points related to Section 206AA

- No certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

- Tax is required to be deducted at the rates (as suggested under this section) also in cases where the deductee files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN.

- If the PAN provided to the deductor is invalid or it does not belong to the deductee,it shall be deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the highest of the two rates specified above.

- Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.

- These provisions will also apply to non-residents or foreign company where tax is deductible on payments or credits made to them. However, the provisions of this section shall not apply to a non- resident or to a foreign company, in respect of—

  (i) payment of interest on long-term bonds as referred to in section 194LC; and
  (ii) any other payment subject to such conditions as may be prescribed.

3) Relaxation from deduction of tax at higher rate under section 206AA

Accordingly, the CBDT has, vide this notification, inserted Rule 37BC to provide that the provisions of section 206AA shall not apply to a non-corporate non-resident, or to a foreign company not having PAN in respect of payments in the nature of interest, royalty, fees for

technical services and payments on transfer of any capital asset, if the deductee furnishes the following details and documents to the deductor:

- Name, e-mail id, contact number;
- address in the country or specified territory outside India of which the deductee is a resident;
- a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory, if the law of that country or specified territory provides for issuance of such certificate;
- Tax Identification Number of the deductee in the country or specified territory of his residence. In case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or specified territory of which he claims to be a resident.

Section 206AB & 206CCA — Higher Rate of TDS / TCS in Case of Non-Filers of Return

Section 206AB and Section 206CCA

Special provision for deduction of tax at source for non-filers of income-tax return.

206AB. *(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source under the provisions of Chapter XVIIB, other than section 192, 192A, 194B, 194BB, 194LBC or 194N on any sum or income or amount paid, or payable or credited, by a person (hereafter referred to as deductee) to a specified person, the tax shall be deducted at the higher of the following rates, namely:—*

(i) at twice the rate specified in the relevant provision of the Act; or

(ii) at twice the rate or rates in force; or

(iii) at the rate of five per cent.

(2) If the provisions of section 206AA 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.

(3) For the purposes of this section "specified person" means 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:

Provided *that the specified person shall not include a non-resident who does not have a permanent establishment in India.*

Explanation.—*For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.***]**

[Special provision for collection of tax at source for non-filers of income-tax return.

206CCA. *(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person (hereafter referred to as collectee) from a specified person, the tax shall be collected at the higher of the following two rates, namely:—*

(i) at twice the rate specified in the relevant provision of the Act; or

(ii) at the rate of five per cent.

(2) If the provisions of section 206CC is applicable to a specified person, in addition to the provisions of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC.

(3) For the purposes of this section "specified person" means 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 collected, 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:

Provided *that the specified person shall not include a non-resident who does not have a permanent establishment in India.*

Explanation.—*For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.***]**

For the applicability of the section 206AB, the following **all** the conditions must be satisfied:

1. A person is required to deduct tax under any of the provision of chapter XVIIB
2. Transaction is with specified person. Specified Person means a person who has not filed his return of income of immediately two preceding previous years, for which due date u/s 139(1) has expired.
3. 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.

Non- Applicability of the Section 206AB

1. If specified person is non-resident who does not have permanent establishment in India.
2. The section has overriding effect on all provisions of Chapter XVIIB of the Income Tax Act, 1961 except the below mentioned sections

S. No.	Section	Particulars
1	192	TDS on Salary
2	192A	TDS on Payment of Accumulated Balance Due to an Employee
3	194B	TDS on winnings from Lottery, Game Shows, and Puzzle etc.
4	194BB	TDS on winning from Horse Race
5	194LBC	TDS on Income in Respect of Investment in Securitization Trust
6	194N	TDS on cash withdrawal

Applicable Tax Rate

The tax shall be deducted at the higher of the following rates, namely :--
a. at twice the rate specified in the relevant provision of the Act; or
b. at twice the rate or rates in force; or
c. at the rate of five per cent.

In case, if the provisions of section 206AA 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.

Table Representing Applicability of Section 206AB

Case	TDS/TCS in Financial Year		ITR Filing status	Whether Sec 206AB applicable
	In 2019-20 Rs. 50,000 or more	In 2020-21 Rs. 50,000 or more		
A	No	Yes	Not filed for both the years	No
B	Yes	No	Not filed for both the years	No
C	Yes	Yes	Filed for both the years	No
D	Yes	Yes	Not filed for both the years	Yes
E	Yes	Yes	Filed only for PY 2019-20	No
F	Yes	Yes	Filed only for PY 2020-21	No

Important Points

From the perusal of above section, the following points are to be noted:

- This punitive rate on the payee will be in addition to the interest, penalty, prosecution and other consequences of non-filing of ROI.
- Credit will be available to the payees for the higher taxes paid while filing his return of income Interpretation of the threshold condition:
- To compute threshold of INR 50,000 or more, both TDS and TCS of respective FY needs to be aggregated. For example: I Co is making FTS payment to Mr. A of Rs. 1 Lac on which TDS is required to be deducted u/s. 194J @10%. He had not filed ITR for last 2 PY and due date u/s. 139(1) has also expired. For each of the last 2 PY, tax deducted of Mr. A was Rs. 20,000 and Rs. 35,000 respectively and TCS collected was Rs. 30,000 and Rs. 40,000 respectively.
- Aggregate of TDS and TCS in year 1 – 20,000 + 30,000 = 50,000

- Aggregate of TDS and TCS for year 2 – 35,000 + 40,000 = 75,000
- The condition of having TDS & TCS of Rs. 50,000 or more in each of the 2 FY is satisfied in the given case.

Meaning of specified person

Specified person means 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 subsection (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. Provisions of this section shall not apply to non-resident who does not have a permanent establishment in India. The expression permanent establishment includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Which are the two previous years immediately prior to previous year 2021-22 for which the Return of Income filing status is required to be examined in case of the deductee?

The definition of the term "specified person" includes 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. If a person wants to deduct tax on 25.08.2021,then the returns to be considered for two previous years will be as under:

Particulars	**Individuals**	**Company/Person to whom Tax Audit is applicable**	**Person to whom Transfer pricing is applicable**
Due date of filling return	31 July	31 October	30 November
PY to be considered	PY 2019-20 PY 2020-21	PY 2018-19 PY 2019-20	PY 2018-19 PY 2019-20

If tax is required to be deducted for transactions undertaken in the previous year 2021-22, which of the two previous years should the deductor consider for examining the return filing status of the deductee. The definition requires that the status should be examined for 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 section 139(1) has expired***

Let's take the following previous years:

Previous year	Time limit of filing ROI expired
2020-21	No
2019-20	Yes
2018-19	Yes

From the above table, it can be seen that though the two previous years immediately prior to the previous year 2021-22 are 2020-21 and 2019-20, the time limit for filing ROI has not expired for previous year 2020-21 and hence, previous year 2020-21 cannot be considered.

Consequently, the deductor will have to consider return filing status for previous years 2019-20 and 2018-19 to examine whether the deductee qualifies as "specified person" or not, This is also clarified in para 3 of Circular No. 11 dated 21 June 2021 issued by the CBDT.

For specified persons covered in the list as on the start of the financial year 2021-22 in the functionality of the income-tax department, the deductor will have to once again verify the Return filing status for previous year 2020-21 as mentioned in para 3 of the Circular to check whether his name has been removed from the list.

The method of examining the Return filing status for previous year 2020-21 ***only in the case of specified persons (as mentioned in the Circular)*** appearing in the list of the income-tax portal gives a major relief to the deductors and reduces their burden of checking the income tax portal for non-specified persons. Though technically such non-specified persons could fall in the definition of the term "specified persons". This can be understood with the help of the following example:

The Return of Income filing status of Mr. B is as under:

Previous year	Return filing status	Aggregate TDS and TCS (INR)
2018-19	Filed before 1 April 2021	-
2019-20	Not filed before 1 April 2021	60,000
2020-21	Not filed by due date applicable under section 139(1) (say 30 September 2021)	70,000

Mr. B's name would not appear in the list as on 1 April 2021. If any amount is payable by XYZ Ltd. to Mr. B on 15th October 2021, though Mr. B falls in the definition of the term "specified persons", Mr. B's name will not be added in the list of the defaulters. In para 4 of the Circular, it is assumed that Mr. B would remain outside the list of specified persons during that financial year. The rationale adopted for such an approach as discussed in para 3 of the Circular is that "*this is a taxpayer friendly measure to reduce the burden on tax deductor and collector of checking PANs of non-specified persons more than once during the financial year"*

Now a question arises that section 206AB(3) uses the words '*specified person" means 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'.* Whether these words require that only Return of Income filed under section 139(1) shall be considered and not Return of Income filed under section 139(4)? The answer to that is No. This is for the reason that the section nowhere states that the Return of Income for the previous years is to be filed under 139(1) of the Act. In this context, it is to be noted that the phrase '*for which the time limit of filing return of income under sub-section (1) of section 139 has expired'* is used to determine the two preceding previous years which should be considered to examine the Return filing status.

Implications of Sec 206AB when certificate u/s 197 has been obtained

The section starts with a non-obstante clause i.e. '*Notwithstanding anything contained in any other provisions of this Act'* which means that it will override all the other provisions of the Act.

The question that arises is whether it will also override the provisions of section 197 which enables the taxpayer to obtain a Nil/ lower withholding certificate.

Rule 28AA deals with certificate for deduction at lower rates or no deduction of tax from income other than dividends. One of the conditions to be tested by the AO for issuing the certificate is tax payable by the applicant on the assessed or returned or estimated income, as the case may be, for last four previous years. Further, para 2(xiii) and (xiv) of Form 13 requires the applicant to give the following details:

"(xiii) Where return of income for any of the four previous year preceding to the previous year referred to in (vii) has not been filed, please upload a computation of estimated total income of the previous year for which return of income has not been filed.

(xiv) Where return of income for any of the four previous year has been filed in paper form, please upload the copy of such returns"

It is pertinent to note that the section does not require that certificate should not be issued to applicant who has not furnished ROI for the past years. Hence, a lower/ Nil withholding certificate could still be issued in the case where no ROI is filed for the immediately two preceding previous years.

Hence, the implications of section 206AB will have to be kept in mind while applying the rate of tax given in the certificate issued under section 197. If the provisions of section 206AB are not

complied with by the deductor, it can be argued that tax officer has authorised him to deduct tax at a particular rate and the same has been complied with by the deductor.
The provisions of Section 206AB overrides all other provisions of the Income-tax Act. It will apply even if the assessee has lower or nil TDS certificate or he has filed a declaration under Section 197A for non-deduction of tax or he is otherwise not liable to file the return of income. However, this provision will be attracted only if the tax is otherwise deductible under Chapter XVII-B.

Higher Rate of TCS as per Section 206CCA :

As per sub-section (1) of the section 206CCA notwithstanding anything contained in any other provisions of this Act, where tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person (hereafter referred to as collectee) from a specified person, the tax shall be collected at the higher of the following two rates, namely :--
(i) at twice the rate specified in the relevant provision of the Act; or
(ii) at the rate of five per cent.
Section 206CC provides for higher rate of TCS in case of non-furnishing of PAN. Sub-section (2) of the section 206CCA provides that if the provisions of section 206CC is applicable to a specified person, in addition to the provisions of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC.
Sub-section (3) of section 206CCA provides that for the purposes of this section specified person means 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 collected, 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.
However, the specified person shall not include a non-resident who does not have a permanent establishment in India.

Now, let us try to understand the above with the help of an example.Let us assume M/S ABC Ltd, pays a monthly rent of INR 2 LaCS to Mr. B. Under normal circumstances TDS @ 10% would be deductible u/s 194-I. However, let us understand how the same may work out in different situations in the present year.

The tax is to be deducted in FY 2021-22 (Previous Year). Let us assume that the time limit for filing IT Return u/s 139(1) for Mr. B is 31st July 2021 only and there are no extensions. In such a case, let us see how Mr. B may become a specified assessee in various cases.

Rent for the month	Date of Payment /Deduct-ion	Relevant Previous Years (PY)	TDS & TCS during FY			Status of filing ITR for FY			Specified Assessee?
			18-19	19-20	20-21	18-19	19-20	20-21	
June	10-07-21	18-19 & 19-20	20000	25000	30000	Yes	Yes	No	NO
June	10-07-21	18-19 & 19-20	58000	60000	65000	Yes	Yes	No	NO
June	10-07-21	18-19 & 19-20	58000	60000	65000	Yes	No	No	NO
June	10-07-21	18-19 & 19-20	48000	60000	65000	No	No	No	NO
June	10-07-21	18-19 & 19-20	58000	60000	65000	No	No	No	YES
July	10-08-21	19-20 & 20-21	20000	25000	30000	Yes	Yes	No	NO
July	10-08-21	19-20 & 20-21	50000	60000	65000	Yes	No	No	YES
August	10-09-21	19-20 & 20-21	50000	60000	65000	Yes	No	Yes	NO

Steps to identify Specified Assessee as provided by Circular No. 11/2021 dated 21/06/2021

Section 206AB and 206CCA requiring higher rate of TDS & TCS are applicable from 1st July 2021 requiring deduction of TDS (other than salary, horse racing, etc) or TCS at twice the normal rates or 5% whichever is higher, in case, deductee or collectee are specified persons ie not filed ITRs for 2 years, total of TDS and TCS is Rs 50,000 or more.

Considering the fact that it is practically impossible for the deduction or collector to identify the specified persons, the new functionality has been issued by CBDT 'Compliance check for 206AB and 206CCA'.

As per the functionality, Single or multiple search of PAN can be made to identify the specified persons and bulk data can in fact be downloaded in pdf format.

A list of specified persons would be prepared at the start of the FY and no new specified person would be added during the FY. If a specified person fulfils the conditions specified above, he would be removed from the list during the FY.

So as a rule, new specified persons list on the portal would be drawn at the start of the FY and no new person would be added during the year even if he becomes a specified person. So we just have to check at the start of the FY for specified persons. Only while adding a new vendor during the year, we might have to look if he is a specified person. Also, if the status of specified person gets converted into a non-specified person, we might have to update in our records.

Section 206C — Tax Collection at Source

206C. *(1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:*

TABLE

Sl. No.	*Nature of goods*	*Percentage*
(1)	*(2)*	*(3)*
(i)	*Alcoholic Liquor for human consumption*	*One per cent*
(ii)	*Tendu leaves*	*Five per cent*
(iii)	*Timber obtained under a forest lease*	*Two and one-half per cent*
(iv)	*Timber obtained by any mode other*	*Two and one-half per cent than under a forest lease*
(v)	*Any other forest produce not being*	*Two and one-half per cent timber or tendu leaves*
(vi)	*Scrap*	*One per cent*
(vii)	*Minerals, being coal or lignite or iron ore*	*One per cent:*

Provided *that every person, being a seller shall at the time, during the period beginning on the 1st day of June, 2003 and ending on the day immediately preceding the date on which the Taxation Laws (Amendment) Act, 2003 comes into force, of debiting of the amount payable by the buyer to the account of the buyer or of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table as it stood immediately before the 1st day of June, 2003, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax in accordance with the provisions of this section as they stood immediately before the 1st day of June, 2003.*

(1A) Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

(1B) The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner one copy of the declaration referred to in sub-section (1A) on or before the seventh day of the month next following the month in which the declaration is furnished to him.

(1C) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as "licensee or lessee") for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

TABLE

Sl. No.	*Nature of contract or licence or lease, etc.*	*Percentage*
(1)	*(2)*	*(3)*
(i)	*Parking lot*	*Two per cent*
(ii)	*Toll plaza*	*Two per cent*
(iii)	*Mining and quarrying*	*Two per cent.*

Explanation 1.—For the purposes of this sub-section, "mining and quarrying" shall not include mining and quarrying of mineral oil.

Explanation 2.—For the purposes of Explanation 1, "mineral oil" includes petroleum and natural gas.

(1D) [***]

(1E) [***]

(1F) Every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ten lakh rupees, shall, at the time of receipt of such amount, collect from the buyer, a sum equal to one per cent of the sale consideration as income-tax.

[(1G) Every person,—

(a) being an authorised dealer, who receives an amount, for remittance out of India from a buyer, being a person remitting such amount out of India under the Liberalised Remittance Scheme of the Reserve Bank of India;

(b) being a seller of an overseas tour program package, who receives any amount from a buyer, being the person who purchases such package,

shall, at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier, collect from the buyer, a sum equal to five per cent of such amount as income-tax:

***Provided** that the authorised dealer shall not collect the sum, if the amount or aggregate of the amounts being remitted by a buyer is less than seven lakh rupees in a financial year and is for a purpose other than purchase of overseas tour program package:*

***Provided further** that the sum to be collected by an authorised dealer from the buyer shall be equal to five per cent of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, where the amount being remitted is for a purpose other than purchase of overseas tour program package:*

***Provided also** that the authorised dealer shall collect a sum equal to one half per cent of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, if the amount being remitted out is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education:*

***Provided also** that the authorised dealer shall not collect the sum on an amount in respect of which the sum has been collected by the seller:*

***Provided also** that the provisions of this sub-section shall not apply, if the buyer is,—*

(i) liable to deduct tax at source under any other provision of this Act and has deducted such amount;

(ii) the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

Explanation.—For the purposes of this sub-section,—

(i) "authorised dealer" means a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of the Foreign Exchange Management Act, 1999 (42 of 1999) to deal in foreign exchange or foreign security;

(ii) "overseas tour programme package" means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

(1H) Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or

sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax:

***Provided** that if the buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words "five per cent", the words "one per cent" had been substituted:*

***Provided further** that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.*

Explanation.—For the purposes of this sub-section,—

(a) "buyer" means a person who purchases any goods, but does not include,—

(A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(B) a local authority as defined in the Explanation to clause (20) of section 10; or

(C) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein;

(b) "seller" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

(1-I) If any difficulty arises in giving effect to the provisions of sub-section (1G) or sub-section (1H), the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(1J) Every guideline issued by the Board under sub-section (1-I) shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person liable to collect the sum.]

(2) The power to recover tax by collection under [this section shall be without prejudice to any other mode of recovery.

(3) Any person collecting any amount under [this section] shall pay within the [62]prescribed time the amount so collected to the credit of the Central Government or as the Board directs :

***Provided** that the person collecting tax on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this section shall, after paying the tax collected to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority, or the person authorised by such authority, such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.]*

(3A) In case of an office of the Government, where the amount collected under sub-section (1) or sub-section (1C) has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person, by whatever name called, who is responsible for crediting

such tax to the credit of the Central Government, shall deliver or cause to be delivered to the prescribed income-tax authority, or to the person authorised by such authority, a statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed.

(3B) The person referred to in the proviso to sub-section (3) may also deliver to the prescribed authority under the said proviso, a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under the said proviso in such form and verified in such manner, as may be specified by the authority.

(4) Any amount collected in accordance with the provisions of this section and paid to the credit of the Central Government shall be deemed to be a payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to such person for the amount so collected in a particular assessment year in accordance with the rules as may be prescribed by the Board from time to time.

(5) Every person collecting tax in accordance with the provisions of this section shall within such period as may be prescribed from the time of debit or receipt of the amount furnish to the buyer or licensee or lessee to whose account such amount is debited or from whom such payment is received, a certificate to the effect that tax has been collected, and specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be prescribed :

*****Provided*** *that the prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) shall, within the prescribed time after the end of each financial year beginning on or after the 1st day of April, 2008, prepare and deliver to the buyer referred to in sub-section (1) or, as the case may be, to the licensee or lessee referred to in sub-section (1C), a statement in the prescribed form specifying the amount of tax collected and such other particulars as may be prescribed.*

(5A) Every person collecting tax before the 1st day of April, 2005 in accordance with the provisions of this section shall prepare within the prescribed time after the end of each financial year, and deliver or cause to be delivered to the prescribed income-tax authority or such other authority or agency as may be prescribed such returns in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed :

Provided *that the Board may, if it considers necessary or expedient so to do, frame a scheme for the purposes of filing such returns with such other authority or agency referred to in this sub-section.*

(5B) Without prejudice to the provisions of sub-section (5A), any person collecting tax, other than in a case where the seller is a company, the Central Government or a State Government, may at his option, deliver or cause to be delivered such return to the prescribed income-tax authority in accordance with such scheme as may be specified by the Board in this behalf, by notification in the Official Gazette, and subject to such conditions as may be specified therein, on or before the prescribed time after the end of each financial year, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media (hereinafter referred to as the computer media) and in the manner as may be specified in that scheme:

Provided *that where the person collecting tax is a company or the Central Government or a State Government, such person shall, in accordance with the provisions of this section, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme.*

(5C) Notwithstanding anything contained in any other law for the time being in force, a return filed on computer media shall be deemed to be a return for the purposes of sub-section (5A) and the rules made thereunder and shall be admissible in any proceedings made thereunder, without further proof of production of the original, as evidence of any contents of the original or of any facts stated therein.

(5D) Where the Assessing Officer considers that the return delivered or caused to be delivered under sub-section (5B) is defective, he may intimate the defect to the person collecting tax and give him an opportunity of rectifying the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to deliver the return.

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

(6A) If any person responsible for collecting tax in accordance with the provisions of this section does not collect the whole or any part of the tax or after collecting, fails to pay the tax as required by or under this Act, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax:

***Provided** that any person responsible for collecting tax [in accordance with the provisions of sub-section (1) and sub-section (1C)], who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee—*

(i) has furnished his return of income under section 139;

(ii) has taken into account such amount for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:

***Provided further** that no penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that the person has without good and sufficient reasons failed to collect and pay the tax.*

(7) Without prejudice to the provisions of sub-section (6), if the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of one per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3):

***Provided** that in case any person responsible for collecting tax in accordance with the provisions of this section, fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee but is*

not deemed to be an assessee in default under the first proviso of sub-section (6A), the interest shall be payable from the date on which such tax was collectible to the date of furnishing of return of income by such buyer or licensee or lessee.

(8) Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the person responsible for collecting tax.

(9) Where the Assessing Officer is satisfied that the total income of the buyer or licensee or lessee justifies the collection of the tax at any lower rate than the relevant rate specified in sub-section (1) or sub-section (1C), the Assessing Officer shall, on an application[70] made by the buyer or licensee or lessee in this behalf, give to him a certificate for collection of tax at such lower rate than the relevant rate specified in sub-section (1) or sub-section (1C).

(10) Where a certificate under sub-section (9) is given, the person responsible for collecting the tax shall, until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate.

[71][(10A) In case the provisions of sub-section (1) [except the goods referred at serial number (i) in the TABLE], (1C), (1F) or (1H) require collection of tax at source during the period commencing from the 14th day of May, 2020 to the 31st day of March, 2021, then, notwithstanding anything contained in these sub-sections the collection of tax shall be made at the rate being the three-fourth of the rate specified in these sub-sections.]

(11) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (9) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

Explanation.—For the purposes of this section,—

(a) "accountant" shall have the meaning assigned to it in the Explanation to sub-section (2) of section 288;

(aa) "buyer" with respect to—

(i) sub-section (1) means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include,—

(A) a public sector company, the Central Government, a State Government, and an embassy, a High Commission, legation, commission, consulate and the trade representation, of a foreign State and a club; or

(B) a buyer in the retail sale of such goods purchased by him for personal consumption;

(ii) [***]

(iii) sub-section (1F) means a person who obtains in any sale, goods of the nature specified in the said sub-section, but does not include,—

(A) the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(B) a local authority as defined in Explanation to clause (20) of section 10; or

(C) a public sector company which is engaged in the business of carrying passengers.

(ab) [***]

(b) "scrap" means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons;

(c) "seller" [72][with respect to sub-section (1) and sub-section (1F)] means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society and also includes an individual or a Hindu undivided family whose total sales, gross receipts or turnover from the business or profession carried on by him exceed [73][one crore rupees in case of business or fifty lakh rupees in case of profession][74] during the financial year immediately preceding the financial year in which the goods of the nature specified in the Table in sub-section (1)[74] are sold.

a) Applicability and Rate [Section 206C(1)/(1C)/(1F)]

Section 206 C(1)

Sr. No.	Nature of goods	Rate of TCS (upto 13.05.2020)	Rate of TCS (w.e.f 14.05.2020 to 31.03.2021)
i.	Alcoholic Liquor for human consumption	1%	1% *(no change)
ii.	Tendu Leaves	5%	3.75%
iii.	Timber obtained under a forest lease	2.5%	1.875%
iv.	Timber obtained by any mode other than under a forest lease	2.5%	1.875%
v.	Any other forest produce not being timber or tendu leaves	2.5%	1.875%
vi.	Scrap	1%	0.75%
vii.	Minerals, being coal or lignite or iron ore	1%	0.75%

- Every person, being a 'Seller', shall collect from the 'Buyer' a tax , at a specified rate on the 'purchase value' of such specified goods-

- Tax has to be collected by the seller at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time or receipt of such amount from the buyer in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.
- **"Seller"** means-
    a. the Central Government,
    b. a State Government
    c. any local authority
    d. corporation
    e. authority established by or under a Central, State or Provincial Act
    f. any company
    g. firm
    h. Co – operative society.
    i. Individual or a HUF whose turnover in just preceding FY exceeds Rs. 1 Crore or Rs. 50 Lakhs, as the case may be.

- **"Buyer"** means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in section 206C(1) or the right to receive any such goods. However, buyer does not include the following:
    (b) a public sector company, the Central Government, a State Government, and an Embassy, a High Commission, Legation, Commission, Consulate and the trade representation, of a foreign State and a club.
    (c) a buyer in the retail sale of such goods purchased by him for personal consumption.
    - TCS u/s. 206C(1) shall not be required to be collected from a resident buyer, if the goods are to be utilized for the purpose of **manufacturing, processing or producing articles or things** or for the purposes of generation of power and **not for trading purposes**.
    - Buyer to furnish declaration in Form No. 27C to the seller at the time of each sale.
    - No time limit has been prescribed for furnishing Form No.27C by the buyer to the seller-**Chandmal Sancheti vs ITO (Jaipur ITAT)** (ITANo. 344&345/JP/2015)
    - Seller to submit Form No.27C ,on or before 7th day of the next month in which Form No. 27C is received.

- SCRAP has been defined u/s. 206C as under:

    *"(b)"scrap" means **waste and scrap** from the **manufacture or mechanical working of materials** which is definitely **not usable as such** because of breakage, cutting up ,wear and other reasons"*

- Thus, the two important conditions for an item to be considered as SCRAP are:
  1. The scrap should arise from manufacture or mechanical working of materials, and

  2. It should not be usable as such
  If any of the above 2 conditions is not satisfied, then the item will not be treated as Scrap, and thus No TCS u/s. 206C.

- The definition of Scrap does not suggests that the scrap should be generated by the seller himself. Thus, the **provisions of section 206C of the Act are applicable to a trader dealing in the scrap–Chandmal Sancheti vs ITO (Jaipur ITAT)** (ITA No. 344&345/JP/2015)

- The scrap sold should arise out of manufacturing or mechanical working of material. In absence of which, no requirement to collect tax at source-**Navine Fluorine International Ltd. vs. ACIT (Ahmedabad ITAT)** [2012] 14ITR (T) 481

- Provisions of TCS not applicable to dealer of scrap–**Lala Bharat Lal & Sons vs. ITO** (Lucknow ITAT) (ITA No.14,15,16/LKW/2019 dtd.19.02.2020). The Tribunal in this case held, that trading in the scrap cannot be deemed to have any nexus with manufacturing and hence a trader cannot be subjected to collection of TCS on the ground that he has dealt in scrap which has been manufactured by another assessee. The Tribunal in this judgement followed the decisions given by the Gujarat High Court in Priya Blue Industries case and by the Ahmedabad Tribunal in Dhasawala Traders case. Lucknow Tribunal reiterated this view in ***M/s Wire One vs ITO (TDS).*** This view was also supported earlier by the ***Ahmedabad Tribunal in Azizbhai A Lada, Bhavnagar vs ITO (TDS)***

- Where products obtained in course of **ship breaking activity** are **usable as such**, they do not fall within definition of scrap. Hence, not liable for TCS– **CIT vs. Priya Blue Industries Pvt. Ltd. (Gujarat HC)** [2016] 381 ITR 210

- Sale of railway scrap by dealer being certainly not usable due to its breakage or wear and tear, same would be subjected to TCS during **resale– Pramod Kumar Jain vs. ITO** [2020] 117 taxmann.com 649 (Jaipur-Trib.) dated 3rdJuly,2020.

- **Whether Sale of Scrap where Form 27C has been submitted by buyer is liable to TCS u/s.206C(1H)**
  - **Bare Text- Section 206C(1H)**:
    "(1H) Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India ***or goods covered*** *in* ***sub-section (1)*** *or* ***sub-section (1F)*** *or* ***sub-section(1G)*** *shall, at the time of receipt of such amount , collect from the buyer, a sum equal to 0.1per cent of the sale consideration exceeding fifty lakh rupees as income-tax…*

2ndProviso*-Provided further that the provisions of this sub-section shall not apply, if the buyer is* ***liable to deduct tax at source under any other provision of this Act*** *on the goods purchased by him from the seller* ***and*** *has* ***deducted*** *such amount."*

- Thus, from a plain reading, it can be concluded that since sale of scrap is covered u/s. 206C(1), the provisions of Section 206C (1H) shall not apply.

- Thus, where the assessee has received declaration in **Form No. 27C** from the buyer that the goods shall be used in manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes, TCS shall not be required to be collected. **[Neither u/s. 206C(1) nor u/s. 206C(1H)]**

Section 206C(1C).

Sr. No.	Nature of contract or license or lease, etc.	Rate of TCS(upto13.05.2020)	Rate of TCS (w.e.f 14.05.2020 to 31.03.2021)
i.	Parking lot	2%	1.5%
ii.	Toll plaza	2%	1.5%
iii.	Mining and quarrying (doesnot includes mining and quarrying of mineral oil, including petroleum And natural gas)	2%	1.5%

- Every person, who grants a lease or a license or enters into a contract or otherwise, transfers any right or interest in
  a. any parking lot or
  b. toll plaza or
  c. mine or quarry,

  to another person (hereafter referred to as "licensee or leasee") for the use of such parking lot or toll plaza or mine or quarry, for the purpose of business, shall collect tax at source at the rate of **2%.** (1.5% w.e.f. 14.05.2020 to 31.03.2021)

- ✓ The provisions of this section shall not apply to mining and quarrying of mineral oil, petroleum and natural gas.
- ✓ The provisions of this section shall not apply if the licensee or lessee is a public sector company.

- Tax has to be collected by the seller at the time of debiting of the amount payable by the licensee or leasee to the account of the licensee or leasee or at the time or receipt of such amount from the licensee or leasee in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.
- **Individual / HUF** even if his turnover does not exceed Rs.1 Crore or Rs. 50 Lakhs, as the case may be are also **liable to collect tax u/s. 206C(1C)**.
- For the purpose of section 206C(1C) on parking lot, toll plaza or mining or quarrying, every **person** [person as defined u/s. 2(31) of the Income tax Act, 1961 [,should collect TCS.

- Thus, the Central Govt., State Govt., not included in the definition of person u/s .2(31) cannot be made liable to collect tax at source.
- Shree Jagannath Temple Office is not a person u/s. 2(31). Thus, not liable to collect tax at source u/s. 206C(1C)-**Shree Jagannath Temple Managing Committee vs. ACIT (Cuttack ITAT)** (ITA No.197 and 198/2013)

Section 206C(1F)

- Every person, being seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding **ten lakh rupees**, shall collect tax from buyer at the rate of **1%** of sale consideration.
- Tax shall be collected at the time of receipt of amount from the buyer.
- TCS on motor vehicle to be collected at the time of (receipt of) **Retail Sale** and not on sale of motor vehicle by manufacturers to dealers / distributors – **CBDT Circular No. 22/2016 dtd. 08.06.2016**
- **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 under sub-section (1F) of section 206C of the Act. [Para 4.5.2. (i) of the CBDT circular 17/2020]**
- As per Para 4.5 of CBDT Guidelines vide **Circular No. 17/2020** dated 29.09.2020–**Receipt of sale consideration by a dealer is liable for TCS u/s. 206C(1H)**.
  Thus, earlier exemption given on sale of motor vehicles by manufacturers to dealers/distributors vide **CBDT Circular No. 22/2016 dated 08.06.2016** is not relevant now since the same have been specifically included vide above Guidelines vide CBDT Circular No. 17/2020.

Thus, the manufacturer/distributors are liable to collect TCS @ 0.1% as per Section 206C(1H) on receipts after 1st October,2020.

- TCS also applicable on **motor bikes** of amount exceeding Rs.10 Lakhs.
- Also applicable on second hand cars or any motor vehicle–if amount exceeds Rs.10 Lakhs.
- Eg. Value of Motor Vehicle-Rs.15 Lakhs, then TCS applicable on entire Rs.15 Lakhs.
- **"Buyer"** means buyer of motor vehicle of the value exceeding ten lakh rupees. However, the tax collection at source shall not be made in relation to sale of motor vehicle of the value exceeding ten lakh rupees to the following class or classes of buyers, namely :-
  - (b) the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State
  - (c) a local authority
  - (d) a public sector company which is engaged in the business of carrying passengers
- **"Seller"** means-
  - a. the Central Government,
  - b. a State Government
  - c. any local authority
  - d. corporation
  - e. authority established by or under a Central, State or Provincial Act
  - f. any company
  - g. firm
  - h. Co – operative society.
  - i. Individual or a HUF whose turnover in just preceding FY exceeds Rs. 1 Crore or Rs. 50 Lakhs, as the case may be.

b) CBDT Clarification relating to certain issues with respect to Section 206C(1F)

Question I: Whether tax collection at source ('TCS') at the rate of 1 % is on sale of Motor Vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/distributors?

Answer: To bring high value transactions within the tax net, section 206C of the Act has been amended to provide that the seller shall collect the tax at the rate of one per cent from the purchaser on sale of motor vehicle of the value exceeding ten lakh rupees, This is brought to cover all transactions of **retail sales** and accordingly it will not apply on sale of motor vehicles by manufacturers to dealers / distributors,

Question 2: Whether TCS at the rate of 1 % is on sale of Motor Vehicle is applicable only to Luxury Cars?

Answer: No, As per sub section (1F) of Section 206C of the Act the seller shall collect the tax at the rate of one per cent from the purchaser on sale of any motor vehicle of the value exceeding ten lakh rupees,

Question 3: Whether TCS at the rate of 1 % is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions for sale of motor vehicle or any other goods or provision of services?

Answer: Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State and shall not be liable to levy of TCS at the rate of 1 % under sub-section (1F) of section 206 C of the Act.

Question 4: Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?

Answer: Tax is to be collected at source at the rate of 1 % on sale consideration of a motor vehicle exceeding ten lakh rupees. It is applicable to each sale and not to aggregate value of sale made during the year.

Question 5: whether TCS at the rate of 1 % on sale of motor vehicle is applicable in case of an individual?

Answer: The definition of "Seller" as given in clause (c) of the Explanation below subsection Accordingly, an individual who is liable to audit as per the provisions of section 44AB of the Act during the financial year immediately preceding the financial year in which the motor vehicle is sold shall be liable for collection of tax at source on sale of motor vehicle by him.

Question 6: How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?

Answer: The provisions of TCS on sale of motor vehicle exceeding ten lakh rupees is not dependent on mode of payment. Any sale of Motor Vehicle exceeding ten lakh would attract TCS at the rate of 1%

c) Collection of the tax at any lower rate than the relevant rate specified

Where the Assessing Officer is satisfied that the total income of the buyer or licensee justifies the collection of the tax at any lower rate than the relevant rate specified, the Assessing Officer shall, on an application made by the buyer or licensee in **Form No.13** in this behalf, give to him a certificate for collection of tax at such lower rate.

Where such certificate is given, the person responsible for collecting the tax shall, until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate. The certificate shall be issued directly to the person responsible for collecting the tax under advice to the buyer who made an application for issue of such certificate.

d) Time Limit for deposit of tax

The Tax so collected shall be deposited to the credit of Central Govt. within 7 days from the end of the month in which tax was required to be collected.

The above percentages referred to in section 206C(1),206C(1C) and 206C(1F) shall be increased by a surcharge and health & education cess for assessment year 2020-21 as under:

Where buyer is:	Applicability of Surcharge & Education Cess
1. Foreign Company	The rates of TCS shall be increased by: a. Surcharge of 2%(where the payment collected or to be collected from buyer and which is subject to tax collection during the financial year exceeds Rs 1 crore but does not exceeds Rs 10 crores) b. Surcharge of 5%(where the payment collected or to be collected from buyer and which is subject to tax collection during the Financial year exceeds Rs 10 crores); and c. Health & education cess of 4% in all cases.
2. Individual or HUF or AOP or BOI being non-resident other than foreign Company	The rates of TCS shall be increased by: **(A)** Surcharge of 10%/15%/25%/37%(where the payment collected or to be collected from buyer and which is subject to tax collection during the financial year exceeds Rs 50 lakhs but upto Rs 1 crore/exceeds Rs 1 crore but upto Rs 2 crores/exceeds Rs 2 crores but upto Rs 5 crores/exceeds Rs 5 crores); and **(B)** Health & education cess of 4% in all cases.
3. Co-operative Society or firm, being a non-resident	The rates of TCS shall be increased by: **(A)** Surcharge of 12%(where the payment collected or to be collected from buyer and which is subject to tax collection during the financial year exceeds Rs 1 crore) **(B)** Health & education cess of 4% in all cases.

e) TCS Return

TCS return shall be submitted in form no. 27 EQ within the time limit give below:-

Quarter ending	Due Date
30th June	15th July of the financial year
30th September	15th October of the financial year
31st December	15th January of the financial year
31st March	15th May of the financial year immediately following the financial year in which deduction is made

f) Certificate of tax collection at source

Certificate of tax collection at source shall be issued within 15 days from the due date of furnishing quarterly TDS/TCS returns.

g) Credit for TCS

The amount collected under this section is deemed to be a payment of tax on behalf of the person from whom the amount has been collected. A tax credit is given to him for the amount so collected in the assessment for which the income is assessable.

h) Processing of statements of tax collected at source [Section 206CB]

i. Where a statement of tax collection at source or a correction statement has been made by a person collecting any sum (herein referred to as collector) under section 206C, such statement shall be processed in the following manner, namely:—

(a) the sums collectible under this Chapter shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the statement;

(ii) an incorrect claim, apparent from any information in the statement;

(b) the interest, if any, shall be computed on the basis of the sums collectible as computed in the statement;

(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;

(d) the sum payable by, or the amount of refund due to, the collector, shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 206C or section 234E and any amount paid otherwise by way of tax or interest or fee;

(e) an intimation shall be prepared or generated and sent to the collector specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

(f) the amount of refund due to the collector in pursuance of the determination under clause (d) shall be granted to the collector

Provided that no intimation under this sub-section shall be sent after the expiry of the period of one year from the end of the financial year in which the statement is filed

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of collection of tax at source, where such rate is not in accordance with the provisions of this Act.

ii. The Board may make a scheme for centralized processing of statements of tax collected at source to expeditiously determine the tax payable by, or the refund due to, the collector, as required under sub-section (1).

i) Consequences of failure to collect tax at source

Section 206 C(6A):

If any person responsible for collecting tax in accordance with the provisions of this section does not collect the whole or any part of the tax or after collecting, fails to pay the tax as required by or under this Act, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax: Provided that any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee—

i. has furnished his return of income under section 139;
ii. has taken into account such amount for computing income in such return of income; and
iii. has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

Provided further that no penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that the person has without **good and sufficient reasons** failed to collect and pay the tax.

Section 206C(7):

Without prejudice to the above, if the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of one per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter.

Provided that in case any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee but is not deemed to be an assessee in default under the first proviso of sub-section (6A), the interest shall be payable from the date on which such tax was collectible to the date of furnishing of return of income by such buyer or licensee or lessee.

Section 206C(8):

Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the person responsible for collecting tax.

Section 206C(1G) TCS on Foreign remittance under Liberalized Remittance Scheme (LRS) and sale of overseas tour program package (w.e.f. 1st October 2020)

- **Purpose of Section 206C(1G)**
  1. For remittance overseas under Liberalized Remittance Scheme (LRS)
  2. Purchase of **Tour Package** which includes expenses for travel or hotel stay / boarding / lodging etc.
- **Who is liable to collect tax at Source (TCS) under section 206C(1G) ?**
  1. Authorised dealer for foreign remittance
  2. Seller of overseas tour program package
- **When to collect the TCS?**

  Earlier of :
  - at the time of debiting the buyer or ie amount due from buyer
  - at the time of Receipt from the buyer, ie. actual receipt
- **Threshold Limits**

➢ No TCS if aggregate amount in FY is less than Rs. **7 Lakhs** and remittance is for the purpose other than overseas tour programme package.

➢ If the payment is for overseas tour programme package to an operator, then TCS is liable to be collected **without any threshold**.

➢ If TCS has already been collected by the Tour Operator, then no further TCS will be collected by the authorized dealer for remittance outside India.

- **Not applicable if**

- Buyer is liable to deduct TDS and has deducted
- Buyer is Central / State Government, Embassy, High Commission etc.

- **TCS Rates**

- **5%** on an amount in excess of Rs. 7 lakhs in a FY (**0.5%** if the remittance is out of educational loan obtained from bank or notified financial institution)
- Rate of TCS will be **10% / 5%** respectively, if the buyer does not furnishes PAN.
- CBDT Press Release dated 13.05.2020 for relaxation in rates of TDS/TCS does not mentions reduction in rate of TCS u/s 206C(1G).

- **Example:** If remittance outside India for medical treatment of Rs.12 Lakhs. Then TCS u/s. 206C(1G) @5% to be collected on Rs. 5 Lakhs– i.e. Rs.25,000

Section 206C(1H) TCS on Receipt of Sale Consideration

*"Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India **or goods covered** in **sub-section (1)** or **sub-section (1F)** or **sub-section(1G)** shall, at the time of receipt of such amount , collect from the buyer, a sum equal to 0.1per cent of the sale consideration exceeding fifty lakh rupees as income-tax"*

- **Nature of Transaction**

Receipt of Sale consideration for Sale of Goods in India by a **Seller whose turnover exceeds Rs. 10 Crores** in the preceding FY is liable to collect tax at source.

The term **goods** have not been defined in the Income Tax Act, hence we may refer to Sales of Goods Act, 1930 or Goods and Service Tax Act 2017 for the meaning of goods. In both the Acts, the term "Goods" has been defined as *"Goods" means every kind of movable property other than money and securities but includes actionable claims, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.*
These provisions are applicable only in respect of transaction of sale of goods and do not apply to sale of services.

- **Who is liable to collect tax at Source (TCS) under section 206C(1H) ?**

- **Seller whose Turnover of preceding year exceeds Rs. 10 Crores.**

- As per Section 206C(1H) "**Seller** means a person whose total sales, **gross receipts** or **turnover** from the business carried on by him **exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out**, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein." However, as per **Para 2** of the **CBDT Press Release** dated 30th September, 2020-A seller would be required to collect tax only if his turnover exceeds Rs. 10 crore in the **last financial year**. **(not the year of sale)**

- **Practically, it can be concluded that any person whose turnover exceeds Rs.10 Crores in the preceding year, shall be covered u/s. 206C(1H).**

- **From whom to collect?**

  Buyer from whom, **receipt (and not sales)** exceeds Rs. 50 Lakhs, in aggregate, in a financial year.

  The amount on which the tax needs to be collected shall be limited only to the consideration for sale of goods actually received. The liability is triggered at the point of receipt of amount once the threshold of Rs.50 Lakhs is crossed. In the absence of sale of goods and amount received, the liability does not exist. The sale consideration can be interpreted as amount received in advance or in arrears. In case, if there is some change in valuation say under GST law then too the requirement of TCS will be qua actual consideration and not qua valuation under the GST law.

- **Rate of Tax**

- 0.1% of the amount exceeding Rs. 50 Lakhs. **(@0.075% upto 31.03.2021)**
- If the buyer does not provide PAN/Aadhar number then the TCS shall be collected at **1%,** instead of 0.1%. In such situation, Covid-19 related concession is also not available.
- Example: If Amount received in a FY is Rs. 70 Lakhs, then TCS is applicable only on Rs.20 Lakhs.

- **When to collect the TCS?**

- **Section 206C(1H) provides that TCS is required to be collected at the time of receipt of the Sale consideration and not at the time of debiting the Party Ledger Account.**

- **What about Sales made in FY 2020-21 where TCS @ 0.075% is levied on invoice ?**–If it's payment is received in FY2021-22, then @0.1% will be levied. Separate accounting /collection for such shortfall would be required.
- If the buyer is liable to deduct tax at source on goods purchased by him and the buyer has deducted the amount then the seller is not required to collect TCS on such transactions. Both

the conditions need to be fulfilled i.e., the buyer should be liable for deduction of tax at source and has deducted such amount.

- **Tax not to be collected in certain cases**

➢ **Explanation (a) to Section 206C(1H)**- **Buyer** means a person who purchases any goods, but does not include,
(A) the Central Government, a State Government, etc.
(B) a local authority as defined in the Explanation to Section10(20)
(C) a person importing goods into India or any other notified person

➢ Although, no tax is to be collected from them, but the same is **required to be mentioned in the quarterly TCS Statement (Form No. 27EQ)** and non-disclosure of such items in quarterly TCS Statement is required to be reported by the Tax Auditor under **Clause 34(b) of the Tax Audit Report**.

➢ TCS is not required to be collected in respect of Export sales as the consideration for sale of goods excludes consideration towards goods exported out of India and even the definition of buyer excludes a person importing goods from India.

➢ TCS not to be collected on Sale of immovable property as it is out of ambit of goods.

- **TCS on trade receivables standing in books as on 30 September 2020:**

The trigger point of collection of TCS is receipt of consideration for sale of goods and hence one may say that as the consideration is received on or after 01 October 2020, TCS provisions are applicable on such transactions and TCS should be collected by the seller.

The CBDT has recently issued a clarification which gives an impression that in cases where goods have been sold prior to 01 October 2020 and the consideration is received on or after 01 October 2020, TCS should be collected.

However, an alternate view is also possible because for this provision to be applicable both the conditions need to be satisfied:

➢ The sale of goods is carried out i.e., sale of goods must have been actually effected and
➢ The consideration must be received in respect of such sale.

Therefore, in cases where goods have already been sold prior to 01 October 2020, TCS may not be required to be collected because these provisions are effectively operative from 01 October 2020. Needless to mention, considering that CBDT has issued a clarification that TCS should be applicable on receipt of consideration on or after 01 October, 2020 even if sale is made before 01 October 2020, litigation cannot be entirely ruled out.

- **Point of Tax Collection**

Sr. No.	Situation	Remarks
1	Sale order is before 01/10/2020 but the sale is not completed as up to 30/09/2020.	TCS would be applicable in respect of amount received on or after 01/10/2020.
2	Sales Order executed on or after 01/10/2020	TCS shall be applicable on the amount received as consideration.
3	**Sale is completed before 01/10/2020 and the payment is received after 01/10/2020**	**As per CBDT Circular, TCS shall be applicable as the consideration is received after 01/10/2020.**

- **Cancellation of Sale**

  Practical difficulties may arise where advance is collected for sale of goods and TCS is remitted and subsequently the contract is cancelled and the amount is refundable. In such cases, the seller may only refund the primary sale consideration received and not the TCS amount, since such TCS amount is already credited as prepaid taxes and will appear in Form 26AS and the buyer should not insist for refund of the TCS amount as the buyer would otherwise be entitled to credit of the TCS in the return of income.

- **Payments by third party**

  In quite a few cases, the sale proceeds are partly paid by the Government as a release of subsidy, or the costs are funded by third-party payments. All such transactions also amount to receipt on behalf of the buyer and hence the seller will be under obligation to remit TCS.

- **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 206C(1H), **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 2019-20 (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 206C(1H) since his turnover is Rs. 9 Crores only, which is below the threshold limit of Rs. 10 Crores.

- **How to determine the limit of Rs. 50 Lakhs?**

➢ **The seller is liable to collect TCS from the buyer if the receipt of sale consideration in the financial year (including receipts before 1st October, 2020) exceeds Rs.50 Lakhs.**

➢ **Section 206C(1H)–**
*"Every person, being a seller, **who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees** in any previous year, other than the goods being exported out of India or goods covered in sub-section (1)/ (1F)/ (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1% of the sale consideration exceeding Rs.50 Lakhs as income-tax"*

➢ Further, as per CBDT Guidelines u/s. 206C(1-I) vide Circular No. 17/2020 dated 29.09.2020 provides that the seller is liable to collect TCS **if the receipt of sales consideration exceeds Rs.50 Lakhs.**
➢ As per Para 4 of the CBDT Press Release dated 30.09.2020-**the threshold is based on the yearly receipt.**
➢ **Thus, it can be concluded that the limit of Rs.50 Lakhs is of RECEIPT and not SALE.**
➢ TCS is also required to be collected at the time of receipt of **advance** – Para No. 4.4.2 **(ii)** of CBDT Guidelines vide Circular No. 17/2020 dated 29.09.2020.
➢ **Threshold of Rs.50 Lakhs–EVERY YEAR FOR EVERY DEBTOR.**

- **Should TCS amount be included in the invoice:**

As such, there is no provision which mandatorily requires the seller to include the amount of TCS in the tax invoice. However, if the amount of TCS is not included in the invoice, then the buyer would not be aware of the total amount of consideration payable to the seller and therefore it would be advisable for the seller to add the TCS figure in the invoice itself and also raise an accounting entry in the books of accounts as a TCS liability even though not payable until the receipt of consideration. It may be noted that even though if the TCS amount is debited to the buyer, the liability to deposit TCS u/s 206C(1H) does not arise till receipt of consideration.

- **Impact of Credit notes and Debit notes:**

If sales return/credit note/debit note is before receipt of any consideration, then the impact thereof will be included in the amount of consideration, and accordingly, on receipt of the

revised consideration, the provisions of TCS would be applicable. If the amount of consideration is already received and TCS is collected and paid, no impact thereof will be required to be made at the time of passing entry for sales return/credit note/debit note. However, against the subsequent realization, if the same gets adjusted and net consideration is paid then on such net consideration TCS should be collected.

- **Whether TCS Provisions would be applicable if the amount of sale consideration is adjusted against the amounts payable for purchases from said party:**

  in such a situation, though the amount is not received in cash mode, however there is a deemed receipt of consideration through indirect means i.e., through an adjustment of receivable and payables account and hence TCS should be collected under such transactions. Even a past, present or future act is valid consideration under the Contract Act and therefore consideration would be deemed to have been received on an adjustment of mutual liabilities.

- **TCS applicable even on part receipt of consideration:**

  M/s ABC (Turnover for the FY 2019-20 was Rs.20 Crores) from the period 01 April 2020 to 30 October 2020 has sold goods worth Rs.50 Lakhs to Mr A and the consideration has been received to M/s ABC. Thereafter, M/s ABC again sold goods worth Rs.75 Lakhs on 01/11/2020 and till 30/11/2020, M/s ABC has received only Rs.60 lakhs from Mr A. Here in this case, M/s ABC will have to consider the receipt of amount of Rs.60 lakhs inclusive of TCS and accordingly compute the amount of TCS on gross up basis as under;
  Amount Received / (100 + Rate of TCS) * Rate of TCS = 60,00,000/100.075 * 0.075% = Rs.4,497/-

- **Whether TCS set off would be available:**

  No set off is allowed under the Act. E.g., If M/s PS Ltd on 01/10/2020 has sold goods worth Rs 1 Crore to M/s SD Ltd and collected TCS of Rs.3,750/-. Thereafter, on 15/10/2020, M/s PS Ltd purchases goods worth Rs 2 Crores from M/s SD Ltd (or any other party), who therein collects Rs.11,250/- as TCS. Here in the given example, M/s PS Ltd cannot take credit of Rs.11,250 while depositing Rs.3,750/-, nor can M/s SD Ltd (or any other party) take any set off while depositing TCS of Rs.11,250/-.
- **Person having commission income along with sale of goods**

  This provision is applicable to those persons, whose sales or receipts or turnover during the previous year ended on 31 March is more than 10 Crores. Thus, if a person is having two types of income from a business i.e., commission income and sale of goods, then both the receipts from the Commission business and the sales from the trading business will be considered for

determining the limit of turnover of Rs.10 Crore. E.g., If a seller is having commission income of Rs.5.5 Crores and Sales of Rs.6 Crores for the year ended 31 March 2020, then the provision u/s 206C(1H) will be applicable to such seller in the FY 2020-21 from 01 October 2020 onwards and accordingly the seller needs to collect TCS on receipt of consideration from the sale of goods subject to other conditions. Despite the applicability of this provision, TCS will not be required to be collected in respect of consideration received by the seller with regards to commission income.

- **TCS not applicable on transactions carried through Exchanges:**

  CBDT has clarified that TCS is not applicable in relation to transactions in securities and commodities which are traded through recognised stock exchanges or recognised clearing corporation located in International Financial Service Centre.

- **TCS not applicable on supply of fuel to Non-resident airlines:**
  CBDT has clarified that TCS is not required to be collected on sale consideration received for fuel supplied to non-resident airlines at airports in India.

- **TCS applicability on sales to a person located in special economic zone:**
  TCS is not required to be collected if the goods are exported out of India. Given that the special economic zone (SEZ) is located within the country's national borders, sale of goods to a person located in SEZ would not mean that the goods are exported out of India, hence TCS should be applicable on such sales, subject to fulfilment of other conditions.

- **Consideration of 50 lakhs is per year qua buyer:**
  TCS is required to be collected if the value of consideration in respect of sale of goods is more than 50 lakhs qua buyer for a year and only in respect of the consideration in excess of 50 Lakhs. E.g., M/s MU Ltd, has sold goods worth Rs 25 Lakhs to Mr. Ron from April 2020 to September 2020. Thereafter, M/s MU Ltd sells goods worth Rs 30 Lakhs to Mr. Ron on 01/10/2020. Here, M/s MU Ltd will have to collect TCS only on 5 lakhs.

- **TCS not applicable on transfer of one branch to another:**
  The preliminary condition for applicability of provision of TCS is that there should be two parties involved in a transaction viz., a seller and a buyer. Further, there must be a sale of goods between the two parties. The activity of transfer of goods from one branch to another should not be construed as a sale transaction and accordingly TCS need not be collected on inter branch transfer of goods. Moreover, even if this type of transactions are held to be a sale of goods, TCS should not be applicable because as per the Income-tax Act, 1961 both the seller and the buyer are one and the same person and one cannot collect taxes for himself on his own.

Sr. No	Turnover for PY 2019-20 (Rs.)	Turnover for PY 2020-21 (Rs.)	Buyer (Nature of Goods)	Receipts from Buyer upto 30th September 2020 (Rs.)	Receipts from 01/10/2020 to 31/03/2021 (Rs.)	TCS u/s 206C(1H) (Rs.)	Remarks
1	13 crore	9 crore	M/s Sam Trading Co (Papers)	24 lakhs	65 lakhs	2,925	0.075%1 on 39 lakhs (Being excess of Rs.50 lakhs)
2	10 crore	25 crore	M/s Shyam & Co (Books)	50 lakhs	40 lakhs	Not applicable	Turnover of preceding PY does not exceed 10 crores
3	12 crore	14 crore	PK & Associates (Mobile phones)	55 lakhs	20 lakhs	1,500	0.075%1 on 20 lakhs.
4	15 crore	20 crore	Local Authority (Stationery)	85 lakhs	15 lakhs	Not applicable	The clause is not applicable for sale to local authority
5	16 crore	10 crore	Mayur (Motor Vehicle)	0	65 lakh	Not applicable	Section 206C(1F) shall be applicable.

TCS by Seller (Summary)
▪ TCS is to be collected at the time of receipt of the amount
▪ However, TCS is to computed as a % of sale consideration
▪ Basic Threshold of Rs. 50 Lakhs is provided – TCS to be collected only on amount in excess of 50 Lakhs
▪ Export and Import transactions are excluded – FA amendment
▪ Government as a buyer is excluded but government companies as seller is not excluded
▪ Applicable where sales, turnover, gross receipts in business of seller exceeded 10 Crore in immediately preceding financial year
▪ Lower collection certificate is not possible – Not covered by sub. Section 9
▪ If TDS deducted by buyer – TCS does not apply – Availability of trail

Journal Entries for recording TCS in the Books of Accounts:

Sr. No.	Particulars	Debit	Credit
1.	Debtors Account Dr.	1.18 Crores	
	To Sales Account		1 Crores
	To GST Payable Account		18 Lakhs
2.	Bank Account Dr.	1,18,05,100	
	To Debtors Account		1.18 Crores
	To TCS Payable Account		5,100 (@0.075% of Rs. 68 Lakhs)
3.	TCS Payable Account	5,100	
	To Bank Account		5,100

Clarifications by CBDT vide Circular No. 17 of 2020 dated September 29, 2020

Sr. No.	FAQ	CBDT Guidelines
1.	While computing the threshold of Rs. 50 Lakh for FY 2020-21, whether the consideration received from a buyer between April- September 2020 is to be included?	Yes. At Para 4.4.2(iii), CBDT has also clarified that since the threshold of 50 lakhs is with respect to previous year, calculation of receipt of sales consideration for triggering TCS u/s 206C(1H) shall be computed from April 1st 2020 and therefore if seller has already received Rs. 50 lakhs up to September 30th 2020, seller would require to collect TCS on all sales receipt on or after October 1st 2020.
2.	Whether TCS provisions apply on advance received on or after October 01, 2020 where no sale has been recognised during the financial year 2020-21 against such advance?	Yes. At Para 4.4.2(ii), CBDT has clarified that the provision of TCS on sale of goods u/s 206C(1H) would apply on all sales considerations received including advance for sale on or after October 1st 2020.
3.	The seller has received an advance prior to October 01, 2020 and sales against the said advance will be recognized on or after October 01, 2020. Whether TCS is	No. At Para 4.4.2(ii), CBDT has also clarified that the provision of

	applicable on such sale?	TCS on sale of goods u/s 206C(1H) would not apply to any sales consideration received before October 1st 2020.
4.	Whether TCS provisions apply on advance received on or after October 01, 2020 where no sale has been recognised during the financial year 2020-21 against such advance?	Yes. At Para 4.4.2(ii), CBDT has clarified that the provision of TCS on sale of goods u/s 206C(1H) would apply on all sales considerations received including advance for sale on or after October 1st 2020.
5.	Whether sale of motor vehicle to dealers / distributors attracts TCS u/s section 206C(1H) of the Act?	At Para 4.5.2.(i), CBDT clarified that TCS on sale of goods u/s 206C(1H) would be applicable in respect of receipt of sale consideration from a dealer if sales of motor vehicle is not subject to TCS u/s 206(1F). It is important to note that CBDT has also mentioned that section 206(1F) is for sale to consumer only and not to dealers. Here, one may refer to CBDT's old Circular dated June 08, 2016 wherein it was clarified that section 206(1F) would not apply in respect of sale of motor vehicles to dealers /

		distributors. At Para. 4.5.2(ii), CBDT also clarified that in case of sale to a consumer, where receipt of sales consideration from sale of motor vehicle is Rs. 10 lakh or less, the buyer would be subject to TCS on sale of goods u/s 206C(1H) if sale consideration during Previous Year exceeds Rs. 50 lakhs. It is worthwhile to note that CBDT has made a distinction between sale to dealers / distributors and sale to consumers.
6.	What would be the impact of sales return, debit note, and credit note while collecting tax at source?	At Para 4.6, CBDT Clarified that no adjustment on account of sale return or discount is required to be made for collection of TCS on sale of good u/s 206C(1H) since the collection is made with reference to receipt
7.	Whether tax is required to be collected on GST component included in sales consideration?	At Para 4.6, CBDT Clarified that no adjustment on account of indirect taxes including GST is required to be made for collection of TCS on sale of good u/s 206C(1H) since the

		collection is made with reference to receipt. Hence, it is now clarified that GST portion included in sale value would attract TCS u/s 206C(1H) of the Act.
8.	Additional Clarifications – Securities and Commodities and Electricity	At Para 4.1.2(i), It is further clarified by CBDT that transactions in securities and commodities which are traded through recognized stock exchanges or cleared & settled through recognized clearing corporation are no subject to TCS provision u/s 206C(1H) of the Act. While whether "securities" in itself would be considered as "goods" is in itself a debatable issue, a literal reading of the current clarification implies that TCS may apply in case of securities not traded through recognised stock exchange. At Para 4.1.2(ii), The CBDT has clarified that transaction in electricity, renewable energy certificates and energy saving certificates traded through power exchange registered in accordance

		with Regulation 21 of the CERC would not subject to TCS provisions u/s 206C(1H) of the Act. There are certain judicial precedents in the context of the Act wherein "electricity" has been considered as "goods". Considering the above, there is a possibility that transactions in electricity not traded through power exchange as mentioned above, TCS should apply.

Section 206CC — Mandatory Requirement of Furnishing PAN

206CC. *(1) Notwithstanding anything contained in any other provisions of this Act, any person paying any sum or amount, on which tax is collectible at source under Chapter XVII-BB (herein referred to as collectee) shall furnish his Permanent Account Number to the person responsible for collecting such tax (herein referred to as collector), failing which tax shall be collected at the higher of the following rates, namely:—*

(i) at twice the rate specified in the relevant provision of this Act; or

(ii) at the rate of five per cent.

(2) No declaration under sub-section (1A) of section 206C shall be valid unless the person furnishes his Permanent Account Number in such declaration.

(3) In case any declaration becomes invalid under sub-section (2), the collector shall collect the tax at source in accordance with the provisions of sub-section (1).

(4) No certificate under sub-section (9) of section 206C shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.

(5) The collectee shall furnish his Permanent Account Number to the collector and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

(6) Where the Permanent Account Number provided to the collector is invalid or does not belong to the collectee, it shall be deemed that the collectee has not furnished his Permanent Account Number to the collector and the provisions of sub-section (1) shall apply accordingly.

(7) The provisions of this section shall not apply to a non-resident who does not have permanent establishment in India.

Explanation.—For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on

- Section 206CC has been inserted to provide that any person whose payments are subject to tax collection at source i.e. the collectee, shall mandatorily furnish his PAN to the collector failing which the collector shall collect tax at source at higher of the following rates –
    a. At twice the applicable rate of TCS or
    b. At the rate of 5%

- This section further provides as under:
  - ✓ No certificate under section 206C (9) will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

  - ✓ Tax is required to be collected at the rates (as suggested under this section) also in cases where the collectee files a declaration in Form 27C [[under section 206C(1A)] but does not provide his PAN.

  - ✓ If the PAN provided to the collector is invalid or it does not belong to the collectee, it shall be deemed that the collecctee has not furnished his PAN to the collector. Accordingly, tax would be collectible at the highest of the two rates specified above
    .
  - ✓ Both the collector and the collectee have to compulsorily quote the PAN of the collectee in all correspondence, bills, vouchers and other documents exchanged between them.

  - ✓ The provisions of this section shall not apply to Non-resident who does not have permanent establishment in India. For this purpose, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Disallowance of Tax Deducted at Source

Section 40(a)(i)- Non-compliance of Provisions of TDS where payment is made to Non Resident

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",—

(a) in the case of any assessee—

(i) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,—

(A) outside India; or

(B) in India to a non-resident, not being a company or to a foreign company,

on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:

[Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purposes of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.]

Explanation.—For the purposes of this sub-clause,—

(A) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;

(B) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

Analysis:

- If any interest, royalty, fees for technical services or other sum chargeable under this Act, which is payable,—
  (A) Outside India; or
  (B) In India to a non-resident, not being a company or to a foreign company,
  On which tax is deductible at source and such tax has not been deducted or, after deduction, has not been paid on or before the due date of filing the income tax Return under section 139(1), then such expenses **cannot be allowed** as deductions.
- **Conditions for Disallowance:**
  Disallowance under section 40(a)(i) shall be attracted if:
  Condition 1: The amount paid or payable is interest, royalty, fees for technical services or any other sum chargeable under I.T. Act. The aforesaid sums must be taxable in the hands of the recipient under the I.T. Act.

Condition 2: The aforesaid sum is paid or is payable:

(i) outside India to a non-resident or a foreign company

(ii) in India to a non-resident or a foreign company

Condition 3: Tax is deductible at source on the aforesaid payments

Condition 4: And any of the following defaults takes place

Default A: Tax at source has not been deducted or
Default B: Tax at source has been deducted but has not been paid on or before the due date specified in section 139(1).

The proviso to section 40(a)(4) provides that where

(i) Tax has been deducted in the subsequent year; or

(ii) Tax has been deducted in the previous year but paid after the due date specified in section 139(1).

then such sum shall be allowed as deduction in the previous year in which such tax has been paid.

- **Relaxing the provisions of Sections 201 and 40 of the Act in case of Payments to Non-Resident**
  Section 201 of the Act provides that where any person, including the principal officer of company or an employer (hereinafter called the deductor), who is required to deduct tax at

source on any sum in accordance with the provisions of the Act, does not deduct or does not pay such tax or fails to pay such tax after making the deduction, then such person shall be deemed to be an assessee in default in respect of such tax.

The first proviso to sub-section (1) of section 201 specifies that the deductor shall **not be deemed to be an assessee in default** if he fails to deduct tax on a payment made to a **resident**, if such resident has furnished his return of income under section 139 disclosed such payment for computing his income in his return of income, paid the tax due on the income declared by him in his return of income and furmished an accountant's certificate to this effect.

This relief in section 201 **is available** to the deductor, only in respect of payments made to a **resident**. In case of similar failure on payments made to a **non-resident**, such relief is **not available** to the deductor. To remove this anomaly, it is proposed to amend the proviso to sub-section (1) of section 201 to extend the benefit of this proviso to a deductor, even in respect of failure to deduct tax on payment to non-resident.

Consequent to this amendment, it is also proposed to amend the proviso to sub-section (1A) of section 201 to provide for levy of interest till the date of filing of return by the non-resident payee (as is the case at present with resident payee).

For the same reason, it is also proposed to amend clause (a) of section 40 to provide that where an assessee fails to deduct tax in accordance with the provisions of Chapter XVII B on any sum paid to a **non-resident**, but is **not deemed to be an assessee in default** under the first proviso to sub-section (1) of section 201, then it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in that proviso. Thus, there will be disallowance under section 40 in respect of such payments:

This amendment will take effect from 1 April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

Section 40(a)(ia)- Non compliance of Provisions of TDS where payment is made to a Resident

thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid :

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the 71[***] payee referred to in the said proviso.

Explanation.—For the purposes of this sub-clause,—

(i) "commission or brokerage" shall have the same meaning as in clause (i) of the Explanation to section 194H;

(ii) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

(iii) "professional services" shall have the same meaning as in clause (a) of the Explanation to section 194J;

(iv) "work" shall have the same meaning as in Explanation III to section 194C;

(v) "rent" shall have the same meaning as in clause (i) to the Explanation to section 194-I;

(vi) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;

Analysis:

- If there is **any** sum payable to a resident, on which tax is deductible at source and such tax has not been deducted or, after deduction, has not been paid on or before the due date of filing the return under section 139(1) then **30%** of such sum should be disallowed.
- **Proviso to the section 40**
  - Where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, 30% of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.
  - Where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to section 201(1), then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee.
- Section 201(1) provides that if an assessee:
  (a) fails to deduct TDS; or
  (b) after deduction, fails to pay the TDS, then he shall be deemed to be assessee in default under section 220 & 221. Consequently he is liable to pay:

(i) Penalty under section 221 which can be upto the amount of TDS not deducted/not paid.
(ii) Interest under section 220 @ 1% p.m. from the date the tax was deductible payable till the date of passing of an order under section 201.

- It is well established law laid down by various courts that the deductor shall be treated as an assessee in default only if:

- Deductor has failed to deduct TDS, and
- Deductee has also failed to pay the tax directly.

Therefore, deductor cannot be treated as an assessee in default where deductor has failed to deduct TDS but deductee has paid the tax directly.

The Finance Act, 2012 seeks to incorporate the above provisions in section 201(1) by inserting Proviso in section 2011). The Finance Act. 2019 has further amended the said proviso to section 201(1).

- **First proviso to section 201(1)**

Any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of relevant Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall **not be deemed to be an assessee in default** in respect of such tax if such resident—

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The above proviso to section 201(1) is applicable in case of amount paid or payable to resident only. It is **not applicable** to Non Resident.

- The amendment also provides that deductor shall have to pay **interest** under Section 201(1A) @ 1% per month or part of the month from the date the tax was so deductible to the date of furnishing of return of income by the payee. The interest shall be levied on the amount of **TDS not deducted / short deducted** by the deductor.

ILLUSTRATION: M/S XYZ appointed Mr. B for consultancy work. He failed to deduct TDS from payment made to him but Mr. B has paid tax on his total income. Whether payment made to Mr. B will be disallowed in hands of Mr. X?

As per section 40(a)(ia), where any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical service is payable to a resident on which tax is deductible at source but such tax has not been deducted or after deduction has not been paid to the credit of central government by due date specified under section 139(1), 30% of such amount shall be disallowed.
However, where an assessee fails to deduct tax but the deductee has paid tax on such income by including the same in the return of income furnished by him, then assessee shall not be deemed as an assessee in default for the purpose of section 40(a)(ia).
Thus, when payee files his return, the amount which was disallowed in the hands of payer shall be allowed as a deduction in the financial year in which payee furnish his return of income.
Example, if payee furnishes his return of income on July 15, 2021, it shall be deemed that the assessee has deducted and deposited the tax on July 15, 2021 and he shall be allowed deduction in the Financial Year 2021-22. A tax auditor is required to report the particulars of such disallowance in the tax audit report for FY 2020-21.

How Section 40(a)(ia) operates to allow or disallow an expense?

As per section 40(a)(ia) where an assessee fails to deduct TDS or after deduction fails to deposit the same to the account of the central government on or before the due date specified under section 139(1), 30% of such amount shall be disallowed. However where such tax is deducted in subsequent year or has been deducted during the current year but paid after the due date, then such proportion which has been disallowed shall be allowed as a deduction in the year in which such tax is paid. Let us understand this with the help of table below (assuming assessee is a company):

Date of Payment/ Credit to the account of assessee	*Date of Deduction of tax*	*Time of Payment of TDS to the credit of government*	*Year in which deduction will be allowed*
June 18, 2020	June 18, 2020	July 7, 2020	FY 2020-21
July 12, 2020	March 28, 2021	May 31, 2021	FY 2020-21
March 31,2021	April 30, 2021	June 30, 2021	FY 2020-21
August 14, 2020	April 30, 2021	December 31, 2021	FY 2021-22
July 15, 2020	June 25, 2021	July 31, 2022	FY 2022-23

ILLUSTRATION: Whether any exp. would be treated as inadmissible under section 40(a)(ia) even if such exp. isn't payable as on March 31, 2018?

Clause 21(b) requires reporting of expenses which are not admissible as per the various sub-clauses to section 40(a). Section 40(a)(ia) deals with the disallowance of 30% of any sum payable to a resident on which TDS hasn't been deducted or after deduction, not paid to Govt. on or before the due date of filing of ITR.

Since the section 40(a)(ia) uses the word 'Payable', assessee often argued that the provision is applicable only on such sums which are payable as on March 31 and no disallowance could be made for any sum which has been paid during the year.

The Supreme Court has settled this 'paid' vs 'payable' controversy in the case of *Palam Gas Service v. CIT [2017] 81 taxmann.com 43 (SC)*. It was held that the disallowance for TDS default shouldn't be restricted to only those expenses which are outstanding as on the last day of the financial year.

Therefore, expenses would be treated as inadmissible under section 40(a)(ia) even if it is paid during the year.

No TDS default disallowance u/s. 40(a)(ia) for assessee opting presumptive basis taxation u/s 44AD

Surat ITAT in the case of Shri Bipinchandra Hiralal Thakkar

[TS-539-ITAT-2020(SUR)]rules in favour of assessee-individual [who offered income to tax on presumptive basis u/s. 44AD @ 8% on gross turnover), deletes TDS default disallowance u/s 40(a)(ia) for AY 2013-14; Noting that assessee made interest payments on unsecured loans and job work expenses without deducting TDS u/s 194A/194C, AO made disallowance u/s. 40(a)(ia); However, ITAT refers to the non-obstante" clause at the beginning of section 44AD overriding the provisions of sections 28 to 43C; Relies on the judgement of SMS Bench Kolkata in the case of Jaharlal Mukherjee, wherein it was held ..the provisions of section 44AD of the Act overrides all other provisions contained in section 28 to 43C. Admittedly, the provisions of section 40(a)(ia)of the Act falls within this range of sections 28 to 43C of Chapter-XVII B of the I.T. Act." ; Rejects Revenue's stand that the dues to the crown has no limitation and has precedence over all other allowance and claims", opines that provisions of section 44AD have been enacted by the Legislature/Crown to provide benefit to small businessmen in terms of cost savings.

TDS Compliance In Tax Audit Report (Particulars in Form No. 3CD)

Clause 21(b) of Form 3CD – Amounts inadmissible under section 40(a)(i), 40(a)(ia), 40(a)(ic), 40(a)(iia), 40(a)(iib), 40(a)(iii), 40(a)(iv), 40(a)(v). These sections broadly relate to disallowances made in respect of expenditure or a part of an expenditure where tax was required to be deducted at source but the assessee failed to do so.

Amount Inadmissible under **section 40(a)**

(i) As payment to non-resident referred to in sub clause (i)
(ii) As payment referred to in sub clause (ia)
(iii) As payment referred to in sub clause (ib)
Details are as under:

21(b)(i) As payment to non- resident referred to in sub clause (i)

(A) Details of payment on which tax is not deducted

Date of payment *	Amount of payment *	Nature of payment *	Name of the payee *	PAN	Address Line-1 *	Address Line-2	City *	Pin *

(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time

Date of payment *	**Amount of payment ***	**Nature of payment ***	**Name of the payee ***	**PAN**	**Address Line-1 ***	**Address Line-2**	**City ***	**Pin ***	**Amount of tax deducted**

21(b)(ii) As payment referred to in sub clause (ia)

(A) Details of payment on which tax is not deducted

Date of payment *	**Amount of payment ***	**Nature of payment ***	**Name of the payee ***	**PAN**	**Address Line-1 ***	**Address Line-2**	**City ***	**Pin ***

(B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub-section (1) of Section 139

Date of payment *	Amount of payment *	Nature of payment *	Name of the payee *	PAN	Address Line-1 *	Address Line-2	City *	Pin *	Amount of tax deducted	Amount of tax deposited, if any

Checklist for Clause 34 of Tax Audit Report to be considered by Auditors

Clause 34(a)

i. Obtain a statement of TDS deducted showing the particulars of the head under which tax is deducted.
ii. Identify various heads of expenses where there is a likelihood of TDS liability and scrutinize those accounts to ensure that wherever TDS was liable to be deducted, is deducted and deducted correctly, *(Ensure you have the correct heads and rate chart including changes if any during the year)*
iii. Check the relevant vouchers, challans of payments.
iv. Scrutinize relevant accounts for expense heads such as salaries, interest, royalties, contractors/sub-contractors, professional technical fees etc.
v. Specify the section under which TDS is required to be deducted, nature of payments, and total payment of such nature.
vi. Out of the above payments, check the total amount on which TDS is required to be deducted, amounts on which TDS is actually deducted and deposited.
vii. Scrutinize the ledger to obtain instances where tax is deductible but it is not deducted or there is short deduction.

Clause 34(b)

i. Obtain the receipts / acknowledgements of the various TDS return filed by the assessee during the year.
ii. Check whether the returns are filed within the due dates specified under the act.
iii. Cross verify the TDS and gross amount on which TDS is required to be deducted as specified in the acknowledgement with the books of accounts, to ensure that all transactions on which TDS was required to be deducted are shown in the quarterly returns.

iv. In this regards Scrutinize the accounts as specified in clause 34(a) above.
v. The details in this clause are required to be given only if the assessee has not filed the TDS returns on time.

Clause 34(c)

i. Obtain the payment challans to Verify whether the TDS / TCS deducted / collected has been deposited within the time limit specified in the Act.
ii. Verify in case of delay, the calculations of interest payable for default and whether such interest is paid by the assessee.