

PAPER ON ANALYSIS OF CERTAIN TDS PROVISIONS IN INCOME TAX

Income tax is a direct tax.

There are two modes of recovery of tax:

- 1) Direct collection from an assessee and
- 2) Indirect collection from an assessee

Direct collection includes advance tax, self-assessment tax, regular assessment tax etc.

Indirect collection of income tax is effected by way of tax deducted at source and tax collected at source. Under this system tax is deducted at the origin of the income. Tax is deducted by the payer and is remitted to the Government by the payer on behalf of the payee.

TDS provisions were incorporated in the Act ever since 1961, the provisions of TCS from 01.04.1988.

Sections 192 To 194 Q deal with TDS with respect to both Residents and Non-residents (as specified in the respective sections). However section 195 applies exclusively to TDS on non-residents. These are explained in Chapter XVII of the Income Tax Act 1961

Section 192-TDS on Salary

Section 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 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.

Tax deducted at source is computed as below: **Old Regime**

Basic salary	xxxx
All allowances to the extent taxable	xxxx
Add: Salary due or received from other employer * (192(2)) (Rule 26A) (to be furnished in form 12B.)	xxxx
Add: Salary arrears (192 (2A)(Rule 21AA in form 10E to be uploaded on line)	xxxx

Add: Any income chargeable under any other head of income * Section 192(2B) (Rule 26B)	xxxx
Add: Value of perquisites – rent free accommodation, motor car, interest free loan etc.	xxxx
Less: Loss under the head income from house property 192 (2B)(b) Rule 26C form 12BB	xxxx
Less: Standard deduction	Rs. 50,000
Less: deductions under Chapter VI A - 80C, 80CCC, 80D, 80U etc	xxxx
Total income	xxxx
Tax due thereon including education cess and surcharge (if applicable)	xxxx
Less: Relief u/s.89(1) Section 192(2a)	xxxx
Less: TDS on other income reported by assessee(section 192(2b)(1))	xxxx
Tax to be deducted on salary	xxxx

*(the information to be provided to the employer is optional)

Tax deducted at source is computed as below: **New Regime**

Basic salary	xxxx
All allowances to the extent taxable	xxxx
Add: Salary due or received from other employer * (192(2)) (Rule 26A) (to be furnished in form 12B.)	xxxx
Add: Salary arrears (192 (2A)(Rule 21AA in form 10E to be uploaded on line)	xxxx
Add: Any income chargeable under any other head of income * Section 192(2B) (Rule 26B)	xxxx
Add: Value of perquisites – rent free accommodation, motor car, interest free loan etc.	xxxx
Total income	xxxx

Tax due thereon including education cess and surcharge (if applicable)	xxxx
Less: Relief u/s.89(1) Section 192(2a)	xxxx
Less: TDS on other income reported by assessee(section 192(2b)(1))	xxxx
Tax to be deducted on salary	xxxx

From AY 2021-2022, option can be exercised by assessees whether to pay tax under the old regime wherein deductions were permitted or under the new regime wherein no deductions are admissible.

The employers have to be informed about the option by the employees, as clarified in Circular C1of 2020 dt 13-4-2020. Tax is deducted based on the intimation of option made by the employees. However, Circular also provides that if such option is not so intimated, the employer shall make TDS without considering above said new regime .Further ,it is to be noticed that once so intimated, the same cannot be modified later.

It's also provided in the Circular that even if TDS is made by employer at old regime, the employee can still opt for new regime at the time filing the return.

The employees can claim deductions in respect deductions allowable under rules framed in pursuance of section 10(14) or deduction under chapter VIA, the employer can act on the statement or declaration furnished by the employee. Where the employer acts on such declaration or statement but it turns out that some of the claims are erroneous the employer could not be held responsible when he has acted in good faith relying on such declaration.

However Rule 26C has been inserted w.e.f. 01/06/2016 and Form 12BB duly signed by the employee is to be obtained by the employer. Form 12BB insists on obtaining evidence for proof of the claims in respect of HRA/LTA/interest on borrowing in respect of house property and deduction under chapter VIA. Hence reliance on the statement of declaration furnished by employee alone is not sufficient after 01.06.2016.

In respect of section 192 tax has to be deducted on salary only when **payment** is made, if salary due to the employee is not paid there is no obligation to deduct tax at source 281 ITR170.

Payment of salary in foreign currency **Rule 26** provides that Rupee equivalent to telegraphic transfer buying rate of such currency on the date on which tax is required to be deducted at source under the provisions of chapter XVII B on the date of payment of salary to be considered.

Section 194 TDS on Dividends

From Assessment year 2021-22 Dividends are taxable in the hands of the shareholders (earlier dividends were exempt up Rs.10 lakhs under section 10(34) and dividends exceeding Rs.10 lakhs was taxable at 10% u/s.115BBDA) . Hence section 194 has regained the importance. Section 194 provides for TDS on dividends. Tax has to be deducted in respect of any dividends within the meaning of section 2(22) (a to e) payable to a resident. The deduction has to be made before the payment of dividend (Rate 10%).However no TDS if shareholder is an individual and dividend is less than Rs.5000/-p.a.

Section 194A, TDS on interest other than interest on security

TDS on interest other than interest on securities shall 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.

Individuals or Hindu undivided family whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified in 44AB (A) or (B) (ie Rs.1 Crore in the case of business and 50 lakhs in case of profession) during the financial year immediately preceding the financial year in which such interest is credited or paid shall alone be liable to deduct income tax under the section.

It may be noted that Section 44AB has been amended increasing the threshold limit of tax audit to 5 crores from 1 crores, in cases where sales, turnover or gross receipt does not exceed Rs.5 crores (proposed increase is Rs.10 Crore) and not more than 5% of the gross receipt, sales or turnover is received in cash and where not more than 5% of the aggregate payments is effected in cash.

The consequential amendments have been brought out under section 194A, 194C, 194H, 194I, 194J. The limit of turnover, gross receipts, and sales has been retained at Rs.1 Crore in case of business and Rs.50 lakhs in case of profession. Such persons shall be liable to deduct TDS in the current previous year. The implication is that even if presumptive tax method is adopted by the persons fulfilling the condition of receipts /payments in cash and no audit is carried out in respect of such persons they continue to be liable to deduct tax if turnover/receipts exceed Rs.1Crore or Rs.50 lakhs. The non-deduction may not have an impact while computing the business income but the consequential implications of TDS like penalty, assessee in default etc. will apply.

Exemptions to deductions of TDS are provided for in section 194A (3).

In case of non-resident any income from interest in a NRE account in any bank in India in accordance with FEMA Act tax is not required to be deducted as per circular dated 01.06.1965.

The difference between the issue price and the face value of commercial papers and the certificates of deposits is to be treated as discount allowed and not as interest paid. The provisions of Income Tax Act relating to deduction of tax at source are not applicable as per circular no 647 dated 22.03.1993.

Tax has to be deducted under the provision of section 194A on interest on compensation/enhanced compensation.

W.e.f. 01.06.2015 TDS on interest on compensation awarded by MACT is to be deducted in the year which the payment is made where the interest exceed Rs.50,000/-.

Surplus on Chit Funds or Discount on Chit Funds - A chit agreement does not fall within the ambit of “money lending” or “debt incurred” and, therefore, will not be covered by the definition of “interest” as contemplated by the Act the amount disbursed to the members from their contribution cannot be treated as ‘interest’ – No TDS u/s 194A is not deductible

Deductor is an assessee even if he is not liable on his on income. Hence assessee whose income is not taxable but who have failed to deduct tax are liable to pay tax and interest thereon u/s. 201 of the Act. Charitable Institution for example becomes liable in this view (252 ITR 772) Supreme Court - ITO Vs. Delhi Development Authority.

Section 194B Winnings from Lottery or Crossword puzzle

Section 194B provides for deduction of tax at source at the time of **payment** of any income by way of winnings from any lottery, crossword puzzle, card game and other game of any sort in an amount exceeding ten thousand rupees.

Section 2(24) (ix) brings within the purview of “Income” any winnings from lotteries, cross word puzzles, races including horse races, card game and other game of any sort or from gambling or betting of any form or nature whatsoever.

The explanation states that

“lottery” includes winnings from prizes awarded to any person by draw of lots or by chance or any other manner whatsoever under any scheme or arrangement by whatever name called.

“Card game” and “other game of any sort” include any game show, entertainment program or television or electronic mode in which people competes to win prize or any other similar game.

The said explanation was inserted w.e.f. 01.04.2002 after which any prize on draw of lots, game shows even involving skill would also come under the purview of section 194B.

The Act also provides that in a case where the winnings are wholly in kind or partly in cash or partly in kind the person responsible for paying shall before releasing the winnings ensure that tax has been paid in respect of the winnings.

Provisions of Section 194B does not provide for deduction of tax at source where the winnings are wholly in kind and it simply puts a responsibility to ensure payment of tax, where winnings are wholly in kind.

It was held that where the winnings was wholly in kind and not in cash at all, the question of deduction does not arise and in that eventuality, the only responsibility, cast under Section 194B, is to ensure that tax is paid by the winner of prize before the prize/winnings is released in his favor, the assessee cannot be held to be an assessee in default only the provisions of interest, penalty etc apply – 361 ITR 1.

194C Payment to Contractors

Any person responsible for paying any sum to any resident for carrying out any work in pursuance of contract shall **at the time of credit** of such sum or **at the time of payment** whichever is earlier deduct tax at source at 1% where the payment is to an individual or HUF and 2% where the payment is made to any other person.

Obligation arises

- a) if sum paid/credited to a contractor in a single payment exceeds Rs. 30,000
- b) If sum paid/credited to contractor in aggregate exceeds Rs.1,00,000 during the financial year

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.

AS per Sec 194C (4) no individual or 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 exclusively for personal purposes of such individual or any member of the Hindu undivided family.

194DA Payment in respect of life insurance policy

Any person responsible for paying to a Resident any sum under the 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 10(10D) of Section 10 shall at the time of **payment** thereon deduct income tax at the rate of 2% (subsequently reduced to 1%). The Section has been amended w.e.f. 01.09.2019 to provide that deduction of tax at source shall be 5% on the income comprised in the sum payable by way of redemption of Policy. No deduction shall be made where the amount of such payment during the financial year is less than One Hundred Thousand Rupees.

194H Commission on Brokerage

Any person not being an individual or Hindu Undivided Family who is responsible for paying to a resident any income by way of commission or brokerage, at the time of crediting such income to the account of the payee or at the time of payment, whichever is earlier, deduct income tax at source at 5% where the said amount of such income is more than Rs.15,000/-

In case of Individuals And Hindu Undivided Families the limit as is applicable to section 194A

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

No deduction of tax shall be made on the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act 1934, excluding a foreign bank, namely:-

- (i). bank guarantee commission;
- (ii). cash management service charges
- (iii). depository charges on maintenance of DEMAT accounts;
- (iv). charges for warehousing services for commodities;
- (v). underwriting service charges;
- (vi). clearing charges (MICR Charges) including interchange fee or any other similar charges by whatever name charged at the time of

- settlement or for clearing activities under the Payment and Settlement Systems Act, 2007;
- (vii). credit card or debit card commission for transaction between the merchant establishment and acquirer bank.
Notification No. 47/2016 dt. 17.06.2016.

Section 194-I

Any person 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 thereon in cash, cheque or draft whichever is earlier**, deduct income tax at source @ 2% for the use of Machinery or Plant or Equipment and 10% for using any land or building or land appurtenant to the building or furniture or fittings. No deduction shall be made where the amount of such income during the financial year does not exceed Rs. 2,40,000/-.

Circular No.715 dated 08.08.1995 has been issued clarifying various provisions relating to tax deduction at source.

Contract for putting up hoarding is in the nature of advertisement contract and provision of Section 194C would be applicable. If however, a person has taken particular space on rent and thereafter sublet, the same fully or in part, for putting up hoarding thereon, it would be liable for TDS u/s 194-I.

The limit of Rs. 2,40,000/- would apply separately for each co-owner of the property.

Non-refundable deposit made by the Tenant would partake the nature of rent as defined in Section 194-I. On refundable deposit, no tax would be deductible at source.

Where tax is deducted on advance rent spread for more than one year credit shall be allowed in the same proportion in which such income is offered for taxation for different assessment years based on the single certificate furnished for TDS on the entire advance rent as per circular 5/2001 dated 02.03.2001.

It is to be noted if payment is made to the same recipient both in respect of immovable property i.e. Land or building etc. and movable property machinery, furniture etc. and the aggregate amount exceeds the limit specified in 194I tax has to be deducted at source.

Section 194IA TDS on Transfer of certain Immovable Property other than Agricultural land

Any person being a transferee responsible for paying to a resident transferor any sum by way of consideration on transfer of any immovable property other than agricultural land shall at the time of credit of any such sum or at the time of payment to the account of the transferor, whichever is earlier, deduct tax at source. TDS has to be deducted where the consideration is Rs. 50 lakhs or more.

Form 26QB online statement cum challan to be submitted by the buyer of property for making payment of TDS on sale of property. Being an online form, correction functionality for correction of 26QB has been made available online from 29.02.2016 onwards. Correction can be made in various fields by logging into www.tdscpc.gov.in

Where there is more than one seller, the limit of Rs. 50 lakhs applies to each of the sellers.

It has to be noted that Section 194-1A applies only to a resident transferor and where the transferor is a non-resident, Section 195 comes into play.

Section 194 -IB

This Section is applicable to individuals or Hindu Undivided Family other than those covered under Section 194-I responsible for paying to a resident any income by way of rent exceeding RS. 50,000/- for a month or part of a month during the previous year calling for deduction of tax at source at 5%. Form 26 QC is the challan cum return for Sec 194 IB. 194 IB – in a case where tax is required to be deducted as per the provisions of section 206AA, the amount of TDS shall not exceed the rent payable as on the last month of the previous year or last month of vacating of tenancy as the case may be.

As in Section 194IA, TAN is not required to be obtained for payment of tax.

Section 194J

Tax shall be deducted at source in respect of

- 1) fees for professional services
- 2) fees for technical services
- 3) remuneration or fees or commission to director of a company
- 4) royalty
- 5) Any sum referred to in Section 28(va)

Professional services means services rendered in the course of carrying on legal, medical, architectural profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the board for the purpose of section 44AA.

The CBDT has notified certain activities as profession for the purpose of Section 44AA.

The following are the professions identified u/s.44AA

- i. Film Artist
- ii. Authorized Representative
- iii. Company Secretaries
- iv. Profession of information technology
- v. Sports persons
- vi. Umpires and referees
- vii. Coach and Trainers,
- viii. Team Physicians and physiotherapist,
- ix. Event Manager,
- x. Commentator,
- xi. Anchor
- xii. Sports Columnist.

W.e.f. 1.4.2020 the rate of TDS shall be 2% in case of fees of 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 10% of such sum in other cases.

Professional service includes an interior decorator. "Emphasis is not on the persons who give drawings but on the person the work of interior decoration whom actually a contractor. However even though the nature of work may be in similar lines, it is not sufficient that tax is deducted at source u/s.194C in case of interior decorator. Interior decorator falls under section 194J.

There is no minimum limit of payment in case of remuneration to the director for deduction of tax at source whereas in respect of the other clauses of section 194J, the limit is Rs.30,000

In case of an Individual or a Hindu Undivided Family no deduction by way of TDS shall be made on the sum by way of fees for professional services where the said sum is exclusively for personal purpose of such individual or Hindu Undivided Family (the said exemption has to be read with Section 194M).

194LA - Tax on payment of compensation on acquisition of certain immovable property

Any person who is responsible for paying on or after 01/10/2004 to a resident any sum being in the nature of compensation on enhanced compensation on account of compulsory acquisition of any immovable property other than agricultural land shall deduct tax at 10% where the amount involved exceeds Rs. 2,50,000 in a financial year. Section 194LA 2nd proviso provides that no deduction shall be made under the 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 and Rehabilitation and Resettlement Act 2013.

194M inserted with effect from 01.09.2019

Any person being an individual or Hindu Undivided Family other than those who are required to deduct income tax under the provisions of section 194C, 194H or 194J responsible for pay any sum to any resident or carrying out any work in pursuant of a contract or by way of brokerage or commission shall be liable to deduct tax at source at 5% (where payment exceeds Rs.50 lakhs).

194N inserted with effect from 01.09.2019

Payment of certain amounts in cash

- i. Every person being a banking company
- ii. A Co-operative Society engaged in carrying on the business of banking or
- iii. Post Office

who is responsible for paying any sum or aggregate of sums in cash in excess of Rs.1 crore during the previous year to any person in one or more accounts maintained shall deduct tax at source at 2% on the amount exceeding Rs.1 Crore.

The ambit of section has been amended w.e.f. 01/07/2020 to reduce the sum or aggregate amount of sums to Rs.20 lakhs where the recipient has not filed the return of income in **all the three assessment years** for which in time limit of filing the return of income u/s.139(1) has expired.

Where the returns have not been filed for the periods within the time specified u/s.139(1) tax is to be deducted at 2% where the amount or aggregate of amounts exceeds Rs. 20 lakhs but does not exceed Rs. 1

crore and at 5% where the amount or aggregate of amounts exceeds Rs. 1 crore

Section 194O w.e.f. 1.10.2020 – payment of certain sums by e-commerce operator to e-commerce participant.

From 01.10.2020 e-commerce operator (Amazon, Flipkart etc.) shall deduct from e-commerce participant (resident in India selling goods or providing services or both through the operator) tax at 1% on the gross amount of such goods or services or both. Tax shall be deducted at the time of credit or payment whichever is earlier. Any amount paid by the purchaser to the seller directly shall also be included in the gross value for the purpose of deduction of tax.

No tax shall be deducted under the section if the seller of the goods /provider of service is an individual or HUF who submit PAN to the e-commerce operator and the gross amount of goods /services does not exceed Rs.5 lakhs during the year.

Section 194P

A new section 194P has been introduced in the budget in 2021. Responsibility is cast on the specified bank to deduct tax on the total income of specified senior citizen.

Specified senior citizen means an individual resident in India who is of the age of 75 years or more and having income of the nature of pension and interest which receives in the account maintained by him in the same specified bank. Such an assessee on furnishing a declaration to the bank containing such particulars in such form and verified in such manner, the bank shall deduct tax after considering the total income giving effect of deduction under chapter VI A and rebate u/s.87A at the rates in force.

Section 194Q

TDS on purchase of goods w.e.f.1.7.2021

Any person being a buyer responsible for **making payment to a resident** for purchase of goods(not applicable to services) when value or aggregate of purchases from a supplier exceeds Rs.50 lakhs during the previous year shall deduct TDS at 0.1% of the purchase transaction at the time of credit or payment thereof, whichever is earlier . If the seller does not have a PAN tax has to be deducted at 5% This section will apply to an assessee whose aggregate turnover in the immediate previous year exceeded Rs.10 Crores.

This section is not applicable on the transaction if TDS is deducted under any other section of Income Tax Act.

Though there is no mention about excluding the GST element while deducting tax the understanding is that GST is not to be considered while deducting tax.

Section 206 AB

In case of payers covered under section 194C,194H,194I,194J etc. where the recipient (resident-does not apply to non resident who does not have permanent establishment in India) has not filed his income tax return **u/s.139 (1) for** two assessment years prior to the previous year in which tax is required to be deducted and the aggregate TDS and TCS in each of two previous years is Rs.50,000 or more then the TDS applicable will be the higher of

- 1) Twice the rate specified relevant TDS section
- 2) 5%
- 3) Rate if applicable under section 206AA

Consequence of non-compliance of provisions relating to TDS

1. Disallowance u/s.40a(ia) – 30% of the expenditure incurred - 30% of the expenditure will be disallowed while computing the income.
2. Penalty u/s.221
3. Penalty u/s.271C.
4. Where TDS is deducted and not remitted, prosecution u/s. 276B
5. Delay in remittance – Interest as per section 201 (1A)
6. Delay in filing return – Late Fee under Section 234E.
7. Non deductor is deemed to be an assessee in default.

To reduce the rigour of non-compliance with the provisions of TDS, Proviso to section 201 has been introduced which provides ie. If the payee 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 tax due on the income declared by him in such return of income and a certificate is obtained from the recipient from a Chartered Accountant in Form 26A, the payer shall not be deemed to be an assessee in default in respect of such tax

This proviso has a consequential impact in Section 40a (ia). The 2nd proviso to the section states that where an assessee is not deemed to be an assessee in default under the 1st proviso to Section 201(1), it shall be deemed that the assessee has deducted and **paid the tax on such sum on the date of furnishing of the return of income by the payee referred to in the 2nd proviso.**

Penalty u/s. 271C

Where tax is not deducted from the payment for which tax is required to be deducted at source, either in whole or in part in accordance with the provisions of chapter XVII-B penalty equal to the amount of tax which such person has failed to deduct at source may be levied by the Joint Commissioner. Penalty will not be imposed if reasonable cause is shown for non deduction.

Prosecution u/s. 276B

Where tax has been deducted at source and not remitted in accordance with the provisions of Chapter XVII-B, prosecution u/s.276B may be imposed.

Interest u/s. 201 (IA)

Where tax is not remitted within the due date specified under the various provisions, interest at 1% shall be charged from the date on which tax is required to be deducted at source till the date on which tax is actually remitted and in case tax has been deducted and not remitted then the rate of interest applicable is 1.5%.

The said interest is mandatory and the power to waive the interest lies only with CBDT.

Assesse in default

Tax is required to be deducted at source and no deduction is made the payer is deemed to be an assessee in default.

Reporting requirement of TDS

Serial No.34 of Form 3CD relates to reporting of compliance of provisions of TDS.

It is to be noted that Serial No.8 which reads as “the total amount on which tax is deducted or collected at less than the specified rate” requires the Chartered Accountants to ensure that TDS has deducted at the correct rate. Hence an onerous responsibility is placed on a Chartered Accountant to ensure that Chapter XVII of the Income Tax Act is complied with in case of all tax deducted.