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DEDUCTION AND COLLECTION OF TAX AT SOURCE

TAX DEDUCTION AT SOURCE

INTRODUCTION

The assessee is required to pay the taxes on his income. Tax is collected by two modes:

- (i) **Deduction or collection of tax at source**
Scheme of TDS is deduction of tax by the payer from the income of the recipient. It is governed by section 192 to section 196D.
- (ii) **Direct Payment by the assessee i.e., Advance tax/Self-assessment tax.**

SECTION 191(1)

In the case of any income in respect of which provision is not made under the Chapter of TDS for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of this Chapter, income-tax shall be payable by the assessee direct.

SECTION 191(2) (*Finance Act, 2020*)

Discussed in ESOPs Chapter.

SCHEME OF THIS CHAPTER:

1. Deduction of tax on specified payments at specified rates.
2. Deposit tax within the time limit as prescribed.
3. File return of tax deducted at source.
4. Issue certificate of deduction of tax at source.
5. Processing of TDS Returns
6. Consequences of non-compliance

SURCHARGE AND EDUCATION CESS ON RATES OF TDS

IN CASE OF RESIDENT PAYEE/ DEDUCTEE:

Payee/ Deductee (i.e. to whom payment is made)	Applicability of Surcharge and Education cess
1. Companies	No surcharge or health & education cess shall be added.
2. Any other assessee	<p>No surcharge or education cess shall be added to the prescribed rate of TDS. However, surcharge and health & education cess shall be added on the TDS on the salary.</p> <p>The tax on salary shall be increased by:</p> <p>(a) surcharge of 10%/15%/25%/37% (where taxable salary exceeds ₹ 50 lakhs but upto ₹ 1 crore/ exceeds ₹ 1 crore but upto ₹ 2 crores/exceeds ₹ 2 crores but upto ₹ 5 crores/ exceeds ₹ 5 crores);</p> <p>(b) health & education cess of 4% in all cases.</p>

IN CASE OF NON-RESIDENT PAYEE/ DEDUCTEE:

Payee/ Deductee (i.e. to whom payment is made)	Applicability of Surcharge and Education cess
1. Foreign Companies	<p>The rates of TDS shall be increased by:</p> <p>(a) surcharge of 2% (where the payment made or to be made to payee and which is subject to tax deduction during the Financial Year exceeds ₹ 1 crore but does not exceeds ₹ 10 crores); or</p> <p>(b) surcharge of 5% (where the payment made or to be made to payee and which is subject to tax deduction during the Financial Year exceeds ₹ 10 crores); and</p> <p>(c) health & education cess of 4% in all cases.</p>
2. Individual	<p>The rates of TDS shall be increased by:</p> <p>(a) surcharge of 10%/15%/25%/37% (where the payment made or to be made to payee and which is subject to tax deduction during the Financial Year exceeds ₹ 50 Lakhs but upto ₹ 1 crore/exceeds ₹ 1 crore but upto ₹ 2 crores/exceeds ₹ 2 crores but upto ₹ 5 crores/exceeds ₹ 5 crores);</p> <p>Provided that in no case surcharge on income computed under the head capital gains under section 111A or 112A or dividend income shall exceed 15%; and</p> <p>(b) health & education cess of 4% in all cases.</p>
3. Any other assessee	The rates of TDS shall be increased by:

	<p>(a) surcharge of 12% (where the payment made or to be made to payee and which is subject to tax deduction during the Financial Year exceeds ₹ 1 crore); and</p> <p>(b) health & education cess of 4% in all cases.</p>
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(Amended by Finance Act, 2019)

CIRCULAR NO.23/2017, DATED 19-7-2017

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. GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax. This applies to all payments e.g. rent, professional fee, etc.**

SECTION 192

TDS On Salaries (Paid to Resident as Well As Non-Resident)

- (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) 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 section 17(2), 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 purposes 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).
- (1C) **Discussed in ESOPs Chapter.**

(Added by Finance Act, 2020)

SECTION 192(2D)

TDS on Salary – Furnishing of Proof for Claiming Deductions

The person responsible for making the payment of salary shall, for the purposes of estimating income of the assessee or computing tax deductible at source, 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.

◆ ANALYSIS OF SECTION 192(2D) ◆

The evidence/ proof/ particulars of the deductions/ exemptions/ allowances/ set-off of loss claimed by the employee such as rent receipt for claiming exemption of HRA, evidence of interest payments for claiming loss from self-occupied house property etc. should be furnished by employee to employer. The employer will allow the deduction/ exemption/ set-off of loss only if proofs are furnished by the employee.

KEY NOTES:

1. Any person, whether individual, HUF, Firm, Company, AOP, BOI, etc. is liable to deduct tax at source on the amount of salary paid irrespective of the fact whether the person is carrying on business or not.
2. TDS on salary is deductible at the time of **payment**. Thereafter, there is no requirement to deduct tax on the salary due and credited to employee's account.
3. Where, during the financial year, an assessee is:
 - (i) employed simultaneously under more than one employer, or
 - (ii) where he has held successively employment under more than one employer,then, he **may** furnish to the person responsible for making the payment referred to above (being one of the said employers as the assessee may 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 prescribed form, 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 this section. (**This is discretionary for the assessee**. It may be noted that all employers are required to deduct tax at source in case there is tax payable on the taxable salary paid by them.)
4. Where the assessee is entitled to the relief under section 89(1), then he may furnish to the person responsible for making the payment referred to above, such particulars, in prescribed form, 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 of tax.
5. 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 above, 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 prescribed form, 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 of tax.

However, **this 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.

Particulars	Amount (₹)
Income under head salaries	4,50,000
Interest received by employee from a company (Company has deducted TDS u/s 206AA @ 20% i.e., 20,000)	1,00,000
Total Income	5,50,000
Tax thereon (Assuming that assessee does not opt for section 115BAC)	
TDS on Interest	20,000
Tax to be deducted	3,400

In the above case, deductor shall deduct TDS on ₹ 4,50,000 of ₹ 3,400. He shall consider the interest of ₹ 1,00,000 and TDS of ₹ 20,000 thereon as it does not result in reduction of TDS on salary (Tax on ₹ 4,50,000 is Nil).

6. **CIT VS. ELI LILLY & CO. (INDIA) P. LTD. (SUPREME COURT)**

Foreign company seconded some employees to Indian joint venture, i.e., assessee. Home salary and special allowance (education allowance and retention allowance) was paid by foreign company abroad for rendition of services in India and no work is found to have been performed for foreign company by such employees.

Assessee had not deducted tax at source on home salary/special allowance (education allowance and retention allowance) payments made outside India in foreign currency by foreign company/head office to its expatriated employees in India.

The question arose before the Supreme Court that whether the Indian assessee was required to deduct TDS under section 192 on the home salary and special allowances paid by the foreign company abroad for rendering of services in India.

The Supreme Court held that if the home salary and special allowance payment made by the foreign company abroad is for rendition of services in India and if no work is found to have been performed for foreign company, then such payment would certainly come under section 192(1) of the Income Tax Act.

The Supreme Court held that the tax-deductor-assessee was duty bound to deduct tax at source under section 192(1) from the home salary/special allowance(s) paid abroad by the foreign company, particularly when no work stood performed for the foreign company and the total remuneration stood paid only on account of services rendered in India during the period in question.

7. **ITC Ltd. v. Commissioner of Income-tax (TDS) (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.

Assessee was engaged in business of owning, operating, and managing hotels.

Held that 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.

Since 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 couldn't be chargeable to tax as salary and thus employer was not liable to deduct tax at source from such payments.**

8. Tax paid by the employer in respect of non-monetary perquisite under section 192(1A) is exempt under section 10(10CC) in the hands of employee.
9. No grossing up of tax is required in case of 192(1A). **(Section 195A)**
10. An employee, having income other than the income under the head P/G/B/P and intending to opt for the concessional rate under section 115BAC of the Act, may intimate the deductor, being his employer, of such intention for each previous year and upon such intimation, the deductor shall compute his total income, and deduct TDS thereon in accordance with the provisions of section 115BAC of the Act. **This intimation for the purposes of TDS cannot be modified during the year. However, this intimation would not amount to exercising option under 115BAC(5) which shall be done alongwith the return to be furnished under section 139(1) and which therefore may be different from the intimation made by employee for that previous year. [Circular C1 of 2020 dated 13-04-2020]**

Illustration 1:

An employee gets a salary of ₹ 5,50,000 from his employer. Apart from the salary, he also gets non-monetary perquisites whose valuation as per Rule 3 amounts to ₹ 80,000. Now the taxable income under the head salaries shall be ₹ 5,50,000 + ₹ 80,000 – ₹ 50,000 = ₹ 5,80,000. The employee has invested ₹ 60,000 in PPF. Calculate the monthly tax required to be deducted by the employer under section 192. (Assume that assessee does not opt for section 115BAC)

Answer:

Computation of TDS shall be made as under:

Annual Salary	5,50,000
Add: Non-monetary perquisite	80,000
Gross Salary	6,30,000
Less: Standard deduction	50,000
Income under the head Salary	5,80,000
Less: Deductions under Chapter VI-A	60,000
Total Taxable Income	5,20,000
Tax on Total Taxable Income	16,500
Less: Rebate under section 87A	Nil
Add: Health & Education Cess @ 4%	660
Total Tax	17,160
Monthly TDS (₹ 17,160/12)	1,430

Illustration 2:

In Illustration 1 above, if the employer wants to exercise the option referred in section 192(1A), what would be the consequences of the same?

Answer:

In terms of section 192(1B), the average rate of tax on the income under the head “Salaries” shall be calculated as under:

Income under the head “Salaries”	₹ 5,80,000
Tax on above	₹ 29,640
Average Rate of Tax	5.11%

Tax on perquisites at average rate of tax shall be 5.11% of ₹ 80,000 = ₹ 4,088. Employer has the option to deposit tax of ₹ 4,088 from his own pocket. Now let us say that the employer deposits ₹ 4,088 from his own pocket in terms of section 192(1A).

- (i) Now as per section 10(10CC), ₹ 4,088 is exempt income in hands of employee. The taxable income of employee shall remain to be ₹ 5,20,000.
- (ii) As per section 40 to Income-tax Act, ₹ 4,088 shall not be allowed as expenditure to the employer and shall be disallowed, while computing the employer’s income.
- (iii) The employer shall deduct TDS of ₹ 17,160 – ₹ 4,088 = ₹ 13,072. Accordingly, ₹ 1,089 shall be deducted every month from the employee’s salary.
- (iv) The employer shall also pay every month tax to the credit of Central Government of ₹ 4,088/12 = ₹ 341 in terms of section 192(1A) from his own pocket.
- (v) The assessee shall be given the credit for the following tax which shall be regarded as TDS:

TDS	₹ 13,068
Tax under section 192(1A)	₹ 4,092
Total	₹ 17,160

SECTION 192A

Payment of Accumulated Balance Due to an Employee

Notwithstanding anything contained in this Act, the trustees of the Recognised Provident Fund, 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.**

◆ ANALYSIS OF SECTION 192A ◆

1. Under the Employees Provident Fund Act, 1952, certain specified employers are required to comply with the Employees Provident Fund Scheme, 1952. However, these employers are also permitted to establish and manage their own private provident funds subject to approval of these funds by Chief CIT/ CIT. This provident fund scheme is known as Recognised Provident Fund (RPF) under the Act. The provisions relating to RPF are contained in Schedule IV, Part A.

Under the existing provisions of rule 8 of Schedule IV, Part A, the withdrawal of accumulated balance by an employee from the RPF **is exempt in the hands of employee in the following situations –**

- If the employee has rendered continuous service with his employer for a period of 5 years or more. For the purpose of calculating 5-year time-limit, service rendered with the previous employer shall be included, if the previous employer also maintained recognized provident fund and the provident fund balance of the employee was transferred by him to the current employer.
 - If the employee has been terminated because of certain reasons which are beyond his control (e.g., ill health of the employee, discontinuation of business by employer, completion of project for which the employee was employed, etc.).
 - 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).
2. If employee makes withdrawal from RPF other than in the circumstances given in Rule 8, then such withdrawals are taxable in hands of employee.
 3. **In view of the above, section 192A has been inserted in Income-tax Act for deduction of tax at the rate of 10% on pre-mature taxable withdrawal from RPF.**
 4. **Further, to reduce the compliance burden of the employees having low income, a threshold of payment of ₹50,000 for applicability of this section has been provided.**
 5. It is further provided that **the facility of filing self-declaration for non-deduction of tax under section 197A of the Income-tax Act shall be available to the employees receiving premature withdrawal** i.e. an employee can give a declaration in Form No. 15G to the effect that his total income including taxable pre-mature withdrawal from RPF does not exceed the maximum amount not chargeable to tax and on furnishing of such declaration, no tax will be deducted by the trustee of RPF while making the payment to such employee. Similar facility of filing self-declaration in Form No. 15H for non-deduction of tax under section 197A of the Income-tax Act has been extended to the senior citizen employees receiving pre-mature withdrawal.
 6. Some employees making pre-mature withdrawal may be paying tax at higher slab rates (20% or 30%). **For ensuring the payment of balance tax by these employees, furnishing of valid Permanent Account Number (PAN) by them to the RPF is a prerequisite.** The existing provisions of section 206AA of the Income-tax Act provide for deduction of tax @ 20% in case of non-furnishing of PAN where

the rate of deduction of tax at source is specified. As mentioned earlier, there may be employees who may be liable to pay tax at the highest slab rate. In order to ensure the collection of balance tax from these employees, it has also been provided that **non-furnishing of PAN to the RPF for receiving these payments shall attract deduction of tax at the maximum marginal rate.**

SECTION 193

TDS on Interest on Securities (Paid to Resident Only)

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 **rate of 10%** on the amount of the interest payable.

KEY NOTE:

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.

EXCEPTIONS TO SECTION 193:

In the following cases TDS is not required to be deducted under section 193:

1. No tax shall be deducted from any interest payable to an **individual or HUF**, who is **resident** in India, on **debentures** issued by a company in which the public are substantially interested, if-
 - (a) the interest is paid by the company by an account payee cheque; and
 - (b) the amount of such interest or, as the case may be, the aggregate of the amounts of such interest paid or likely to be paid during the financial year by the company to such **individual or HUF does not exceed ₹ 5,000.**

If a listed company issues debenture whether in physical or demat form and if such debentures are not listed on any stock exchange, then there will be no TDS on interest upto ₹ 5,000 payable in the financial year to an individual/ HUF. Also, if a listed company issues debenture in physical form and such debentures are listed on stock exchange, then there will be no TDS on interest upto ₹ 5,000 payable to individual / HUF.

2. **No TDS shall be deducted on any security issued by a company:**
 - where such security is in demat form
 - and is listed on stock exchange in India
 - irrespective of the amount of interest
 - and irrespective of status of the payee
3. No TDS shall be deducted on interest payable on any security of the Central or State Government. **However, as per Finance Act, 2018 TDS shall be deducted on 7.75% Savings (Taxable) Bonds, 2018.**
4. **No TDS shall be deducted on any interest payable to any insurance company in respect of any securities owned by it or in which it has full beneficial interest.**

5. **No tax shall be deducted at source on “Indian Railway Finance Corporation Ltd. 54EC Capital Gains Bond” and “Power Finance Corporation Ltd. 54EC Capital Gains Bonds”.**

SECTION 194 (Finance Act, 2020)

TDS on Dividends (Paid to Resident Only)

The Indian company shall:

- before making any payment of dividend (on equity shares as well as preference shares) or
- before making any distribution or payment of dividend under section 2(22)(a), section 2(22)(b), section 2(22)(c), section 2(22)(d) and section 2(22)(e)

to a shareholder who is resident in India, deduct from the amount of such dividend, income tax @ 10%

Note 1: No tax shall be deducted on dividend income **credited or paid to any insurance company in respect of shares owned by it or in which it has full beneficial interest.**

Note 2: No tax shall be deducted from the dividend income **paid** by any company to a **shareholder who is a resident individual** provided

- (i) the dividend is paid by any mode **other than cash** and
- (ii) dividend distributed, paid or likely to be distributed or paid during the financial year to such shareholder **does not exceed ₹ 5,000.**

Note 3: No tax shall be deducted from the dividend **credited or paid to a business trust, by a special purpose vehicle** referred to in Explanation to section 10(23FC). **(Discussed in Chapter of Business Trust)**

(Finance Act, 2021)

Note 4: No tax shall be deducted from the dividend credited or paid to such other person as may be notified by the Central Government.

(Finance Act, 2021)

SECTION 194A

TDS on Interest Other Than "Interest on Securities" (Paid to Resident Only)

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 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 10%.** **(TDS is also to be deducted from interest on Fixed Deposits and Recurring Deposits with banks and Co-operative banks)**

KEY NOTES:

1. **“Cooperative Bank” means a cooperative society carrying on business of banking.** For the sake of simplicity, the word **“Cooperative Bank”** has been used in this section at various places instead of co-operative society carrying on the banking business.
2. 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.
3. This section shall not apply where the interest is to be paid **by an individual or HUF** (Other than mentioned in point 4 below).
4. **An individual or a Hindu Undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ 1 crore in case of business or ₹ 50 lakhs 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 section 194A.**

(Finance Act, 2020)

EXCEPTIONS TO SECTION 194A:

Following are the cases where tax is not required to be deducted under section 194A

- (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 to the payee, **does not exceed:**
 - (A) **₹ 40,000 (₹ 50,000 in case of senior citizen) on time deposit where payer is Banking Company.**
 - (B) **₹ 40,000 (₹ 50,000 in case of senior citizen) on time deposit where payer is a Co-operative Bank.**
 - (C) **₹ 40,000 (₹ 50,000 in case of senior citizen) on deposit with post office under Senior Citizen Saving Scheme Rules, 2004.**
 - (D) **₹ 5,000 in any other case.**

Note: “Time deposit” means fixed Deposits and also the Recurring Deposits repayable after fixed period and does not include interest on savings bank account.

(Amended by Finance Act, 2019)

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

- (a) time deposits with a banking company; or
- (b) time deposits with a co-operative bank;

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 bank, 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 bank, as the case may be, where such banking company or the co-operative bank has adopted core banking solutions.

(ii) Where such income is credited or paid to -

- **any banking company to which Banking Regulation Act, 1949 applies, or**
- any co-operative society engaged in the carrying on the business of banking **i.e., co-operative bank** (including a co-operative land mortgage bank), or
- any financial corporation established by or under a Central, State or Provincial Act, or
- the Life Insurance Corporation of India, or
- the Unit Trust of India, or
- any company or co-operative society carrying on the business of insurance.

(iii) Where such income is credited or paid by a firm to a partner of the firm.

(iv) Interest credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or co-operative land mortgage bank or a co-operative land development bank.

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

Provided that a co-operative society referred to in clause (iv) or clause (v) shall be liable to deduct income-tax if—

- (a) the total sales, gross receipts or turnover of the co-operative society exceeds ₹ 50 crores 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 amounts 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.**

(Proviso added by Finance Act, 2020)

(vi) Interest on savings account with banks or with a co-operative society engaged in the business of banking (However tax shall be deducted on interest on time deposits i.e. FDR's and recurring deposits with such banks or co-operative society engaged in banking).

(vii) Where interest is credited or paid in respect of deposits under certain schemes of Post Office, Post Office (Recurring Deposits), Post Office Monthly Income Account, Kisan Vikas Patra, Indra Vikas Patra and National Savings Certificates.

- (viii) Where interest is credited or paid by the Central Government under the Income-tax Act. (However, TDS shall be deducted under section 195 where such interest is paid to a non-resident)
- (ix) such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;
- (ixa) 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) 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 by such company or fund or public-sector company or scheduled bank.

Explanation—For the purposes of this 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.

◆ ANALYSIS OF AMENDMENTS RELATING TO CO-OPERATIVE SOCIETIES ◆

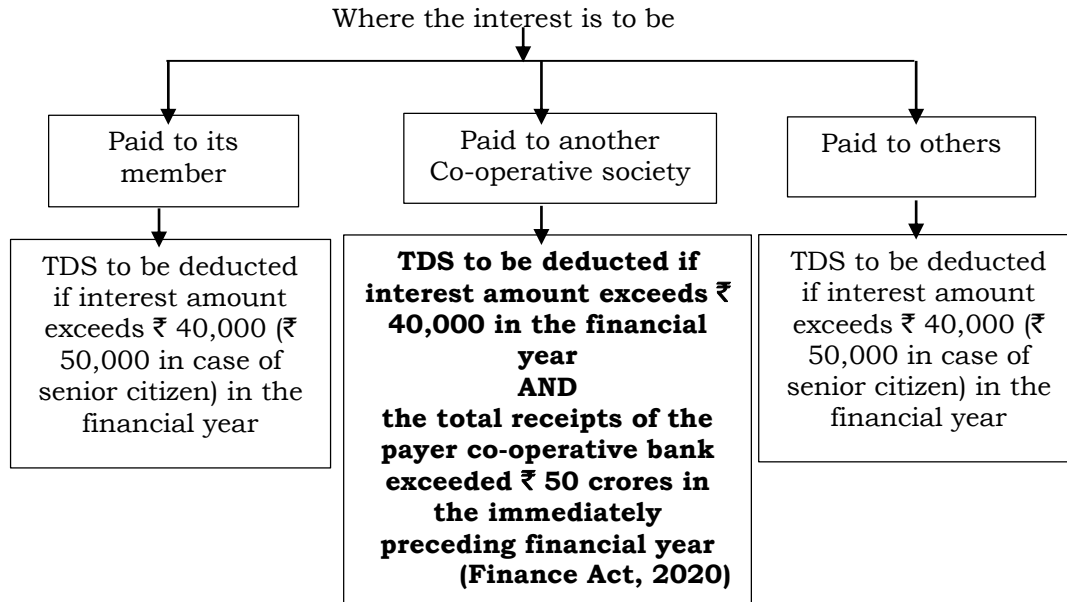
Note: Interest means interest on fixed deposits and recurring deposits but excludes interest on savings account.

I. Interest paid by Co-operative Bank (Not Covered in II)

Co-operative Bank is regarded as a Normal Bank for purposes of TDS and is required to deduct TDS if interest exceeds ₹ 40,000 (₹ 50,000 in case of senior citizen). Prior to the amendments made by Finance Act, 2020, a Co-operative Bank was not required to deduct TDS if it paid any interest (irrespective of the above threshold) to any co-operative society.

The Finance Act, 2020 has amended the provisions to extend the scope of this section to large Co-operative Banks and accordingly, now a Co-operative Bank shall be liable to deduct TDS on interest paid to a Co-operative Society, if

- **Such amount or the aggregate of amount credited or paid during the financial year is more than ₹ 40,000, AND**
- **the total sales, gross receipts or turnover of the Co-operative Bank exceeded ₹ 50 crores during the immediately preceding financial year.**



II. Interest paid by Co-operative society being:

- Primary agricultural credit society; or
- Primary credit society; or
- Co-operative land mortgage bank; or
- Co-operative land development bank

Prior to the amendments made by Finance Act, 2020, the above forms of co-operative societies were not required to deduct TDS on interest paid irrespective of the amount.

The Finance Act, 2020 has amended these provisions to extend the scope of this section to large co-operative societies and accordingly, the above forms of co-operative societies shall also be liable to deduct TDS if:

- **the amount or the aggregate of amounts credited or paid during the financial year is more than ₹ 40,000 (₹ 50,000 in case of a senior citizen), AND**
- **the total sales, gross receipts or turnover of the payer society exceeded ₹ 50 crores during the immediately preceding financial year.**

III. Interest paid by Co-operative Society not referred to in I & II above

Prior to the amendments made by Finance Act, 2020, a Co-operative Society other than a Co-operative Bank was not required to deduct TDS if it

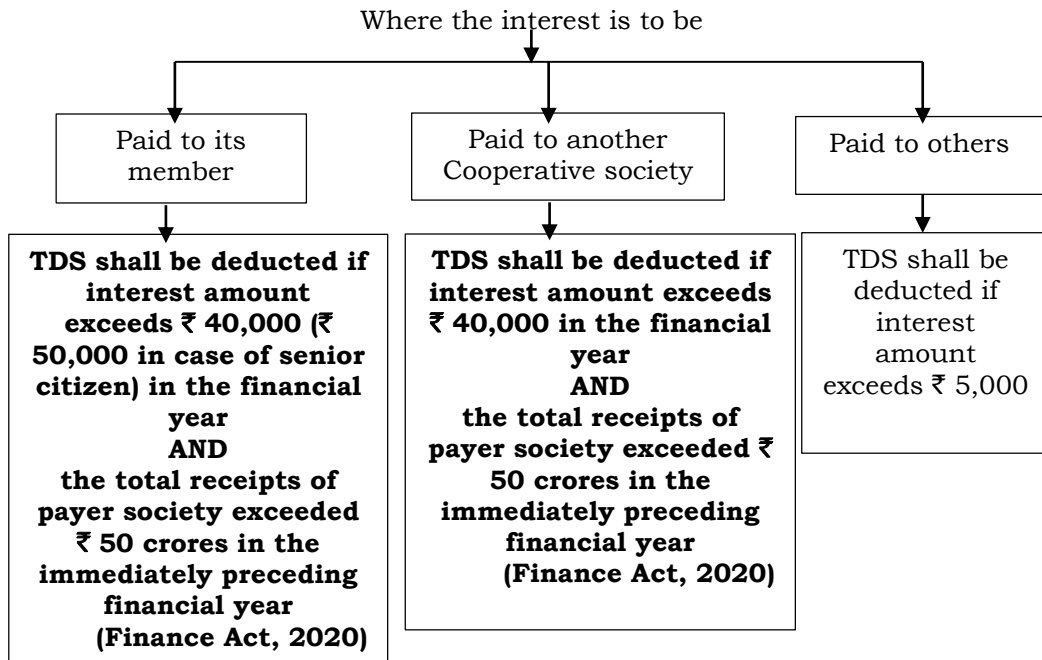
- paid interest to its members, or
- paid interest to any other co-operative society.

The Finance Act, 2020 has amended these provisions to extend the scope of this section to large co-operative societies and accordingly, now a co-operative society not referred to in I and II above shall be liable to deduct TDS on interest paid to its members or another co-operative society if:

- the amount or the aggregate of amounts credited or paid during the financial year is more than ₹ 40,000 (₹ 50,000 in case of senior citizen), AND
- the total sales, gross receipts or turnover of the payer society exceeded ₹ 50 crores during the immediately preceding financial year.

However the above thresholds shall not apply where such interest is credited or paid to persons other than its members or a co-operative society. In such a case, TDS shall be deducted if the interest amount exceeds ₹ 5,000 irrespective of the turnover limit.

To summarise:



◆ ANALYSIS OF AMENDMENT ON INTEREST ON COMPENSATION AWARDED BY MOTOR ACCIDENT CLAIM TRIBUNAL ◆

Section 56 provide that interest income received on compensation or enhanced compensation shall be deemed to be the income of the year in which the same has been received. Therefore, the provisions of section 194A have been amended to provide that **deduction of tax under section 194A from interest payment on the compensation amount awarded by the Motor Accident Claim Tribunal compensation shall be made only at the time of payment, if the amount of such payment or aggregate amount of such payments during a financial year exceeds ₹50,000. No deduction shall be made if interest is announced but not paid.**

◆ ANALYSIS OF AMENDMENTS OF CBS SOFTWARE ◆

1. WHERE CORE BANKING SOLUTIONS SOFTWARE NOT ADOPTED

Mr. A has fixed deposits and recurring deposits with following branches of Bank of India/ Vaish co-operative bank and has earned interest as under:

Bank's Branch:	Interest on FDR/ RD
Chandni chowk, Delhi	₹ 15,000
Connaught Place, Delhi	₹ 10,000
M. G. Road, Chennai	₹ 7,000
Red Fort Branch, Agra	₹ 5,000
Nariman point, Mumbai	₹ 6,000
Total	₹ 43,000

No TDS shall be deducted since the interest payment by each branch does not exceed ₹40,000.

2. WHERE CORE BANKING SOLUTION SOFTWARE HAS BEEN ADOPTED

TDS shall be deducted on aggregate of interest paid by all the branches of the bank, where aggregate interest paid by all branches exceed ₹ 40,000. In the above case, TDS shall be deducted on ₹ 43,000. However, if Mr. A is a senior citizen, higher threshold of ₹ 50,000 shall be available and TDS shall not be deducted.

CBDT CIRCULARS AND JUDGEMENTS ON SECTION 194A

1. Tax is not required to be deducted under section 194A on payment of interest on time deposits by banks following Core-Branch Banking Solutions (CBS) software. CIRCULAR NO. 03/2011

In case of banks using CBS software, interest payable on time deposits is calculated generally on daily basis or monthly basis and is swept & parked accordingly in the provisioning account for the purposes of macro-monitoring only.

However, constructive credit is given to the depositor's/payee's account either at the end of the financial year or at periodic intervals as per practice of the bank or as per the depositor's/payee's requirement or on maturity or on encashment of time deposits; whichever is earlier.

In view of the above position, it is clarified that since no constructive credit to the depositor's/payee's account takes place while calculating interest on time deposits on daily or monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only.

In such cases, tax shall be deducted at source on accrual of interest at the end of financial year or at periodic intervals as per practice of the bank or as per the depositor's/payee's requirement or on maturity or on encashment of time deposits; whichever event takes place earlier; whenever the aggregate of amounts of interest income credited or paid or likely to be credited or paid during the financial year by the banks exceeds the limits specified in section 194A.

2. TDS under section 194A on interest on fixed deposit made on direction of courts. CIRCULAR NO.23/2015, DATED 28-12-2015

It is clarified 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. Thus, 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.

3. NOTIFICATION NO. 47/2016, DATED 17-06-2016

No Deduction in Certain Cases

The Central Government hereby notifies that no deduction of tax under Chapter XVII of the said Act 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 excluding a foreign bank**, or to any **payment systems company authorised by the Reserve Bank of India** under section 4(2) of the Payment and Settlement Systems Act, 2007 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 called 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.

4. Commissioner of Income-tax v. Avenue Super Chits (P.) Ltd.

Chit dividend paid by chit fund company to its members is not interest and, consequently, no deduction of TDS under section 194A is required to be made.

The assessee-company was engaged in the business of chit fund. It paid amounts to its subscribers who had participated in its chit scheme. The said amount was called as dividend. Under the scheme, the unsuccessful members in the auction chit would earn dividend and the successful bidders would be entitled to retain the face value till the stipulated period under the scheme. The Assessing Officer held that the amount paid by assessee to its members by way of dividend was liable for deduction of tax under section 194A.

Held that **the amount paid by way of dividend cannot be treated as interest**. Further, section 194A has no application to such dividends and, therefore, it was held that there is **no obligation on the part of the assessee to make any deductions under section 194A** before such dividend is paid to subscribers of the chit.

SECTION 194B

TDS on Winnings from Lottery or Crossword Puzzle (Paid to Resident as Well As Non-Resident)

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 **₹10,000** shall, at the time of payment thereof, deduct income-tax thereon at the **rate of 30%**.

KEY NOTES:

1. In a case where:
 - (i) the winnings are **wholly in kind** or
 - (ii) **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.
2. It has been provided that:
 - (i) **"Lottery"** includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called.
 - (ii) **"Card game and other game of any sort"** includes any game show, an entertainment program on television or electronic mode, in which people compete to win prizes or any other similar game".
3. It is mandatory for the organisers of TV programs such as **"KAUN BANEGA CROREPATI" or "DANCE INDIA DANCE"** etc. to deduct tax under section 194B.
4. Lucky draw schemes organized by any person shall attract TDS on distribution of prize since it is in the nature of Lottery as defined above.

Illustration 1:

Mr. X, a non-resident, wins a Maruti car in a crossword puzzle on 13.02.2022 and the market price of the car is ₹ 2,40,000. The said crossword puzzle was organized by Cadbury Ltd. Tax rate under section 115BB is 30% (plus health & education cess of 4%).

Answer:

WHERE CADBURY LTD. RECOVERS THE TAX FROM THE WINNER

In case the company Cadbury Ltd, recovers the tax from the winner amounting to 31.20% of ₹ 2,40,000, i.e., ₹74,880, then it can release the car to the winner. The company in such a case shall deposit tax of ₹ 74,880 and give a TDS certificate of ₹ 74,880 to the winner.

(Alternatively, if the winner gives challan of advance tax of ₹ 74,880 to Cadbury Ltd. and certifies that the advance tax is paid on the winning of car, then the car can be released).

WHERE CADBURY LTD. DOES NOT RECOVERS THE TAX FROM THE WINNER

In case the tax cannot be recovered from the winner as per the terms of the contest and as per the contest the company is to bear the tax, then Cadbury Ltd will have to pay TDS as under before releasing the car to the winner:

$$(2,40,000 + \text{tax}) \times 31.20/100 = \text{tax}$$
$$\text{tax} = 2,40,000 \times 31.2/(100-31.2)$$
$$\text{tax} = 1,08,837$$

Therefore, TDS is ₹ 1,08,837 which shall be deposited by Cadbury Ltd. In the hands of Mr. X, the income shall be ₹ 2,40,000 plus ₹ 1,08,837 i.e., ₹ 3,48,837. 31.20% tax thereon is ₹1,08,837 which has been deducted at source.

Illustration 2:

Mr. X, a non-resident, wins a Maruti car in a crossword puzzle and the market price of the car is ₹ 2,40,000 and also cash prize of ₹ 80,000. The said crossword puzzle was organized by Cadbury Ltd. Tax rate under section 115BB is 31.20%. In case the company Cadbury Ltd, recovers the tax from the winner amounting to (31.20% of ₹ 3,20,000) minus (₹ 80,000.00), i.e., ₹19,840 then it can release the car to the winner.

But in case the tax cannot be recovered from the winner as per the terms of the contest and as per the contest the company can adjust the cash prize of ₹ 80,000 towards tax and cannot further recover any tax, then Cadbury Ltd will have to pay TDS as under before releasing the car to the winner:

$$[(\text{Taxable Winnings} + \text{Tax}) \times 31.20/100] - ₹ 80,000 = \text{Tax}$$

Where **Tax** represents the tax borne by the company

$$[(3,20,000 + \text{tax}) \times 31.20/100] - [80,000] = \text{tax}$$

$$\text{tax} = 28,837$$

Therefore, TDS is ₹ 80,000 plus ₹ 28,837 which shall be deposited by Cadbury Ltd. In the hands of Mr. X, the income shall be ₹ 2,40,000 plus ₹ 80,000 plus ₹ 28,837 i.e., ₹3,48,837. 31.20% tax thereon is ₹ 1,08,837 which has been deducted at source.

KEY NOTE:

The tax liability in the above two Illustrations is coming to be the same i.e. ₹ 1,08,837 because:

- (i) In the first Illustration, there is no cash prize of ₹ 80,000 but tax deposited of ₹1,08,837 is treated as income of the winner.
- (ii) In the second Illustration, there is a cash prize of ₹ 80,000 but tax deposited of ₹28,837 is treated as the income of the winner.

SECTION 194BB

TDS on Winning from Horse Race (Paid to Resident as Well As Non-Resident)

Any person, being a bookmaker 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, who is responsible for paying to any person any income by way of winnings from any horse race in an amount **exceeding ₹ 10,000** shall, **at the time of payment** thereof, deduct income-tax thereon **at the rate of 30%**.

SECTION 194C

TDS on Payments to Contractors (Paid to Residents Only)

(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) **1% where the payment is being made or credit is being given to an individual or a Hindu undivided family;**

(ii) **2% 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. **(on gross amount of receipt)**

(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 (iii) 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. However, the liability to deduct TDS even in such a case shall arise where the conditions as stated in section 194M are fulfilled, i.e., payment exceeds ₹ 50,00,000.**

(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 ₹ 30,000.**

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 ₹ 1,00,000**, 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 10 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, —

- (a) **“specified person”** shall mean all person, including the Central Government or any State Government, Government of Foreign State or a foreign enterprise established outside India. However, **an individual or a Hindu undivided family shall be liable to deduct tax at source if he has total sales, gross receipts or turnover from business or profession carried on by him exceeding ₹ 1 crore in case of business or ₹ 50 lakhs 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.**

(Amended by Finance Act, 2020)

- (i) **“goods carriage”** means any motor vehicle for carriage of goods.
- (ii) **“contract” shall include sub-contract.**
- (iii) **“work”** shall include—
- (a) advertising;
 - (b) broadcasting and telecasting including production of programs 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 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.**

(Amended by Finance Act, 2020)

◆ ANALYSIS OF SECTION 194C ◆

1. There is no distinction between contract and sub-contract. The word “contract” also includes “sub-contract”. Therefore, all the provisions applicable to “contract” shall also be applicable to “sub-contract”.
2. The rates of TDS are as under:
 - (i) 1% where payment is made to an individual or HUF.
 - (ii) 2% where payment is made to others.
3. The definition of “work” is expanded to include certain cases of job work. The definition of “work” shall include:

“Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or **an associate of such customer**. However, it shall 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 **an associate of such customer**.”

The section also provides that in above case the TDS shall be deducted:

- (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.

Illustration 1:

Blackberry Ltd. gives cloth to Mr. X and asks Mr. X to stitch shirts as per the specifications given by Blackberry Ltd. Mr. X charges in his invoice ₹ 200 per shirt for stitching 10,000 shirts and raises a bill of ₹ 20,00,000 on 01.09.2021.

This is a works contract and TDS shall be deducted by Blackberry Ltd. @ 1% on ₹20,00,000.

Illustration 2:

In the above Illustration1, say Blackberry Ltd. sells cloth of ₹ 50,00,000 to Mr. X and asks Mr. X to stitch shirts as per the specifications.

CASE A: Mr. X raises a bill on Blackberry Ltd. as under:

Cloth	₹ 50,00,000
Stitching charge	<u>₹ 20,00,000</u>
	<u>₹ 70,00,000</u>

Now since value of material is separately mentioned in invoice, TDS @ 1% will be deducted by Blackberry Ltd. on ₹ 20,00,000.

CASE B: Mr. X raises consolidated bill of ₹ 70,00,000 as under:

Sale of 10,000 shirts @ ₹ 700 per shirt	₹ 70,00,000
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Now since material has been purchased by Mr. X from Blackberry Ltd. and value of material is not shown separately in the bill, the Blackberry Ltd. shall deduct TDS @ 1% on ₹70,00,000.

Illustration 3:

Mr. X purchases cloth from Raymond's for ₹ 50,00,000. He stitches shirts as per specification of Blackberry Ltd. and supplies to Blackberry Ltd. as per invoice given below:

Material purchased	₹ 50,00,000
Stitching charges	₹ 20,00,000
	<u>₹ 70,00,000</u>

This will be treated as sale of shirts and TDS is not required to be deducted since material has been purchased from other than the customer i.e. Blackberry Ltd.

However, if Raymond is closely related to Blackberry i.e., if Raymond is a specified person as referred to in section 40A(2)(b), then it will be treated as work contract as per amendment by Finance Act, 2020 and TDS shall be deducted under section 194C.

(Finance Act, 2020)

4. To prevent the splitting up of the contract, it is provided that tax will be required to be deducted at source where the amount credited or paid to a contractor/sub-contractor exceeds ₹ 30,000 in a single payment or ₹ 1,00,000 in the aggregate during a financial year.

	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 ₹ 15,000 each in the year	No
6.	Six contracts of ₹ 20,000 each in the year	Tax to be deducted on ₹ 1,20,000
7.	Five contracts of ₹ 20,000 each	No

5. DEDUCTION OF TAX AT SOURCE ON PAYMENT OF GAS TRANSPORTATION CHARGES BY THE PURCHASER OF NATURAL GAS TO THE SELLER OF GAS - CIRCULAR NO. 9/2012

It is clarified that in case the **Owner/Seller of the gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership of gas to the purchaser is simultaneously transferred**, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a 'contract for sale' and not a 'works contract' as envisaged in section 194C. Hence in such circumstances, provisions of Chapter XVII-B of the Act are not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. The use of different modes of transportation of gas by Owner/Seller will not alter the position.

It is needless to mention that **transportation charges paid to a third-party transporter of gas, either by the Owner/Seller of the gas or purchaser** of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and TDS shall be deductible on such payment to the third party at the applicable rates.

6. **CIT (TDS) v. Shree Mahalaxmi Transport Co. (Guj.)**

Can the payment made to contractors for hiring dumpers, by an assessee engaged in transportation of building material, be treated as rent for machinery or equipment to attract provisions of tax deduction at source under section 194-I?

The High Court observed that the assessee had given contracts to the parties for the transportation of goods and had not taken machinery and equipment on rent. The Court observed that the transactions being in the nature of contracts for shifting of goods from one place to another would be covered as works contracts, thereby attracting the provisions of section 194C. Since the assessee had given sub-contracts for transportation of goods and not for the renting out of machinery or equipment, such payments **could not be termed as rent paid** for the use of machinery and the provisions of section 194-I would, therefore, not be applicable.

7. **East India Hotels Ltd. v. CBDT (Bom.)**

Can services rendered by a hotel to its customers in providing hotel room with various facilities/ amenities (like housekeeping, bank counter, beauty salon, car rental, health club etc.) amount to “carrying out any work” to attract the provisions of section 194C?

The facilities or amenities made available by a hotel to its customers do not fall within the meaning of work under section 194C, and therefore provisions of TDS under this section are not attracted.

8. **Is the assessee-company engaged in refining, distribution and sale of petroleum products, liable to deduct tax under section 194C or under section 194-I, in respect of payment made to the carrier engaged for road transport of bulk petroleum products?**

INDIAN OIL CORPORATION [2019] (UTTARAKHAND)

Facts of the Case: The assessee-company was engaged in refining crude oil and storing, distributing and selling the petroleum products. The assessee-company required trucks for road transportation of bulk petroleum products from its various storage points to customers or other storage points. It entered into an agreement with another company for the said purpose.

Upon scrutinizing the contract, the Assessing Officer came to the conclusion that the assessee was liable to deduct tax under section 194-I as the carrier is being hired and being paid for full time unlike in the case of a works contract.

Relevant provision of the Income-tax Act, 1961: Section 194-I provides for deduction of tax at source on payment of rent. As per section 194-I, “rent” means payment, by whatever name called, for inter alia, use of any plant. Section 194C deals with deduction of tax at source in respect of payment made to a contractor for carrying out any work. Section 194C defines “work” to include carriage of goods or passengers by any mode of transport other than by railways.

Issue: The issue under consideration is whether the assessee-company is liable to deduct tax under section 194C or under section 194-I on payment made to the carrier engaged for road transport of bulk petroleum products.

High Court's Observation: Upon perusing the terms of the contract, the High Court observed that the parties understood the agreement as one where the carrier would be paid transport charges, and that too, **for the shortest route travelled by it in the course of transporting the goods of the assessee.** The contract **did not require payment of idle charges and it was clear that there was no entitlement to any payment other than the actual transportation of the goods. Hence, the carrier was not being hired for full time.**

The carrier under the contract was undoubtedly obliged to maintain the requisite number of trucks of a particular type subject to various restriction and conditions. However, the carrier was under the obligation to operate the trucks for the specific purpose of transporting the goods belonging to the assessee.

High Court's Decision: The High Court held that, the contract is one for transportation of goods and, therefore, is a contract of work within the meaning of section 194C and not section 194-I.

Extract of Circular Explaining the Provisions of Finance Act, 2015

***CLARIFICATION REGARDING DEDUCTION OF TAX FROM PAYMENTS
MADE TO TRANSPORTERS***

The relaxation under sub-section (6) of section 194C of the Income-tax Act for 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 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 Income-tax Act (i.e. a person who is not owning more than 10 goods carriages at any time during the previous year) and who has also furnished a declaration to this effect along with his PAN, to the person paying such sum.

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.

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.

Further, for determining the aggregate amounts of sum credited or paid for the purposes of computing limit of ₹ 1,00,000, all the payment made during the financial year shall be taken into account including the amount credited or paid during the period of the financial year during which the transporter was not owning more than ten goods carriages.

'T', an individual owns five goods carriages from 1st April, 2021 to 31st October, 2021. On 1st November, 2021, he purchased 6 more goods carriages. On 1st January,

2022, he sold 8 goods carriages. ‘P’ makes following payment of transport charges to ‘T’ during the financial year 2021-22:

15th April, 2021	₹ 35,000
15th July, 2021	₹ 40,000
15th November, 2021	₹ 20,000
15th December, 2021	₹ 20,000
15th February, 2022	₹ 50,000

No tax is deductible on payment made on 15th April, 2021 and from payment made on 15th July, 2021 if ‘T’ furnishes a declaration that he does not own more than 10 goods carriages during the relevant financial year along with his PAN as per the requirement of the amended provision of section 194C(6). Tax is not deductible on 15th Nov. 2021, payment since contract does not exceed ₹ 30,000 and total payment do not exceed ₹1,00,000. Tax shall be deductible on ₹ 1,15,000 from payment of ₹ 20,000 made on 15th December, 2021 since he owns more than 10 trucks on that day. Tax is also deductible from the payment made on 15th February, 2022 even though ‘T’ did not own more than 10 goods carriages on 15th February, 2022. This is because ‘T’ owned more than 10 goods carriages during the financial year 2021-22 and the payment exceeded both the specified threshold for individual and aggregate payments. In view of this, ‘T’ is not eligible to claim the exemption under section 194C(6) by furnishing declaration along with the PAN in accordance with the provisions of section 194C(6) in respect of payments made on 15th December, 2021 and 15th February, 2022.

Memorandum Explaining Finance Bill, 2020

Amending Definition of “Work” in Section 194C of the Act

Section 194C of the Act provides for the deduction of tax on payments made to contractors. The section provides that any person responsible for paying any sum to a resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract shall at the time of such credit or at the time of payment whichever is earlier deduct an amount equal to one per cent in case payment is made to an individual or an HUF and two per cent in other cases. Clause (iii) of the Explanation of the said section defines “work”. Sub-clause (e) of this definition includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer within the definition. However, it excludes 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.

It has been noted that some assesseees are 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 escapes the tax net.

Therefore, to bring clarity in the section and plug the leakage, it is proposed to amend the definition of “work” 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.** Associate is proposed to be defined to mean a person who is placed similarly in relation to the 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 of the Act.

SECTION 194D

TDS on Insurance Commission (Paid to Resident Only)

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,

- (i) at the time of credit of such income to the account of the payee or
- (ii) 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 **5%**

However, 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 ₹15,000**.

Note: The recipient of commission can furnish declaration under section 197A in Form 15G/ 15H for non-deduction of TDS.

SECTION 194-E

TDS on Payment to Non-Resident Sportsmen or Sports Associations or an Entertainer

Discussed in Foreign Taxation.

SECTION 194DA

TDS on Payment in Respect of Life Insurance Policy

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, at the time of payment thereof, deduct income-tax thereon at the rate of **“5% on the amount of income comprised therein”**

(Amendment by Finance Act, 2019)

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 ₹ **1,00,000**.

KEY NOTE:

The recipient can furnish declaration under section 197A in Form 15G/15H for non-deduction of TDS.

Memorandum Explaining The Finance Bill, 2019

TDS on Non Exempt Portion of Life Insurance Pay-out on Net Basis

Under section 194DA of the Act, a person is obliged to deduct tax at source, if it pays any sum to a resident under a life insurance policy, which is not exempt under sub-section (10D) of section 10. The present requirement is to deduct tax at the rate of **one percent** of such sum at the time of payment. Several concerns have been expressed that deducting **tax on gross amount** creates difficulties to an assessee who otherwise has to pay tax on net income (i.e after deducting the amount of insurance premium paid by him from the total sum received). From the point of views of tax administration as well, it is preferable to deduct tax on net income so that the income as per TDS return of the deductor can be matched automatically with the return of income filed by the assessee. The person who is paying a sum to a resident under a life insurance policy is aware of the amount of insurance premium paid by the assessee. Hence, it is proposed to provide for tax deduction at source **at the rate of five percent on income component of the sum paid by the person.**

SECTION 194G

TDS on Commission, Etc. On the Sale of Lottery Tickets (Paid to Resident as Well As Non-Resident)

Any person who is responsible for paying 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 ₹15,000** 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 **5%**.

KEY NOTE:

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.**

SECTION 194H

TDS on Commission or Brokerage (Paid to Resident Only)

Any person, **not being an 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, 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 **5%**.

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 ₹ 15,000.**

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 **₹ 1 crore in case of business or ₹ 50 lakhs 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.

(Amended by Finance Act, 2020)

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 purpose 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) 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.

KEY NOTES:

- 1. Commission to employees and employee directors will form part of salary income and is liable to TDS under section 192 of the Act and not under this section.
- 2. The transactions relating to Securities are not covered by section 194H. Therefore, section 194H is not attracted on:
 - (i) **Brokerage and commission paid to underwriters.**
 - (ii) **Brokerage and sub-brokerage on public issue of securities.**
 - (iii) **Brokerage on stock exchange transactions of securities.**

However, TDS shall be deducted on brokerage or commission paid for commodities transactions.

- 3. ***Tax deduction at source on payments by television channels and publishing houses to advertisement companies for procuring or canvassing for advertisements - CIRCULAR NO. 5/2016***

The issue of applicability of TDS provisions on payments made by television channels or media houses publishing newspapers or magazines to advertising agencies for procuring and canvassing for advertisements has been examined by the Board in view of representations received in this regard.

It is noted that there are two types of payments involved in the advertising business:

- (i) Payment by client to the advertising agency, and
- (ii) Payment by advertising agency to the television channel/newspaper company

It has been clarified that while TDS under section 194C (as work contract) will be applicable on the first type of payment, there will be no TDS under section 194C on the second type of payment e.g. payment by advertising agency to the media company.

However, another issue has been raised in various cases as to whether the fees/charges taken or retained by advertising companies from media companies for canvassing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount'. Since the relationship between the media company and the advertising company is on a principal-to-principal basis, such payments are in the nature of trade discount and not commission and, therefore, outside the purview of TDS under section 194H.

It is hereby clarified that 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.

4. Tax deduction at source on commission/supplementary commission received by travel agents from airlines. LETTER F.NO. 275/70/2009-IT(B), DATED 22-12-2009

It is clarified that **tax should be deducted at source under Section 194H on amount available to agents being difference between airfare fixed by Airlines and price at which agents are enabled to sell tickets.**

5. Vodafone Essar Cellular Ltd. (Kerala) / Bharti Cellular Ltd. (Kolkata)

Can discount given on supply of SIM cards and recharge coupons by a telecom company to its distributors under a prepaid scheme be treated as commission to attract the TDS provisions under section 194H?

There was no sale of any goods involved as claimed by the assessee and the entire charges collected by the assessee from the distributors at the time of delivery of SIM cards or recharge coupons were only for rendering services to ultimate subscribers. The assessee was accountable to the subscribers for failure to render prompt services pursuant to connections given by the distributor. Therefore, the distributor only acted as a middleman on behalf of the assessee for procuring and retaining customers and therefore, the discount given to him was within the meaning of commission under section 194H on which tax was deductible.

6. CIT v. Intervet India P Ltd. (2014) (Bom)

Can incentives given to stockists and distributors by a manufacturing company be treated as "commission" to attract —

(i) the provisions for tax deduction at source under section 194H; and

(ii) consequent disallowance under section 40(a)(ia) for failure to deduct tax at source?

The assessee-company engaged in manufacture of pharmaceutical products, sold the same either through consignment or commission agents or directly through distributors or stockists. **During the relevant financial year, it introduced a sales promotion scheme to boost sales by way of product discounts and product campaign. It passed on the incentives to distributors through consignment agents by way of sales credit notes.**

The Assessing Officer held that as the assessee was paying the stockists/distributors for the services rendered by them for buying and selling

goods, on the basis of quantum of sales effected, such payment has to be considered as commission, on which tax was deductible at source under section 194H. Consequently, disallowance under section 40(a)(ia) was attracted for failure to deduct tax at source.

The High Court observed that the assessee had undertaken sales promotion by way of product discount scheme under which it offered incentive to the stockists/ distributors and dealers. The relationship between the assessee and the distributors/ stockists was that of principal to principal.

The High Court, accordingly, held that the stockists and distributors were not acting on behalf of the assessee and most of the credit was by way of goods on meeting the sales target which could not be said to be a commission within the meaning of section 194H. Accordingly, the High Court held that such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.

SECTION 194-I

TDS on Rent (Paid to Resident Only)

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) **2% for the use of any machinery or plant or equipment; and**
- (b) **10% 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 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.

(Discussed in Chapter of Business Trust)

KEY NOTES:

1. **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 ₹ 2,40,000.**
(Amendment by Finance Act, 2019)
2. **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.**
3. An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ **1 crore in case of business or ₹ 50 lakhs 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.
(Amended by Finance Act, 2020)

4. For purposes of this section, -
- (i) **"rent" means any payment, by whatever name called, under any lease, sublease, 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.

5. **JAPAN AIRLINES CO. LTD. V. COMMISSIONER OF INCOME-TAX [2015] (SUPREME COURT)**

Landing and parking charges payable by Airlines in respect of aircrafts are **not for the 'use of land'** per se but the charges are in respect of number of facilities provided by the Airport Authority of India. Thus, landing and parking charges payable by Airlines would attract TDS under Section 194C and not under Section 194-I.

The Supreme Court held as under:

- (1) We are convinced that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the 'use of land'. These charges are for services and facilities offered in connection with the aircraft operation at the airport. These services include providing of air traffic services, found safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.
 - (2) Therefore, it is held that the charges are not for use of land per se and, therefore, it **cannot be treated as 'rent' within meaning of Section 194-I. However, TDS shall be deducted under section 194C.**
6. **Circular No. 21/2017 – Non-applicability of section 194-I on remittance of Passenger Service Fees (PSF) by an airline to an airport operator**

A dispute arose on applicability of the provisions of section 194-I of the Act, on payment of Passenger Service Fees (PSF) by an Airline to an Airport Operator. The Hon'ble High Court of Bombay in CIT v. Jet Airways (India) Ltd. relied on the judgment of the Hon'ble Supreme Court in the case of Japan Airlines where the Apex Court held that in view of Explanation to section 194-I of the Act, though, the normal meaning of the word 'rent' stood expanded, however, the primary requirement is that the payment must be for the use of land and building and mere incidental/ minor/ insignificant use of the same while providing other

facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I of the Act.

According to Bombay High Court, section 194-I shall not be attracted on payment of passenger service fee by an airline to an air operator.

The Board has accepted the above view of the High Court of Bombay. Accordingly, it is now a settled position that section 194-I of the Act, will not apply on PSF.

7. TDS on Non-refundable deposit made by Tenant – Clarification from CBDT

In cases where the tenant makes a non-refundable deposit tax would have to be deducted at source as such deposit represents the consideration for the use of the land or the building, etc., and, therefore, partakes the nature of rent as defined in section 194-I. If, however, the deposit is refundable, no tax would be deductible at source. It is further clarified that if the deposit carries interest, the tax to be deducted on the amount of interest will be governed by section 194A of the Income-tax Act.

8. TDS on security deposit adjusted at the end of the lease period

No TDS is required to be deducted at the time of payment of security deposit since it cannot be treated as advance rent. However, TDS has to be deducted when the security deposit has been adjusted.

9. TDS on warehousing charges– Clarification from CBDT

The term “rent” as defined in Explanation (1) below section 194-I means any payment by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any building or land. Therefore, the warehousing charges will be subject to deduction of tax under section 194-I.

10. On what amount the tax is to be deducted at source if the rentals include municipal tax, ground rent, etc.? – Clarification from CBDT

The basis of tax deduction at source under section 194-I is "income by way of rent". Rent has been defined, in the Explanation (1) of section 194-I, to mean any payment under any lease, tenancy, agreement, etc., for the use of any land or building. Thus, if the municipal taxes, ground rent, etc., are borne by the tenant, no tax will be deducted on such sum.

11. Whether section 194-I is applicable to rent paid for the use of only a part or a portion of any land or building – Circular No. 718 Dated 22.8.1995

Yes, the definition of the term "any land" or “any building” would include a part or a portion of such land or building.

12. Whether tax has to be deducted on advance-rent? – Clarification from CBDT

Yes. Tax is required to be deducted on advance payment of rent.

CIRCULAR NO. 5/2001:

- (a) Tax at source has to be deducted under section 194-I on the advance rent pertaining to more than one Financial Year. Difficulty arises since such advance rent is taxable in more than one Financial Year and the tax is deducted in the first year. The Board clarifies that where advance rent is spread over more than one Financial Year and tax is deducted thereon, the credit for tax shall be allowed in the same proportion in which such income is offered for tax for different assessment years based on the single certificate furnished for the tax so deducted on the entire advance rent.
- (b) Problems also arise when subsequent to deduction of tax at source on advance rent pertaining to more than one Financial Year, the rent agreement gets terminated resulting into refund of the balance amount to the tenant. The Board clarifies that in such a case the landlord in whose name the TDS Certificate stands can claim the deduction of TDS not claimed so far even if the rental income is not included in his total income because of cancellation of the rent agreement. The landlord should claim the TDS in the assessment year relevant to the financial year in which rent agreement gets terminated.

13. TDS on Payment made to Hotels – Circular No. 5/2002

The provisions of section 194-I do not normally cover any payment for rent made by an individual or HUF except in cases where the total sales, gross receipts or turnover from business and profession carried on by the individual or HUF exceed **₹ 1 crore in case of business or ₹ 50 lakhs in case of profession**. Where an employee or an individual representing a company (like a consultant, auditor, etc.) makes a payment for hotel accommodation directly to the hotel as and when he stays there, **the question of tax deduction at source would not normally arise (except where the total sales, gross receipts or turnover exceeds ₹ 1 crore / ₹ 50 lakhs) since it is the employee or such individual who makes the payment and the company merely reimburses the expenditure.**

The meaning of 'rent' in section 194-I is wide in its ambit and scope. For this reason, payment made to hotels for hotel accommodation, whether in the nature of lease or license agreements are covered, so long as such accommodation has been taken on **'regular basis'**. **Where earmarked rooms are let out for a specified rate and specified period, they would be construed to be accommodation made available on 'regular basis'**. Similar would be the case, where a room or set of rooms are not earmarked, but the hotel has a legal obligation to provide such types of rooms during the currency of the agreement. However, often, there are instances, where corporate employers, tour operators and travel agents enter into agreements with hotels with a view to merely fix the room tariffs of hotel rooms for their executives/ guests/ customers. Such agreements, usually entered into for lower tariff rates, are in the nature of rate-contract, therefore, may be said to be a contract for providing specified types of hotel rooms at pre-determined rates during an agreed period. **Where an agreement is merely in the nature of a rate contract, it cannot be said to be accommodation 'taken on regular basis', as there is no obligation on the part of the hotel to provide a room or specified set of rooms.** The occupancy in such cases would be occasional or casual. In other words, rate-contract is different for this reason from other agreements, where rooms are taken on regular basis. Consequently, the provisions of section 194-I while applying to hotel accommodation taken on regular basis **would not apply to rate contract agreements.**

14. **Clarification regarding applicability of provisions of section 194-I to payments made by the customers on account of cooling charges to the cold storage owners - Circular No. 1/2008**

The main function of the cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only incidental in nature. The customer is also not given any right to use any demarcated space/place or the machinery of the cold store and thus does not become a tenant. Therefore, the provision of 194-I is not applicable to the cooling charges paid by the customers of the cold storage.

However, since the arrangement between the customers and cold storage owners are basically contractual in nature, the provision of section 194C will be applicable to the amounts paid as cooling charges by the customers of the cold storage.

15. **The recipient of rent can give declaration under section 197A in Form 15G/15H for non-deduction of TDS.**
16. **Indus Towers Ltd. (Delhi)**

Is payment made for use of passive Infrastructure facility such as mobile towers subject to tax deduction under section 194C or section 194-I?

The assessee owned a network of telecom towers and infrastructure services which were let out to major telecom operators in the country. Under section 197, the assessee sought for lower tax deduction under section 194C at 0.5% and whereas the Assessing Officer issued a certificate under section 197 for lower tax deduction at 2.5% under section 194-I.

The High Court observed that it was the intention of the parties to use the technical and specialized equipment maintained by the assessee. The infrastructure was given for the use of mobile operators. The towers were the neutral platform without which the mobile operators could not operate. Each mobile operator has to carry out this activity, by necessarily renting premises and installing the same equipment. The dominant intention was the use of equipment or plant or machinery and the use of premises was only incidental.

The High Court held that the Revenue's contention that the transaction is primarily "renting of land" is incorrect. The assessee contention that TDS should be deducted under section 194C is also incorrect. The underlying object of the arrangement was the use of machinery, plant or equipment i.e., the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises. It directed that tax deduction be made at 2% as per section 194-I, the rate applicable for payment made for use of plant and machinery.

SECTION 194-IA

TDS on Payment on Transfer of Certain Immovable Property Other Than Agricultural Land (Payment Made to Resident Only)

- (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 which is not a capital asset), 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 1%** 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 ₹ 50 lakh**.
- (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, "**immovable property**" means any land (other than agricultural land which is not a capital asset) or any building or part of a building.

Explanation— For the purposes of this section, "**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.

(Explanation Added by Finance Act, 2019)

<p style="text-align: center;">Memorandum Explaining The Finance Bill, 2019 TDS at The Time of Purchase of Immovable Property</p>

Section 194-IA of the Act relates to payment on transfer of certain immovable property other than agricultural land and provides for levy of TDS at the rate of one per cent on the amount of consideration paid or credited for transfer of such property. The term 'consideration for immovable property' is presently not defined for the purposes of this section. It is noted that in the transaction involving purchase of immovable property, there **are other types of payments made** besides the sales consideration and the buyer is contractually bound to make such payments to the builder/seller, **either under the same agreement or under a different agreement**. Some of such payments are those for rights to amenities like club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee etc. Accordingly, it is proposed to amend the Explanation to said section and provide that the term "consideration for immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

◆ ANALYSIS OF AMENDMENT BY FINANCE ACT, 2019 ◆

Example — DLF Ltd sells a flat to Mr. X for ₹ 49,00,000 on 1-1-2022 through an agreement to sell. The agreement to sell also provides that Mr. X has to pay ₹ 50,000 and ₹ 25,000 for electricity and water meter respectively. The maintenance charges of flat are ₹ 6,000 per month and Mr. X has to pay 24 months maintenance fees in advance as per the agreement to sell. DLF Ltd has also entered another agreement with Mr. X that Mr. X shall pay the following to DLF Ltd before the flat is registered in name of Mr. X.

- (i) ₹ 5,00,000 for car parking to be used exclusively by Mr. X
- (ii) ₹ 3,00,000 for club membership fees

Answer

In view of the amendment made by Finance Act, 2019, the consideration for transfer of immovable property shall be ₹ 49,00,000 + ₹ 50,000 + ₹ 25,000 + ₹ 1,44,000 + ₹ 5,00,000 + ₹ 3,00,000 = ₹ 59,19,000. Mr. X shall deduct TDS @ 1% on ₹ 59,19,000.

◆ ANALYSIS OF SECTION 194-IA ◆

1. Every person is liable to deduct tax at source @ 1% on payment made for purchase of immovable property to a person resident in India, except for:
 - (i) rural agricultural land (which is not coming in definition of capital asset), and
 - (ii) where the sale consideration for the property is less than ₹ 50 lakh.

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.

Note: TDS is required to be deducted on payment made for purchase of an agricultural land which falls in definition of capital asset if purchase price is ₹50 lakhs or more.

2. It is not necessary that the land or building should be situated in India. If any person is purchasing property outside India from a person resident in India, he is liable to deduct tax at source on sale consideration @ 1%.
3. In case section 194-IA is attracted then the purchaser isn't required to obtain TAN, i.e., Tax Deduction Account Number i.e., section 203A is not applicable.
4. Every person who is purchasing property of ₹ 50 lakhs or more would have to deduct TDS @ 1% of the payments made to the seller.
5. In case the seller does not have PAN, then instead of 1%, TDS will be applicable @ 20% because of section 206AA of the Income-tax Act, 1961.
6. In the case of property whose sale price is ₹ 50 lakhs or more and in the event part payment is being made for the purchase, then such TDS would be required to be deducted on every part payment of consideration and not at the time of final tranche of payment.
7. If sellers jointly own a property and sells for a total consideration of ₹ 50 lakh or more, then section 194-IA is attracted even if each co-owner's consideration is less than ₹ 50 lakhs.
8. TDS is required to be deducted irrespective of the fact that immovable property is held as capital asset or stock-in trade by the buyer and seller.
9. In case immovable property is acquired under any law in force, the provisions of section 194LA shall apply and provisions of section 194-IA is not applicable.

Illustration 1:

Mr. A and Mr. B are the joint holders of a building situated at Rajouri Garden, Delhi having equal share in the building. They sold the house to Mr. X on 5-8-2021 for a consideration of ₹ 55 Lakh. It has been decided that Mr. X will pay ₹ 27.5 lakhs to each seller i.e., Mr. A and Mr. B.

Now, Mr. X while making the payment to Mr. A and Mr. B is required to deduct tax under section 194-IA @ 1% since the total consideration for transfer of an immovable property is ₹ 50 lakh or more.

Illustration 2:

Mr. Abhay and Mr. Kushal purchased a building situated in Ludhiana jointly. They bought it from Mr. Kumar for a total consideration of ₹ 60 lakhs on 11.11.2021. Mr. Abhay and Mr. Kushal are required to pay ₹ 30 lakh each.

Now Mr. Abhay and Mr. Kushal both are required to deduct TDS @ 1% on the amount paid by them since the total consideration is ₹ 50 lakh or more for transfer of an immovable property.

Illustration 3:

BKC Pvt. Ltd. acquired the land situated at Yamuna expressway on 14.04.2021 from Raheja Builders and issued 10,00,000 equity shares having face value of ₹ 10 each at a premium of ₹ 15 each in consideration of the land.

BKC Pvt. Ltd. is required to deduct TDS @ 1% on ₹ 2,50,00,000 at the time of issue of shares. Grossing up shall be done if the agreement specifies that the burden of TDS shall be borne by the buyer.

Illustration 4:

Mr. P, non-resident, sold his building situated at Mumbai to Mr. Z for a total consideration of ₹ 1.25 crore. Mr. Z will make the payment to Mr. P after deduction of tax @ 20% plus surcharge and health & education cess (on the LTCG computed) under section 195. Section 194-IA does not apply where the payment is made to a non-resident.

Illustration 5:

Mr. Akash, resident in India, sold his house situated in Kolkata, to Mr. Rahul who is the resident of USA for a total consideration of ₹ 2 crores on 20.12.2021.

Mr. Rahul is required to deduct TDS @ 1% under section 194-IA while making payment to Mr. Akash.

Illustration 6:

Mr. Deepak, resident in India, owned a house in Jaipur. He sold the house to Mr. Anand, resident of Jaipur for a total consideration of ₹ 48 lakhs. However, the stamp duty value of the said property is ₹ 55 lakhs.

Now, Mr. Anand is not required to deduct TDS under section 194-IA since the total consideration does not exceeds ₹ 50 lakh.

SECTION 194-IB

Payment of Rent by Certain Individuals or Hindu Undivided Family (Payment Made to Resident Only)

- (1) **Any person, being an individual or a Hindu undivided family** (other than those individual / HUF who are required to deduct TDS under section 194-I as per key note 3 of 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 5%** 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.

(Words in bold added by Finance Act, 2021)

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**.

◆ ANALYSIS OF SECTION 194-IB ◆

1. Under section 194-I, only those individuals and HUFs are covered whose turnover/receipts from business / profession exceeded ₹ 1 crore / ₹ 50 lakhs respectively in the preceding Financial Year.
2. This section is not applicable to the individuals / HUF who are covered under section 194-I.
3. Section 194-IB applies to those individuals and HUFs whose turnover / receipts did not exceed ₹ 1 crore / ₹ 50 lakhs in preceding financial year or those individuals and HUFs who are not carrying on any business or profession. If these individuals and HUFs are paying rent to any resident person, in excess of ₹ 50,000 per month then he / it shall be required to deduct and pay TDS @ 5%.
4. Tenant can be resident or non-resident. Both are liable to deduct TDS under this section.
5. It is irrelevant where the land and building is situated i.e., in India or abroad. What is relevant is the residential status of the person to whom the payment is made. TDS will be deducted only if the payment is made to the resident.

6. **TDS shall be deducted only on the component of rent paid for the use of land or building. Any other thing taken on rent e.g., furniture, shall not be covered.**
7. **The land or building taken by tenant can be used for any purpose i.e., it can be commercial or residential.**
8. In case section 194-IB is attracted, then such individual or HUF, is not required to obtain TAN, i.e., Tax Deduction Account Number i.e., section 203A is not applicable.
9. Deduction of tax is only one time in a year i.e., annually in the last month of the previous year. In case the tenant is vacating the premises during the previous year, then, TDS should be deducted in the month when the tenant vacates the premises.
10. TDS deducted under this section shall be payable within 30 days from the end of the month in which deduction is made. For tax deducted in March, 2022, it is payable by 30th April, 2022.
11. In case the landlord does not have PAN, then instead of 5%, TDS will be deducted @ 20% because of section 206AA of the Income-tax Act, 1961. However, total TDS cannot exceed last month rent.
12. In case, the landlord is a specified person as per section 206AB, then instead of 5%. TDS will be deducted @ 10%. However, total TDS cannot exceed last month rent.

Issues	Tax Implication
A person stays in rented house from April 2021 to July 2021 and paid rent @ ₹ 55,000 per month.	He is liable to deduct TDS 5% on ₹ 2,20,000. The same shall be deducted from the rent of July, 2021.
A USA resident came to India for 2 months and took guest house on rent and paid ₹1,40,000 for 2 months for June and July, 2021.	TDS shall be deducted under section 194-IB on ₹ 1,40,000 @ 5%.
Mr. A is paying rent @ ₹ 48,000 till February 2022. Rent is increased to ₹ 52,800 per month w.e.f. March, 2022.	Mr. A is required to deduct TDS under this section on whole amount of rent paid. i.e., ₹ 5,80,800 @ 5%.
Mr. X is paying rent @ 52,000 per month. However, the landlord, who is 80 years old, does not have PAN.	Mr. X is required to deduct TDS @ 20% under section 206AA since the landlord does not have PAN. TDS on ₹ 6,24,000 @ 20% shall be ₹ 1,24,800. However, as per section 194-IB(4), total TDS cannot exceed the last month rent. Therefore, total TDS shall be ₹ 52,000.
Mr. P is paying rent of ₹ 60,000 per month. The house which is taken on rent is jointly owned by Mr. Y and Mrs. Y. Mr. P pays per month ₹30,000 each to both.	Mr. P is not required to deduct TDS under section 194-IB since the rent to a person does not exceed ₹ 50,000 per month.

SECTION 194-IC

Payment under Specified Agreement (Payment Made to Resident Only)

- 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 section 45(5A),**
- 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.

◆ **ANALYSIS OF SECTION 194-IC** ◆

In joint development agreement referred to in section 45(5A), if the builder pays any cash to the assessee in addition to share in the project, then builder shall deduct TDS @ 10% on the cash payment made to the assessee.

It may be noted that capital gains are taxable in the hands of the assessee in the previous year in which certificate of completion is issued by competent authority. Therefore, the TDS credit shall be claimed by the assessee in the previous year in which capital gains are taxable.

To illustrate, the builder makes payment to the assessee on 1-1-2022 of ₹ 1 crore. The builder will deduct TDS @ 10% on ₹ 1 crore on 1-1-2022. However, completion certificate is obtained on 30.12.2022, then capital gains shall be taxable in the hands of assessee in previous year 31.3.2023 and credit of TDS shall be claimed in previous year 31.3.2023.

SECTION 194J

TDS on Fees for Professional or Technical Services (Paid to Resident Only)

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
- (c) royalty, or
- (d) any sum referred to in section 28(x), or
- (e) **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,**

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

- **2% of such sum in case of fees for Technical Services (Finance Act, 2020)**
- **2% of royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic film, (Finance Act, 2020)**

- 2% of such sum if payee is engaged **only in the business of operation of call centre**
- 10% of such sum in other cases

as income-tax thereon.

However, no deduction shall be made under this section 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) ₹ 30,000, in the case of fees for professional services referred to in clause (a), or
- (ii) ₹ 30,000, in the case of fees for technical services referred to in clause (b), or
- (iii) ₹ 30,000, in the case of royalty referred to in clause (c), or
- (iv) ₹ 30,000, in the case of sum referred to in clause (d).

KEY NOTES:

1. Section 28(va) provides that the following shall be taxable under the head P/G/B/P:
“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, license, 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.”

2. An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ 1 crore in **case of business or ₹ 50 lakhs in case of profession** during the financial year immediately preceding the financial year in which such sum by way of fees for professional or technical services is credited or paid, shall be liable to deduct income-tax under this section.

However, such individual or HUF shall not be liable to deduct income-tax on the sum by way of **fees for professional services** in case such sum is paid **exclusively for personal purposes** of such individual or any member of Hindu Undivided Family. However, the liability to deduct TDS even in such a case shall arise where the conditions as stated in section 194M are fulfilled.

3. **Any sitting fees paid to director is subject to TDS @ 10%. No threshold limit has been provided and even if sitting fees of ₹ 5,000 is paid, then the company is liable to deduct TDS.**

It is not only the sitting fees which is covered by section 194J but all payments to Director which are not taxable as salary will be covered by section 194J.

4. 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"** means fees for rendering of any managerial, technical or consultancy services (including provision of services of technical or other personnel).
- (c) **"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;
- (i) the transfer of all or any rights (including the granting of a license) in respect of patent, invention, model, design, secret formula or process or trade mark or similar property;
 - (ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;
 - (iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;
 - (iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill
 - (v) the transfer of all or any rights (including the granting of a license) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with radio broadcasting, ~~but not including consideration for the sale, distribution or exhibition of cinematographic films.~~
- (Words deleted by Finance Act, 2020)**
- (vi) the rendering of any services in connection with the activities referred to in above sub-clauses (i) to (v).

The Finance Act, 2012 has added following Explanation to the definition of Royalty under section 9:

Explanation 4. — For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a license) irrespective of the medium through which such right is transferred.

◆ ANALYSIS OF AMENDMENTS MADE BY FINANCE ACT, 2012 ◆

- A. Explanation 4 to section 9 added by Finance Act, 2012 clarifies that payment received for transfer of:
- All or any right to use a computer software
 - Including granting of a license for computer software
 - **is royalty.**

Therefore, if a resident, imports a software from abroad/get a license to use the software from abroad, then the payment received by foreigner shall be treated as royalty. Since the software is to be used in India, the royalty shall be taxable in hands of foreigner in India and the Indian making the payment shall deduct TDS under section 195 @ 10% as given in section 115A (or rate given in DTAA whichever is lower).

Even if software is purchased by an Indian from a resident in India, then the payment received by resident in India is royalty and the Indian shall deduct TDS @ 10% under section 194J.

B. However, following notification of CBDT may be noted:

The Central Government hereby notifies that no deduction of tax shall be made on the following specified payment under section 194J of the Act, namely:

Payment by a person (hereafter referred to as the transferee) for acquisition of software from another person, being a resident, (hereafter referred to as the transferor), where-

- (i) the software is acquired in a subsequent transfer and the transferor has transferred the software without any modification,**
- (ii) tax has been deducted-**
 - (a) under section 194J on payment for any previous transfer of such software; or**
 - (b) under section 195 on payment for any previous transfer of such software from a non-resident, and**
- (iii) the transferee obtains a declaration from the transferor that the tax has been deducted either under sub-clause (a) or (b) of clause (ii) along with the Permanent Account Number of the transferor.**

Illustration 1:

Reliance imports a software of ₹ 10 lakhs from Microsoft U.S.A. on 20.06.2021 Reliance has to deduct TDS @ 10% under section 195 (or rate given in DTAA whichever is lower).

Illustration 2:

Reliance purchases software for ₹ 10 lakh from Microsoft India on 20.06.2021. Microsoft India has itself produced the computer software. Reliance will deduct TDS @ 10% under section 194J.

Illustration 3:

If in Illustration 2, Microsoft India has imported the software from Microsoft U.S.A. and Microsoft India has deducted TDS @ 10% under section 195 (or rate given in DTAA whichever is lower), then Reliance is not required to deduct TDS on payment made to Microsoft India under section 194J if:

- (i) Microsoft India has not made any notification in the software; and
- (ii) Microsoft India gives a declaration to Reliance that it has deducted TDS under section 195 on payment made to Microsoft U.S.A.

Illustration 4:

Reliance purchases a software from HP India. HP India has purchased the software from Infosys India. Reliance is not required to deduct TDS on payment made to HP India if:

- (i) HP India has not made any modification in the software.
- (ii) HP India gives a declaration to Reliance that it has deducted TDS under section 194J on payment made to Infosys India.

◆ AN IMPORTANT ISSUE ◆

Section 40(a)(i) and section 40(a)(ia) provides that deduction for any expenditure by way of royalty paid to non-resident and resident respectively, shall be allowed if TDS is deducted/paid as per the conditions specified therein.

Section 40(a)(i) and 40(a)(ia) provide that royalty shall have the same meaning as given in section 9. Now after the amendment by Finance Act, 2012, royalty includes payment for computer software. Therefore, amount paid for purchase of computer software is royalty and shall be allowed as deduction under section 37(1).

Income tax Rules, 1962 provides that computer software will be included in block of assets of computer and will be eligible for 40% depreciation but Income Tax Act, 1961 provides that payment made for computer software is royalty. Income Tax Rules cannot override the Income Tax Act. Therefore, after the amendment by Finance Act 2012, amount paid to obtain the computer software will be treated as Revenue Expenditure under section 37(1) subject to section 40(a)(i) and section 40(a)(ia) and shall not be added to block of assets of computers.

5. Where any sum 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 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.
6. ***CBDT Notifies the services rendered by following persons in relation to the sports activities as "Professional Services" under section 194J - NOTIFICATION NO. 88/2008***

Central Board of Direct Taxes, hereby notifies the services rendered by following persons in relation to the sports activities as "**Professional Services**" for the purpose of the section 194J, namely:

- Sports Persons,
- Umpires and Referees,
- Coaches and Trainers,
- Team Physicians and Physiotherapists,
- Event Managers,
- Commentators,
- Anchors, and
- Sports Columnists.

7. *Applicability of provisions under section 194J, in the case of transactions by the Third-Party Administrators (TPAs) with hospitals etc. - CIRCULAR NO. 8/2009*

The services rendered by hospitals to various patients are primarily medical services and, therefore, provisions of section 194J are applicable on payments made by TPAs to hospitals etc. Further for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore, TPAs 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.

8. *No TDS on Professional fee paid by Non-residents to the Chartered Accountant, lawyer, advocate or solicitor in India- Clarification from CBDT*

Practical difficulties arise when firms of chartered accountants and lawyers are receiving fees from foreign clients outside India, since it is difficult for these foreign clients to deduct TDS and pay to the Indian Government. Therefore, it has been provided in a recent circular that if any fee is paid through regular banking channel to any chartered accountant, lawyer, advocate or solicitor who is resident in India by the non-residents who do not have any agent or business connection in India, then such fees shall not be subjected to provisions of section 194J, i.e., no TDS is required to be deducted on such fees.

9. *Commissioner of Income-tax v. Kotak Securities Ltd. (SC)*

Service made available by Bombay Stock Exchange [BSE Online Trading (BOLT) System] for which transaction charges are paid by members of BSE are common services that every member of Stock Exchange is necessarily required to avail of to carry out trading in securities in Stock Exchange; such services do not amount to 'technical services' provided by Stock Exchange, not being services specifically sought for by user or consumer and, therefore, no TDS would be deductible under section 194J on payments made for such services.

Only payment for services which are specialized, exclusive and according to individual requirements of user or consumer who may approach service provider for such services would come within ambit of 'fees for technical services so as to attract TDS under section 194J.

10. *Manipal Health Systems (P) Ltd. (Kar)*

Where remuneration paid to doctors is variable based on number of patients and treatment given to them, would the liability to deduct tax at source arise under section 192 or under section 194J?

The assessee-company is an institution providing health services. The assessee has deducted tax on payment made to doctors under section 194J. The Assessing Officer came to a conclusion that there existed an employer-employee relationship between the hospital and the doctors engaged by it, and hence, the assessee was required to deduct tax at source under section 192.

The High Court observed that to decide whether the relationship of employer-employee existed or not, the contract entered into between the parties has to be seen - whether the same is a "contract for service" or a "contract of service". In order to ascertain the nature of contract, multiple-factor tests have to be applied. The independence test, control test, intention test, are some of the tests adopted to distinguish between 'contract for service' and 'contract of service'.

The High Court examined the terms of the contract entered into between the assessee company and the doctors. As per the said terms,

- **The remuneration paid to the doctors depends on the treatment given to patients and on the number of patients - if the number of patients are more, remuneration would be on a higher side or if no patients, no remuneration;**
- **The timing of the doctors is fixed; and**
- **They cannot have private practice or attend any other hospital.**

It was observed that mere provision of non-competition clause in the agreement shall not change the nature of contract from profession to that of employment.

Considering the totality of facts and terms of the agreement, the Court held that in this case, the consultancy charges paid to doctors rendering professional service would be subject to tax deduction under section 194J and not section 192.

11. *Tax deduction at source (TDS) on payments by broadcasters or television channels to production houses for production of content or program for telecasting – CIRCULAR NO.4/2016*

It has been noted that disputes have arisen on the issue as to whether payments made by the broadcaster/ telecaster to production houses for production of content/ program are payments under a 'work contract' or a contract for 'professional or technical services' and, therefore, liable for TDS under section 194C or under section 194J of the Income-tax Act, 1961.

While applying the relevant provision of TDS on a contract for content production, a distinction is required to be made between (i) a payment for production of content/program as per the specifications of the broadcaster/telecaster and (ii) a payment for acquisition of broadcasting/telecasting rights of the content already produced by the production house.

In the first situation where the content is produced as per the specifications provided by the broadcaster/telecaster and the copyright of the content/ program also gets transferred to the telecaster/ broadcaster, it is hereby clarified that such contract is covered by the definition of the term 'work' in section 194C of the Act and, therefore, subject to TDS under that section. This position clearly flows from the definition of 'work' given in clause (iii)(b) of the Explanation to section 194C.

However, in a case where the telecaster/broadcaster acquires only the telecasting/broadcasting rights of the content already produced by the production house, there is no contract for 'carrying out any work', as required in sub-section (1) of section 194C. Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections under Chapter XVII-C of the Act.

Memorandum Explaining The Finance Bill, 2020

Reducing the Rate of TDS on Fees for Technical Services (Other Than Professional Services)

Section 194J of the Act provides that any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of fees for professional services, or fees for technical services, or any remuneration or fees or commission by whatever name called (other than those on which tax is deductible under section 192 of the Act, to a director), or royalty or any sum referred to in clause (va) of section 28, shall, at the time of payment or credit of such sum to the account of the payee, deduct an amount equal to ten per cent as income-tax.

Section 194C of the Act provides that any person responsible for paying any sum to a resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract shall at the time of payment or credit of such sum deduct an amount equal to one per cent in case payment is made to an individual or a HUF and two per cent in other cases.

It is noticed that there are large number of litigations on the issue of short deduction of tax treating assessee in default where the assessee deducts tax under section 194C, while the tax officers claim that tax should have been deducted under section 194J of the Act.

Therefore to reduce litigation, it is proposed to reduce rate for TDS in section 194J in case of fees for technical services (other than professional services) to two per cent from existing ten per cent. The TDS rate in other cases under section 194J would remain same at ten per cent.

SECTION 194K (Introduced by Finance Act, 2020 w.e.f. 01.04.2020) ***Income in Respect of Units***

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 10%:

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 ₹ 5,000**; or
- (ii) **if the income is of the nature of capital gains.**

Explanation— 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.

SECTION 194LA

Payment of Compensation on Acquisition of Certain Immovable Property (Paid to Resident Only)

Any person responsible for **paying to a resident** any sum, being in the nature of compensation or the enhanced compensation 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 **10%** 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 ₹2,50,000**.

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.

Note: There will be no TDS if agricultural land is acquired under compulsory acquisition under any law. This shall apply irrespective of the fact that agricultural land falls in definition of capital asset or not.

SECTION 194LB

Income by Way of Interest from Infrastructure Debt Fund

Discussed in Foreign Taxation.

SECTION 194LBA

Tax Deduction at Source

Discussed in the Chapter of Business trust.

SECTION 194LBB

Income in Respect of Units of Investment Fund

Discussed in the Chapter of Investment Fund.

SECTION 194LBC

Income in Respect of Investment in Securitization Trust

Discussed in Securitization Trust.

SECTION 194LC

Income by Way of Interest from Indian Company

Discussed in Foreign taxation.

SECTION 194LD

Income by Way of Interest on Certain Bonds and Government Securities

Discussed in Foreign taxation.

SECTION 194M (Introduced by Finance Act, 2019)

(TDS on Payment of Certain Sums by Individual and HUF)

- (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 or,
 - 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 5% 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 section 194C;**
- (b) **“commission or brokerage” shall have the meaning assigned to it in section 194H;**
- (c) **“professional services” shall have the meaning assigned to it in section 194J;**
- (d) **“work” shall have the meaning assigned to it in section 194C.**

Memorandum Explaining The Finance Bill, 2019

TDS on Payment by Individual /HUF to Contractors and Professionals

At present there is no liability on an individual or Hindu undivided family (HUF) to deduct tax at source on any payment made to a resident contractor or professional when it is for personal use. Further, if the individual or HUF is carrying on business or profession which is not subjected to audit, there is no obligation to deduct tax at source on such payment to a resident, even if the payment is for the purpose of business or profession. Due to this exemption, substantial amount by way of payments made by individuals or HUFs in respect of contractual work or for professional service is escaping the levy of TDS, leaving a loophole for possible tax evasion. To plug this loophole, it is proposed to insert a new section 194M in the Act to provide for levy of TDS at the rate of five per cent. on the sum, or the aggregate of sums, paid or credited in a year on account of contractual work or professional fees by an individual or a Hindu undivided family, not required to deduct tax at source under section 194C and 194J of the Act, if 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 shall be able to deposit the tax deducted using their Permanent Account Number (PAN) and shall not be required to obtain Tax deduction Account Number (TAN).

SECTION 194N (Introduced by Finance Act, 2019 and Substituted by Finance Act, 2020)

TDS on Payment of Certain Amounts in Cash

Every person, being,—

- (i) **a banking company** to which the Banking Regulation Act, 1949 applies;
- (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 ₹ 1 crore 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 2% of **SUCH SUM** ~~exceeding one crore rupees,~~ **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 filing 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 ₹ 20 lakhs during the previous year; and**
- (ii) **the deduction shall be—**

- (a) **an amount equal to 2% of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds ₹ 20 lakhs during the previous year but does not exceed ₹ 1 crore; or**
- (b) **an amount equal to 5% of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds ₹ 1 crore 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 that nothing contained in this sub-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;
- (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;

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.

NOTIFICATIONS

1. The Central Government after consultation with the Reserve Bank of India, hereby specifies that provisions of **section 194N shall not apply to cash withdrawn by Cash Replenishment Agencies (CRA's) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's) maintaining a separate bank account from which withdrawal is made only for the purposes of replenishing cash in the Automated Teller Machines (ATM's) operated by such WLATMO's and the WLATMO have furnished a certificate every month to the bank certifying that the bank account of the CRA's and the franchise agents of the WLATMO's have been examined and the amounts being withdrawn from their bank accounts has been reconciled with the amount of cash deposited in the ATM's of the WLATMO's.**
2. The Central Government after consultation with the Reserve Bank of India, hereby specifies that provisions of section 194N shall not apply to cash withdrawn by **the commission agent or trader, operating under Agriculture Produce Market**

Committee (APMC) and registered under any Law relating to Agriculture Produce Market of the concerned State, who has intimated to the banking company or co-operative society or post office his account number through which he wishes to withdraw **cash in excess of ₹ 1 crore** in the previous year along with **his Permanent Account Number (PAN)** and the details of the previous year and has certified to the banking company or co-operative society or post office that the withdrawal of cash from the account in excess of ₹ 1 crore during the previous year is for **the purpose of making payments to the farmers on account of purchase of agriculture produce** and the banking company or co-operative society or post office has ensured that the PAN quoted is correct and the commission **agent or trader is registered with the APMC**, and for this purpose necessary evidences have been collected and placed on record.

3. The Central Government, after consultation with the Reserve Bank of India (RBI), hereby specifies that provisions of section 194N shall not apply to cash withdrawn by-

- (a) **the authorised dealer and its franchise agent and sub-agent; and**
- (b) **Full-Fledged Money Changer (FFMC) licensed by the Reserve Bank of India and its franchise agent;**

maintaining a separate bank account from which withdrawal is made only for the purposes of,-

- (i) **purchase of foreign currency from foreign tourists or non-residents** visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by Reserve Bank of India; or
- (ii) **disbursement of inward remittances to the recipient beneficiaries in India** in cash under Money Transfer Service Scheme (MTSS) of the Reserve Bank of India;

and a **certificate is furnished by the authorised dealers** and their franchise agent and sub-agent, and the Full-Fledged Money Changers (FFMC) and their franchise agent to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the Reserve Bank of India have been adhered to.

◆ ANALYSIS OF SECTION 194N ◆

1. The provisions of section 194N shall apply where cash withdrawals exceeds ₹ 1 crore from bank/co-operative bank/post office during the previous year. The section applies to cash withdrawals made by **Resident as well as Non-Resident**.
2. The provisions of this section apply if aggregate cash withdrawals **from one or more accounts maintained** with the bank/cooperative bank/post office exceeds ₹ 1 crore in a previous year. Accordingly if Mr. X withdraws ₹ 60 Lakhs from his saving account on 15.7.2021 and ₹ 50 lakhs from his current account on 20.8.2021, with Bank of India, then Bank of India shall deduct TDS of ₹ 2,20,000 from payment of ₹ 50 lakhs.
3. The limit of ₹ 1 crore has to be seen for cash withdrawals made from all branches of a bank/cooperative bank/post office. If a company has current accounts with

State Bank of India at Mumbai Branch, Delhi Branch and Kolkata Branch and cash withdrawn by the company is ₹ 50 lakh from each branch, then bank shall deduct TDS of ₹ 3,00,000.

4. However cash withdrawals from **two different banks**/co-operative banks **shall not be aggregated**. Therefore if a company has an account with SBI and an account with PNB and company withdraws cash of ₹ 60,00,000 each from SBI and PNB, then TDS shall not be deducted.
5. Proviso is added in Section 198 to provide that TDS deducted under section 194N will not be considered as income of the assessee. As per law, the credit of TDS is given in the year in which income is offered for taxation. Income Tax Rules have been amended to provide that the credit of TDS shall be given to the person in whose name TDS under section 194N has been deducted irrespective of the fact that corresponding income has not been offered for taxation.
6. **If deductee does not furnish his PAN to the deductor, the tax shall be deducted at the rate of 20% under Section 206AA.**

◆ ANALYSIS OF FIRST PROVISO TO SECTION 194N ◆

First proviso applies, if cash is withdrawn by a person (called recipient) during previous year ended on 31.3.2022 and if the recipient has not filed the returns for the three previous years ended on 31.3.2020, 31.3.2019 and 31.3.2018, AND the due dates for filing the return under section 139(1) have expired for the said 3 previous years before the commencement of the previous year in which payment is made/cash is withdrawn.

In simple words, First Proviso to section 194N applies if cash is withdrawn in previous year 31.3.2022 by recipient and recipient has not filed returns of income for all of the previous years ending on 31.3.2020, 31.3.2019 and 31.3.2018.

Note: First proviso shall not apply if recipient has filed return for any one or more previous years i.e. previous year 31.3.2020 and/or previous year 31.3.2019 and/or previous year 31.3.2018.

In case of the recipient referred to in the **First proviso of section 194N**, TDS shall be deducted as follows:

Cash withdrawn during the previous year	TDS Rate
upto ₹ 20 lakhs	NIL
Above ₹ 20 lakhs but upto ₹ 1 crore	2% of cash withdrawn
Above ₹ 1 crore	₹ 2 lakhs plus 5% of cash withdrawn in excess of ₹ 1 crore

Illustration:

Mr. X withdraws the following sums in cash during the financial year 2021-2022:

Date	Amount withdrawn
01-08-2021	10,00,000
15-09-2021	35,00,000
17-11-2021	25,00,000
28-01-2022	45,00,000
16-03-2022	30,00,000

He has not furnished his return of income for the previous years 2017-18, 2018-19 and 2019-20. Compute TDS to be deducted under section 194N.

Answer:

Since Mr. X has not filed returns of income for three previous years ending 31.3.2020 whose due dates under section 139(1) have expired in the previous year immediately preceding the previous year in which cash is withdrawn, the tax shall be deducted as follows:

Date	Amount withdrawn	Aggregate of amount withdrawn	Tax Deducted at Source		
			Rate	Computation	Tax to be deducted
01-08-2021	10 lakhs	10 lakhs	-	-	-
15-09-2021	35 lakhs	45 lakhs	2%	45 lakhs	90,000
17-11-2021	25 lakhs	70 lakhs	2%	25 lakhs × 2%	50,000
28-01-2022	45 lakhs	115 lakhs	2% and 5%	30 lakh × 2% + 15 lakh × 5%	1,35,000
16-03-2022	30 lakhs	145 lakhs	5%	30 lakh × 5%	1,50,000

If Mr. X had furnished his returns and the first proviso had not been applicable to him, TDS would have been deducted on cash withdrawals on 28.01.2022 @ 2% i.e., ₹ 2,30,000 (115 lakhs × 2%) and on 16.03.2022 @ 2% i.e., ₹ 60,000 (30 lakhs × 2%).

SECTION 194-O (Introduced by Finance Act, 2020)

Payment of Certain Sums by E-commerce Operator to E-commerce Participant

- (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 1% 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 ₹ 5 lakhs** 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.

◆ ANALYSIS OF SECTION 194-O ◆

A new section 194-O has been inserted **with effect from 01-10-2020** to provide for levy of TDS on e-commerce transactions notwithstanding anything to the contrary contained in any of the provisions of Part B of Chapter XVII i.e. chapter of TDS.

1. **New Provision**

The section applies if all the following conditions are fulfilled:

- (a) **There is a sale of goods or provision of services.**

- (b) **Such sale or provision of services is of an e-commerce participant.**
- (c) **Such sale or provision of services is facilitated by an e-commerce operator.**
- (d) **Such facilitation is through the digital or electronic facility or platform of the e-commerce operator.**

If the aforesaid conditions are fulfilled,

- (a) The e-commerce operator shall deduct income-tax @ 1% of the gross amount of such sales or services or both.
- (b) Such deduction shall be made—
 - (i) at the time of credit of amount of sale or services or both to the account of an e-commerce participant; or
 - (ii) at the time of payment thereof to such e-commerce participant by any mode,

whichever is earlier.

- 2. 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—
 - (i) deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant; and
 - (ii) included in the gross amount of such sale or services for the purpose of deduction of income-tax under this section.

3. Exception:

No deduction shall be made if ALL the following conditions are satisfied:

- (a) The e-commerce participant is an individual or HUF.
- (b) The gross amount of such sale or services or both during the previous year does not exceed ₹ 5 lakh.
- (c) The e-commerce participant has furnished his PAN or Aadhaar number to the e-commerce operator. **(If PAN/Aadhaar not given, then TDS shall be deducted @ 5% instead of 1%)**

The following transactions shall not be liable to tax deduction at source under any other provision of Part B of Chapter XVII:—

- (a) A transaction in respect of which tax has been deducted by the e-commerce operator under section 194-O, or
- (b) A transaction which is not liable to deduction in respect of payment to individual or HUF under section 194-O(2).

However, this non-deduction of TDS under any other section and non-applicability to individual/HUF where gross amount of sale/service does not exceed ₹ 5,00,000 shall not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator for—

- (a) hosting advertisements; or
- (b) providing any other services which are not in connection with the sale or services referred to in section 194-O(1).

4. **Applicability**

The provision

- (a) **does not apply in case the e-commerce participant is a non-resident.**
 - (b) **applies to both resident and non-resident e-commerce operators.**
 - (c) **applies even if the purchaser of goods/recipient of services is a non-resident.**
 - (d) **does not apply if the e-commerce participant conducts business through its own website.**
 - (e) shall apply irrespective of whether the payment is made by the purchaser of goods/recipient of services directly to the e-commerce participant or the payment is first received by the e-commerce operator and then remitted to the e-commerce participant. In the former case, since the purchaser/recipient would make entire payment to the e-commerce participant, without deducting any tax, the e-commerce operator would be required to deduct tax at source under section 194-O, deposit the same with the government and later collect the said amount from the e-commerce participant.
 - (f) **applies irrespective of the amount of sales/services in case of assesseees other than individuals/HUF (that is, partnership firms, LLPs, companies, AOPs, etc.).**
5. If the e-commerce participant is a specified person in terms of section 206AB(3), then, the e-commerce operator shall deduct TDS @ 5% instead of 1%.

CBDT CIRCULAR NO. 17

DATED 29.09.2020

1.0 **Applicability on payment gateway:**

- 1.1 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-O twice i.e. once on e-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-O may fall on both "XYZ" and "ABC".
- 1.2 In order to remove this difficulty, it is provided that the **payment gateway will not be required to deduct tax under section 194-O of the Act on a transaction, if the tax has been deducted by the e-commerce operator under section 194-O of the Act, on the same transaction**. Hence, in the above example, if "XYZ" has deducted tax under section 194-O on one lakh rupees, "ABC" will not be required to deduct tax under section 194-O of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

Example:

Samsung India Ltd. sells Televisions of ₹ 50 crores through E-commerce Operator AMAZON INDIA. AMAZON INDIA has taken payment through the payment gateway of PayuMoney. Now Amazon India is required to deduct TDS @ 1% on payment of ₹ 50 crores made to Samsung India. PayuMoney is not required to deduct TDS on the money it pays to Samsung India provided it takes an undertaking from Samsung India regarding deduction of tax.

2.0 **Applicability on insurance agent or insurance aggregator:**

- 2.1 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.
- 2.2 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-O 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**.

Question 1:

Samsung India Ltd has sold 1,000 television sets at ₹ 50,000 each through Reliance Digital on 01.12.2021. Reliance Digital receives payment of ₹ 5,00,00,000 from various buyers and deducts commission of 10% and wants to remit ₹ 4,50,00,000 to Samsung India Ltd. Advise.

Answer:

Samsung India Ltd is the E-Commerce Participant and Reliance Digital is the E-Commerce Operator. As per section 194-O(1), Reliance Digital shall deduct TDS of 1% on ₹ 5,00,00,000 i.e. ₹ 5,00,000. Therefore Reliance Digital will remit ₹ 4,45,00,000 to **Samsung India Ltd after deducting TDS of ₹ 5,00,000.**

There is no liability of Samsung India Ltd to deduct TDS under section 194H on the commission of ₹ 5,00,000 it pays to Reliance Digital since:

- (i) section 194-O overrules the entire chapter of TDS and
- (ii) as per section 194-O(3), a transaction on which tax has been deducted by e-commerce operator under section 194-O(1), shall not be liable to tax deduction under any other section. TDS has been deducted on the entire transaction of ₹ 5,00,00,000.

Question 2:

Suppose in Question 1, all facts remaining the same and instead of Samsung India Ltd, it was Samsung Japan, a non-resident foreign company.

Answer:

As per section 194-O, **“E-Commerce Participant” means a person resident in India.** Samsung Japan is a non-resident and therefore it does not fall in definition of “E-Commerce Participant” and hence TDS under section 194-O shall not be deducted.

The tax liability of Samsung Japan and TDS obligation of Reliance Digital shall be discussed in module of International Taxation in chapter of Business connection.

Question 3:

Suppose in Question 1, all facts remaining the same and instead of Reliance Digital, it was AMAZON USA facilitating sale of products by Samsung India Ltd. AMAZON USA is a non-resident.

Answer:

As per section 194-O, “E-commerce Operator” includes resident as well as non-resident. Therefore, AMAZON USA being a non-resident is “E-commerce Operator” and is required to deduct TDS under section 194-O @ 1% on ₹ 5,00,00,000. The tax liability of AMAZON USA shall be discussed in module of International Taxation in Chapter of Business Connection and Equalisation Levy.

Question 4:

Suppose in Question 1, Reliance Digital sold televisions of ₹ 4,00,00,000 to Indian buyers and ₹ 1,00,00,000 to foreign buyers.

Answer:

Section 194-O does not distinguish as to whether buyers should be residents or non-residents. Therefore section 194-O shall apply and TDS shall be deducted on ₹ 5,00,00,000.

Question 5:

Mr. A, a resident manufactures perfumes and sells through Flipkart. The total sales made by Mr. A through Flipkart are ₹ 5,00,000 in previous year 31.3.2022. Flipkart deducts commission @ 10% and remits ₹ 4,50,000 to Mr. A.

Answer:

Section 194-O shall not be applicable since the gross sales do not exceed ₹ 5,00,000. Hence Flipkart shall not deduct TDS **provided that** Mr. A gives his PAN/Aadhaar to Flipkart. If he does not give PAN/Aadhaar to Flipkart, then TDS shall be deducted @ 5% on ₹ 5,00,000.

TDS on commission paid to Flipkart is also not required to be deducted. [Section 194-O(3)]

Question 6:

Will your answer be different if in Question 5, M/s ABC partnership was there instead of Mr. A.

Answer:

Section 194-O shall be applicable since exemption is only in case of individuals and HUF whose gross sales through E-Commerce Operator does not exceed ₹ 5,00,000.

Flipkart will deduct TDS @ 1% under section 194-O on ₹ 5,00,000. M/s ABC shall not deduct TDS on commission paid to Flipkart. [Section 194-O(3)]

Question 7:

M/s ABC sells Women Apparel through Myntra and total sales of M/s ABC through Myntra are ₹ 2,00,00,000 during the previous year 31.3.2022. Myntra charges 10% commission on sales made by it. The payment gateway of Myntra is so designed that ₹ 20,00,000 comes to Myntra from customers and ₹ 1,80,00,000 goes to M/s ABC directly.

Answer:

As per Explanation to section 194-O(1), any payment by purchaser directly to E-Commerce participant for sale of goods facilitated by an E-Commerce Operators shall be deemed to be the amount credited or paid by E-Commerce Operator to E-Commerce Participant and shall be included in gross amount of sale for purpose of tax deduction under section 194-O.

Therefore Myntra shall pay TDS of 1% of ₹ 2,00,00,000 i.e. ₹ 2,00,000 to the credit of Government and shall recover ₹ 2,00,000 from M/s ABC.

M/s ABC is not required to deduct TDS on commission paid to Myntra.

Question 8:

A Chartered Accountant renders professional advices to various clients through “**Consult-CA**”, a website run by E-Commerce Operator. Various clients pays ₹

1,00,00,000 to **Consult-CA** and **Consult-CA** deducts 20% commission and remits ₹ 80,00,000 to the Chartered Accountant for the financial year ending 31.3.2022.

Answer:

As per section 194-O, "Services" include professional services. Therefore **Consult-CA** will deduct 1% TDS on ₹ 1,00,00,000 and remit ₹ 79,00,000 to the Chartered Accountant. Section 194J shall not apply and TDS shall not be deducted @ 10%.

Section 194H shall also not apply as per section 194-O(3).

SECTION 194P (Added by Finance Act, 2021 w.e.f. 1.04.2021)

Deduction of Tax in Case of Specified Senior Citizen

- (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.

◆ ANALYSIS OF SECTION 194P ◆

The provisions of section 194P shall only apply in case of a **RESIDENT "Specified Senior Citizen"** i.e.:

- (1) A person who is of the age of seventy-five years or more at any time during the previous year; and

- (2) Who is having pension income and no other income except interest income received or receivable from any account maintained by such individual in the same specified bank in which he is receiving his pension income; and
- (3) He furnishes a declaration to the specified bank in Form 12BBA

If all the above 3 conditions are satisfied, then the “specified bank” i.e. a scheduled bank (A bank enlisted under Second Schedule to the Reserve Bank of India Act, 1934) shall compute the total income of such specified senior citizen for the relevant assessment year (i.e. for which the declaration is furnished) after giving effect to the deduction allowable under Chapter VI-A (as per the evidence furnished by the specified senior citizen) and rebate allowed under section 87A and then, deduct income-tax on such total income on the basis of the rates in force.

Note 1: The tax to be deducted should be at the rates in force as increased by Surcharge and Health & Education Cess.

Note 2: The specified bank responsible for deduction shall preserve the declaration and evidence furnished by the specified senior citizen for claiming deduction under Chapter VI-A and shall be required to furnish the same to the Principal Director General/ Director General of Income-tax (Systems) when asked for.

If the specified bank deducts income-tax on total income of the specified senior citizen, then such specified senior citizen shall not be required to file his return of income under section 139(1).

Note: The provisions of section 194P overrides all other provisions of Chapter XVII-B (Chapter of TDS). Thus, if any tax is also deductible under any other section say, section 194A from interest payable by a bank on time deposit, the bank shall deduct the tax under this provision only.

Illustration

Mr. Ranjit was born on 01.04.1947. He earned following income for the previous year ended 31.03.2022.

Particulars	Case 1	Case 2	Case 3	Case 4	Case 5
Pension Income in Bank A	4,50,000	6,00,000	3,00,000	-	2,00,000
Interest Income in Bank A	1,50,000	50,000	25,000	5,50,000	20,000
Interest Income in Bank B	-	-	65,000	-	30,000

Bank A and Bank B are specified banks for the purposes of section 194P.

Mr. Ranjit does not want to file his return of income. Advise. Further Bank A and Bank B want to know their liability to deduct tax at source.

Answer

As per CBDT Circular 28/2016, Mr. Ranjit would be considered to have attained the age of 75 years on 31.03.2022.

Case 1

Mr. Ranjit has only pension income and interest income in one specified bank. He may furnish a declaration in Form 12BBA to request Bank A to deduct income-tax under section 194P as a result of which he shall not be required to furnish the return of income. Bank A shall calculate income-tax on the income of Mr. Ranjit which shall come to be 'Nil' as the total income is ₹ 5,00,000. Therefore, no TDS shall be deducted by Bank A.

If however Mr. Ranjit does not furnish a declaration under Form 12BBA, Bank A shall be required to deduct TDS @ 10% under section 194A on ₹ 1,50,000 unless Mr. Ranjit furnishes Form 15H to the bank. In such a case, Mr. Ranjit shall be required to furnish the return of income as his total income exceeds the maximum amount not chargeable to tax.

Case 2

Mr. Ranjit has only pension income and interest income in one specified bank. He may furnish a declaration in Form 12BBA to request Bank A to deduct income-tax under section 194P as a result of which he shall not be required to furnish the return of income. Bank A shall calculate income-tax on the income of Mr. Ranjit which shall come to be ₹ 20,800 and deduct the same under section 194P.

If however Mr. Ranjit does not furnish a declaration under Form 12BBA, he shall be required to file return of income. Moreover, Bank A shall not be required to deduct TDS under section 194A as interest payable does not exceed ₹ 50,000.

Case 3

Mr. Ranjit can not opt for section 194P as he is receiving interest income from a bank other than the bank in which he is receiving pension income. Mr. Ranjit shall be required to file his return of income.

Bank A shall not be required to deduct TDS under section 194A.

Bank B shall be required to deduct TDS under section 194A @ 10% on ₹ 65,000 unless Mr. Ranjit furnishes Form 15H.

Case 4

Mr. Ranjit can not opt for section 194P as he is not receiving any pension income.

Mr. Ranjit shall be required to file his return of income.

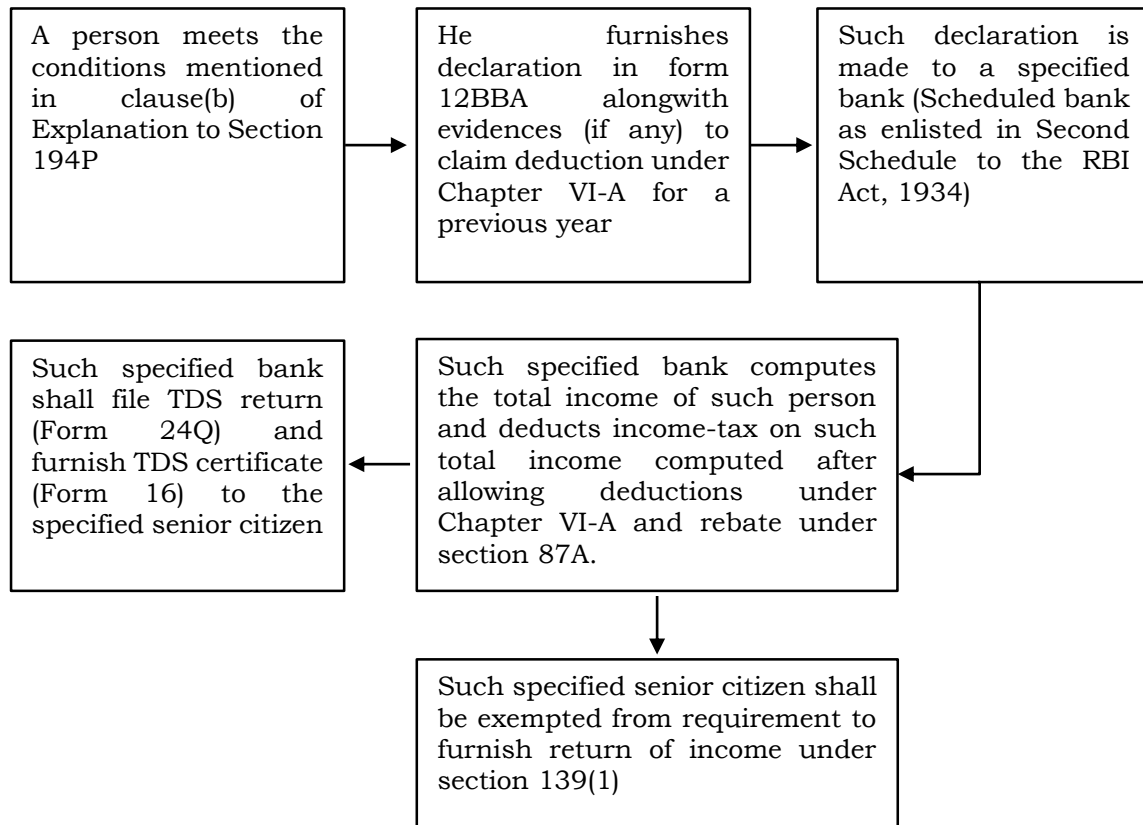
Bank A shall be required to deduct TDS under section 194A @ 10% on ₹ 5,50,000.

Case 5

Mr. Ranjit is not required to furnish his return of income as his total income does not exceed ₹ 3,00,000. Accordingly, he is not required to apply under section 194P.

Bank A and Bank B shall not be required to deduct TDS under section 194A as interest income does not exceed ₹ 50,000.

To Summarise:



SECTION 194Q (Inserted by Finance Act, 2021 w.e.f. 1.07.2021)

Deduction of Tax at Source on Payment of Certain Sum for Purchase of Goods

- (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.**

Analysis of section 194Q is given alongwith analysis of section 206C(1H).

CBDT CIRCULAR NO. 13 DATED 30.06.2021

- 1.0 **Calculation of threshold for the financial year 2021-22:**
- 1.1 Since section 194Q, of the Act would come into effect from 1st July, 2021, it was requested to clarify how the threshold of ₹ 50 lakhs specified under the section shall be computed and whether the tax is required to be deducted in respect of advance paid before 1st July, 2021 and sum credited thereafter.
- 1.2 **It is hereby clarified that,—**
- (i) Since **section 194Q** of the Act mandates buyer to deduct tax on credit of sum in the account of seller or on payment of such sum, whichever is earlier, the provision of this sub-section shall not apply on any sum credited or paid **before 1st July 2021. If either of the two events had happened before 1st July 2021, that transaction would not be subjected to the provisions of section 194Q of the Act.**
 - (ii) Since the **threshold of fifty lakh rupees is with respect to the previous year**, calculation of sum for triggering TDS under section 194Q shall be computed from 1st April, 2021. Hence, if a person being a buyer has **already credited or paid fifty lakh rupees or more up to 30th June 2021 to a seller, the TDS under section 194Q shall apply on all credit or payment during the previous year, on or after 1st July 2021, to such seller.**

Example 1:

The turnover of ABC Ltd. for previous year 31.03.2021 was ₹ 11 crores. During the previous year 31.3.2022, it made following purchases from Zigma Ltd.

- (i) **From 01.04.2021 to 30.06.2021:** ₹ 40,00,000. ₹ 30,00,000 was paid by 30.6.2021 and ₹ 10,00,000 is paid on 15.07.2021.

- (ii) **From 01.07.2021 to 31.03.2022:** ₹ 60,00,000. ₹ 45,00,000 was paid by 31.03.2022.

Section 194Q is applicable since purchases from Zigma Ltd. during the previous year 31.03.2022 exceeds ₹ 50 lakhs (₹ 40 lakhs + ₹ 60 lakhs = ₹ 100 lakhs)

TDS under section 194Q shall be deducted @ 0.1% on amount exceeding ₹ 50,00,000 i.e., on 50,00,000.

Example 2:

Suppose in example 1, the facts were as under:

- (i) **From 01.04.2021 to 30.06.2021:** ₹ 200 lakhs. ₹ 180 lakhs was paid and credited upto 30.06.2021 and ₹ 20 lakhs is paid on 15.07.2021.
- (ii) **From 01.07.2021 to 31.3.2022:** ₹ 40,00,000. ₹ 35,00,000 was paid by 31.03.2022.

Section 194Q is applicable since total purchases exceeds ₹ 50 lakhs in previous year 31.03.2022. TDS shall be deducted under section 194Q on ₹ 40 lakhs.

It should be noted that TDS under section 194Q shall not be deducted on purchase of ₹ 200 lakhs since the payment or credit relating to same, EITHER OF THE EVENTS have happened before 01.07.2021.

Example 3:

ABC Ltd. turnover for previous year 31.03.2021 was ₹ 200 crores. ABC Ltd. made purchases of ₹ 80 lakhs from M/s XYZ upto 30.06.2021. ABC Ltd. made payment of ₹ 80 lakhs to XYZ on 30.06.2021. ABC Ltd. also made advance payment of ₹ 100 lakhs to XYZ on 30.06.2021. From 1.07.2021 to 31.03.2022, ABC Ltd. purchased goods of ₹ 260 lakhs from M/s XYZ and advance of ₹ 100 lakhs is adjusted.

Answer:

Section 194Q shall not apply to purchases of ₹ 80 lakhs made upto 30.06.2021. Section 194Q shall also not apply to advance of ₹ 100 lakhs paid prior to 01.07.2021. Section 194Q shall apply to purchases of ₹ 160 lakhs and therefore TDS @ 0.1% shall be deducted on ₹ 160 lakhs.

- 2.0 It is requested to clarify that whether **adjustment is required to be made for GST or purchase returns** for the purpose of tax deduction under section 194Q of the Act. **Vide circular no 17 of 2020 dated 29th Sept 2020** it was clarified that **no adjustment on account of GST is required to be made for collection of tax under sub-section (1H) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration. However, the situation is different so far as TDS is concerned.**
- 2.1 Accordingly with respect to **TDS under section 194Q** of the Act, it is clarified that when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the **component of GST comprised in the amount payable to the seller is indicated separately, tax shall be deducted** under section 194Q of the Act on the amount

credited **without including such GST. However, if the tax is deducted on payment basis** because the payment is earlier than the credit, **the tax would be deducted on the whole amount** as it is not possible to identify that payment with GST component of the amount to be invoiced in future.

- 2.2 Further, with respect to **purchase return** it is clarified that the tax is required to be deducted at the time of payment or credit, whichever is earlier. Thus, **before purchase return happens, the tax must have already been deducted under section 194Q of the Act on that purchase. If that is the case and** against this purchase return the **money is refunded by the seller**, then this **tax deducted may be adjusted** against the next purchase against the same seller. No adjustment is required if the purchase return is **replaced by the goods** by the seller as in that case the purchase on which tax was deducted under section 194Q of the Act has been completed with goods replaced.

Example 1:

XYZ Ltd.'s turnover for previous year 31.03.2021 was ₹ 20 crores. It made the following purchases from M/s NPQ.

	Amount	GST	Total
01.04.2021 to 30.06.2021	100 lakhs	18 lakhs	118 lakhs
01.07.2021 to 31.03.2022	300 lakhs	54 lakhs	354 lakhs

Now, TDS under section 194Q shall be deducted @ 0.1% on ₹ 300 lakhs excluding GST.

Example 2:

Suppose XYZ Ltd. made following purchases from M/s NPQ in above question:

	Amount	GST	Total	TDS deducted
01.07.2021	100 lakhs	18 lakhs	118 lakhs	0.1% of 50 lakhs
01.11.2021	200 lakhs	36 lakhs	236 lakhs	0.1% of 200 lakhs

Goods purchased on 01.07.2021 are returned on 15.11.2021. Goods of ₹ 300 lakhs (plus ₹ 54 lakhs GST) are purchased on 30.11.2021.

Now, TDS shall be deducted under section 194Q @ 0.1% of 200 lakhs (₹ 300 lakhs – ₹ 100 lakhs)

- 3.0 It is requested to clarify if the provisions of section 194Q of the Act shall apply to a buyer being a non-resident. To remove difficulties, it is **clarified that the provisions of section 194Q of the Act shall not apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment** of such non-resident in India. For this purpose, "permanent establishment" shall mean to include a fixed place of business through which the business of the enterprise is wholly or partly carries on.

- 4.0 **Whether tax is to be deducted when the seller is a person whose income is exempt**
- 4.1 It is requested to clarify if the provisions of **section 194Q** of the Act shall apply to a seller whose income is exempt. To remove difficulty, it is **clarified that the provisions of section 194Q of the Act shall not apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax** under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).
- 4.2 Similarly, with respect to **sub-section (1H) of section 206C** of the Act, it is **clarified that the provisions of this sub-section shall not apply to sale of goods to a person, being a buyer, who as a person is exempt from income tax** under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).
- 4.3 The above clarifications would not apply if only part of the income of the person (being a seller or being a buyer, as the case may be) is exempt.
- 5.0 **Whether tax is to be deducted on advance payment?**
- 5.1 It is requested to clarify if the provisions of section 194Q of the Act shall apply to advance payment made by the buyer. It is clarified that since the provisions apply on payment or credit whichever is earlier, the **provisions of section 194Q of the Act shall apply to advance payment made by the buyer to the seller.**
- 6.0 **Whether provisions of section 194Q of the Act shall apply to buyer in the year of incorporation?**
- 6.1 It is requested to clarify if the provisions of section 194Q of the Act shall apply to a buyer in the year of its incorporation. It is clarified that under section 194Q of the Act a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding ten crore rupees during the financial year immediately preceding the financial year in which the purchase of good is carried out. Since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q of the Act shall not apply in the year of incorporation.
- 7.0 **Whether provisions of section 194Q of the Act shall apply to buyer if the turnover from business is 10 crore or less?**
- 7.1 It is requested to clarify if the provisions of section 194Q of the Act shall apply to a buyer who has turnover or gross receipt exceeding ₹ 10 crore but total sales or gross receipts or turnover from business is ₹ 10 crore or less. It is clarified that for the purposes of section 194Q of the Act, a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding ten crore rupees during the financial year immediately preceding the financial year in which the purchase of good is carried out. Hence, the sales or gross receipts or turnover from business carried on by him must exceed ₹ 10 crore. His turnover or receipts from non-business activity is not to be counted for this purpose.

SECTION 195

TDS on Other Sums (Paid to Non-Residents)

Discussed in Foreign Taxation.

SECTION 195A

Income Payable “Net of Tax”

In 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 simple words, when any amount is paid net of tax, the TDS has to be calculated by grossing up the amount, since the tax itself (borne by the payer) represents the income of the payee.

SECTION 196

No TDS on Interest or Other Sums Payable to Government, Reserve Bank or Certain Corporations

Notwithstanding anything contained in the foregoing provisions of this Chapter, no deduction of tax shall be made by any person from any sums payable to –

- (i) the Government, or
- (ii) the Reserve Bank of India, or
- (iii) a corporation established by or under a Central Act which is, under any law for the time being in force, exempt from income-tax on its income, or
- (iv) a Mutual Fund specified under section 10(23D),

SECTION 196A

TDS on Income from Units

Discussed in Foreign Taxation

SECTION 196B

TDS on Income from Units to Offshore Fund

Discussed in Foreign Taxation.

SECTION 196C

TDS on Income from Foreign Currency Bonds or Shares of Indian Company

Discussed in Foreign Taxation.

SECTION 196D

TDS on Income of Foreign Institutional Investors from Securities

Discussed in Foreign Taxation.

SECTION 197

Certificate for Deduction at Lower Rate

- (1) 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, 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 (Form 13), give to him such certificate as may be appropriate.

(Section 194M added by Finance Act, 2019)
(Section 194-O added by Finance Act, 2020)
(Section 194N is not there)
- (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.

CBDT CIRCULAR

Application for lower / NIL deduction under section 197 for Financial Year 2021-22 can be filed electronically on or after 28.2.2021 but latest by 15th March, 2022. Same applies for application for lower / NIL collection of TCS.

SECTION 197A

No Deduction to Be Made in Certain Cases

- (1A) Notwithstanding anything contained in **section 192A** or section 193 or section 194A or **section 194D or section 194DA or section 194-I**, 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**, 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. **[Form 15G]**
- (1B) The provisions of this sub-section (1A) shall not apply where the amount of any income of the nature referred to in sub-section (1A) or the aggregate of the amounts of such income 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 194A or **section 194D or section 194DA or section 194-I** 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 60 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 194A or **section 194D or section 194DA or section 194-I**, 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. **[Form 15H]**
- (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 section 10(44).
- (2) The person responsible for paying any income of the nature referred to in sub-section (1A) or sub-section (1C) shall furnish the declarations electronically to the income tax department as follows:

S. No.	Date of ending of the quarter of the financial year	Due Date for Government	Due Date for Others
1	30 th June	31 st July of the financial year	15 th July of the financial year
2	30 th September	31 st October of the financial year	15 th October of the financial year
3	31 st December	31 st January of the financial year	15 th January of the financial year
4	31 st March	15 th May of the financial year immediately following the financial year in which declaration is made.	30 th April of the financial year immediately following the financial year in which declaration is made.

◆ ANALYSIS OF SECTION 197A(1B) ◆

Under the existing provisions of section 197A, no tax is to be deducted at source from certain incomes if a declaration is furnished by the payee that the tax on his estimated total income of the relevant previous year would be NIL. Provisions of sub-section (1A) apply in respect of **income from payment of accumulated balance due to an employee from recognised provident fund**, interest on securities and interest other than “interest on securities”, **payment in respect of life insurance policy, insurance commission and rent**. This declaration cannot be given by a company or a firm.

Section 197A(1B) provides that the self-declaration mentioned in section 197A(1A) cannot be given by an assessee whose income from payment of accumulated balance due to an employee from recognised provident fund, interest on securities or interest other than “interest on securities” or payment in respect of life insurance policy or insurance commission or rent or aggregate of such incomes exceeds the maximum amount not

chargeable to tax. Therefore, even if the tax of an individual is NIL, still tax shall be deducted at source. For example, an individual receives ₹ 3,20,000 interest from a company and he has no other source of income. He has invested ₹ 1,00,000 in 80C and therefore the tax payable by him is NIL. After the insertion of section 197A(1B), the declaration cannot be given by such individual and tax shall be deducted. Such individual shall have to claim refund of such TDS by filing his return of income. **Alternatively, such individual can obtain certificate from Assessing Officer under section 197 that no TDS should be deducted.**

However, if the above individual is a senior citizen aged 61 years, then he can give a self-declaration that his tax on estimated income shall be NIL and in such a case TDS shall not be deducted.

SECTION 198

Tax Deducted Is Income Received

All sums deducted in accordance with the provisions of chapter of tax deduction at source, 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 section 192(1A) 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”.

(Proviso added by Finance Act, 2019)

SECTION 199

Credit for Tax Deducted

- (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.

RULE NOTIFIED UNDER SECTION 199 [RULE 37BA]

1. Where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at

source, as the case may be, shall be given to the other person and not to the deductee.

Therefore, if TDS is deducted on interest income of minor, the **credit of TDS** shall be **allowed to the parent in whose income such interest shall be clubbed**.

2. However, for the purposes of section 194N, credit for tax deducted at source shall be given to the person **from whose account tax is deducted** and paid to the Central Government.
3. Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which **such income is assessable**.

Therefore, if builder deducts TDS on cash paid to the assessee in Joint Development agreement on 1-1-2020 and capital gains are assessable in the year in which completion certificate is received and completion certificate is received on 1-1-2023, then TDS will be allowed in Previous Year 31-3-2023.

4. 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 across those years in the same proportion in which the income is assessable to tax.

NOTIFICATION NO.5/2017

Duty of Person Deducting Tax - TDS and Filing of ITR in Case Both the Parents of Minor are Dead

It has been brought to the notice of CBDT that in cases of minors whose both the parents have deceased, TDS deductors/Banks are clubbing the interest income accrued to the minor in the hands of grandparents and issuing TDS certificates to the grandparents, which is not in accordance with the law as the Income-tax Act envisages clubbing of minor's income with that of the parents only and not any other relative. Ideally in such type of situations, the income should be assessed in the hands of the minor and the income-tax returns be filed by the minor through his/her guardian.

It is clarified 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.

INSTRUCTION NO. 5/2013

Credit of TDS under Section 199 to an Assessee When the Tax Deducted Has Been Deposited with Revenue by Deductor

It has been decided by the Board that when an assessee approaches the Assessing Officer with requisite details and particulars in the form of TDS certificate as an evidence against any mismatched amount, the said Assessing Officer will verify whether or not the deductor has made payment of the TDS in the Government Account and if the payment has been made, credit of the same should be given to the assessee. However, the Assessing Officer is at liberty to ascertain and verify the true and correct position about the TDS with the relevant AO(TDS). The Assessing Officer may also, if deemed necessary,

issue a notice to the deductor to compel him to file correction statement as per the procedure laid down.

SECTION 203A

Tax Deduction and Collection Account Number

- (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 of section 206C;
 - (b) in all certificates furnished under section 203 or under section 206C;
 - (ba) **in all the periodic statements (at present quarterly) prepared and delivered or caused to be delivered in accordance with the provisions of section 200(3) or section 206C(3).**
 - (c) in all the returns, delivered in accordance with the provisions of section 206 or 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.

SECTION 206AA

Requirement to Furnish Permanent Account Number- Tax Deduction at Higher Rate for Failure to Furnish PAN

- (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 XVIIIB (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 percent.**

Provided that where tax is required to be deducted under section **194-O or 194Q**, **the provisions of sub-clause (iii) shall apply as if** for the words “**twenty percent**”, the words “**five percent**” had been substituted.

- (2) No declaration under 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, 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 payment received from category I or Category II Alternate Investment Fund (AIF) located in any International Financial Services Centre (IFSC) provided:**
 - (a) **Non-resident / foreign company does not earn any income in India except income from AIF and**
 - (b) **Such AIF has appropriately deducted and deposited TDS as per provisions of section 194LBB.**

RELAXATION FROM DEDUCTION OF TAX AT HIGHER RATE UNDER SECTION 206AA

In the case of a **non-resident** or a foreign company (hereafter referred to as 'the deductee') and **not having permanent account number** the provisions of section 206AA shall not apply in respect of payments in the nature of **interest, dividend, royalty, fees for technical services and payments on transfer of any capital asset**, if the deductee furnishes the following details to the deductor:

- (i) name, e-mail id, contact number;
- (ii) address in the country of which the deductee is a resident;
- (iii) a certificate of his being resident in any country from the Government of that country if the law of that country provides for issuance of such certificate;
- (iv) Tax Identification Number of the deductee in the country of his residence and 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 of which he claims to be a resident.

Illustration:

Examine the TDS Liability in the following cases:

- (i) Company pays ₹ 10 lakhs on 10.10.2021 as professional fees to a professional firm. The professional firm has not given the PAN.
- (ii) What will be your answer if in the above case the professional firm gives an invalid PAN or PAN belonging to some other firm.
- (iii) An individual gives a declaration in Form 15G/15H to a company under section 197A that no TDS should be deducted as his income is below the maximum amount not chargeable to tax. Form 15G/15H does not contain PAN.
- (iv) A company makes an application to Assessing Officer under section 197 for no deduction of TDS. The application does not bear the PAN of the company.

Solution:

Tax Liability under the various cases is as under:

- (i) TDS is required to be deducted @ 10% under section 194J when payment is made to a professional firm. However, since the Firm does not furnish its PAN, then section 206AA shall be attracted and the deduction shall be @ 20%.
- (ii) If the Firm furnishes the invalid PAN or PAN of some other firm, then also answer remains the same as given in (i) above.
- (iii) Form 15G/15H shall not be valid and TDS shall be deducted @ 20% as per section 206AA.
- (iv) In this case, the Assessing Officer shall not entertain the application under section 197.

SECTION 206AB (Inserted by Finance Act, 2021 w.e.f. 1.07.2021)
Special Provision for Deduction of Tax at Source for Non-filers of Income-tax Return

- (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 XVIIIB, 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.

SECTION 206CCA (Inserted by Finance Act, 2021 w.e.f. 01.07.2021)
Special Provision for Collection of Tax at Source for Non-filers of Income-tax Return

- (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.

NOTE: SECTION 206CC IS GIVEN ON PAGE 110.

**CIRCULAR REGARDING USE OF FUNCTIONALITY UNDER SECTIONS 206AB AND
206CCA OF THE INCOME-TAX ACT, 1961
CIRCULAR NO. 11 OF 2021, DATED 21-6-2021**

1. It can be seen that the tax deductor or the tax collector under section 206AB or 206CCA is required to do a due diligence of satisfying himself if the deductee or the collectee is a **specified person**. This can lead to extra compliance burden on such tax deductor or tax collector. To ease this compliance burden the Central Board of Direct Taxes is issuing a new functionality "**Compliance Check for Sections 206AB & 206CCA**". This functionality is **made available through reporting portal of the Income-tax Department**. The tax deductor or the collector can feed the single PAN (PAN search) or multiple PANs (bulk search) of the deductee or collectee and can get a **response from the functionality if such deductee or collectee is a specified person**.
2. The logic of the functionality is as under:
 - A list of specified persons is prepared as on the start of the **financial year 2021-22**, taking previous years 2018-19 and 2019-20 as the two relevant previous years. List contains name of taxpayers who did not file return of income for both **assessment years 2019-20 and 2020-21** and have aggregate of TDS and TCS of fifty thousand rupees or more in each of these two previous years.
 - **During the financial year 2021-22, no new names are added** in the list of specified persons. This is a taxpayer friendly measure **to reduce the burden on tax deductor and collector of checking PANs of non-specified person more than once during the financial year**.
 - If any specified person files a **valid return of income** (filed & verified) for **assessment year 2019-20 or 2020-21 during the financial year 2021-22, his name would be removed** from the list of specified persons. This would be done on the date of filing of the valid return of income during the financial year 2021-22.
 - If any specified person files a **valid return of income** (filed & verified) for **assessment year 2021-22, his name would be removed from the list of specified persons**. This will be done on the due date of filing of return of income for A.Y. 2021-22 or the date of actual filing of valid return(filed & verified) whichever is later.
 - **If the aggregate of TDS and TCS, in the case of a specified person, in the previous year 2020-21, is less than fifty thousand rupees, his name would be removed from the list of specified persons. This would be done on the first due date under sub-section (1) of section 139 of the Act falling in the financial year 2021-22.**
 - **Belated and revised TCS & TDS returns of the relevant financial years filed during the financial year 2021-22 would also be considered for removing persons from the list of specified persons on a regular basis.**
3. The deductor or the collector may check the PAN in the functionality at the beginning of the financial year and then he is not required to check the PAN of non-specified person during that financial year. To illustrate, let us assume that

a deductor has 10,000 vendors that he deals with. He can use the functionality in the bulk search mode and can get the result of all these 10,000 PANs at one go. Let us assume that the functionality has shown that out of these 10,000 PANs, 5 PANs are specified persons for the purposes of sections 206AB and 206CCA of the Act. Now with respect of the remaining 9,995 PAN, it is clear that they are not in the list of specified persons for that financial year. Since no new name would be added in the list of specified persons during the financial year, the deductor or collector can be assured that these 9,995 PANs would remain outside the list of specified persons during that financial year. Thus, deductor or collector need not check again with respect to these 9,995 PANs during that financial year. There are chances that the 5 PANs which are of specified persons may move out of the list during the financial year and for that there will be need to recheck at the time of making tax deduction or tax collection.

4. The list would be drawn afresh at the start of each financial year and the above process would have to be repeated. For example, at the beginning of the financial year 2022-23 a fresh list would be prepared with previous years 2019-20 and 2020-21 as the two relevant previous years. Then, no name would be added to the list of specified persons during the financial year and only name would be removed based on the logic given in paragraph 2 above.
5. It may be noted that as per the provisos of sections 206AB & 206CCA of the Act, the specified persons shall not include a non-resident who does not have a permanent establishment in India. Tax deductors & collectors are expected to carry out necessary due diligence in respect of a specified person established by the above referred functionality to consider him as non-specified if he fall under these provisions.

◆ ANALYSIS OF PROVISIONS OF SECTION 206AB AND SECTION 206CCA ◆

1. The provisions of section 206AB are attracted where tax is required to be deducted at source under Chapter of TDS **except under sections 192, 192A, 194B, 194BB, 194LBC or 194N on any sum paid/credited to a specified person.**

The provisions of section 206CCA are attracted where tax is required to be collected at source under the Chapter of TCS on any sum received by a person from a specified person.

2. **The rate of tax, where provisions of section 206AB are attracted shall be higher of following:**
 - **twice the rate specified** in relevant provision of Act.
 - **twice the rate or rates in force**
 - **at the rate of 5%**

The rate of tax, where provisions of section 206CCA are attracted shall be higher of following:

- **twice the rate specified** in relevant provision of Act
 - **at the rate of 5%**
3. A person for the purpose of section 206AB or 206CCA is a specified person in respect of previous year **(say, 31.03.2022) if:**

- he has not filed the return of income for **BOTH the two previous years** immediately preceding previous year (**in our case 31.03.2022**) of which due-date for filing the return of income under section 139(1) has expired (**i.e., 31.03.2020 and 31.03.2019**).

Note: Due-date for filing of return of income under section 139(1) for financial year 31.03.2021 would be not expired as on 01.04.2021, i.e., when the functionality prepares the list of defaulters.

AND

- the aggregate of **TDS AND TCS** in his case **is ₹ 50,000 or more** in each of those two previous years (i.e., in our case P.Y. 31.03.2020 and 31.03.2019).

Note 1: Section 206AB/206CCA apply if the deductee/collectee has not filed the returns for **BOTH** the two previous years as above mentioned. Accordingly, the deductee/ collectee shall not be a specified person if he has filed the return for **ANY** or **BOTH** of the previous years.

Note 2: Section 206AB/ 206CCA apply if in addition to the default of furnishing the returns, the aggregate of tax-deducted (TDS) and tax-collected (TCS) **FROM HIM** (i.e., he **as a deductee/ collectee**) by **all his deductors/ collectors** exceeds **IN THE AGGREGATE** (i.e., TDS + TCS) ₹ 50,000 in each of the above-mentioned previous years (i.e., ₹ 50,000 threshold to apply **SEPARATELY for EACH YEAR**)

However, specified person shall not be a non-resident who does not have a permanent-establishment in India.

To illustrate, suppose, tax is to be deducted during financial year 2021-22 in case of Mr. X who is resident in India, whether he would be treated as specified person under section 206AB or 206CCA in different situations is analysed as under:

<i>Filed ROI for A.Y. 2019-20?</i>	<i>Filed ROI for A.Y. 2020-21?</i>	<i>Total TCS & TCS in respect of A.Y. 2019-20 was more than ₹ 50,000?</i>	<i>Total TCS & TCS in respect of A.Y. 2020-21 was more than ₹ 50,000?</i>	<i>Whether Mr. X will be treated as specified person?</i>	<i>Reason</i>
Yes	Yes	Yes	Yes	No	ROI filed
Yes	No	Yes	Yes	No	ROI filed for A.Y. 2019-20
No	Yes	Yes	Yes	No	ROI filed for A.Y. 2020-21
No	No	Yes	Yes	Yes	ROI not filed for AY 2019-20 & 2020-21
Yes	Yes	No	No	No	TDS/TCS < ₹ 50,000
Yes	Yes	No	Yes	No	TDS/TCS < ₹ 50,000 in A.Y. 2019-20
Yes	Yes	Yes	No	No	TDS/TCS < ₹ 50,000 in A.Y. 2020-21
No	No	No	No	No	TDS/TCS < ₹ 50,000

SECTION 206A (Introduced by Finance Act, 2019)

Electronic filing of statement of transactions on which tax has not been deducted

- (1) **Any banking company or co-operative society or certain specified public company responsible for paying to a resident any income not exceeding forty thousand rupees, where the payer is a banking company or a co-operative society, and five thousand rupees in any other case by way of interest** (other than interest on securities), shall prepare such statement in such form, containing such particulars, for such period, verified in such manner and within such time, as may be prescribed, and deliver or cause to be delivered the said statement to the prescribed income-tax authority or to the person authorised by such authority.
- (2) The Board may require any person, other than a person mentioned in sub-section (1), responsible for paying to a resident any income liable for deduction of tax at source under Chapter XVII, to prepare such statement in such form, containing such particulars, for such period, verified in such manner and within such time, as may be prescribed, and deliver or cause to be delivered the said statement to the income-tax authority or the authorised person referred to in sub-section (1).
- (3) The person responsible for paying to a resident any income referred to in sub-section (1) or sub-section (2) may also deliver to the income-tax authority referred to in sub-section (1), a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under the said sub-sections in such form and verified in such manner, as may be prescribed.

Penalty in Case of Non-compliance of Section 206A [Section 272A]

If a person fails to furnish the statement under section 206A within the time prescribed, then he shall pay a penalty of ₹ 100 for each day during which the default continues.

(Amendment by Finance Act, 2019)

SECTION 200

Duty of Person Deducting Tax

1. PAYMENT OF TAX DEDUCTED AT SOURCE WITHIN PRESCRIBED TIME:

Any person deducting any sum in accordance with the provisions of chapter of tax deduction at source shall pay within the prescribed time, the sum so deducted to the credit of the Central Government.

2. PAYMENT OF TAX BORNE BY THE EMPLOYER ON NON-MONETARY PERQUISITE WITHIN PRESCRIBED TIME:

Any person being an employer, referred to in section 192(1A) shall pay, within the prescribed time, the sum so deducted to the credit of the Central Government.

3. FILE TDS RETURN WITHIN THE PRESCRIBED TIME [QUARTERLY RETURNS OF TDS UNDER SECTION 200(3)]:

Any person deducting any sum in accordance with the provisions of this Chapter within the prescribed time shall, prepare quarterly returns for such period, as

may be prescribed, and deliver to the prescribed income-tax authority, such quarterly returns.

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 quarterly return delivered under this sub-section in such form and verified in such manner as may be specified by the authority.

TIME LIMITS FOR PAYMENT OF TAX

Tax deducted at source is required to be paid to the credit of the Central Government within the time given below-

Different Situation	Time limit for deposit of tax	
When payer is the Government or when payment is made on behalf of the Government.	TDS is deposited without Challan	Same day
	TDS is deposited with Challan	On or before 7 days from the end of the month in which— i) the deduction is made; or ii) income-tax is due under section 192(1A).
When tax is deducted by a person other than Government	Where the income or amount is credited or paid in the month of March	On or before 30th April.
	In any other case	On or before 7 days from the end of the month in which— i) the deduction is made; or ii) income-tax is due under section 192(1A).

Notwithstanding the above time limits, any sum deducted under section 194-IA, 194-IB or 194M shall be paid to the credit of the Central Government within a **period of 30 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, 26QC or 26QD respectively.

TIME LIMITS FOR FURNISHING QUARTERLY RETURNS OF TDS/TCS

The Quarterly returns of TDS and TCS have to be filed by following due date:

S. No.	Date of ending of the quarter of the financial year	Due date for TDS	Due date for TCS
1.	30 th June	31 st July of the financial year	15 th July of the financial year
2.	30 th September	31 st October of the financial year	15 th October of the financial year

3.	31 st December	31 st January of the financial year	15 th January of the financial year
4.	31 st March	31 st May of the financial year immediately following the financial year in which deduction is made	15 th May of the financial year immediately following the financial year in which deduction is made

W.r.t sum deducted under section **194-IA, 194-IB or 194M**, a **challan-cum-statement** in Form No. **26QB, 26QC or 26QD** respectively is required to be furnished **within a period of 30 days from the end of the month in which the deduction is made.**

SECTION 203

Issue of TDS Certificate

Every person deducting tax in accordance with the foregoing provisions of this Chapter shall, within such period as may be prescribed, furnish 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.

TIME LIMIT FOR ISSUE OF TDS CERTIFICATE

The TDS Certificates should be furnished by following due date:

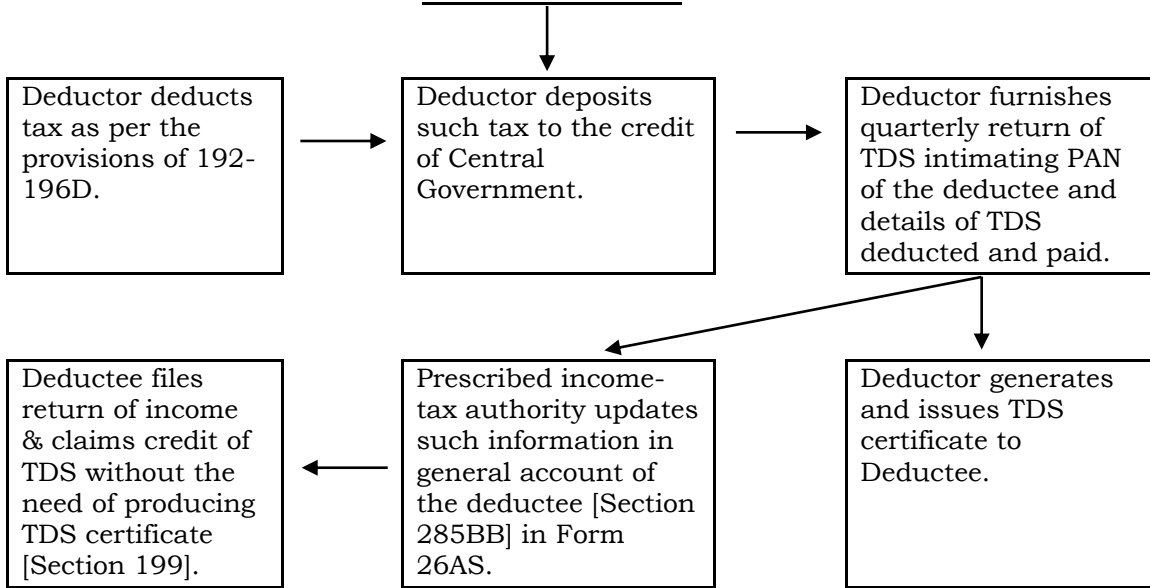
<i>Particulars</i>	<i>TDS on Salary</i>	<i>TDS on Non-Salary</i>
Form	Form 16	Form 16A
Periodicity	Annual	Quarterly
Due Date upto which TDS Certificate should be issued	15 th June of the following relevant Financial Year	15 Days from the due date of furnishing of TDS return i.e., 15 th Aug., 15 th Nov., 15 th Feb., and 15 th June

For TDS under section **194-IA, 194-IB, 194M, Form No. 16B, 16C, 16D** have to be **issued** respectively **within 15 days from the due date of furnishing the challan-cum-statement.**

KEY NOTE:

- All deductors (including Government deductors) shall issue TDS certificates in Form No. 16/ 16A/ 16B/ 16C/ 16D as the case may be, generated through TRACES portal having unique TDS certificate number in respect of all sums deducted and shall also authenticate such TDS certificates by either using digital signature or manual signature.
- If a person fails to furnish the TDS certificate to payee within the prescribed time, then there is a penalty of ₹ 100 per day per certificate not furnished, for every day during which the failure continues. However, such penalty shall not exceed the amount of TDS in each certificate not furnished. **[Section 272A]**

PROCEDURAL ASPECTS OF TDS



SECTION 200A

Processing of Statements of Tax Deducted at Source

Where a quarterly return 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 quarterly return 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 quarterly return; or
 - (ii) an incorrect claim, apparent from any information in the quarterly return;
- (b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the quarterly return;
- (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 section shall be sent after the expiry of 1 year from the end of the financial year in which the quarterly return is filed.

Explanation— For the purposes of this section, “an incorrect claim apparent from any information in the quarterly return” shall mean a claim, on the basis of an entry, in the quarterly return —

- (i) of an item, which is inconsistent with another entry of the same or some other item in such quarterly return;
- (ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

NOTE: SECTION 206CB IS ON SIMILAR LINES WHICH DEALS WITH PROCESSING OF TCS RETURNS.

AMENDMENTS MADE BY FINANCE ACT, 2012 & FINANCE ACT, 2015

1. **Section 156** has been amended to provide that where any sum is determined as payable by the deductor/ collector in intimation under section 200A/ 206CB, then such intimation shall be deemed to be notice of demand under section 156.

If such demand is not paid within 30 days of receipt of the intimation, then the assessee shall be deemed to be an assessee in default for which he shall pay interest under section 220 and penalty under section 221.

2. **Section 246A relating to filing of appeal:** A deductor / collector aggrieved by an intimation under section 200A/ 206CB, where he objects to the adjustments made, can file an appeal to CIT (Appeals)
3. **Section 154 relating to rectification of mistake:** An assessee can file a rectification application under section 154 for rectification of any mistake apparent from record in the intimation under section 200A/ 206CB.

SECTION 201

Consequences of Failure to Deduct or Pay TDS

FAILURE TO DEDUCT OR FAILURE TO PAY TDS - SECTION 201(1)

- (1) If any person who is liable to deduct TDS does not deduct the whole or any part of the tax or after deducting fails to pay the whole or any part of the tax, then, he shall be deemed to be an assessee in default in respect of the tax not so deducted or not so paid. Consequently, he shall be liable to pay interest under section 220 and penalty under section 221 for being an assessee in default.

It is provided that section 201(1) shall apply if assessee does not deduct whole or part of TDS. Also, this section applies where assessee after deducting TDS fails to pay the whole or part of TDS. Section 201(1) shall not apply if there is a delay in deduction or delay in payment of TDS.

It is also clarified that interest under section 201(1A) shall not be levied where section 201(1) applies.

Provided that any person, 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

resident payee or on the sum credited to the account of a resident payee shall not be deemed to be an assessee in default in respect of such tax if such resident 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 a chartered accountant in such form as may be prescribed.

LATE DEDUCTION OF TDS OR LATE PAYMENT OF TDS - SECTION 201(1A)

(1A) If any person, does not deduct the whole or any part of the tax within the time prescribed or after deducting fails to pay the tax within the time prescribed, he shall be liable to pay simple interest, —

- (i) 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
- (ii) at 1-½ % 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 quarterly return of TDS.

Provided that in case any person, 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 resident payee or on the sum credited to the account of a resident payee but is not deemed to be an assessee in default under the first proviso of 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 resident payee.

(2) Where the tax has not been paid after it is deducted, the amount of the tax together with the amount of simple interest thereon shall be a charge upon all the assets of the deductor.

(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 PROVISIO TO SECTION 200(3), WHICHEVER IS LATER.**

Illustrations:

Suppose TDS was required to be deducted on 10.10.2021 and was to be paid by 7.11.2021:

Case-1:

Assessee deducts the TDS on 10.10.2021 but pays TDS on 31.12.2021. Now interest under section 201(1A) shall be charged from 10.10.2021 to 31.12.2021 @ 1.5% per month i.e., for 3 months.

Case-2:

Assessee failed to deduct TDS and deducts TDS on 31.12.2021. Assessee pays TDS on 17.1.2022.

- (i) Interest under section 201(1A) shall be charged for 3 months @ 1% for the period 10.10.2021 to 31.12.2021.
- (ii) Interest under section 201(1A) shall be charged @ 1.5% per month for one month from 31.12.2021 to 17.1.2022.

Case-3:

Assessee does not deduct TDS and does not pay TDS. The assessee shall be deemed to be as assessee in default under section 201(1) for the amount of TDS not deducted. The penalty for being assessee in default is upto the amount of TDS not deducted. Further, interest for assessee in default shall be levied @ 1% upto the date of order under section 201(1). This is however subject to Proviso to section 201(1) and Proviso to section 201(1A).

◆ ANALYSIS OF AMENDMENT IN SECTION 40(a)(ia)/SECTION 40(a)(i) & PROVISIO ADDED IN SECTION 201(1) & PROVISIO ADDED IN SECTION 201(1A) ◆

1. 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 an 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(1).

2. 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.

Section 201 has been amended to incorporate the above provisions in section 201(1) by inserting Proviso in section 201(1).

3. The amendments are applicable for resident deductee and as well as a Non-Resident deductee.

4. The amendment to section 201(1) i.e. First proviso to section 201(1) provides as under:

- If the deductor fails to deduct the whole or any part of tax in accordance with the Chapter of TDS.
- on the sum paid to a **resident or non-resident**; or
- on the sum credited to the account of a **resident or non-resident**,
- **then such deductor shall not be deemed to be an assessee in default in respect of such TDS if:**
 - (i) **the resident payee or non-resident payee has furnished his return of income under section 139.**
 - (ii) **the resident payee or non-resident payee has taken into account such sum for computing income in such return of income; and**
 - (iii) **the resident payee or non-resident payee has paid the tax due on income declared by him in such return of income.**

The deductor has to furnish a certificate to this effect from a Chartered Accountant of the payee in the prescribed form.

5. 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.**
6. **Section 40(a)(i)/40(a)(ia) has been amended by Finance Act, 2019 to provide that:**
 - **where assessee has failed to deduct TDS in accordance with Chapter of TDS**
 - **and he is not treated as an assessee in default under the first proviso to section 201(1)**
 - **then, for the purpose of section 40(a)(i)/40(a)(ia)**
 - **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**
 - **and deduction of such expenditure shall be allowed accordingly.**

Illustration 1:

A company A Ltd. whose due date of filing of return is 31st October pays the following sums without deduction of TDS:

- (i) ₹ 4,00,000 to Mr. X, a resident, as rent (Due date of filing of return for Mr. X is 31st July)
- (ii) ₹ 5,00,000 to Y Ltd., a resident company, as professional fees (Due date of filing of return for Y Ltd. is 30th Nov.)
- (iii) ₹ 10,00,000 to Z Inc., a non-resident company, as royalty (Due date of filing of return by Z Inc. is 31st Oct.)

The above sums were paid on 1st July, 2021 without deduction of TDS.

For previous year 31.03.2022, X, Y Ltd. and Z Inc. have included the above sums in their respective return of income and have paid tax thereon. Returns have been filed by X, Y Ltd. and Z Inc. on 31st August, 2022, 30th Nov., 2022 and 31st Oct., 2022 respectively.

Company A Ltd has taken certificate from Chartered Accountant to the above effect. Now following are the consequences:

- (i) Company A Ltd. shall not be treated as an assessee in default for payment of ₹4,00,000 made to Mr. X without deducting TDS. Company A Ltd. shall pay interest @ 1% p.m. from 1st July, 2021 to 31st August, 2022 on TDS of ₹ 40,000. The expenditure of ₹ 4,00,000 shall be allowed to company A Ltd. in previous year 31.03.2022 as per provision of section 40(a)(ia).
- (ii) Company A Ltd. shall not be treated as an assessee in default for payment of ₹5,00,000 to Y Ltd. without deducting TDS. Company A Ltd shall pay interest @ 1% p.m. from 1st July, 2021 to 30th Nov, 2022 on TDS of ₹ 50,000. 30% of expenditure of ₹ 5,00,000 shall be allowed to Company A Ltd. in previous year 31.03.2023 as per provisions of section 40(a)(ia). 30% of the said expenditure shall be disallowed in previous 31.03.2022 since deduction and payment of TDS is deemed to be made on 30.11.2022 i.e. after the due date 31.10.2022 of company A Ltd.
- (iii) As per Finance Act. 2019 Company A Ltd. shall not be treated an assessee in default for payment of ₹10,00,000 to Z Inc. without deducting TDS. Company A Ltd. shall pay interest @ 1% p.m. from 1st July, 2021 to 31st October, 2022 on TDS of ₹ 1,00,000. The expenditure of ₹ 10,00,000 shall be allowed to company A Ltd. in previous years 31.03.2022 as per provision of section 40(a)(i).

◆ ANALYSIS OF SECTION 201(3) ◆

1. If assessee does not deduct TDS or after deducting fails to pay TDS, then he shall be deemed as an assessee in default for which interest and penalty shall be levied. [Section 201(1)]
2. The order under section 201(1) for interest and penalty shall be passed within 7 years from the end of the Financial Year in which in which payment is made or credit is given **OR WITHIN TWO YEARS FROM THE END OF THE FINANCIAL YEAR IN WHICH CORRECTION STATEMENT OF TDS QUARTERLY RETURN IS FILED, WHICHEVER IS LATER.**
3. If payment was made in previous year 31.3.2021 and no TDS was deducted on such payment, then order under section 201(1) levying penalty and interest can be passed upto 31.3.2028.
4. **However, no time-limits have been prescribed for passing an order under section 201(1) where—**
 - (a) **the deductor has deducted but not deposited the tax deducted at source, as this would be a case of defalcation of government dues,**
 - (b) **the employer has failed to pay the tax wholly or partly, under sub-section (1A) of section 192, as the employee would not have paid tax on such perquisites,**
 - (c) **the deductee is a non-resident as it may not be administratively possible to recover the tax from the non-resident.**

Illustration:

What is the time limit for passing penalty order under section 201(1) in the following cases:

- (i) A company pays ₹ 10 lakhs to M/s ABC without deducting TDS on 10.10.2021. The company files quarterly return of TDS on 15.1.2022.
- (ii) A company pays ₹ 10 lakhs to M/s XYZ without deducting TDS on 10.10.2021. The company does not file quarterly return of TDS.

- (iii) A company deducts ₹ 1 lakh TDS and pays ₹ 9 lakhs to M/s PQR on 10.10.2021. The company does not deposit TDS and files quarterly return of TDS on 15.1.2022.
- (iv) A company pays ₹ 10 lakhs to a Non-resident without deducting TDS on 10.10.2021. The company files quarterly return of TDS on 15.1.2022.
- (v) A company agrees to bear TDS on the non-monetary perquisites given to its employees. The company does not pay the TDS.
- (vi) A company makes payments on 25.06.2021 but does not deduct TDS. Company filed quarterly return of TDS on 31.07.2021. The payee has not included the said sum in his return of income and conditions of proviso to section 201(1) are not satisfied. The company files correction statement of TDS quarterly return on 01.01.2029.

Solution:

In view of section 201(3), the time limit for passing order under section 201(1) in the various cases shall be as under:

- (i) Order can be passed upto 31.3.2029.
- (ii) Order can be passed upto 31.3.2029.
- (iii) There is no time limit prescribed for passing the order. The order can be passed at any time.
- (iv) There is no time limit prescribed for passing the order. The order can be passed at any time. There will be no penalty if the case falls in proviso to section 201(1) as the assessee shall not be treated as assessee in default.
- (v) There is no time limit prescribed for passing the order. The order can be passed at any time. There will be no penalty if the case falls in proviso to section 201(1) as the assessee shall not be treated as assessee in default.
- (vi) The penalty order under section 201(1) can be passed upto 31.03.2029 or 31.03.2031, whichever is later. Therefore, penalty order can be passed upto 31.03.2031.

CIRCULAR NO.11/2017

1. Consequences of Failure to Deduct or Pay – Guidelines For Waiver of Interest Charged Under Section 201(1A)(i)

Central Board of Direct Taxes, hereby directs that the Chief Commissioner of Income-tax and Director General of Income-tax **may reduce or waive interest charged under section 201(1A)(i) of the Act in the classes of cases specified in paragraph 2 of this order** for the period and to the extent the Chief Commissioner of Income-tax/Director General of Income-tax may deem fit. However, no reduction or waiver of such interest shall be ordered unless the principal demand under sections 200A, 201(1) or 234E, as the case may be, stands fully paid or satisfactory arrangements for payment of the principal demand under these sections have been made. The Chief Commissioner of Income-tax or Director General of Income-tax may also impose any other condition as deemed fit for the said reduction or waiver of interest.

2. The class of cases in which the reduction or waiver of interest under section 201(1A)(i) can be considered, are as follows:

- (i) Where during the course of proceedings for search and seizure under section 132 of the Income-tax Act, the books of account and other documents necessary for making deduction under Chapter XVIIIB of the Act were seized and the assessee

was not able to, within the time specified, deduct tax at source from any sum credited to any account in his books of account.

- (ii) Where any sum paid or payable was not liable for deduction of tax at source in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he did not deduct tax at source in relation to such sum, and subsequently, in consequence of any retrospective amendment of law or a decision of the Supreme Court of India or a decision of a Larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final) in any proceedings, as the case may be, tax was held to be deductible or the tax deducted by the deductor during such financial year was found to be less than the tax deductible on such sums paid or payable.
- (iii) Where the default under section 201 relates to non-deduction or a lower deduction of tax under section 195 of the Act in respect of a payment made to a non-resident (including a foreign company) being a resident of a country or specified territory outside India with whom India has entered into an agreement referred to in section 90 or 90A of the Act, and where —
 - (a) a dispute regarding the tax payable in India in respect of the said payment had been referred to the Competent Authority in India mentioned in Rule 44H of the Income-tax Rules, 1962 under the said agreement under section 90 or 90A of the Act;
 - (b) such reference had been received by the Competent Authority in India within a period of two years of the date on which the notice of demand determining the tax payable was received by the person in default under section 201;
 - (c) the dispute has been settled by way of a resolution arrived at under the Mutual Agreement Procedure (MAP) provided in the said agreement; and
 - (d) the person in default under section 201 has given his acceptance to the resolution and has withdrawn his appeal(s) pending on the issue, within the meaning of sub-rule (4) of Rule 44H of the Income-tax Rules, within a period of one month of the date on which the resolution is communicated to him.

3. Even if the interest under section 201(1A)(i) has already been paid by the deductor, the same can be considered for waiver, subject to the conditions above and a refund may be given to the deductor, if waiver is ordered.

PENALTY IN RESPECT OF QUARTELY RETURN OF TDS/TCS

- (1) Section 234E: Fee for default in furnishing quarterly returns of TDS / TCS:**
 - a. This section 234E is applicable for quarterly returns of TDS / TCS.
 - b. Section 234E provides that where a person fails to deliver the quarterly returns of TDS / TCS within the time prescribed, then he shall be liable to pay a fee of ₹200 for every day during which the failure continues. This is in addition to the penalty under section 271H.
 - c. However, such fees shall not exceed the amount of TDS / TCS deductible/collectible in the quarterly return.

- d. The fees under section 234E shall be paid before furnishing the quarterly returns of TDS / TCS.
- e. The fee under section 234E is mandatory and cannot be waived / reduced under any circumstances. However, fee under section 234E can be waived by CBDT, for any sufficient and appropriate cause, on an application made by the assessee.

(2) Section 271H: Penalty for incorrect information or failure to furnish statements, etc.

- a. This section 271H is applicable for quarterly returns of TDS / TCS.
- b. This section levies a penalty for delay in filing quarterly returns of TDS / TCS or furnishing incorrect information in the said returns.
- c. Section 271H provides that without effecting the provisions of section 234E, a person shall be liable to pay penalty if:
 - (i) he fails to deliver the quarterly returns of TDS / TCS within the time prescribed; or
 - (ii) he furnishes incorrect information in the quarterly returns of TDS/ TCS.
- d. The penalty shall be a minimum amount of ₹ 10,000 and it can be extended upto ₹1,00,000.**
- e. The above penalty is mandatory and cannot be waived.
- f. This section, however, provides that notwithstanding the above, no penalty shall be levied for delay in delivering the quarterly returns of TDS / TCS if such person proves that:
 - after paying the tax deducted or collected along with fees under section 234E and interest under section 201 to the credit of Central Government,
 - he has filed the quarterly returns before the expiry of a period of **one year** from the time prescribed for filing the quarterly return.

Therefore, if quarterly returns of TDS / TCS which were to be filed on 31st July, 2022 are filed upto 31st July, 2023 and assessee has paid TDS / TCS and fees under section 234E and interest under section 201, then there shall be no penalty under section 271H for delay in furnishing of quarterly return.

- g. Penalty under section 271H shall be levied by Assessing Officer.

SECTION 205

Bar Against Direct Demand on Assessee

Where tax is deductible at the source under the foregoing provisions of this Chapter, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

SECTION 206C: TAX COLLECTION AT SOURCE

TCS on Sale of Alcoholic Liquor, Forest produce, Minerals & Scrap, etc.

- (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, whichever is earlier, **collect from the buyer**, a sum equal to the following percentage of the purchase price, as income-tax:

	<i>Nature of goods</i>	<i>% of Purchase Price</i>
(i)	Alcoholic liquor for human consumption	1 %
(ii)	Tendu leaves	5 %
(iii)	Timber obtained under a forest lease	2.5 %
(iv)	Timber obtained by any mode other than under a forest lease	2.5 %
(v)	Any other forest produce not being timber or tendu leaves	2.5 %
(vi)	Scrap	1 %
(vii)	Minerals, being coal or lignite or iron ore	1%

Note 1: There is not threshold limit for collection of TCS on sale of above goods.

Note 2: **“Seller”** 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 HUF** whose total sales, gross receipts or turnover from the business or profession carried on by him **exceed ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession** during the financial year immediately preceding the financial year in which the goods are sold.

Note 3: **“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 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**;

Note 4: **“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.

- (1A) The provisions of section 206C(1) **shall not apply** where the **buyer**, who is a **resident in India**, furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in Form 27C, verified in the prescribed manner to the effect **that the goods referred to above are to be utilized 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 Chief Commissioner or Commissioner one copy of the declaration, referred to above, on or before the 7th day of the month next following the month in which the declaration is furnished to him.

**TCS on Granting Rights in Parking Lots, Toll plaza,
Mine & Quarry**

- (1C) **Every person, who grants a lease or a license or enters into a contract or otherwise transfers**
- **any right or interest in any parking lot or toll plaza or mine or quarry**
 - **to another person, other than a public-sector company (herein after called as “Licensee or Lessee”)**
 - **for the use of such parking lot or toll plaza or mine or quarry for the purposes 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,**
 - **whichever is earlier,**
 - **collect from the licensee or lessee,**
 - **a sum equal to following percentage of such amount as income-tax.**

	<u>Nature of contract/license /lease, etc.</u>	<u>Percentage to be collected</u>
(i)	Parking lot	2 %
(ii)	Toll plaza	2 %
(iii)	Mining and quarrying	2 %

Note 1: There is not threshold limit for collection of TCS on granting rights for above.

Note 2: “Mining and quarrying” shall not include mining and quarrying of mineral oil.

Note 3: “Mineral Oil” includes petroleum and natural gas.

Illustration:

Government grants lease of coal mine to Lalu Yadav and charged ₹ 1 crore for lease of coal mine. Lalu Yadav sold coal of ₹ 10 lakh to Sadhu Yadav. Sadhu Yadav sold coal of ₹ 15 lakh to Tata Steel.

Answer:

Government will collect TCS @ 2% on ₹ 1 crore from Lalu Yadav. Lalu Yadav shall pay ₹1,02,00,000 to Government.

Lalu Yadav will collect TCS of 1% from Sadhu Yadav. Sadhu Yadav will pay ₹10,10,000 to Lalu Yadav.

Sadhu Yadav shall not collect TCS from Tata Steel since it will be using coal in production of steel.

TCS on Sale of Motor Vehicles

(1F) **Every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ₹ 10,00,000, shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 1% of the sale consideration as income-tax.**

Note 1: “**Seller**” 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 HUF** whose total sales, gross receipts or turnover from the business or profession carried on by him **exceed ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession** during the financial year immediately preceding the financial year in which the goods are sold.

Note 2: “**Buyer**” 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 section 10(20); or**

(C) **a public-sector company which is engaged in the business of carrying passengers.**

CIRCULAR NO.22, DATED 8-6-2016

Question:

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(1F) 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.

TCS on Remittance under LFRS & Sale of Overseas Tour Programme Package (Introduced by Finance Act, 2020)

(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 5% 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 ₹ 7 lakhs 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 5% of the amount or aggregate of the amounts in **excess of ₹ 7 lakhs 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 **0.5% of the amount or aggregate of the amounts in excess of ₹ 7 lakhs** 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 section 10(1) of the Foreign Exchange Management Act, 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.**

◆ **ANALYSIS OF SECTION 206C(1G) ADDED BY FINANCE ACT, 2020** ◆

REMITTANCE UNDER LIBERALISED FOREIGN REMITTANCE SCHEMES			
S. No.	Purpose of Remittance	Rate of TCS to be collected by Authorised Dealer	Threshold Limit

1.	Purchase of Overseas tour program package: Assessee purchases foreign tour package from travel agent abroad and remits him money in foreign exchange	5% of amount remitted (10% if PAN not given or if buyer is a “specified person” in terms of section 206CCA(3)).	Any Amount
2.	Pursuing Foreign Education Abroad and money remitted abroad out of loan obtained from any Financial Institution	0.5% of the amount in excess of ₹ 7,00,000 remitted during the financial year (5% if PAN not given or if buyer is a “specified person” in terms of section 206CCA(3))	No TCS if remittance during the financial year is less than ₹ 7,00,000
3.	Pursuing foreign Education Abroad and money remitted abroad Remittance not out of loan obtained from financial institution	5% of amount in excess of ₹ 7,00,000 remitted during the financial year (10% if PAN not given or if buyer is a “specified person” in terms of section 206CCA(3))	No TCS if remittance during the financial year is less than ₹ 7,00,000
4.	Any other remittance abroad under LFRS	5% of amount in excess of ₹ 7,00,000 remitted during the financial year (10% if PAN not given or if buyer is a “specified person” in terms of section 206CCA(3))	No TCS if remittance during the financial year is less than ₹ 7,00,000

Note 1: Buyer - In the context, a **buyer** would be an **individual** purchasing foreign currency, for remittance, towards specified/permitted purposes under LFRS.

Broadly stated LFRS permits remittances by **resident individuals up to USD 2,50,000** for capital/current account transactions, like, opening a bank account, investments, gifts, tourism, expenses of children for studies or medical expenses and the like.

Note 2: Seller means the Authorised dealer remitting money abroad.

◆ OVERSEAS TOUR PROGRAM PACKAGE FROM INDIA ◆

If buyer buys overseas tour program package from a seller, then seller will collect 5% TCS from buyer being 5% of overseas tour program package price.

Note 1: TCS will be 10% if buyer does not give PAN or if buyer is a “specified person” in terms of section 206CCA(3).

Note 2: Buyer could be resident / non-resident. Buyer could be company / firm / individual / any form of organization.

Note 3: There is no threshold and even if package is for say ₹ 15,000, TCS needs to be collected.

- Note 4:** Seller need not necessarily be in the business of selling overseas tour program package.
- Note 5:** If a company buys overseas tour program and deducts TDS under section 194C, then no TCS shall be collected from the company.
- Note 6:** Overseas Tour program package includes cost of air tickets, visa, hotel accommodation, city tours, meals, guides etc. if included in tour package.

**TCS on Sale of Goods Exceeding ₹ 50,00,000 by Certain Sellers
Except Goods covered under (1), (1F), (1G) above**

- (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 ₹ 50,00,000** 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% of the sale consideration exceeding ₹ 50,00,000 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:

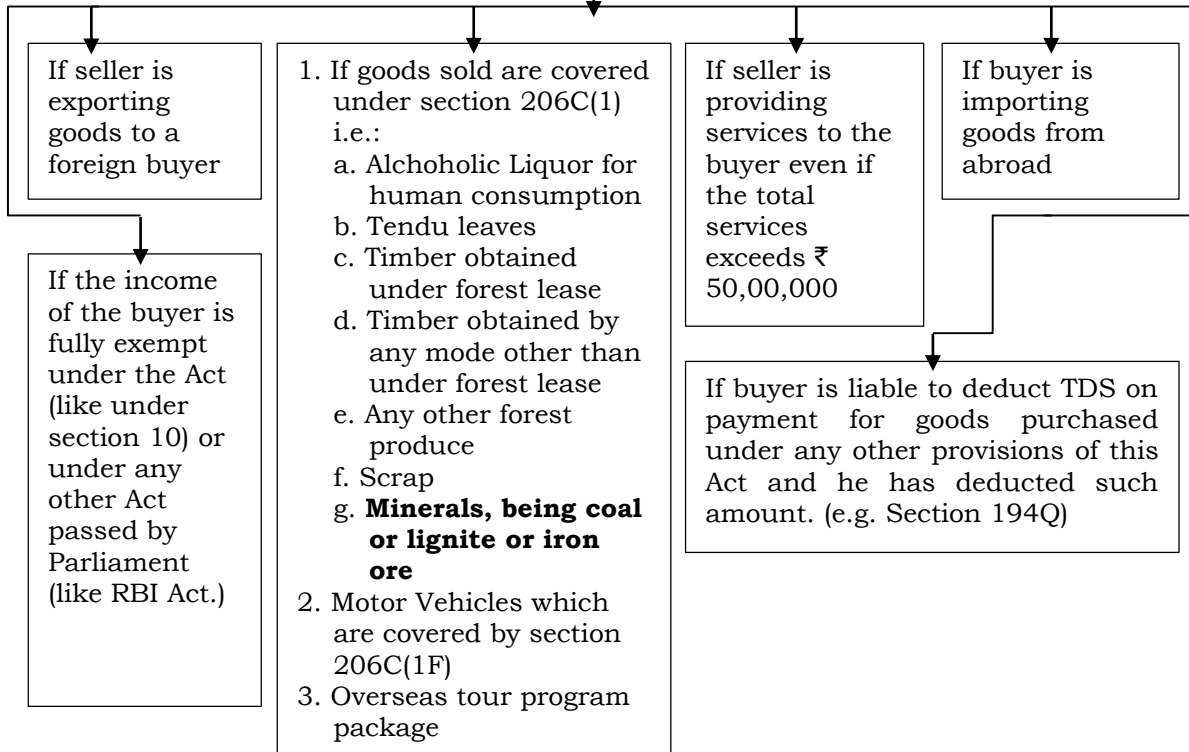
Provided further that the provisions of this sub-section shall not apply, if the **buyer is liable to deduct tax at source under any other provision of this Act on the goods** purchased by him from the seller and has **deducted such** amount.

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 ₹ 10 crores 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.

[Sub-sections (1G) and (1H) added by Finance Act, 2020]

NO TCS SHALL BE COLLECTED UNDER SECTION 206C(1H)



Note 1: If seller sells to the buyer minerals OTHER THAN COAL, LIGNITE OR IRON ORE and total sales to buyer during the previous year exceeds ₹ 50,00,000, then seller needs to collect TCS from buyer @ 0.1% of amount in excess of ₹ 50,00,000.

Note 2: If buyer does not given his PAN, then seller shall collect TCS @ 1%.

Note 3: If Blackberry sells cloth of ₹ 60,00,000 to M/s XYZ in P.Y. 31.3.2022 and M/s XYZ stiches shirts as per the specification of Blackberry and it raises a consolidated bill of ₹ 80,00,000, then TDS shall be deducted under section 194C on ₹ 80,00,000.

Now even if sales of Blackberry exceeded ₹ 10 crores in P.Y. 31.3.2021, it is not required to collect TCS.

Note 4: The above percentages referred to in section 206C shall be increased by a surcharge and health & education cess for assessment year 2022-23 as under:

Where buyer is:	Applicability of Surcharge and 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 ₹ 1 crore but does not exceeds ₹ 10 crores); or (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 ₹ 10 crores); and

	<i>(c) health & education cess of 4% in all cases.</i>
2. Individual or HUF or AOP or BOI being non-resident other than foreign company	<p>The rates of TCS shall be increased by:</p> <p>(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 ₹ 50 lakhs but upto ₹ 1 crore/exceeds ₹ 1 crore but upto ₹ 2 crores/exceeds ₹ 2 crores but upto ₹ 5 crores/exceeds ₹ 5 crores); and</p> <p>(b) health & education cess of 4% in all cases.</p>
3. Co-operative society or firm, being a non-resident	<p>The rates of TCS shall be increased by:</p> <p>(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 ₹ 1 crore); and</p> <p>(b) health & education cess of 4% in all cases.</p>

Note: Surcharge and Health & Education Cess shall not be added in case of resident buyer.

**CIRCULAR NO. 17 DATED: 29TH SEPTEMBER, 2020
AND CIRCULAR NO. 13, DATED: 30TH JUNE, 2021
GUIDELINES UNDER SECTION 194-O (4), SECTION
194Q AND SECTION 206C(1H)**

1. The CBDT issues following guidelines for clarifications of provisions of section 194-O, section 194Q and section 206C(1H).
- 2.0 **Applicability on transactions carried through various Exchanges:**
 - 2.1 It has been represented that there are practical difficulties in implementing the provisions of Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) contained in section 194-O, section 194Q and sub-section (1H) of section 206C 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.
 - 2.2 In order to remove such difficulties, it is provided that the **provisions of section 194-O, section 194Q and sub-section (1H) of section 206C, 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; **(Example 1)**

- (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

3.0 **Applicability to sale of motor vehicle:**

3.1 **The provisions of sub-section (1F) of section 206C of the Act apply to sale of motor vehicle of the value exceeding ten lakh rupees. Sub-section (1H) of section 206C of the Act exclude from its applicability goods covered under sub-section (1F).** It has been requested to clarify that whether all motor vehicles are excluded from the applicability of sub-section (1H) of section 206C of the Act.

3.2 In this regard it may be noted that the **scope of sub-sections (1H) and (1F) are different. While sub-section (1F) is based on single sale of motor vehicle, sub-section (1H) is for receipt above 50 lakh rupee during the previous year against aggregate sale of good. While sub-section (1F) is for sale to consumer only and not to dealers, sub-section (1H) is for all sale above the threshold.** Hence, in order to remove difficulty it is clarified that,—

- (i) **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.**
- (ii) **In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of ₹ 10 lakhs or less to a buyer would be subjected to TCS under sub-section (1H) of section 206C of the Act, if the receipt of sale consideration for such vehicles during the previous year exceeds fifty lakh rupees during the previous year.**
- (iii) **In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ten lakh rupees would not be subjected to TCS under sub-section (1H) of section 206C of the Act if such sales are subjected to TCS under sub-section (1F) of section 206C of the Act. (See Examples 2, 3 & 4)**

4.0 **Adjustment for sale return, discount or indirect taxes:**

4.1 It is requested to clarify that whether adjustment is required to be made **for sales return, discount or indirect taxes including GST for the purpose of collection of tax under sub-section (1H) of section 206C of the Act. It is hereby clarified that no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under sub-section (1H) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration.**

4.2 However, for the purpose of section 194Q, TDS shall be deducted on the sale consideration EXCLUDING GST.

4.3 For the purposes of section 194Q, the sales returns can be adjusted in future bills and TDS on future bills can be deducted after adjusting the sales returns.

5.0 **Fuel supplied to non-resident airlines:**

5.1 It is requested to clarify if the provisions of sub-section (1H) of section 206C of the Act shall apply **on fuel supplied to non-resident airlines at airports in India.** To remove difficulties it is provided that the provisions of **sub-section (1H) of**

- section 206C of the Act shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.**
- 6.0 **Cross application of section 194-O, sub-section (1H) of section 206C and section 194Q of the Act.**
- 6.1 **It is requested to clarify how section 194- O, sub-section (1H) of section 206C and section 194Q of the Act, apply on the same transaction.**
- 6.2 **Under sub-section (3) of section 194-O of the Act.** 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 chapter XVII of the Act.**
- 6.3 Under second proviso to **sub-section (IH) of section 206C of the Act**, provisions of this sub-section **shall not apply, if the buyer is liable to deduct tax at source under any other provisions of this Act** on the goods purchased by him from the seller and has deducted such tax.
- 6.4 **Under sub-section (5) of section 194Q of the Act**, the provision of this section shall not apply to a transaction on which–
- (i) **tax is deductible under any of the provisions of this Act; and**
 - (ii) **tax is collectible under the provisions of section 206C, other than a transactions on which sub-section (1H) of section 206C applies**
- 6.5 **After conjoint reading of all these provisions** the following is clarified:
- (i) **If tax has been deducted by the e-commerce operator** on a transaction under section 194-O of the Act [**including** transactions on which tax is not deducted on account of **sub-section (2) of section 194-O**], **that transaction shall not be subjected to tax deduction under section 194Q of the Act.**
 - (ii) Though **sub-section (1H) of section 206C** of the Act provides exemption from TCS if the buyer has deducted tax at source on goods purchased by him, to remove difficulties it is clarified that this **exemption would also cover a situation where instead of the buyer the e-commerce operator has deducted tax at source** on that transaction of sale of goods by seller to buyer through e-commerce operator.
 - (iii) **If a transaction is both within the purview of section 194-O of the Act as well as section 194Q of the Act, tax is required to be deducted under section 194-O of the Act and not under section 194Q of the Act.**
 - (iv) Similarly, if a transaction is **both within the purview of section 194-O of the Act as well as sub-section (1H) of section 206C** of the Act **tax is required to be deducted under section 194-O of the Act.** The transaction shall **come out of the purview of sub-section (1H) of section 206C** of the Act after tax has been deducted by the e-commerce operator on that transaction. Once the e-commerce operator has deducted the tax on a transaction, the seller is not required to collect the tax under sub-section (1H) of section 206C of the Act on the same transaction. It is clarified that **here primary responsibility is on e-commerce operator to deduct the**

tax under section 194-O of the Act and that responsibility cannot be condoned if the seller has collected the tax under sub-section (1H) of section 206C of the Act. This is for the reason that the rate of TDS under section 194-O is higher than rate of TCS under sub-section (1H) of section 206C.

- (v) If a transaction is **both within the purview of section 194-Q of the Act as well as sub-section (1H) of section 206C of the Act, the tax is required to be deducted under section 194-Q of the Act.** The transaction shall **come out of the purview of sub-section (1H) of section 206C** of the Act after tax has been deducted by the buyer on that transaction. Once the buyer has deducted the tax on a transaction, the seller is not required to collect the tax under sub-section (1H) of section 206C of the Act on the same transaction. **However, if, for any reason, tax has been collected by the seller under sub-section (1H) of section 206C of the Act, before the buyer could deduct tax under section 194-Q of the Act on the same transaction, such transaction would not be subjected to tax deduction again by the buyer.** This concession is provided to remove difficulty, since tax rate of deduction and collection are same in section 194Q and sub-section (1H) of section 206C of the Act. **(See Examples 5 and 6)**

7.0 Exempt Income

7.1 Section 194Q shall not apply if income of seller is totally exempt from tax.

7.2 Section 206C(1H) shall not apply if income of buyer is totally exempt from tax.

Example 1:

- (i) Mr. Rajiv purchased shares of various companies amounting to ₹ 100 lakhs in the previous year 31.03.2022. The shares are purchased through a stock broker whose turnover in previous year 31.03.2021 was ₹ 11 crores. The shares have been purchased over the Electronic Platform of NSE.
- Section 206C(1H) is not applicable and Stock-Broker or NSE is not required to collect TCS from Mr. Rajiv under section 206(1H).
- (ii) Further, section 194Q will also be not applicable even if Mr. Rajiv's turnover in previous year 31.03.2021 was more than ₹ 10 crores.

Example 2:

Car Dealers Ltd. is an authorised car dealer for Maruti Suzuki Ltd and BMW Ltd. Its turnover for previous year 31.03.2021 was ₹ 20 crores. It makes the following sales to customers.

- (i) BMW car to Karan Johar for ₹ 118 lakhs (₹ 100 lakhs plus ₹ 18 lakhs GST).
- (ii) 5 Maruti Cars of ₹ 5 lakhs each to Zepta Ltd. (₹ 5 lakhs plus ₹ 90,000 GST).
- (iii) 20 Maruti cars of ₹ 5 lakhs each to Pluto Ltd. (₹ 5 lakhs plus ₹ 90,000 GST).

Pluto Ltd. returned 2 cars and made payment for 18 cars. (Assume Pluto Ltd. follows cash basis for income tax purposes)

- (iv) In (iii) above, suppose Pluto Ltd. had made payment for 20 cars and later on Car Dealers Ltd. refunded payment of 2 cars.

Answer:

- (i) Car Dealers Ltd. will collect TCS of 1% from Karan Johar under section 206C(1F) on ₹ 118 lakhs, Section 206C(1H) is not applicable.

If Karan Johar's turnover for previous year 31.03.2021 was exceeding ₹ 10 crores, even then Karan Johar shall not be required to deduct TDS under section 194Q since 194Q(5) clarifies non-applicability of 194Q to a transaction to which tax is collectible under section 206C.

- (ii) No TCS under section 206C(1F) and section 206C(1H). No TDS under section 194Q.

- (iii) No TCS under section 206C(1F). TCS shall be collected under section 206C(1H) @ 0.1% of [(₹ 90 lakhs + ₹ 16.20 lakhs) – ₹ 50 lakhs].

However, if turnover of Pluto Ltd. for previous year 31.03.2021 exceeded ₹ 10 crores, it shall be liable to deduct TDS under section 194Q @ 0.1% of (₹ 90 lakhs – ₹ 50 lakhs). Consequently, section 206C(1H) shall not be applicable.

- (iv) No TCS under section 206(1F). TCS shall be collected under section 206C(1H) @ 0.1% of (₹ 200 lakhs + ₹ 18 lakhs) – ₹ 50 lakhs].

However, if turnover of Pluto Ltd. for previous year 31.03.2021 exceeded ₹ 10 crores, it shall be liable to deduct TDS under section 194Q @ 0.1% of (₹ 100 lakhs – ₹ 50 lakhs) Consequently, section 206C(1H) shall not be applicable.

Example 3:

Car Dealers Ltd. sold a BMW car to Mahuri Dixit and bill was raised as under:

	Sale Value	₹	200 lakhs
Less:	Discount	₹	20 lakhs
		₹	180 lakhs
Add:	18% GST	₹	32.40 lakhs
		₹	212.40 lakhs

Now, Car Dealers shall collect TCS under section 206C(1F) @ 1% on ₹ 212.40 lakhs. Section 194Q and 206C(1H) shall not be applicable.

Example 4:

BMW Ltd. and Maruti Suzuki Ltd. sell as follows to Car Dealers Ltd.

- (i) 20 BMW cars @ ₹ 100 lakhs each plus 18% GST.
(ii) 100 Maruti Cars @ ₹ 5 lakhs each plus 18% GST.

Section 206C(1F) shall not be applicable as per Board Circular No. 22/2016.

- (i) Car Dealers Ltd. shall deduct TDS @ 0.1% under section 194Q from payment to be made to BMW Ltd. on ₹ 2,000 – ₹ 50 lakhs.

However, if turnover of Car Dealers Ltd. was less than or equal to ₹ 10 crores in previous year 31.03.2021, BMW Ltd shall be liable to collect TCS @ 0.1% under section 206C(1H) from Car Dealers Ltd. on ₹ 2,360 lakhs – ₹ 50 lakhs.

- (ii) Car Dealers Ltd. shall deduct TDS @ 0.1% under section 194Q from payment to be made to Maruti Suzuki Ltd. on ₹ 500 lakhs – ₹ 50 lakhs.

However, if turnover of Car Dealers Ltd. was less than or equal to ₹ 10 crores in previous year 31.03.2021. Maruti Suzuki Ltd. shall be liable to collect TCS @ 0.1% under section 206C(1H) from Car Dealers Ltd. on ₹ 590 lakhs – ₹ 50 lakhs.

Example 5:

Analyse the TDS/TCS liability in following cases where M/s Ramesh Enterprises (Proprietorship) sells its products through Reliance Digital (on E-commerce operator) to M/s Tarun Enterprises (Proprietorship):

	Particulars	Case 1	Case 2
(a)	Sales value for P.Y. 31.03.2022	4,00,000	50,00,000
(b)	Turnover of M/s Tarun Enterprises for P.Y. 31.03.2021	20,00,00,000	10,00,00,000
(c)	Turnover of M/s Ramesh Enterprises for P.Y. 31.03.2021	30,00,00,000	20,00,00,000
(d)	Turnover of Reliance Digital for P.Y. 31.03.2021	25,00,00,000	50,00,00,000

Case 1

As per section 194-O(2), since the sum to be paid to the E-commerce participant (i.e. M/s Ramesh Enterprises) is less than ₹ 5,00,000, Reliance Digital shall not be required to deduct TDS under section 194-O. Section 194Q and section 206C(1H) are also not applicable.

Case 2

Reliance Digital shall be liable to deduct TDS @ 1% under section 194-O on amount to be paid to M/s Ramesh Enterprises i.e., $1\% \times 50,00,000 = ₹ 50,000$.

Section 194Q shall not be applicable as turnover of M/s Tarun Enterprises does not exceed ₹ 10 crores. It may be noted that even if turnover of M/s Tarun Enterprises exceeded ₹ 10 crores, section 194Q would not have been applicable as Reliance Digital has deducted TDS. Section 206C(1H) shall also not be applicable as although buyer has not deducted TDS from payment made to seller but the E-commerce operator has deducted the tax.

Example 6:

Samsung India Ltd. sells 1,000 television sets at ₹ 50,000 each through Reliance Digital during previous year 31.03.2022. The television sets are sold to ABC Ltd. Turnover of both Samsung India Ltd. and ABC Ltd. for previous year 31.03.2021 exceeded ₹ 10 crores. Samsung India Ltd. collects TCS from ABC Ltd. @ 0.1% on ₹ 5,00,00,000. Reliance Digital and ABC Ltd. contend that they are relieved from the liability to deduct/collect tax at source from the payment made to Samsung India Ltd. Advise.

Answer:

Conjoint reading of Section 194Q(5) and second proviso to section 206C(1H) indicates a primary liability of the buyer to deduct TDS under section 194Q where applicable. However, where the seller has collect tax on a transaction under section 206C(1H), the buyer shall no more be required to deduct tax under section 194Q.

However, an E-commerce operator is not absolved from his liability from deducting tax under section 194-O even if the E-commerce participant (seller) has collected the TCS on the transaction under section 206C(1H) due to the fact that rate of deduction under section 194-O is 1% which is greater than the rate for TCS under section 206C(1H) i.e., 0.1%.

Accordingly, where contention of ABC Ltd. is correct, Reliance Digital shall still be liable to deduct tax under section 194-O of the Act.

The applicability of provisions of section 194Q and section 206C(1H) are explained in following table:

Particular	Section 194Q [TDS on purchase of goods]	Section 206C(1H) [TCS on sale of goods]
Nature	Tax deduction at source (TDS)	Tax Collection at Source (TCS)
Obligation on	Buyer	Seller
Obligation, viz-a-viz the turnover	Turnover etc. exceeds ₹ 10 cr. in preceding financial year	Turnover etc. exceeds ₹ 10 cr. in preceding financial year
Transaction limit in previous year	₹ 50 lakhs or more	₹ 50 lakhs or more
GST inclusion	For purpose of TDS, GST component shall be excluded	For purpose of TCS amount shall be inclusive of GST as TCS is on receipt value.
Nature of payment/receipt	Any sum for purchase of goods	Consideration received for sale of goods
Timing	Credit or payment , whichever is early	Receipt
Rate	0.1%	0.1%
Not applicable	(i) If tax is deductible under any other provision (ii) If tax is collectible under any other provision except section 206C(1H)	(i) if tax is deducted by the buyer under any other provisions [E.g.: Buyer is liable as per section 194Q AND he has deducted such tax]
Deductee/collectee	Any person who is a resident i.e., seller	A person who purchases the goods but does not include Govt, etc., local authority or importer.

OTHER PROVISIONS OF SECTION 206C

- (2) The power to recover tax by collection under this section shall be without prejudice to any other mode of recovery.
- (3) Every person collecting tax under this section shall pay within the prescribed time the amount so collected to the credit of Central Government.

- (4) Tax collected and paid to the credit of the Central Government shall be **deemed to be the tax paid by the buyer or licensee or lessee** and credit shall be given for the TCS to the buyer or licensee or lessee without production of certificate of TCS.
- (5) The person collecting the above tax shall furnish to the buyer or licensee or lessee a certificate of TCS within such period as may be prescribed from the date of debit or receipt of the amount from the buyer/ licensee/ lessee.
- (6) If a person fails to collect the tax, then he shall be liable to pay such tax to the credit of the Central Government.
- (7) If the person responsible for collecting tax does not collect the tax or after collecting the tax, fails to pay it, he shall be liable to pay simple interest @ 1% per month or part thereof on the amount of such tax from the date on which such tax was actually paid.

Provided that such person shall also be deemed to be the assessee in default in respect of such tax.

Provided that where a person liable to collect tax or per 206C(1) or (1C) is not deemed to be assessee in default (Conditions given in proviso to Section 201(1) are satisfied) the interest shall be computed upto the date of furnishing of return of income by the buyer / licensee or lessee.

- (8) The amount of tax collected but not paid along with the interest thereon shall be a charge upon all the assets of such collector.
- (9) Where the Assessing Officer is satisfied that the total income of the buyer or licensee or lessee justifies the collection of tax at any lower rate than specified in the section, then the Assessing Officer shall, on an application made by the buyer or licensee or lessee in this behalf, give him a certificate for collection of tax at such a lower rate.
- (10) Where a certificate is given, the person responsible for collecting tax, shall until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate.

♦ **ANALYSIS OF AMENDMENT IN PROVISIONS RELATING TO ASSESSEE IN DEFAULT CONTAINED IN SECTION 206C BY FINANCE ACT, 2020** ♦

As per the law contained in chapter of TDS, similar law is there for **TCS if collector fails to collect TCS**. If **collector fails to collect TCS** then such collector shall **not be deemed to be an assessee in default if the buyer**, licensee or lessee –

- (i) **furnishes his return of income** under section 139,
- (ii) takes into **account the amount for computing income** in such return of income, and
- (iii) **pays the tax due** on the income declared by him in such return of income, and
- (iv) such person **furnishes a certificate to this effect from chartered accountant**.

However, the collector is still liable to pay the interest upto the date of furnishing the return by the buyer, licensee or lessee.

These provisions were applicable to any person responsible for collecting tax as per section 206C, prior to amendment by Finance Act, 2020.

However, **Finance Act, 2020 has restricted the relaxation in respect of the provisions of being assessee in default to the persons responsible for collecting tax as per 206C(1) and/or 206C(1C) only.**

Therefore, **where any person fails to collect tax as per Section 206C(1F) and/or 206C(1G) and/or 206C(1H) i.e.,**

1. **On sale of Motor Vehicle of the value exceeding ₹ 10 lakhs.**
2. – **By Authorised dealer making foreign remittance.**
 - **On sale of Overseas Tour program package.**
3. **On sale of goods** (Goods other than those covered under section 206C(1) / (1F) / (1G)) **exceeding ₹ 50,00,000.**

or after so collecting, fails to pay such tax to the credit of Central Government, he shall be deemed to be an assessee in default in respect of such tax irrespective of the fulfilment of the 4 conditions mentioned above.

LATEST IN JUDICIARY

Priya Blue Industries (P) Ltd. (Guj.)

Can items of finished products from ship breaking activity which are usable as such be treated as “Scrap” to attract provisions for tax collection at source under section 206C?

The assessee-company, engaged in ship breaking activity, sold old and used plates, wood etc. It did not produce any document or papers to show collection of tax at source on sale of such items and payment thereof to the credit of the Central Government. The Assessing Officer observed that such items were in the nature of scrap and therefore, the assessee was under an obligation to collect tax at source from the buyers of scrap. **The assessee claimed that such items are usable as such, and are hence not ‘scrap’ to attract the provisions for collection of tax at source.**

The Court held that the waste and scrap must be from manufacture or mechanical working of material which is definitely not usable as such because of breakage, cutting up, wear and other reasons. Since the assessee is engaged in ship breaking activity, these items/products are finished products obtained from such activity which are usable as such and hence, are not ‘waste and scrap’ though commercially known as scrap.

The High Court held that any material which is usable as such would not fall within the ambit of the expression ‘scrap’ as defined in Explanation to section 206C and therefore, no TCS is required to be collected on the same.

SECTION 206CC

Requirement to Furnish Permanent Account Number by Collectee

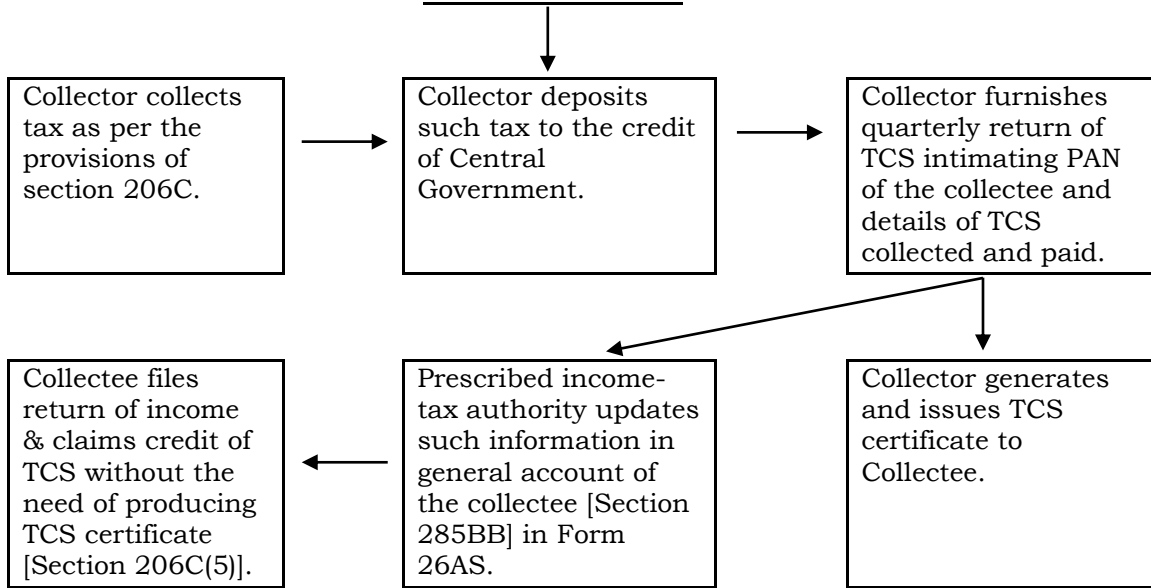
- (1) Notwithstanding anything contained in any other provisions of this Act, any person paying any sum or amount, on which tax is collectible at source under Chapter XVII-BB (herein referred to as collectee) shall furnish his Permanent Account Number to the person responsible for collecting such tax (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 5%.
- (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.

◆ ANALYSIS OF SECTION 206CC ◆

1. Similar to section 206AA, section 206CC is introduced wherein the higher rate of TCS shall apply where PAN is not furnished by the collectee.
2. In such cases, the TCS shall be collected higher of the following:
 - (i) **Twice the rate of TCS; or**
 - (ii) **at the rate of 5%**
3. However, this section does not apply to non-resident who do not have PE in India.
4. Where the failure to furnish the Permanent Account Number relates to the transaction specified in section 206C(1H) the tax shall be collected at the higher of: —
 - **twice the rate specified therein; or**
 - **1%****and accordingly tax shall be collected @ 1%.**

PROCEDURAL ASPECTS OF TCS



NOTIFICATION NO. 110/2021, DATED 17.09.2021

The Central Government hereby notifies that **no deduction of tax shall be made on the following payment under section 194A of the said Act, namely payment in the nature of interest, other than interest on securities**, made by a scheduled bank (here in after the “payer”) located in a specified area, to a member of Scheduled Tribe (here in after the “receiver”) residing in any specified area, as referred to in section 10(26) of the said Act, subject to the following conditions:

- (i) the **payer satisfies itself that the receiver is a member of Scheduled Tribe** residing in any specified area, and the payment as referred above is accruing or arising to the receiver as referred to in clause (26) of section 10 of the said Act, during the previous year relevant for the assessment year in which the payment is made, **by obtaining necessary documentary evidences in support of the same;**
- (ii) the **payer reports the above payment in the statements of deduction of tax** as referred to in sub-section (3) of section 200 of the said Act;
- (iii) the **payment made or aggregate of payments made during the previous year does not exceed twenty lakh rupees.**