TDS: A 3-DEE System

Deduct, Deposit and Declare

A Practical Approach to TDS & TCS

(Amended upto 31.10.2020)

R.S. KALRA

Chartered Accountant

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About The Author

Born in a humble middle-class family in Jalandhar (Punjab) in 1962, Ravinder, an avid academic turned every obstacle into opportunity through sheer hard work, graduated in Bachelors of Commerce from DAV College, Jalandhar. After graduation he stepped into nonetheless a rigorous course of accountancy from Institute of Chartered Accountants of India and simultaneously done his Masters of Commerce from Himachal Pradesh University. All of this did not fulfill his appetite for knowledge he moved on to add another feather in his hat by doing Bachelors of Law.

Kicked off his career as a practicing Chartered Accountant, enlightened and awakened the masses on the taxation matters by writing articles in various leading newspapers and journals.

Climbing the ladder at a steady pace to scale mountainous heights and be at the helm of professional affairs with dignity made an unconditional contribution to the profession being Vice- Chairman of Jalandhar Branch of NIRC of ICAI from 1995-1998, Chairman Jalandhar branch of NIRC of ICAI for the year 2008-2009, Member Regional Tax Advisory Committee of CBDT, New Delhi, Member Direct Tax Committee of ICAI for the Year 2011-2012, Special Invitee Direct Tax Committee of ICAI for the Year 2012- 2013,Member Indirect Tax Committee of ICAI for the Year 2013-2014,Member Board of Studies of ICAI of 2014-15,Senate Member of Guru Nanak Dev University, Amritsar from 01.07.2014 to 30.06.2016, Member of Committee on Economic, Commercial Laws & WTO, and Economic Advisory of ICAI for the Year 2017- 2018..At present he is on the panel of authors of Tax Guru.

About The Book

Tax laws are a part of the dynamic laws which always keep changing. Not only amendment but its interpretation and meaning also keeps changing, making it imperative for the taxpayers to keep a constant track of it on an ongoing basis.

The book 'TDS: A 3-DEE SYSTEM' is a mobile guide for the taxpayers. All the sections are incorporated in the form of Frequently Asked Question (FAQ). It is an attempt to keep the taxpayers updated as well as informed and provides all the information related to TDS in summarized as well as simple manner.

In case of any doubt or query, readers are requested to approach the author at ca.rskalra@yahoo.com. Author requests for the suggestions and feedback from the readers for making it better.

Wish you all a Happy Reading.

- CA R.S. KALRA

M No: 9888927000

Date 11/11/2020

CA SANJAY KUMAR AGGARWAL

FOREWORD

I am extremely glad to know that CA R.S.Kalra, is bringing out a book on "TDS: A 3-DEE System". I had the opportunity of meeting CA R.S. Kalra in year 2006 in a Seminar. I have been going through various articles written by CA R.S. Kalra. He possesses a unique skill to explain highly complicated and intricate issues in very simple language exercising economy of words. He is able to put proper focus on the central theme of a complicated tax issue.

Speaking of Experience, CA R.S. Kalra has been practicing Chartered Accountant having an in depth experience of more than 33 years in Direct Taxes. There is no doubt that his vast experience and wisdom will contribute in the better understanding of Income Tax Law.

I have gone through this book. The book has been written in a style which is easy to grasp. The complexities of taxation issues related to TDS and TCS have been explained in a very simple manner. A tax payer as well as tax consultant can easily refer to this book for proper answer to the doubts plaguing his mind. The precautions to be observed by the taxpayers and the pitfalls to be avoided have been very clearly pointed out. I am of the firm view that this book will be of great help not only to the taxpayers but also to the members of professional bodies and the officials of the Income tax Department.

This book represents a systematic codification of all the ingredients required to understand the Tax Deduction provisions of the Income Tax Act,1961 It is a commendable compendium of legal and procedural aspects of Income Tax Act. The author has highlighted the relevant Circulars, Notification and rules. The analysis of the relevant provisions is also handled in a masterly fashion.

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

I wish him great success in this venture.

(C.A. Sanjay Kumar Aggarwal)

What Professionals Say:

"If there's anyone who can explain Tedious TDS in so much detail yet in an interesting way, it is my dear friend R.S.Kalra"

~Advocate Dinesh Sarna

"Infused by a can-do spirit Kalra has done a commendable job on bringing the impressive breadth of TDS under the bundle of 194 pages, this book is very handy on practical issues involved in TDS."

~CA Ashwani Jindal

"TDS plays a significant role in collection of Taxes that is why with each passing year more and more sources of income are brought under its purview, therefore it is inevitable part of Practice and Tedious TDS: A 3 Dee System has all that a professional needs."

~CA Dr. Ashwani Gupta

"Self-Explanatory is the correct word I will use for Kalra's works but this one all the more befitted it. It contains the TDS provisions in an exhaustive manner and the FAQ's addresses the need of practical issues involved in TDS."

~CA Ashwani Randeva

"In this informative and insightful book, R.S.Kalra brilliantly explains TDS, Indian Taxation system has come of age where it will need such authors to explain Income Tax provisions in a simplified manner, Elegantly written and passionately engaging, Tedious TDS:A 3 Dee Taxation System, is another substantial achievement from one of the finest author CA R.S.Kalra"

~CA Manoj Soni & CA Rajiv Makol

Acknowledgement

*I express my gratitude to **Mahamandleshwar Swami Shanta Nand Ji** for their ever showering blessings and inspiration.*

*I am always indebted to **CA Dr. Girish Ahuja** & **CA Ashok Batra** for their valuable guidance and continuous support in the field of taxation.*

*Writing a book on a specialised topic on a subject with so much practical applicability, needs an enthusiastic team and constant efforts. Resultantly, constant and determined involvement of **CA Arvind Tuli, CA H.S. Makkar**, **CA Gurleen Singh Sahni, CA Parampreet Kaur, CA Gagandeep Kaur** and **CA Jasmeet Singh** is highlighted here.*

*I heartily thank **Harjot Singh, Ritik Chopra** and **Shubham Beri** for their suggestions during this project.*

Above all, knowledgeable readers are appreciated for their unshakable faith and steadfast patronage even during rapidly changing times. There is always an opportunity for betterment, improvement and refinement in all areas including writing a book for professionals. Therefore, positive suggestions, unprejudiced views and healthy criticism, if any, of readers is always welcome.

~CA R.S. Kalra

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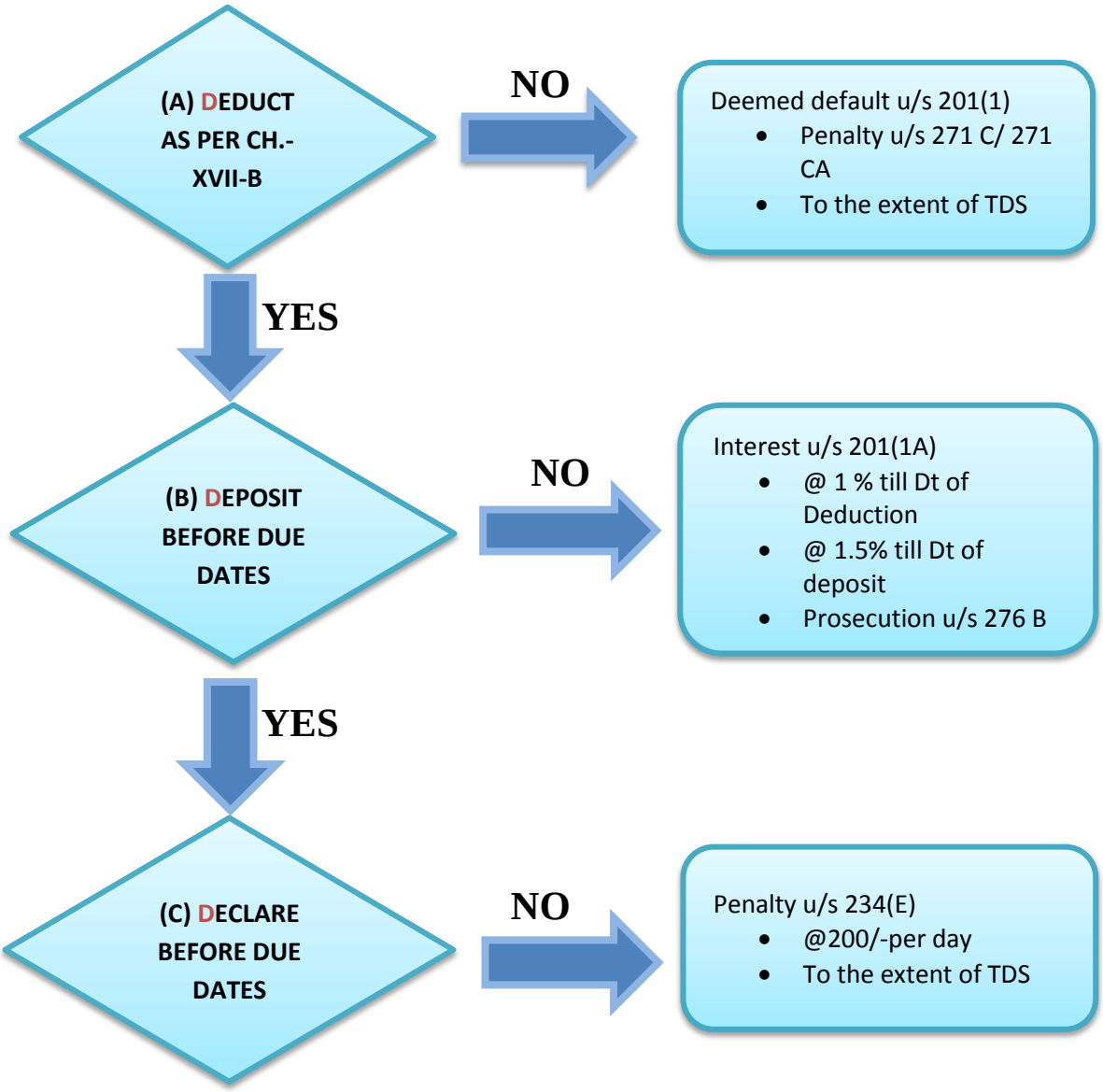


(A) Changes in rate of Tax Deduction at Source (TDS) [DEDUCT]

In order to provide more funds at the disposal of the taxpayers for dealing with the economic situation arising out of **COVID-19 pandemic**, the rates of Tax Deduction at Source (TDS) for the following non-salaried specified payments made to residents has been reduced by 25% for the period from 14th May, 2020 to 31st March, 2021. All sections other than Section 192 and 194N are covered under this:-

S. No	Section of the Income-tax Act	Nature of Payment	Existing Rate of TDS	Reduced rate from 14/05/2020 to 31/03/2021
1	193	Interest on Securities	10%	7.5%
2	194	Dividend	10%	7.5%
3	194A	Interest other than interest on securities	10%	7.5%
4	194C	Payment of Contractors and sub-contractors	1% (individual/HUF) 2% (others)	0.75% (individual/HUF) 1.5% (others)
5	194D	Insurance Commission	5%	3.75%
6	194DA	Payment in respect of life insurance policy	5%	3.75%
7	194EE	Payments in respect of deposits under National Savings Scheme	10%	7.5%
8	194F	Payments on account of re-purchase of Units by Mutual Funds or UTI	20%	15%
9	194G	Commission, prize etc., on sale of lottery tickets	5%	3.75%
10	194H	Commission or brokerage	5%	3.75%
11	194-I(a)	Rent for plant and machinery	2%	1.5%
12	194-I(b)	Rent for immovable property	10%	7.5%
13	194-IA	Payment for acquisition of immovable property	1%	0.75%
14	194-IB	Payment of rent by	5%	3.75%

		individual or HUF		
15	194-IC	Payment for Joint Development Agreements	10%	7.5%
16	194J	Fee for Professional or Technical Services (FTS), Royalty, etc.	2% (FTS, certain royalties, call centre) 10% (others)	1.5% (FTS, certain royalties, call centre) 7.5% (others)
17	194K	Payment of dividend by Mutual Funds	10%	7.5%
18	194LA	Payment of Compensation on acquisition of immovable property	10%	7.5%
19	194LBA(1)	Payment of income by Business trust	10%	7.5%
20	194LBB(i)	Payment of income by Investment fund	10%	7.5%
21	194LBC(1)	Income by securitisation trust	25% (Individual/HUF) 30% (Others)	18.75% (Individual/HUF) 22.5% (Others)
22	194M	Payment to commission, brokerage etc. by Individual and HUF	5%	3.75%
23	194-O	TDS on e-commerce participants	1% (w.e.f. 1.10.2020)	0.75%

(B) DATE TO DEPOSIT [DEPOSIT]

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

(C) PAYMENT OF TAX, QUARTERLY STATEMENT AND FURNISHING TDS/TCS CERTIFICATE

[DECLARE]

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

INTRODUCTION

TDS stands for **'Tax Deducted at Source'**. It was introduced to collect tax at the source from where an individual's income is generated. The government uses TDS as a tool to collect tax in order to minimize tax evasion by taxing the income (partially or wholly) at the time it is generated rather than at a later date.

TDS is applicable on the various incomes such as salaries, interest received, commission received etc. TDS is not applicable to all incomes and persons for all transactions. Different rates of TDS have been prescribed by the Income Tax Act for different payments and different categories of recipients

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

The person who is making the payment is responsible for deducting the tax and depositing the same with government. This person is known as '**deductor**'. On the other hand, the person who receives the payment after the tax deduction is called '**deductee**'.

How TDS works

The entity making a payment (which is subject to TDS) deducts a certain percentage of the amount paid, as tax and pays the balance to the recipient. The recipient also gets a certificate from the deductor stating the amount of TDS. The deductee can claim this TDS amount as tax paid by him (i.e. the deductee) for the financial year in which it is deducted.

The deductor is duty bound to deposit the TDS with the government. Once deposited this amount reflects in the Form 26AS of individual deductees on the TRACES website linked to the income tax department's e-filing website.

Form 26AS is a statement which shows the amount of tax deducted and deposited in a person's name/PAN. An individual can, therefore, view/check the TDS from incomes paid to him by viewing this Form 26AS. Each deductor is also duty bound to issue a TDS certificate certifying how much amount is deducted in the deductee's name and deposited with the government.

TDS only applicable above a threshold level

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

Also, GST should be excluded while deducting TDS. [Circular No.23/2017 dated 19th July 2017]

Section 192 TDS on Salary

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

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

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

*[32]**[**(1C) For the purposes of deducting or paying tax under sub-section (1) or sub-section (1A), as the case may be, a person, being an eligible start-up referred to in section 80-IAC, responsible for paying any income to the assessee being perquisite of the nature specified in clause (vi) of sub-section (2) of section 17 in any previous year relevant to the assessment year, beginning on or after the 1st day of April, 2021, shall deduct or pay, as the case may be, tax on such income within fourteen days—*

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

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

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

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

(2) Where, during the financial year, an assessee is employed simultaneously under more than one employer, or where he has held successively employment under more than one employer, he may furnish to the person responsible for making the payment referred to in sub-section (1) (being one of the said employers as the assessee may, having regard to the circumstances of his case, choose), such details of the income under the head "Salaries" due or received by him from the other employer or employers, the tax deducted at source therefrom and such other particulars, in such form and verified in such manner as may be prescribed, and thereupon the person responsible for making the payment referred to above shall take into account the details so furnished for the purposes of making the deduction under sub-section (1).

(2A) Where the assessee, being a Government servant or an employee in a company, co-operative society, local authority, university, institution, association or body is entitled to the relief under sub-section (1) of section 89, he may furnish to the person responsible for making the payment referred to

in sub-section (1), such particulars, in such form and verified in such manner as may be prescribed, and thereupon the person responsible as aforesaid shall compute the relief on the basis of such particulars and take it into account in making the deduction under sub-section (1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2) Who is the payee?

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

For e.g

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

II. Part-Time Directors of the company, visiting professors & visiting doctors are covered u/s194 J and not covered u/s 192. The whole-time directors are employees of the company and hence TDS is deductible u/s 192.

Case laws:

- **PCIT(TDS) vs. National Health & Education Society [2019] 4112 ITR 404 (Bom):**

Where there existed no relationship of employer and employee between assessee and Hospital Based Consultants (HBCs), provisions of section 192 would not be applicable

- **CIT(TDS) vs. Asian Heart Institute and Research Centre (P.) Ltd. [2019] 104 taxmann.com 125 (Bom):**

Where assessee trust, running a hospital, shared receipts from patients with consultant doctors in fixed ratio, TDS was to be deducted under section 194J as such payment was professional fees

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

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

4) When to Deduct TDS under Section 192?

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

5) Threshold limit

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

6) Rate of TDS under Section 192

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

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

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

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

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

ILLUSTRATION*:*

Estimated Salary of an employee below 60 years of age is ₹8.00 lakh out of which ₹50,000/- is on account of non-monetary perquisites and the employer opts to pay the tax on such perquisites as per the provisions of income tax act. Total salary income chargeable to Tax is ₹8.00 lakhs. Employers are required to deduct perquisite tax for the A.Y. 2020-21 computed as follows:

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

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

8) Excess or shortfall of TDS during the financial year

•Any excess/deficiency arising out of previous deduction or failure to deduct during the financial year can be adjusted subsequently as per **Section 192(3)**.

•Thus, where assessee did not deduct tax from salaries in each month, rather it deducted tax at end of financial year, interest u/s. 201(1A) could not belevied–**CIT v. Enron Expat Services Inc.(Uttarakhand HC)**(ITANo.78/2007)

•If TDS u/s.192 is not deducted in equal installments intentionally (not bonafide) and the deficiency is made good in last months, interest u/s. 201(1A) is liable to be levied –**Madhya Gujarat Vij Co. Ltd. v. ITO (Ahmedabad Trib.)** (ITANo.420/Ahd/2011)

9) RELIEF WHEN SALARY IS PAID IN ARREARS OR ADVANCE –SECTION 89(1)

•Advance Salary and Arrears of salary-Taxable in the year of receipt.
•However, eligible to claim relief u/s. 89(1).
•Relief to be computed as per Rule 21A.
•As per Sec.192 (2A), Form No.10 E is required to be submitted to the employer. Form No.10 E is also required to be submitted electronically on the e-filing portal.

•**Section 89(1) and Section 10(10C)**:
If any amount received on voluntary retirement or termination of service as per **VRS** or in case of public sector company, a scheme of voluntary separation is claimed as exempt u/s. 10(10C), **relief u/s. 89(1) cannot be claimed**.

10) Other relevant points related to section 192

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

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

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

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

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

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

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

   ➢ The employee MAY provide to the employer, particulars of:

   - Other Income, including tax deducted thereon
   - Loss, only if it is under the head ‘Income from house property’

   ➢ Income from House Property-
   - Any other rental income may be informed to the employer.

- Deemed let out property- From A.Y. 2020-21, if assessee owns more than 2 Self occupied houses, such other house or houses shall be deemed to have been let out and its annual value shall be computed in accordance with Section 23(1). [Prior to A.Y. 2020-21, if the assessee owned 2 houses, the other house had to be deemed to have been let out]
- Assessee can claim deduction of interest paid on borrowed capital u/s 24(b) of the Act.
- Loss only under the head 'Income from House Property' can be informed to the employer. House Property loss can be set-off maximum upto Rs. 2 Lakhs. [Section 71(3A)]
- Particulars of 'Other Income' to be informed to the employer in simple statement duly verified by the employee- Rule 26 B

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

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

- The employee may declare his other incomes to the employer for the purpose of tax deduction at source under this section.
- If he wants to declare, then particulars of
  i. other income (not being a loss) and tax deducted thereon
  ii. the loss under the head "Income from house property"
  shall be submitted to the employer in a prescribed form and verified in a prescribed manner.
- On receipt of the same, employer shall deduct tax under section 192 after taking into account the other income.
- However, this shall not have the effect of reducing the tax deductible (except where the loss under the head "Income from house property" has been taken into account) from salary income below the amount that would be so deductible if the other income and tax deducted thereon had not been taken into account.

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

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

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

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

14) Evidence/Proof Of Claims To Be Submitted By The Employee –Section 192(2D)

The person responsible for making any payment of income chargeable under the head 'Salaries' shall obtain from the assessee the evidence or proof of particulars of prescribed claims made by him in Form No. 12BB:

a) Exemption of House Rent Allowance

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

b) Leave Travel Concession

- Evidence of expenditure is required to be furnished to the employer as per Rule 26C
- Leave Travel Concession cannot be claimed for foreign travel- Syndicate Bank Vs. ACIT (TDS) 164 ITD 319 (Bengaluru Trib.)
- However, if the assessee has, under bonafide belief that foreign travel costs can be claimed as exempt u/s 10(5), not deducted TDS, penalty u/s 271C could not be levied and the same was treated as reasonable cause for the purpose of Section 273 B- State Bank of India Vs. ACIT (TDS) [2019] 063 ITD 440 (Jaipur Trib.)

c) Deduction of Interest u/s 24 (b)

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

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

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

15) TDS on Salary to Partners

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

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

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

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

16) TDS on Pension and Family Pension

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

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

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

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

On the other hand, Family Pension is not "Salary" but an "Income from Other Sources". Therefore, TDS cannot be deducted on Family Pension under Section 192.

Moreover, there is no other Section in the Income Tax Act which makes it mandatory to deduct TDS on family pension. Therefore, there is no TDS deduction on Family Pension.

In case of pensioners of a Govt. or other departments, receiving pension through nationalized banks, TDS has to be deducted by the bank u/s 192.

Further, the Banks are bound to issue Form No. 16 to such pensioners as per Section 203.

Form No. 16 cannot be denied merely because there is no Employer-employee relationship between the bank and such pensioner. [CBDT Circular No. 761 dated 13.01.1998]

17) Salary received by MP, MLA, Ministers

- Remuneration received by a Member of Parliament, Member of Legislative Assembly is not chargeable as Income under the head 'Salary'. As there is no employer- employee relationship. It is chargeable under the head 'Income from other sources' – CIT Vs. Shiv Charan Mathur (Raj. HC) (ITA No. 96 of 2006) (Also refer CBDT Letter F. No. 40/29/67-IT(A-1) DATED 22.05.1967
- Salary received by Chief Minister or a minister is taxable under the head 'Salary' – Lalu Prasad Vs. CIT (Patna) (2009) 316 ITR 186
- Daily allowance, Constituency allowance, etc. received by MP/MLA is exempt u/s 10(17).

18) TDS under section 192 and Section 115BAC

Tax rates u/s 115 BAC inserted vide Finance Act, 2020

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

When to exercise option u/s 115 BAC

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

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

•**Intimation to Employer**-The employee, whether having any income under head 'profits and gains from business or profession' or not, has to intimate the employer about the intention to opt for concessional rate of taxation u/s.115BAC of the Act. The employer will deduct TDS accordingly.
•If **no such intimation** is made, TDS will be deducted without considering Section115BAC.
•Intimations made to the employer **cannot be modified during the year**.

•However, this intimation given to employer is not binding and the employee can choose different option while filing return of income.
•In respect of employee having income under PGBP head– intimation for subsequent years should not deviate from previous intimation, except when the employee opts out from Section115BAC.
•**CBDT Circular No.C1 of 2020 dated April 13, 2020**

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

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

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

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

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

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

2) When to Deduct TDS under Section 192A?

Tax is deductible at the time of payment.

3) Which amount is subject to tax deduction?

a. Tax is deductible from accumulated lump sum payment when the employee has not rendered continuous service of 5 years (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.). RPF is exempt in the hands of the employee if the employee has resigned before completion of 5 years but he joins another employer who maintains recognized provident fund, and provident fund money with the current employer is transferred to the new employer.

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

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

4) **Threshold limit**

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

5) **Rate of TDS under Section 192A**

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

6) **No deduction of tax at source**

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

7) Further,if post retirement,if any interest is paid on the accumulated balance not withdrawn,tax is required to be deducted as per section 194A,since there is no employer –employee relationship.

Section 193 TDS from Interest on Securities

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

Provided *that no tax shall be deducted from—*

(i) any interest payable on 4 per cent National Defence Bonds, 1972, where the bonds are held by an individual, not being a non-resident; or

(ia) any interest payable to an individual on 4 per cent National Defence Loan, 1968, or 4 per cent National Defence Loan, 1972; or

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

(ii) [***]

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

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

(iii) any interest payable on 6 per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, where the Bonds are held by an individual not being a non-resident, and the holder thereof makes a declaration in writing before the person responsible for paying the interest that the total nominal value of the 6 per cent Gold Bonds, 1977, or, as the case may be, the 7 per cent Gold Bonds, 1980, held by him (including such bonds, if any, held on his behalf by any other person) did not in either case exceed ten thousand rupees at any time during the period to which the interest relates;

(iiia) [***]

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

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

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

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

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

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

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

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

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

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

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

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

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

2) When to Deduct TDS under Section 193?

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

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

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

3) Meaning of interest on securities

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

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

4) Rate of TDS under Section 193

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

a) No surcharge, plus Health & Education Cess shall be added to the above rates. Hence, tax will be deducted at source at the basic rate.
b) As per section 206AA(1), if the permanent account number is not provided by the deductee, the tax shall be deducted at the higher of the following rates, namely:—

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

c) Further, as per section 206AA(4), no certificate under section 197 for deduction of tax at Nil rate or lower rate shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.
d) Similarly, declaration under 15G/15H shall not be valid if it does not contain the permanent account number of the declarant. In case any declaration becomes invalid, the deductor shall deduct the tax @ 20%.

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

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

A. Interest payable to insurance companies, etc.:

Any interest payable to:—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 194 TDS on payment of dividend

194. *The principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, shall, before making any payment* [33] ***[****by any mode****]*** *in respect of any dividend or before making any distribution or payment to a shareholder, who is resident in India, of any dividend within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of section 2, deduct from the amount of such dividend, income-tax* [34] ***[****at the rate of ten per cent****]*** *:*

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

(a) the dividend is paid by the company by [35] ***[****any mode other than cash****]****; and***

(b) the amount of such dividend or, as the case may be, the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during the financial year by the company to the shareholder, does not exceed [36] ***[****five thousand****]*** *rupees:*

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

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

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

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

[37] ***[***]***

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

The principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of any dividend (including dividends on preference shares) to a shareholder, who is resident in India, is required to deduct tax at source.

2) What is threshold limit u/s 194?

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

3) When to Deduct TDS under Section 194?

Such tax shall be deducted before making payment of dividend.

4) Rate of TDS under Section 194

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

5) Other Points-

- Only Individual Shareholder can furnish Form No. 15G or 15H, as the case maybe.
- No deduction on dividend paid to LIC, GIC or any other connected insurer.

Summary

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

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

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

Provided *that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed* [38] ***[****one crore rupees in case of business or fifty lakh rupees in case of profession****]*** *during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.*

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

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

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

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

(a) [39] *[forty] thousand rupees, where the payer is a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution, referred to in section 51 of that Act);*

(b) [40] *[forty] thousand rupees, where the payer is a co-operative society engaged in carrying on the business of banking;*

(c) [40] *[forty] thousand rupees, on any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf; and*

(d) five thousand rupees in any other case:

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

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

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

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

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

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

Provided also *that in case of payee being a senior citizen, the provisions of sub-clause (a), sub-clause (b), and sub-clause (c) shall have effect as if for the words "*[41]*[forty] thousand rupees", the words "fifty thousand rupees" had been substituted.*

Explanation.—[42]***[***]***

(ii) [***]

(iii) to such income credited or paid to—

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

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

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

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

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

(f) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

[43]***[Provided*** *that no notification under this sub-clause shall be issued on or after the 1st day of April, 2020;**]***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The person (other than an individual or a Hindu Undivided Family) who is responsible for paying to a resident any income by way of interests other than 'interest on securities' is required to deduct tax thereon at the rates in force.
An individual or a HUF is liable to deduct TDS under section 194A, if total sales, gross receipts or turnover exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such interest is credited or paid.

LIABILITY TO DEDUCT TAX AT SOURCE BY INDIVIDUAL AND HUF

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

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

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

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

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

- **Impact of Amendment**

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

    (A) one crore rupees in case of business or

    (B) fifty lakh rupees in case of profession
    during the financial year immediately preceding the financial year in such sum is credited or paid.

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

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

ILLUSTRATION-

Mr. A, proprietor of AB enterprises made turnover of ₹ 150 lakhs during previous year 2018-19, his turnover for the year ended 31-03-2020 was ₹ 85 lakhs. Decide whether he is liable to deduct tax at source under section 194A in PY 2019-20?

Since Mr. A's turnover exceeds ₹ 100 lakhs in the immediately preceding financial year i.e. FY 2018-19, he is liable to deduct tax at source under section 194A in the previous year 2019-20, irrespective of his turnover being less than ₹ 100 lakhs in the Financial year 2019-20. He will not be required to deduct tax for the FY 2020-21 as his turnover for the FY 2019-20 is below ₹ 100 Lakhs.

Therefore if any partnership firm, LLP, Company, AOP, society pays interest exceeding the threshold limit, it is required to deduct TDS.

2) Who is the recipient?

A resident person

3) What is the nature of payment covered?

Interest other than interest on securities

4) When is tax to be deducted?

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

5) What is the rate of tax deduction?

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

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

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

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

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

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

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

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

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

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

1) The aggregate amount of interest credited/paid (or likely to be credited/paid) during the FY does not exceed the specified threshold limit.(SEE POINT 6)
2) Interest is paid/credited to any banking company, co-operative bank, public financial institutions, LIC, UTI, an insurance company, co-operative society carrying the business of insurance or notified institutions.
3) Interest is paid/credited by the firm to its partner(s).

ILLUSTRATION-

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

In such a case, as per section 194A tax is not to be deducted from interest paid or payable by a partnership firm to its partner, who is resident in India. Hence, the firm need not deduct tax at source from payment of interest to its partner, Mr. R.

However, payment of interest by the firm to its non-resident partner is not governed by Section 194A. The same is governed by Section195, which requires deduction of tax at source from interest paid or payable to any non-resident.

4) Interest is paid/credited by co-operative society(not including co-operative bank) whose turnover does not exceeds Rs. 50 Crores (w.e.f. 01.04.2020) during the previous Financial year to its members [i.e. interest on time deposits /other deposits to members holding one share or to any other co-operative society.]
5) Interest is paid/credited in respect of deposits under the schemes of Post Office (Time Deposits), Post Office (Recurring Deposits), Post Office Monthly Income A/c, Kisan Vikas Patra, NSC VIII Issue, Indira Vikas Patra.
6) Interest is paid/credited on deposits (other than time deposit made on/after July 1, 1995) with a banking company or interest paid/credited to non-members on deposit with a co-operative bank.
7) Interest paid/credited in respect of deposits (by non-members) with a primary agricultural credit society or primary credit society or co-operative land mortgage bank or co-operative land development bank.
8) Interest paid/credited by Central Govt. under different provisions of Direct Taxes.
9) Interest paid/credited on compensation awarded by the Motor Accidents Claim Tribunal if the aggregate amount does not exceed ₹50,000. Threshold limit of ₹50,000 is applicable separately where interest is to be shared by 2 or more claimants. (w.e.f. 1st June 2015, deduction of tax u/s 194A from interest payment on the compensation amount awarded by the Motor Accident Claim Tribunal shall be made only at the time of payment, if the amount of such payment or aggregate amount of such payments during the FY exceeds ₹50,000.)
10) Income paid/payable by an infrastructure capital company/fund or public sector company in relation to zero coupon bonds.

11) Interest paid/payable by an Offshore Banking Unit on deposits made (or borrowings) on/after Apr 1, 2005, by a person who is resident but not ordinarily resident in India
12) Interest referred to in section 10(23FC)*.

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

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

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

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

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

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

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

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

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

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

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

11) TDS under Section 194A on Cheque discounting charges

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

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

- **The CBDT has made following observation in its Circular No. 23/2015, dated 28-12-2915 on the above issue:**
  In the case of **UCO Bank in Writ Petition No. 3563 of 2012** (available on NJRS at 2014) and **CM No. 7517/2012** vide judgment dated 11/11/2014, the Hon'ble Delhi High Court has held that the provisions of section 194A do not apply to fixed deposits made in the name of Registrar General of the Court on the directions of the Court during the pendency of proceedings before the Court. In such cases, till the Court passes the appropriate orders in the matter, it is not known who the beneficiary of the fixed deposits will be. Amount and year of receipt is also unascertainable. The Hon'ble High Court thus held that the person who is ultimately granted the funds would be determined by orders that are passed subsequently. At that stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient. The High Court has also quashed Circular No. 8 of 2011**.**

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

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

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

As per literal interpretation of Clause (v) of Section194A(3), payment of interest by a co-operative society to any other co-operative society is not liable for TDS u/s194A. Co-operative society includes a co-operative bank. Thus, payment of interest by a co-operative bank to a cooperative society is not liable for TDS u/s 194A. On the above issue, **Hon'ble Kerala High Court** has held that in terms of Section 194A(3)(v) there will be no requirement of deducting tax at source in the case of payment of interest by a co-operative bank to a co-operative society.-**Vembayam Service Co-operative Bank Ltd. vs. ACIT[WP(C). No.9578/2019 dated 18.10.2019] (Kerala High Court).**

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

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

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

Interest paid for delayed payments of trade liability is out of ambit of section 2(28A). Accordingly, not liable for TDS u/s.194A- **ITO vs. Parag Maha sukhlal Shah [2011] 46SOT302 (Ahmedabad Trib.)**

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

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

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

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

The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle, card game and other game of any sort in an amount exceeding ₹ 10,000 shall, deduct income-tax thereon at the rates in force.
Therefore, no tax is to be deducted where the amount of winning from each lottery, crossword puzzle, card game, etc. does not exceed ₹ 10,000.

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

(a) He has collected the amount equivalent to TDS amount from the payee.
(b) He insists the payee to make the payment of TDS on his own & submit the proof to the payer.

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

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

3) Rate of TDS under Section 194B

Rate of TDS is 30%.
No surcharge and Health & Education Cess shall be added. Hence, TDS shall be deductible at basic rates.

ILLUSTRATION-

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

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

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

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

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

Example-

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

Section 194BB — TDS on Winning from Horse Races

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

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

Any person, who is responsible for paying to any person any income by way of winnings from any horse race an amount exceeding ₹10,000 (~~₹5,000~~ upto 31.5.2016) shall deduct income-tax at the rates in force.

Any person here means a book maker or a person to whom a licence has been granted by the Government under any law for the time being in force for horse racing in any race course or for arranging for wagering or betting in any race course.

2) When to Deduct TDS under Section 194BB?

At the time of payment of such income.

3) Rate of TDS under Section 194BB

Rate of TDS is 30%.

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

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

Not Possible

Section 194C — TDS on Payment to Contractor

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

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

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

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

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

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

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

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

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

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

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

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.

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

Explanation.—For the purposes of this section,—

(i) "specified person" shall mean,—

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

(b) any local authority; or

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

(d) any company; or

(e) any co-operative society; or

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

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

(h) any trust; or

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

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

(k) any firm; or

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

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

*(B) [47]**[**has total sales, gross receipts or turnover from business or profession carried on by him exceeding one crore rupees in case of business or fifty lakh rupees in case of profession**]** during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor;*

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

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

(iv) "work" shall include—

(a) advertising;

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

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

(d) catering;

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

*but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer [49]**[**or associate of such customer**]**.*

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

Any person, other than an Individual or HUF, responsible for making payment to a resident contractor or sub-contractor for carrying out any work (including supply of labour) is liable to deduct tax at source under Section 194C.

However, an Individual or HUF, AOP/BOI is liable to deduct TDS under section 194C, if total sales, gross receipts or turnover exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such sum is credited or paid.

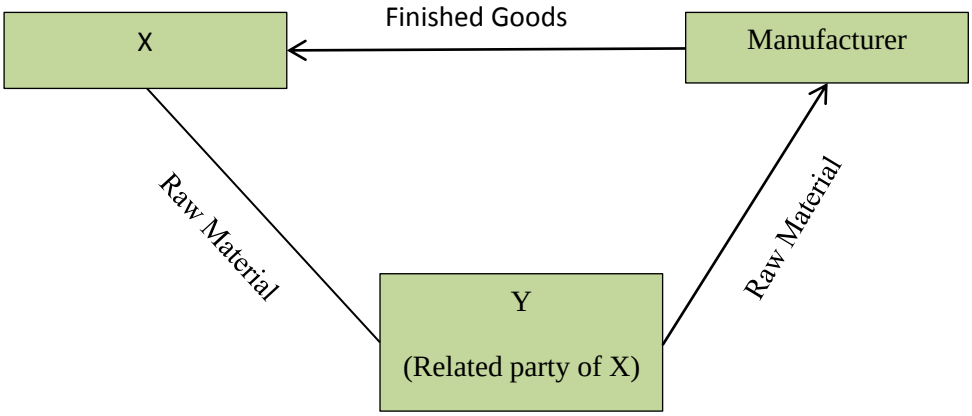
2) Which works contract is covered under Section 194C?

Works Contract includes:

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

  In the case of work contract being manufacturing or supplying product according to the specification of customer (by using material purchased from such customer), TDS shall be deducted on the invoice value excluding the value of material purchased from such customer, if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, TDS shall be deducted on the whole of the invoice value.

- Supply of labour for works contract.
  - Current definition of "work" includes OEM Manufacturing by using material purchased from such customer but excluded if material is not purchased directly from such customer.
  - Contract Manufacturing: Some Assesses were using the escape clause of the section by getting the contract manufacturer to procure the raw material supplied through its **related parties**. As a result, a substantial amount of income was escaping the tax net.



- Definition of "work" has been amendment for the purpose of TDS under Section 194C. To provide that in a contract manufacturing, the raw material provided by the assessee or its associate shall fall within the purview of the 'work' under Section 194C.

Case Law:

- **Malayalam Communications Ltd vs. Income tax Officer (TDS) [2019] 175 ITD 433 (Cochin - Trib.):**
  Where assessee made payments to various artists like singers, musicians etc. who participated in reality shows hosted by it as guests or judges, tax was required to be deducted at source u/s 194C.

- **Principal Commissioner of Income-tax (TDS) vs. National Health & Education Society [2019] 103 taxmann.com 286 (Bom):**
  Where contract between assessee and Call Center operator was in nature of a 'works contract' and not of a technical or professional nature, payments towards call centre expenses would be covered u/s 194C and not u/s 194J

- **CIT (TDS) vs. Saifee Hospital [2019] 104 taxmann.com 64 (Bom):**
  Where assessee-hospital made payments for services rendered towards maintenance of its medical equipments for proper and long functioning, it was required to deduction TDS u/s 194C not u/d 194J

- **CIT vs Dabur India Ltd.[2006] 283 ITR 197 (Delhi):**
  Purchase of printed packing material is a 'Contract of Sale' and not 'Works contract'. Thus, not liable for TDS u/s 194C.

3) When to Deduct TDS under Section 194C?

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

4) Rate of TDS under Section 194C

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

5) When is TDS under Section 194C not applicable?

Tax is not required to be deducted in the following cases:

a. If amount is payable to a person who is engaged in business of plying , hiring or leasing goods carriages and he does not own more than 10 goods carriage vehicle's, during the financial year. Such exemption is provided only if the recipient furnishes his PAN and payer intimate's the details to IT Dept. in TDS Return.

   Payments to transporters: If any person owns 10 or less goods carriage at any time during the year and he furnishes a declaration to this effect, TDS u/s.194C is not required to be deducted. [Such details of non-deduction of tax are to be furnished in Form No. 26Q] This exemption is not available if payment is made to a person merely acting as a transport agent and not a goods carriage owner.

b. If amount paid or credited does not exceed ₹ 30,000 in a single payment and ₹ 1,00,000 in aggregate during the financial year.

c. If the payment or amount credited to the contractor is for **personal use**.

6) Will Tax be Deductible at Source on the GST amount charged in the bill?

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

7) TDS at lower rate

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

ILLUSTRATION 1 – A, an individual whose total sales in business during the year ending March 31, 2019 was ₹1.25 crore, paid ₹ 8 lakhs by cheque on February 15, 2020 to a contractor for construction of his business premises in full and final settlement. No amount was credited earlier to the account of the contractor in the books of A.

An individual is required to deduct tax at source if his turnover exceeds Rs. 1 Crore in the preceding financial year. In the given case, since receipts of Mr. A exceeds Rs. 1 Crore in Financial year 31.03.2019 (Preceding year), he is required to deduct tax at source on payment made to contractor i.e., on ₹ 8 Lakhs at the applicable rate in force.

ILLUSTRATION 2 -

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

ILLUSTRATION 3- AB Ltd has made following payments on various dates to CD Ltd. towards work done under different contracts

Contract Number	Date of Payment	Amount (₹)
1.	**05.05.2019**	**20000**
2.	**06.06.2019**	**15000**
3.	**08.08.2019**	**25000**
4.	**10.12.2019**	**25000**
5.	**29.01.2020**	**17000**

In present case, though the value of each contract does not exceed ₹30,000 the aggregate amount exceeds ₹1,00,000 during the financial year. Hence, AB Ltd is required to deduct tax at source on the whole amount of ₹ 1,02,000 from the last payment of ₹17000.

<u>ILLUSTRATION 4</u>- A LTD. has entered into a contract to buy shirts from B Ltd. as per the designs & specifications given to it. For this A Ltd. sold necessary raw material to B Ltd. For the previous year 2019-20, B Ltd. has raised following invoices on A ltd.

Date	Invoice no.	Qty.	Value of Raw Material	Labour Charges	Total Bill ₹
14/10/19	**1020/19-20**	**10,000**	**-**	**-**	**60,000**
31/11/19	**1255/19-20**	**20,000**	**80,000**	**45,000**	**1,25,000**

In present case A Ltd. is required to deduct TDS on ₹ 60000 for the invoice no. 1020/19-20 while in invoice no. 1255/19-20 TDS to be made on ₹45,000 only**.**

Section 194D — TDS on Insurance Commission

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

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

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

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

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

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

2) When to Deduct TDS under Section 194D?

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

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

3) Rate of TDS under Section 194D

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

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

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

There are 2 instances when TDS is not deducted under Section 194D:

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

5) Non-deduction or lowered rate of tax deduction

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

6) Reinsurance not covered by section 194D

Reinsurance differs from insurance in a number of ways and the most important is that there is no contractual relationship between the Direct Insured and the Reinsurer.

There are separate contracts involved—one between the Insured and the Insurer and another between the Insurer and the Reinsurer. Insurer has to pay all valid claims to the insured, irrespective of whether the insurer can recover the same from his reinsurer.

When an Reinsurance company gets business from insurance company at premium less “Commission”, the “Commission” is not subject to TDS under section 194D, as it is not payable to an agent for procuring insurance business.

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

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

194DA. Any person responsible for paying to a resident any sum under a life insurance policy, including the sum allocated by way of bonus on such policy, other than the amount not includible in the total income under clause (10D) of section 10, shall, at the time of payment thereof, deduct income-tax thereon at the rate of [50][five per cent on the amount of income comprised therein] :

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

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

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

2) When to Deduct TDS under Section 194DA?

Tax shall be deducted at the time of payment thereof.

3) Rate of TDS under Section 194DA

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

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

4) Threshold Limit

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

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

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

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

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

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

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

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

6) Points to be kept in mind

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

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

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

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

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

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

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

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

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

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

Section 194E

TDS on Payments to Non-Resident Sportsmen or Sports Association

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

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

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

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

2) When to Deduct TDS under Section 194E?

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

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

3) Rate of TDS under Section 194E

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

Section 194EE

TDS on Payments in respect of Deposit under National Savings Scheme

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

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

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

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

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

2) When to Deduct TDS under Section 194EE?

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

3) Rate of TDS under Section 194EE

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

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

In the following cases, Tax is Not Deductible :

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

2. PAYMENT TO LEGAL HEIRS -
   Where the payment is made to the heirs of the deceased assessee (depositor), no tax shall be deducted at source.

3. DECLARATION TO THE PAYER IN FORM NO. 15G OR 15H [Section 197A]
   If a declaration is submitted under section 197A by the recipient to the payer, then no tax is deductible in a few cases.

Section 194F

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

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

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

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

2) When to Deduct TDS under Section 194F?

Tax is deductible at the time of payment.

3) Rate of TDS under Section 194F

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

Section 194G

TDS on Commission on Sale of Lottery Tickets

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

(2) [***]

(3) [***]

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

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

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

2) When to Deduct TDS under Section 194G?

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

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

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

3) Rate of TDS under Section 194G

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

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

4) Threshold limit

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

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

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

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

Section 194H

TDS on Commission and Brokerage

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

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

Provided further *that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed* [51] ***[****one crore rupees in case of business or fifty lakh rupees in case of profession****]*** *during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section:*

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

Explanation.—For the purposes of this section,—

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

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

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

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

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

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

(a) for services rendered (not being professional services), or
(b) for any services in the course of buying or selling of goods, or
(c) in relation to any transaction relating to any asset, valuable article or thing, not being securities.

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

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

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

2) When to Deduct TDS under Section 194H?

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

3) Rate of TDS under Section 194H

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

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

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

5) Additional Points

- **Commission received by Travel Agents liable to TDS U/s 194H-**

  Commission and supplementary commission received by the travel agents from Airlines are liable to tax deduction at source under section 194H.

- **SIM Cards -**

  Bharti Airtel Ltd. vs DCIT [2015] 372 ITR 33 (Karnatka HC): Discount given by a mobile cellular operator to its distributors in the course of selling of SIM cards and recharge coupons under pre-paid scheme of getting a connection are not liable to TDS under section 194H.

- **Advertisement Commission paid by Doordarshan to its Agents-**

  Advertisement commission paid by Doordarshan to its agents is subject to tax deduction at source under section 194H.

  Case Law:

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

- **Discount given to Stamp Vendors -**

  No TDS is applicable on discount given to Stamp Vendors for purchasing stamps in bulk quantity.

- **Payment made by Television Channels/Newspapers to Advertising Agency -**

  No TDS is attracted on payments made by television channels/newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It is trade discount but not commission.

- **Bank Guarantee Commission**

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

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

  PCIT vs. Shalimar Chemical Works Ltd. [2018] 257 Taxman 590 (Calcutta): Where assessee paid target incentives to dealers for increasing sales of its products, since there was no relationship of principal and agent between assessee and distributors, assessee was not required to deduct tax at source under section 194H while making said payments

- **Discount offered to distributors for promotion of sales** cannot be treated as commission liable to TDS u/s.194H-**Nokia India (P.) Ltd.vs DCIT (DelhiTrib.) [ITANo.5791/Del/2015]**

Section 194I — TDS on Rent

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

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

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

Provided *that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed* [52] *[two hundred and forty thousand rupees] :*

Provided further *that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed* [53] ***[****one crore rupees in case of business or fifty lakh rupees in case of profession****]*** *during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section :*

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

Explanation.—For the purposes of this section,—

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

(a) land; or

(b) building (including factory building); or

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

(d) machinery; or

(e) plant; or

(f) equipment; or

(g) furniture; or

(h) fittings,

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

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

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

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

- Sub-letting is also covered.

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

- For invoking the provisions of Section 194-I, element of control and possession is necessary–**Chhattisgarh State Electricity Board vs. ITO (Mumbai ITAT) [2012] 50 SOT 33 (Mumbai)**

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

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

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

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

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

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

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

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

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

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

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

In case the aggregate of the amount of such income credited/paid or likely to be credited/paid during the financial year by the aforesaid person to the account of or to the payee exceeds **₹2,40,000/-**[Including Advance Rent & Arrears of Rent] (w.e.f. 01/04/2019).

TDS threshold for deduction of tax on rent is increased from ₹1,80,000 to ₹ **2,40,000** for FY2019-20.

3) When to Deduct TDS under Section 194I?

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

4) Rate of TDS under Section 194I

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

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

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

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

Sharing or proceeds of film exhibition between a film distributor and a film exhibitor owning a cinema theatre- In case of a film exhibitor and film distributor contract, the share of the exhibitor is on account of composite services. The distributor does not take cinema building on lease or sub-lease or tenancy or under an agreement of similar nature. The payment made is not rental in nature.

Where the payee is the Government at agency- A person making payment to Government is not required to deduct tax at source under Section 196. The payments made to statutory authorities and local authorities are exempt from tax and hence not tax deductible.

Wharfage Charges- **Angre Port (P) Ltd vs. ITO [TS-219-ITAT-2019(PUN)]:** Wharfage Charges in common parlance are shipping fees for carrying on loading/unloading along the river front. Wharfage charges paid by assessee-company [engaged in providing port facilities for shipment of cargo] to the Maharashtra Maritime Board (MMB) could not be equated with 'rent'. MMB did not own the 'water' or 'waterfront' as it belongs to the State Government, thereby the Board could not have leased, sub-leased or created any tenancy for the use of the said water, as also there was no arrangement/contract between the assessee and the Board for the use of land/water. Thus, S. 194I not applicable

Lounge Services- **CIT vs. Jet Airways (India) Ltd [TS-231-HC-2019(BOM)]:** Payment by assessee for usage of lounge space at the airport is not rent liable for TDS u/s. 194-I. The payment for certain services, need not be seen in isolation. The real character of the service provided and for which the payment is made, would have to be judged. The dominant part of the service is to provide quiet, comfortable and a clean place for customers to spend some spare time and providing refreshments/beverages is only an incidental activity. Observing that the lounge is not exclusively used by assessee's customers, but even customers of other airlines would be allowed to use the facility, the High Court held that the payment does not contain an element of rent. High Court upheld the assessee's conduct of deducting tax u/s 194C.

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

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

ILLUSTRATION-

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

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

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

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

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

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

Section 194IA — TDS on Purchase of Immovable Property

194-IA. *(1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount eq195ual to one per cent of such sum as income-tax thereon.*

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

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

Explanation.—For the purposes of this section,—

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

[54][(aa) "consideration for transfer of any immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property;]

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

Preamble and Rational behind inserting Section 194-IA:

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

Section 194-IA:

This section was made applicable from 1.6.2013. Where the **'immovable property'** was acquired before 1.6.2013 but any instalment has been paid on or after 1.6.2013 TDS will have to be deducted subject to satisfaction of other conditions. Any person, being **a transferee**, responsible for paying (other than the person referred to in section 194LA, relating to compensation in case of compulsory acquisition of property) **to a resident transferor any sum** by way of consideration for **transfer of any immovable property**

being any land (other than agricultural land) or any building or part of a building shall be liable to deduct tax @ **1%** at the time of credit of such sum to the account of the transferor, or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

Provision Illustrated:

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

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

Any person, being a transferee responsible for paying (other than the person referred to in section 194LA) to a **resident** transferor any sum by way of consideration for transfer of any immovable property (**other than agricultural land**), is liable to deduct tax at source under this section.

Therefore, if the immovable property is purchased from a non-resident person for any value, no TDS is required to be deducted under this section. However, TDS shall be deducted under Section 195.

ILLUSTRATION:

Mr. Singh, non-resident, sold his building situated at Nakodar, Punjab to Mr. Sharma for a total consideration of ₹ 1.35 crore.

In such a case, Mr. Sharma will make the payment to Mr. Singh after deduction of tax @20% plus surcharge and Health & Education Cess @ 4% (on the LTCG computed) under Section 195. Section 194-IA does not apply where the payment is made to a non-resident.

ILLUSTRATION:

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

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

When to Deduct TDS under Section 194IA?

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

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

Threshold Limit u/s 194IA

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

Rate of TDS under Section 194IA

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

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

- The rate of TDS will be 20% in all cases, if PAN is not quoted.

  Case Law: Pushkar Prabhat Chandra Jain vs. UOI [2019] 262 Taxman 118 (Bom): If payer, after deducting tax, fails to deposit it in Government revenue, measures can always be initiated against such payers once seller of property suffers TDS at hands of payer purchaser; seller could not again be asked to pay same again

Immovable Property is partly financed by Bank/Lender

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

ILLUSTRATION*:*

If M purchased an immovable property of ₹ 60 lakh which is financed by bank for ₹ 40 lakhs and he has contributed ₹ 20.00 lakh. The TDS is to be deducted and deposited by Mr M is ₹ 60 lakhs @ 1% = ₹ 60,000/-. So Bank will pay to the transferor ₹ 40 lakhs and Mr M will pay ₹ 19.40 lakhs (₹ 20 lakhs – ₹ 0.60 lakhs). If the payment is made in installments then the amount shall be deductible in proportionate to the installment paid.

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

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

ILLUSTRATION:-

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

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

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

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

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

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

Transferee:

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

Scenario where the Provision is not applicable:

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

a. The immovable property transferred is a rural agricultural land.

b. The immovable property has been compulsory acquired under any law.

c. The total amount of consideration for the transfer of immovable property is less than

Rs.50,00,000/-

d. Where the transferor is a Non-Resident. In this case section 195 will be attracted.

Meaning of Immovable Property:

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

"Immovable property" means—

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

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

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

Section 3(26) of General Clauses Act, 1897

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

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

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

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

Agricultural land:

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

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

Meaning of Consideration:

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

a. club membership fee,

b. car parking fee,

c. electricity and water facility fees,

d. maintenance fee,

e. advance fee, or

f. any other charges of similar nature,

which are incidental to transfer of the immovable property.

In the context, the definition of consideration for transfer of any immovable property **is inclusive** and it includes **'all charges of the nature of ……';** therefore, it would include all charges similar in nature which are specifically included in the definition**. 'Of similar nature'** could mean **charges having some resemblance but not same**.

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

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

b. Chargers for additional facilities

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

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

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

to be deducted under the amended provision in respect of the sum payable on or after 1-9-2019 as consideration for transfer of immovable property

One Seller and Multiple Buyers

Honourable Delhi ITAT in the case of Vinod Soni v ITO (2019) 101 taxmann.com 190 (Del - Trib) has held that where assessee purchased an immovable property alongwith three other members of family for Rs.1.50 crores, in view of fact that share of each co-owner came to Rs.37.50 lakhs which was under threshold limit prescribed by section 194-IA, assessee was not required to deduct tax at source while making payment in question.

In this case, the Honourable tribunal Observed that provisions of section 194-IA (2) of the Act state that **"no deduction under sub-section(1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees".** The Tribunal further observed as under;

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

Finally the tribunal gave its verdict in favour of the Assessee.

One Buyer and Multiple Sellers:

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

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

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

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

Acquisition through Loan:

Where the lender makes the payment of the loan amount directly to the seller, he may remit 99% of the loan amount directly to the lender and balance 1% can be given to the buyer who will deposit the TDS. Alternatively, the lender may make the entire payment of the loan to the seller and the TDS may be deposited by the buyer himself.

Payment in Installments:

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

Exchange:

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

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

Scenario referred to in Section 45(3):

Revenue may forward following arguments:

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

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

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

d. As per Section 45(3), the profits or gains arising from the transfer of capital asset held by a person, to a firm or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year, in which such a transfer takes place and, for the purposes of computation of capital gain in the hands of the partner/member, the amount recorded in the books of account of the firm, association or body of individuals for such capital asset shall be deemed to be the full value of the consideration

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

Arguments in Favour of Assessee:

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

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

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

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

e. As one of the essential requirements for applicability of the provisions of section 194-IA as mentioned in above i.e the determination of the quantum and flow of consideration

between the transferor and transferee is not met, the provisions of Section 194-IA of the income tax will not be applicable in this case.

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

Scenario referred to in Section 45(4):

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

Section 194- IA vis a vis Section 50C:

Section 50C of The Income tax Act states that where the consideration received or accrued as a result of transfer of land or building or both is less than the stamp duty value declared by the State Government then in such cases **for the purposes of computation of capital gains under section 48** of shall be the value so accepted by the State Government. The question here may arise that what will happen to the provisions of section 194-IA relating to deduction of tax at source? Whether TDS would be deductible on the actual consideration or will be deductible on the value stipulated under section 50C?

Where the actual consideration price is less than the stamp duty value referred to in section 50C, tax will have to be deducted on the actual consideration price and not

the stamp duty value as the reference of the stamp duty value is only for the purpose of computation of capital gain.

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

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

Scenario illustrated:

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

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

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

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

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

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

With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer, the Act has inserted a new sub-section (5A) in section 45 which can be explained as under: Section 45(5A) has been inserted with effect from assessment year 2018-19 to provide for a special provision for computation of capital gains in case of an assessee transferring a capital asset pursuant to a joint development agreement.

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

a. The assessee is an individual or an HUF;

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

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

d. The transfer is made under a specified agreement;

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

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

If the aforesaid conditions are satisfied, then—

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

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

ii. consideration received in cash, if any

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

TDS Obligation on Developer:

W.e.f 01-06-2017 as per Section 194-IC, notwithstanding anything contained in section 194-IA, any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under the agreement referred to in sub-section (5A) of section 45, shall at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to 10% of such sum as income-tax thereon. If the PAN is not provided by the recipient of the consideration, the rate of TDS as per section 206AA shall be 20% instead of 10%. It may be noted that in the above case, tax will be deducted at source under the specified agreement at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, but the credit of such tax deducted at source will be available to the individual or HUF, as the case may be, at the time when the capital gain is computed as per section 45(5A)(i.e. previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority). In this case, the deductee will have to carry forward such tax deducted at source and claim the credit of the same in the previous year in which the capital gain becomes taxable.

TDS Obligation on Buyer towards Developer:

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

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

But assume a scenario where the case does not fall in the scope of Section 45(5A). In such as case, if we assume that the developer has been given limited rights in the form of license to develop the property then no TDS u/s 194-IA is required to be deducted on the amount

paid to a developer by a buyer of an apartment pertaining to the developer's share in a development agreement, to the extent of the amount paid by the buyer for undivided share of land which is conveyed by the developer to the buyer of an apartment by using the general power of attorney given by the Owner of the property to execute deeds of conveyance on his behalf in favour of such buyers, as **the developer is conveying only his development rights on the property**. However **there will be TDS obligation u/s 194-IA** in case of the view being taken that the immovable property has already been transferred in favour of the Developer to the extent of the Developer's Share as on the date of entering into the development agreement. This may invite litigations in future if adequately not clarified by CBDT.

Does Consideration include GST?

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

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

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

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

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

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

Online payment of TDS is mandatory. Online payment of challan is available on TIN NSDL website. Any sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of 30 days w.e.f. 1.6.2016 (earlier it was 7 days) from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QB. Where assessee purchased 96 flats and made payments

towards same after deducting tax at source under section 194IA, since assessee itself had filed separate TDS statements under section 200(3) in Form 26QB in respect of TDS deducted in respect of every individual transaction relating to purchase of each flat, Assessing Officer was justified in levying fee under section 234E on account of delay in filing statements in respect of each flat, while processing such statements under section 200A. Refer **Corner view Construction & Developers (P.) Ltd [2019] 109 taxmann.com 68 (Mumbai - Trib.)** Where in respect of purchase of property, assessee deposited tax at source under section 194-IA and also filed a statement to that effect **much prior to date when section 234E came into existence i.e. 1-6-2015**, impugned order levying fee under section 234E for violation of section 200(3) was to be **set aside Meghna Gupta [2018] 99 taxmann.com 334 (Delhi - Trib.)**

The person responsible for deduction of tax under section 194-IA shall furnish the certificate of deduction of tax at source in Form No.16B to the payee within 15 days from the due date for furnishing the challan-cum-statement in Form No.26QB under rule 31A after generating and downloading the same from the web portal specified by the Principal Director General or Director General of Income-tax (System) or the person authorised by him. Refer **'Bar against direct demand on assessee':**

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

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

Failure to Deduct the TDS:

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

Section 194IB — TDS on Rent of Property

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

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

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

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

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

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

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

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

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

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

3) Rate of TDS under Section 194IB

Section 194-IB provides that tax at a rate of **5%**(3.75% w.e.f. 14.05.2020 to 31.03.2021) should be deducted by the Tenant, Payer or Lessee at the time of making payment of rent to, Lesser, Landlord or Payee.
The tax so deducted has to be deposited to the Government Account through online by any of the authorized bank branches.
The provisions of section 203A relating to requirement of obtaining TAN No**.** shall not apply to a person required to deduct tax in accordance with the provisions of this section.
In case, the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

4) Other Points

- Challan-cum-statement in Form no. 26QC will have to be submitted.
- TDS certificate is to be issued in Form 16C by the person deducting tax within the specified due dates.

ILLUSTRATION-

Mr.Shan, a salaried employee, pays rent of Rs 62,000 per month to Mr. Rehan. Is he required to deduct Tax at source for the financial year 2019-2020?

Mr. Shan pays rent exceeding Rs 50,000 per month in the financial year; therefore he is liable to deduct tax at source @5% of such rent. Thus, Rs 37200 (Rs 62000*5%* 12 months) has to be deducted from rent payable for March, 2020.

- **In above case if Mr. Shan vacated the premises on 30th November 2019, what will be his liability?**

  If Mr. Shan vacated the premises on 30th November 2019, then tax of Rs 24800 (Rs 62000*5%***8 months**) has to be deducted from the rent payable for November 2019.

- **In above case if Mr. Shan vacated the premises on 31st March 2020, but Mr. Rehan did not furnish his PAN, what will be his liability?**

  If Mr. Rehan does not provide his PAN to Mr. Shan then tax of ₹ 148800 (₹.62000***20%***12months) or rent of that month i.e.62000 whichever is less has to be deducted from the rent payable for March, 2020.

Section 194IC — TDS on Payment Made Under Specified Agreement

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

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

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

2) What is meant by the Joint Development Agreement?

Joint Development Agreement is an agreement between two people i.e. the owner of the land or building and another person who is given the permission to build a real estate project and in return, he or she must give a share to the owner or the payment in cash must be done.

3) Rate of TDS under Section 194IC

Given below is the rate of tax that must be deducted under the section 194IC-

- 10 percent (7.5% w.e.f. 14.05.2020 to 31.03.2021) if the receiver has the PAN
- 20 percent, if there is no PAN of the receiver.

4) Under what circumstances TDS u/s 194IC is not deductible?

Tax deduction at source shall not be made in respect of that part of consideration which is in kind under the specified agreement.

5) When to Deduct TDS under Section 194IC?

Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time or payment thereof, whichever is earlier. For this purpose, “payment” can be in cash or by issue of a cheque or draft of by any other mode.

Section 194J — TDS on Professional or Technical Fees

194J. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of—

(*a*) fees for professional services, or

(*b*) fees for technical services, or

(*ba*) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company, or

(*c*) royalty, or

(*d*) any sum referred to in clause (*va*) of section 28,

shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to [55]**[***two per cent of such sum in case of fees for technical services (not being a professional services) or royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films and ten per cent of such sum in other cases,***]** as income-tax on income comprised therein :

Provided that no deduction shall be made under this section—

(*A*) from any sums as aforesaid credited or paid before the 1st day of July, 1995; or

(*B*) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed—

(*i*) thirty thousand rupees, in the case of fees for professional services referred to in clause (*a*), or

(*ii*) thirty thousand rupees, in the case of fees for technical services referred to in clause (*b*), or

(*iii*) thirty thousand rupees, in the case of royalty referred to in clause (*c*), or

(*iv*) thirty thousand rupees, in the case of sum referred to in clause (*d*) :

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed [56]**[***one crore rupees in case of business or fifty lakh rupees in case of profession***]** during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section :

Provided also that no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax on the sum by way of fees for professional services in case such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family:

Provided also that the provisions of this section shall have effect, as if for the words "ten per cent", the words "two per cent" had been substituted in the case of a payee, engaged only in the business of operation of call centre.

(2) [***]

(3) [***]

Explanation.—For the purposes of this section,—

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

(*b*) "fees for technical services" shall have the same meaning as in *Explanation 2* to clause (*vii*) of sub-section (1) of section 9;

(*ba*) "royalty" shall have the same meaning as in *Explanation 2* to clause (*vi*) of sub-section (1) of section 9;

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

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

Any person, not being an individual or a HUF, who is responsible for paying to a **resident** any sum by way of:-

1. Fees for professional Services

Professions are notified under section 44AA

- Accountancy
- Architectural
- Authorised Representative
- Company Secretary
- Engineering
- Film Artists/Actors, Cameraman, Director, Singer, Story-writer etc.
- Interior Decoration
- Legal
- Medical
- Technical Consultancy

2. Fees for technical services

3. Royalty

4. Any sum referred to in clause (va) of section 28

clause (va) of section 28

"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

(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

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.

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

- **Reimbursement of expense**– TDS not liable to be deducted on pure reimbursements when separate bill is raised.
- Fees for professional services means services rendered by person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or film artist.
- TDS u/s.194J not to be deducted on subsequent sale of software without modification– **Notification No.21/2012 dtd. 13.06.2012.**

ILLUSTRATION-

XYZ Co., a partnership firm took consultancy from an engineer located at Sydney. The firm has paid fees of ₹ 80000 to the engineer. Should the firm deduct Tax at source under section 194J from the fees paid to the engineer?

In this case, the professional fees are paid to non-resident and hence, tax is not to be deducted under section 194J. However, section 195 requires deduction of tax at source from payment made to non-resident if such payment is chargeable to tax. Hence, the firm may require to deduct tax at source under section 195. For such purpose provisions of tax treaty was to be considered.

2) Threshold limit for deducting tax

- Tax has to be deducted in case the payment is greater than ₹ 30,000 during the year. Such ₹30,000 is the maximum limit which is applicable to each item or payment independently.

  Example: Firm XYZ paid ₹ 25,000/- as fees for technical services and ₹ 20,000/- as professional charges to Mr. Red. Here firm XYZ is not liable to deduct TDS from payments made to Mr. Red as ₹ 30,000/- limit is separate for each item, namely fees for technical services and professional charges.

- TDS under this section is also applicable on commission or remuneration or fees given to a company's director. In these cases, the ₹30,000 limit is not applicable.

3) When to Deduct TDS under Section 194J?

The tax should be deducted at the time of passing such entry in the accounts or making the actual payment of the expense, whichever earlier.

4) Rate of TDS under Section 194J

Nature of payment	Threshold limit	Rate of tax (upto13.05.2020)	Rate of tax (w.e.f 14.05.2020 to 31.03.2021)
Fees for professional services	Rs. 30,000	10%	7.5%
Fees for technical services and payment to call centers	Rs. 30,000	2% (for FTS- 10% upto FY 19-20)	1.5%
Remuneration or fees to Director (other than 192)	NIL	10%	7.5%
Royalty	Rs. 30,000	10%	7.5%
Non-compete fees	Rs. 30,000	10%	7.5%

Finance Act : TDS on Royalties where such royalty is in the nature of consideration for sale, distribution or exhibition of a cinematographic film will also be subjected to TDS @ **2%**

5) Applying for TDS at a Lower Rate

According to Section 197, the person receiving payment can apply for a reduction of rate in TDS, through filling in the Form 13 and sending it to the assessing officer. If approved by the officer, a certificate stating a deduction in the TDS is issued to the assessee.

Section 194K — TDS on Income in Respect of units of Mutual Fund

194K. *Any person responsible for paying to a resident any income in respect of—*

(a) *units of a Mutual Fund specified under clause (23D) of section 10; or*

(b) *units from the Administrator of the specified undertaking; or*

(c) *units from the specified company,*

shall, at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent:

Provided *that the provisions of this section shall not apply—*

(i) *where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person responsible for making the payment to the account of, or to, the payee does not exceed five thousand rupees; or*

(ii) *if the income is of the nature of capital gains.*

Explanation 1.—*For the purposes of this section,—*

(a) *"Administrator" means the Administrator as referred to in clause (a) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);*

(b) *"specified company" means a company as referred to in clause (h) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);*

(c) *"specified undertaking" shall have the meaning assigned to it in clause (i) of section 2 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002).*

Explanation 2.—*For the removal of doubts, it is hereby clarified that where any income referred to in this section is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly.***]**

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

Any person responsible for making the payment to a resident in respect of

a) units of a Mutual Fund specified under clause (*23D*) of section 10 or of the Unit Trust of India,
b) units from the Administrator of the specified undertaking; or (c) units from the specified company
c) units from the specified company, shall,
d) (i) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person responsible for making the payment to the account of, or to, the payee does not exceed five thousand rupees; or (ii) if the income is of the nature of capital gains.

2) When to Deduct TDS under Section 194K?

At the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

3) Threshold Limit for deducting TDS?

Tax has to be deducted in this section if the payment is more than Rs.5000

4) Rate of TDS Under section 194 K?

Deduct income-tax thereon at the rate of **10%**. (7.5% w.e.f. 14.05.2020 to 31.03.2021)

5) Non applicability of Section 194 K

(i) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person responsible for making the payment to the account of, or to, the payee does not exceed five thousand rupees; or

(ii) if the income is of the nature of **capital gains**

Section 194LA — TDS on Payments of Compensation on Acquisition of certain Immovable Property

194LA. Any person responsible for paying to a resident any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land), shall, at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax thereon:

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed two lakh and fifty thousand rupees:

Provided further that no deduction shall be made under this section where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013).

Explanation.—For the purposes of this section,—

(*i*) "agricultural land" means agricultural land in India including land situate in any area referred to in items (*a*) and (*b*) of sub-clause (*iii*) of clause (*14*) of section 2;

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

Section 194LA

This section is effective from 1-10-2004 which provides as follows;

a. Any person responsible for paying any sum **to a resident** is required to deduct tax at source;

b. The payment must be in the nature of **compensation** or **the enhanced compensation** or **the consideration** or **the enhanced consideration** on account of **compulsory acquisition**, under any law for the time being in force, **of any immovable property**, other than agricultural land;

c. The tax must be deducted at the **rate of 10 per cent.** No surcharge or health and education cess shall be added to the above rates. Hence, tax will be deducted at source at the basic rate. The rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee.

d. The tax shall be deducted at the time of payment of the sum in cash or by issue of the cheque or of draft or by any other mode, whichever is earlier;

e. No deduction is required where the amount of such payment or the total amount of such payment does not exceed **Rs. 2.5 lakh, during the financial year**; and

f. For the purpose :

Immovable property means **any land** (excluding agricultural land) or any building or part of a building;

agricultural land means agricultural land in India, **wherever** situated [i.e., including land situate in any area referred to in section 2(14)(iii)(a)/(b)]**Thus Agricultural land even if situated in urban area is excluded from the term immovable property**.;

g. The TDS is required **only** in case of **compulsory acquisition under any law**. In other words, for purchase of any immovable property, tax is **not** required to be deducted at source, where such purchase is from a resident.

h. The limit for no deduction is fixed with reference to the payments made during a financial year and not the aggregate payments in respect of the acquisition of the land. To illustrate, if the land is acquired, say, for Rs. 1,95,000 in the financial year 2019-20, no deduction is required. If the compensation is enhanced by Rs. 50,000 in the next financial year, no tax is required to be deducted since the aggregate payment during the next financial year does not exceed Rs. 2.5 lakh.

i. Finance Act, 2017 has inserted new proviso after the Explanation to provide that no deduction of tax under the section is required, if the payment is made in respect of any award or agreement which has been exempted from levy of income tax under section 96 of "**Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013**"

j. The assessee to whom compensation is payable may make an application in Form No. 13 for obtaining a certificate for deduction of tax at any lower rate or no deduction of tax, as the case may be.

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

Any person, who is responsible for paying, on or after 1.10.2004, to a resident, any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land) shall, deduct income-tax thereon.

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

2) When to Deduct TDS under Section 194LA?

Tax is deductible at the time of payment of aforesaid sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

3) Rate of TDS under Section 194LA

The rate of tax deduction u/s 194LA is 10%(7.5% w.e.f. 14.05.2020 to 31.03.2021) of such compensation.

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

4) Where No TDS under Section 194LA is to be Deducted?

- No deduction shall be made under this section in a case where the amount of such payment or as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed **₹2,50,000.**
- No deduction shall be made under this section where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

5) Other key points related to section 194LA

Agricultural land for the purpose of this section means agricultural land in India situated in any area. Therefore, tax cannot be deducted in respect of compensation payable on account of compulsory acquisition of agricultural land situated in urban area.

Section 194LB

TDS on Income by way of Interest from Infrastructure Debt Fund

194LB. ***Where any income by way of interest is payable to a non-resident, not being a company, or to a foreign company, by an infrastructure debt fund referred to in clause (47) of section 10, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.***

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

Any person who makes payment of interest [which is payable by an infrastructure debt fund, as per section 10(47)] to a non-resident (not a company/ foreign company) is required to deduct tax at source.

2) When to Deduct TDS under Section 194LB?

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

3) Rate of TDS under Section 194LB

The rate of TDS shall be 5% of such gross interest plus surcharge.

1. Surcharge shall be added if applicable.
2. Health & Education Cess @ 4% shall be added to the above rates plus surcharge if applicable.
3. The provisions of section 206AA shall not apply to a non-resident, not being a company, or to a foreign company, in respect of payment of such interest subject to such conditions as may be prescribed.

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

Tax cannot be deducted at lower rate. Hence, section 197 shall not be applicable in this case.

Section 194LBA — TDS on Certain Income from Units of a Business Trust

194LBA. (1) Where any distributed income referred to in section 115UA, being of the nature referred to in [58]**[***]** clause (*23FC*) or clause (*23FCA*) of section 10, is payable by a business trust to its unit holder being a resident, the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.

(2) Where any distributed income referred to in section 115UA, being of the nature referred to in [58]**[***]** clause (*23FC*) of section 10, is payable by a business trust to its unit holder, being a non-resident (not being a company) or a foreign company, the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent [59]**[***in case of income of the nature referred to in sub-clause (*a*) and ten per cent in case of income of the nature referred to in sub-clause (*b*), of the said clause***]**.

[59]**[***(2A) Nothing contained in sub-sections (1) and (2) shall apply in respect of income of the nature referred to in sub-clause (*b*) of clause (*23FC*) of section 10, if the special purpose vehicle referred to in the said clause has not exercised the option under section 115BAA.***]**

(3) Where any distributed income referred to in section 115UA, being of the nature referred to in clause (*23FCA*) of section 10, is payable by a business trust to its unit holder, being a non-resident (not being a company), or a foreign company, the person responsible for making the payment shall at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

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

Any person who makes payment of income [as per section 115UA] which is payable by a business trust to its unit holder is required to deduct tax at source. Such unit holder can be a resident, non-resident (but not a company).

2) When to Deduct TDS under Section 194LBA?

The time of deduction is earlier of, the credit of income to the account of the payee (receiver) or actual payment (in cash, cheque, draft or another mode).

3) Rate of TDS under Section 194LBA

S.No.	Particulars	Rate
1.	Distribution of dividend income (w.e.f.01.04.2020) & income referred u/s 10(23FC) & 10(23FCA) to **resident**	10%(7.5% w.e.f. 14.05.2020 to 31.03.2021)
2.	Distribution of dividend income (w.e.f. 01.04.2020) & income referred u/s **10(23FC)(a)** to **non-resident**	5%
3.	Distribution of income referred u/s **10(23FC)(b)** to **non-resident**	10%
4.	Distribution of income referred u/s **10(23FCA)** to **non-resident**	Rates in Force

Section 194LBB — TDS on Income in Respect of Units of Investment Fund

194LBB. *Where any income, other than that proportion of income which is of the same nature as income referred to in clause (23FBB) of section 10, is payable to a unit holder in respect of units of an investment fund specified in clause (a) of the Explanation 1 to section 115UB, the person responsible for making the payment shall, at the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon,—*

(i) at the rate of ten per cent, where the payee is a resident;

(ii) at the rates in force, where the payee is a non-resident (not being a company) or a foreign company :

Provided *that where the payee is a non-resident (not being a company) or a foreign company, no deduction shall be made in respect of any income that is not chargeable to tax under the provisions of the Act.*

Explanation.—For the purposes of this section,—

(a) "unit" shall have the meaning assigned to it in clause (c) of the Explanation 1 to section 115UB;

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

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

Any person who gives an income (as referred u/s 115UB) to a unit holder in respect of units held in an investment trust has to deduct tax under this section.

2) When to Deduct TDS under Section 194LBB?

The time of deduction is earlier of, the credit of income to the account of the payee (receiver) or actual payment (in cash, cheque, draft or another mode).

3) Rate of TDS under Section 194LBB

The rate of tax u/s 194LBB is 10% (if the payee is resident) (7.5% w.e.f. 14.05.2020 to 31.03.2021) and if the payee is non-resident (not a company) or a foreign company then tax will be as per the rates in force during FY.

Section 194LBC

TDS on Income in Respect of Investment in Securitization Trust

194LBC. (1) Where any income is payable to an investor, being a resident, in respect of an investment in a securitisation trust specified in clause (*d*) of the *Explanation* occurring after section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon, at the rate of—

(*i*) twenty-five per cent, if the payee is an individual or a Hindu undivided family;

(*ii*) thirty per cent, if the payee is any other person.

(2) Where any income is payable to an investor, being a non-resident (not being a company) or a foreign company, in respect of an investment in a securitisation trust specified in clause (*d*) of the *Explanation* occurring after section 115TCA, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon, at the rates in force.

Explanation.—For the purposes of this section,—

(*a*) "investor" shall have the meaning assigned to it in clause (*a*) of the *Explanation* occurring after section 115TCA;

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

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

Any person who gives income to an investor with respect to investment in securitization trust is required to deduct tax under this section.

2) When to Deduct TDS under Section 194LBC?

The time of deduction is earlier of, the credit of income to the account of the payee (receiver) or actual payment (in cash, cheque, draft or another mode).

3) Rate of TDS under Section 194LBC

a. 25% (if the payee is resident Individual & HUF) (18.75% w.e.f. 14.05.2020 to 31.03.2021)

b. 30% (if the payee is resident other than individual or HUF) (22.50% w.e.f. 14.05.2020 to 31.03.2021)

At the rates in force [if the payee is non-resident (not being a company) or foreign company]

Section 194LC

TDS on Income by way of Interest from Indian Company or Business trust

194LC. (1) Where any income by way of interest referred to in sub-section (2) is payable to a non-resident, not being a company or to a foreign company by a specified company or a business trust, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon at the rate of five per cent:

[60]**[Provided** *that in case of income by way of interest referred to clause (*ib*) of sub-section (2), the income-tax shall be deducted at the rate of four per cent;***]**

(2) The interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company or the business trust,—

(*i*) in respect of monies borrowed by it in foreign currency from a source outside India,—

(*a*) under a loan agreement at any time on or after the 1st day of July, 2012 but before the 1st day of July, [61]**[***2023***]**; or

(*b*) by way of issue of long-term infrastructure bonds at any time on or after the 1st day of July, 2012 but before the 1st day of October, 2014; or

(*c*) by way of issue of any long-term bond including long-term infrastructure bond at any time on or after the 1st day of October, 2014 but before the 1st day of July, [62]**[***2023***]**,

as approved by the Central Government in this behalf; or

(*ia*) in respect of monies borrowed by it from a source outside India by way of issue of rupee denominated bond before the 1st day of July, [63]**[***2023, or***]**

[64]**[***(*ib*) in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after the 1st day of April, 2020 but before the 1st day of July, 2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre, and***]**

(*ii*) to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or the bond and its repayment.

Explanation.—For the purpose of this section—

(*a*) "foreign currency" shall have the meaning assigned to it in clause (*m*) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);

(*b*) "specified company" means an Indian company;

[64]**[***(c) "International Financial Services Centre" shall have the meaning assigned to it in clause (*q*) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);*

(d) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of Explanation 1 *to clause (5) of section 43.***]**

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

If an Indian company or a business trust pays income by way of interest to non-resident (not being a company) or foreign company, has to deduct TDS under this section.

2) Nature of Payment

- Interest payable by an Indian Company or a Business Trust in respect of monies borrowed by it in foreign currency from a source outside India,—
  a. under a loan agreement at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2023(amended w.e.f. 01.04.2020); or
  b. by way of issue of long-term infrastructure bonds at any time on or after the 1st day of July, 2012 but before the 1st day of October, 2014; or
  c. by way of issue of any long-term bond including long-term infrastructure bond at any time on or after the 1st day of October, 2014 but before the 1st day of July, 2023 (amended w.e.f. 01.04.2020);, as approved by the Central Government in this behalf.
  d. in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after the 1st day of April, 2020 but before the 1st day of July, 2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre, and";

- Interest payable in respect monies borrowed by it from a source outside India by way of issue of rupee denominated bond before the 1st day of July, 2020.

3) When to Deduct TDS under Section 194LC?

At the time of credit of such income to the account of payee or at the time of payment whichever is earlier.

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

4) Rate of TDS under Section 194LC

The rate of tax u/s 194LC is 4%(w.e.f. 01.04.2020)(plus Health & Education Cess @ 4%).

5) Other key points related to section 194LC

- Interest does not exceed the amount of interest calculated at the rate approved by Central Government in this behalf after considering the terms of bond or loan and its repayment.

- The provisions of section 206AA shall not apply in respect of payment of interest on long-term infrastructure bonds, as referred to in this section.

Section 194LD — TDS on Income by way of Interest on certain Bonds / Government Securities

194LD. (1) Any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor, any income by way of interest referred to in sub-section (2), shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.

[65]**[***(2) The income by way of interest referred to in sub-section (1) shall be the interest payable,—*

*(*a*) on or after the 1st day of June, 2013 but before the 1st day of July, 2023 in respect of the investment made by the payee in—*

*(*i*) a rupee denominated bond of an Indian company; or*

*(*ii*) a Government security;*

*(*b*) on or after the 1st day of April, 2020 but before the 1st day of July, 2023 in respect of the investment made by the payee in municipal debt securities:*

Provided *that the rate of interest in respect of bond referred to in sub-clause (*i*) of clause (*a*) shall not exceed the rate as the Central Government may, by notification in the Official Gazette, specify.***]**

Explanation.—For the purpose of this section,—

(*a*) "Foreign Institutional Investor" shall have the meaning assigned to it in clause (*a*) of the *Explanation* to section 115AD;

(*b*) "Government security" shall have the meaning assigned to it in clause (*b*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

[66]**[***(*ba*) "municipal debt securities" shall have the meaning assigned to it in clause (*m*) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);***]**

(*c*) "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated the 9th August, 2011, as amended from time to time, issued by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).

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

Any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor any income by way of interest.

2) Nature of Payment

a) Interest payable on or after the 1st day of June, 2013 but before the 1st day of July, 2023(Amended in Finance Act,2020) in respect of investment made by the payee in—

i. a rupee denominated bond of an Indian company ; or

ii. a Government security.

b) on or after the 1st day of April, 2020 but before the 1st day of July, 2023 in respect of the investment made by the payee in municipal debt securities

3) When to Deduct TDS under Section 194LD?

At the time of credit of such income to the account of payee or at the time of payment whichever is earlier.

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

4) Rate of TDS under Section 194LD

The rates of TDS shall be 5%.

- Surcharge, wherever applicable plus Health & Education Cess @ 4% shall be added to the above rates.
- The rate of TDS will be 20% in all cases, if PAN is not quoted by the deductee.
- The provisions of section 206AA shall not apply to a non-resident, not being a company, or to a foreign company, in respect of income by way of interest under this section subject to such conditions as may be prescribed.

5) Other key points related to section 194LD

- Rate of interest in respect of rupee denominated bond of an Indian company shall not exceed the rate as may be notified by the Central Government in this behalf.
- "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD.
- "Government security" shall have the meaning assigned to it in clause (b) of section 214b of the Securities Contracts (Regulation) Act, 1956.
- "Qualified Foreign Investor" shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated the 9th August, 2011, as amended from time to time, issued by the Securities and Exchange Board of India, under section 11 of the Securities and Exchange Board of India Act, 1992.
- If tax is deductible under this section, then provisions of section 195 and Section 196D are not applicable in respect of such payment.

Section 194M — TDS on payments of certain Sums by Individual and HUF

[Applicable from September 1, 2019]

194M. (1) Any person, being an individual or a Hindu undivided family (other than those who are required to deduct income-tax as per the provisions of section 194C, section 194H or section 194J) responsible for paying any sum to any resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract, by way of commission (not being insurance commission referred to in section 194D) or brokerage or by way of fees for professional services during the financial year, shall, at the time of credit of such sum or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to five per cent of such sum as income-tax thereon:

Provided that no such deduction under this section shall be made if such sum or, as the case may be, aggregate of such sums, credited or paid to a resident during a financial year does not exceed fifty lakh rupees.

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

Explanation.—For the purposes of this section,—

(*a*) "contract" shall have the meaning assigned to it in clause (*iii*) of the *Explanation* to section 194C;

(*b*) "commission or brokerage" shall have the meaning assigned to it in clause (*i*) of the *Explanation* to section 194H;

(*c*) "professional services" shall have the meaning assigned to it in clause (*a*) of the *Explanation* to section 194J;

(*d*) "work" shall have the meaning assigned to it in clause (*iv*) of the *Explanation* to section 194C.

1) Why Section 194M is introduced?

As per the existing provisions of Section 194C , Section 194H and Section 194J, an individual or HUF, who are not liable to tax audit under Section 44AB(a)/44AB(b), shall not be required to deduct tax under these provisions. Thus, no tax is required to be deducted by an individual or HUF from payment made to contractor or professional in the following cases:

- Payment made for services received exclusively for personal purposes
- Payment made for services received for business or profession if payer is not subjected to tax audit u/s 44AB(a)/(b).

Due to this exemption, substantial payments made by individuals or HUFs in respect of contractual work, commission or for professional service were out of the purview of TDS, leaving a loophole for possible tax evasion.

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

Any person, being an individual or a Hindu undivided family (other than those who are required to deduct income-tax as per the provisions of section 194C, 194H or section 194J) responsible for paying any sum to any resident shall deduct TDS.

3) When to Deduct TDS under Section 194M?

TDS shall be deducted at the time of credit of such sum or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier

4) Rate of TDS under Section 194M

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

5) Nature of work performed

Payment should be for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract or by way of fees for professional services or by way of commission during the financial year

For the purposes of this section,—

a) "**contract**" shall have the meaning assigned to it in clause (iii) of the Explanation to section 194C;
b) " **commission or brokerage**" shall have the meaning assigned to it in section 194 H
c) "**professional services**" shall have the meaning assigned to it in clause (a) of the Explanation to section 194J;
d) "**work**" shall have the meaning assigned to it in clause (iv) of the Explanation to section 194C.

6) Threshold Limit of TDS under Section 194M

TDS shall be deducted only when such sum, or aggregate of such sums, exceeds **fifty lakh rupees** in a year. However, in order to reduce the compliance burden, it is proposed that such individuals or HUFs can deposit the tax deducted using their PAN and shall **not** be required to obtain TAN.

Challan-cum statement in Form No. 26QD to be filed within 30 days from the end of the month in which TDS is deducted and TDS Certificate in Form No.16D to be given to deductee within 15 days.

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

of any building or residential house is Rs.60 Lakhs, then TDS of Rs.2,25,000/–(@3.75% of entire Rs.60 Lakhs) shall be deducted.

ILLUSTRATION-

Mr. XYZ, a salaried employee, acquired a plot of land on June 1, 2019 for ₹ 60 lakhs. For construction of a building on such land he paid ₹ 75 lakhs to a contractor on December 10, 2019, ₹ 65 lakhs to interior decorator on January 2, 2020 and ₹ 40 lakhs to another contractor for painting on March 15, 2020.

The tax be deducted by Mr. A has been enumerated in below table.

Particular	*Amount paid*	*Section*	*Rate of Deduction*	*Amount of TDS*
Acquisition of land	60,00,000	194-IA	1%	60,000
Construction	75,00,000	194M	5%	3,75,000
Interior Decoration	65,00,000	194M	5%	3,25,000
Painting *	40,00,000	-	-	-

* Since amount paid is less than ₹ 50 lakhs no tax is required to be deducted

Section 194N — TDS on cash withdrawal from banks/post offices

[Applicable from September 1, 2019]

194N. *Every person, being,—*

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

(ii) a co-operative society engaged in carrying on the business of banking; or

(iii) a post office,

who is responsible for paying any sum, being the amount or the aggregate of amounts, as the case may be, in cash exceeding one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent of such sum, as income-tax:

Provided *that in case of a recipient who has not filed the returns of income for all of the three assessment years relevant to the three previous years, for which the time limit of file return of income under sub-section (1) of section 139 has expired, immediately preceding the previous year in which the payment of the sum is made to him, the provision of this section shall apply with the modification that—*

(i) the sum shall be the amount or the aggregate of amounts, as the case may be, in cash exceeding twenty lakh rupees during the previous year; and

(ii) the deduction shall be—

(a) an amount equal to two per cent of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds twenty lakh rupees during the previous year but does not exceed one crore rupees; or

(b) an amount equal to five per cent of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds one crore rupees during the previous year:

Provided further *that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the first proviso shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification:*

Provided also *that nothing contained in this section shall apply to any payment made to—*

(i) the Government;

(ii) any banking company or co-operative society engaged in carrying on the business of banking or a post office;

(iii) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation

issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007):

Provided also *that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the provision of this section shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification.***]**

1. Who is responsible to deduct tax u/s 194N?

Every person, being,—

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

(ii) a co-operative society engaged in carrying on the business of banking; or

(iii) a post office,

who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it .

2. Who is the Payee?

TDS deduction on cash withdrawal u/s 194N is applicable to all taxpayers, including

- An Individual
- A Hindu Undivided Family (HUF)
- A Company
- A partnership firm or an LLP
- A local authority
- An Association of Person (AOPs) or Body of Individuals (BOIs)

3. Are there any exemptions to TDS on cash withdrawal u/s 194N?

No tax shall be deducted if amount is withdrawn from the bank or post office by following recipients:

1. Central or State Government
2. Banks
3. Co-op. Banks
4. Post Office
5. Banking correspondents
6. White label ATM operators
7. Other persons notified by the Govt. in consultation with the RBI

- **Notification 70/2019:** TDS not required on payments to registered commission agent or trader, operating under **Agriculture Produce Market Committee (APMC)** who has certified that the cash withdrawal is for the purpose of making payments to the farmers on account of purchase of agriculture produce.

4. When to Deduct TDS under Section 194N?

At the time of payment of such sum

5. Rate & Threshold limit of TDS under Section 194N

(i) If an individual receiving the money **has filed** income tax return for **any of the three years** immediately preceding the year, then TDS to be deducted is an amount equal to **2%** of withdrawal sum exceeding **one crore rupees**

(ii) If an individual receiving the money **has not filed** income tax return for **all the three years**, for which the time limit of filing return of income under Section 139(1) has expired, immediately preceding the year, then the TDS is **2%** on the cash payments/withdrawals of **more than Rs 20 lakh and up to Rs 1 crore**, and **5%** for withdrawal exceeding **Rs 1 crore**. (Amendment w.e.f 01.07.2020)

No Relaxation in rate of TDS through CBDT Press release dated 13th May, 2020.

The recipient **cannot** apply for lower deduction certificate u/s 197 and cannot furnish form no. 15G/15H.

Aggregate amount of cash withdrawal	If the recipient has FILED return of income for ANY of the 3 previous years	If the recipient has NOT FILED return of income for ALL of the 3 previous years
Upto Rs. 20 Lakhs	NIL	NIL
More than Rs. 20 Lakhs but upto Rs. 1 Crore	NIL	2%
More than Rs. 1 Crore	2%	5%

6. Is this section applicable to Non-resident?

The section applies to cash withdrawals made by resident as well as Non-resident. Therefore, if a NRI withdraws an amount of ₹ 150 lakhs on 15.02.2020 from his NRE Account maintained in India, the bank shall deduct TDS of ₹1,00,000.

7. Applicability of section when amount is withdrawn from one or more account maintained with same bank/cooperative bank?

Date of cash withdrawn	Cash withdrawn from saving account	Cash withdrawn from current account
01-04-2019	20,00,000	20,00,000
05-07-2019	5,00,000	10,00,000
31-08-2019	4,00,000	25,00,000
01-09-2019	50,00,000	45,00,000
01-03-2020	65,00,000	20,00,000
Total amount withdrawn In Financial Year 2019-20		
- Up to 31-08-2019	29,00,000	55,00,000
From 01-09-2019 onwards	1,15,00,000	65,00,000
Tax to be deducted	328000{ (26400000-10000000)*2%}	

As Section 194N has been inserted in Income-tax Act with effect from 01-09 2019, the tax shall be required to be deducted only after the said date. However, for the purpose of calculation of threshold limit of ₹ 1 crore, the aggregate amount of cash withdrawn from one or more accounts during the previous year shall be considered.

8. Applicability of section when amount is withdrawn from different branches of same bank?

The limit of Rs 1 crore has to be seen for cash withdrawals made from **all branches of a bank.**

Illustration-

ABC LTD has withdrawn cash from following branches of Bank of India during the financial year on –

Dates	Branch	Amount
01.07.2019	Delhi Branch	₹70Lakhs
01.10.2019	Kolkata Branch	₹80Lakhs
01.12.2019	Chandigarh Branch	₹90Lakhs

In this case the bank shall deduct TDS on 01.10.2019 at the rate of 2% on ₹50,00,000/- (1.50 crores –1 crore) i.e.₹1,00,000/- from the payment of ₹80,00,000/-. Similarly bank shall deduct TDS on 01.12.2019 at the rate of 2% on ₹90,00,000/- i.e.₹1,80,000/- from the payment of ₹90,00,000/-.

9. Applicability of section when amount is withdrawn from different banks?

The cash withdrawals from two different banks shall not be aggregated for the limit of ₹ 1 Crore.

Illustration-

ABC LTD has withdrawn cash from following Banks during the financial year on –

Dates	Bank	Amount
01.07.2019	HDFC BANK	₹70Lakhs
01.08.2019	SBI BANK	₹70Lakhs
01.12.2019	BANK OF INDIA	₹70Lakhs

In this case neither of the banks is liable to deduct TDS under Section 194N.

10. Applicability of Section when assessee has not filed return in previous three Assessment Years

Illustration- Mr. Y -Not Filed his returns for 3 preceding Assessment years 2019-20, 2018- 19 & 2017-18. Mr. Y has withdrawn cash from the bank in following installments-

Date	Amount Withdrawn
30 April	10 Lakh
31 May	15 Lakh
31 July	25 Lakh
30 Sept	80 Lakh

In the present case scenario, no TDS will be deducted by bank on withdrawal of amount on 30 April & 31 May because the aggregate of the said amounts does not exceed Rs.1 Crore and there is no applicability of Section if aggregate withdrawal not crosses the limit of Rs. 1 Crore.

Bank is liable to deduct TDS on withdrawal of amount of Rs. 30 Lakh on 31 July because the aggregate of the said amounts (i.e.50 Lakh) during the financial year 2020-21 is exceeding the limit of Rs. 20 Lakh. Bank shall deduct TDS on 31.07.2020 at the rate of 2% on ₹30, 00,000/- i.e.₹60,000/- from the payment of ₹2500000/-.

On 30 September, bank shall deduct TDS on 30.07.2020 at the rate of 2% on ₹50, 00,000/- i.e.₹1,00,000/- and at the rate of 5% on ₹30, 00,000/- i.e ₹1, 50,000 from the payment of ₹80, 00,000/-.

Section 194O — TDS on E-commerce Operator

[Applicable from April 1, 2020]

194-O. *(1) Notwithstanding anything to the contrary contained in any of the provisions of Part B of this Chapter, where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform (by whatever name called), such e-commerce operator shall, at the time of credit of amount of sale or services or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant by any mode, whichever is earlier, deduct income-tax at the rate of one per cent of the gross amount of such sales or services or both.*

Explanation.—*For the purposes of this sub-section, any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale or services for the purpose of deduction of income-tax under this sub-section.*

(2) No deduction under sub-section (1) shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of an e-commerce participant, being an individual or Hindu undivided family, where the gross amount of such sale or services or both during the previous year does not exceed five lakh rupees and such e-commerce participant has furnished his Permanent Account Number or Aadhaar number to the e-commerce operator.

(3) Notwithstanding anything contained in Part B of this Chapter, a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), shall not be liable to tax deduction at source under any other provision of this Chapter:

Provided *that the provisions of this sub-section shall not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale or services referred to in sub-section (1).*

(4) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(5) Every guideline issued by the Board under sub-section (4) shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the e-commerce operator.

(6) For the purposes of this section, e-commerce operator shall be deemed to be the person responsible for paying to e-commerce participant.

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

(a) *"electronic commerce" means the supply of goods or services or both, including digital products, over digital or electronic network;*

(b) *"e-commerce operator" means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce;*

(c) *"e-commerce participant" means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce;*

(d) *"services" includes "fees for technical services" and fees for "professional services", as defined in the* Explanation *to section 194J.*]

1) Who is responsible to deduct TDS under section 194O?

Any person, being E-commerce operator facilitating sale of goods or provision of services of an E-commerce Participant through its digital or electronic Facility or platform (by whatever name called).

2) Is there any definition for E-commerce, E-commerce Operator and E-commerce Participant?

Yes, Explanation to 194O have specifically defined below terms

a. Electronic Commerce means the supply of goods or services or both, including digital products over digital or electronic network.

b. E-commerce operator: means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is responsible for paying to e-commerce participant. (It's mandatory to fulfill both precondition which are conjunctive and not dis conjunctive i.e. person must own, operates or manage Digital/Electronic Facility or Platform.)

c. E-commerce participant means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.

3) What is the point of deduction of TDS u/s 194O?

Tax should be deducted either at the time of credit of amount of sale or services or both to the account of an e-commerce participant OR at the time of payment thereof to such e-commerce participant by any mode**,** whichever is earlier**.**

- Payment made by purchaser of goods or services directly to participant shall be deemed to be payment made by E-commerce operator to participant
- **Finance Act Amendment**
  - ✓ Definition of E-commerce operator initially had a condition that he shall be responsible for paying to E-commerce participant
  - ✓ Anomaly due to the language where payment is directly made by purchaser of goods or services
  - ✓ Anomaly now removed by Finance Act by amending definition of E-commerce operator
  - ✓ Also sub-section (6) inserted – For the purpose of this section E-commerce operator shall be deemed to be the person responsible for paying to Ecommerce participant

4) At what rate TDS has to be deducted u/s 194-O?

TDS is to be deducted at **1%** (0.75% w.e.f. 14.05.2020 to 31.03.2021) on the gross amount of sales or services or both**.** In Absence of Pan/Aadhaar, TDS is to be deducted @5% (Section 206AA have been amended accordingly). (It is pertinent to note that proposed section uses word "Gross amount of such Sales" which means e-commerce operator will require to deduct TDS on GST portion of sales and as well as on Commission and affiliation portion also which e-commerce operator himself will withheld)

- E-commerce participants will continue to make TDS from Ecommerce operator's Income u/s. 194C, 194I, 194H etc. as applicable – Two way TDS

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

No TDS is to be deducted, where e-commerce Participant is Individual or HUF and gross amount of such sale or services or both during the previous year does not exceed **five lakh rupees** AND e-commerce participant furnished Permanent Account Number or Aadhaar number to the e-commerce operator.

6) Whether the TDS is to be deducted for Non-Resident Selling good through Ecommerce Portal u/s 194O?

- E-commerce Participant is defined a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce. And thus No TDS is required to be deducted when Participant is Non Resident.
- If E-commerce operator is Non-resident, Equalisation Levy will be applicable

7) Whether TDS is to be deducted if amount is directly collected by E-commerce Participant?

For all transaction which has been facilitated by E-commerce participant, TDS has to be deducted by E-commerce operator irrespective of mode of payment to E-commerce participant.

8) Whether Ecommerce Participant can apply for Lower deduction/No Deduction certificate u/s 197?

Yes, Consequent amendment has been made in Section 197. Ecommerce Participant can make application before TDS AO who has a jurisdiction over his/her/its case.

Section 195 — TDS on Non-Resident Payments

195.(1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest referred to in section 194LB or section 194LC) or section 194LD or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries") shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :

Provided that in the case of interest payable by the Government or a public sector bank within the meaning of clause (*23D*) of section 10 or a public financial institution within the meaning of that clause, deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode.

[70]**[***]**

Explanation 1.—For the purposes of this section, where any interest or other sum as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

Explanation 2.—For the removal of doubts, it is hereby clarified that the obligation to comply with sub-section (1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has—

(*i*) a residence or place of business or business connection in India; or

(*ii*) any other presence in any manner whatsoever in India.

(2) Where the person responsible for paying any such sum chargeable under this Act (other than salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application [71][in such form and manner to the Assessing Officer, to determine in such manner, as may be prescribed], the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

(3) Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

(4) A certificate granted under sub-section (3) shall remain in force till the expiry of the period specified therein or, if it is cancelled by the Assessing Officer before the expiry of such period, till such cancellation.

(5) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (3) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

(6) The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.

(7) Notwithstanding anything contained in sub-section (1) and sub-section (2), the Board may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application [72][in such form and manner to the Assessing Officer, to determine in such manner, as may be prescribed], the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.

1) Who is responsible to deduct tax u/s 195?

Any person responsible for paying to a non-resident, not being a company, or to a foreign company, shall deduct income-tax thereon at the rates in force.

2) Nature of Payment

a) Any interest (not being interest referred to in section 194LB, 194LC and 194LD)

b) Any other sum chargeable under the provision of this Act (not being income chargeable under the head “Salaries”)

3) When to Deduct TDS under Section 195?

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

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

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

If interest is payable by the Government or a public sector bank or a public financial institution, then tax deduction shall be made only at the time of payment thereof in cash or by cheque or draft or any other mode.

Second Provisio to Section 195(1) exempting TDS on dividend referred to in Section 115-O has been deleted.[Finance Act 2020]

4) Threshold limit

No threshold limit. However, tax shall be deducted on sum chargeable to tax. Therefore, if no sum is chargeable to tax in India, then no tax is required to be deducted.

5) Other sums under Section 195

- **Applicability:** TDS to be deducted on **any sum chargeable under the provisions of Income Tax Act, 1961** not being income chargeable under the head 'Salaries'. (E.g. Payments such as interest, royalty, fees for technical services are liable for tax deduction u/s. 195 of the Act)

- **Payer:** Any person (both Resident and Non-resident)

- **Payee:** Non-residents / Foreign Company

- **Threshold limit: NIL i.e. No Threshold limit.**

- No TDS u/s. 195 on payment of Income chargeable under the head 'Salaries' or payments covered u/s. 194LB or 194LC or 194LD.

- TDS to be deducted at the time of **payment or credit, whichever is earlier**.

6) Income Deemed to Accrue or Arise In India

- As per the provisions of Section 5(2)(b) of the Act, the total income of a non-resident also includes all income which **accrues or arises** or is **deemed to accrue or arise in India** to the non-resident.

- **To check whether the income of the non-resident is deemed to accrue or arise in India–We have to refer Section 9.**

- If the income is deemed to accrue or arise in India, then the payer is liable to withhold taxes in India.

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

  - ✓ **Section9(1)(ii)**– Income which falls under the head "Salaries" ,if it is earned in India, i.e. when the services are rendered in India **[Tax deductible u/s. 192]**

  - ✓ **Section9(1)(iii)**– Salary payable by the Central Govt. to a **citizen of India** for services rendered outside India **[Tax deductible u/s. 192]**

  - ✓ **Section9(1)(iv)**– Dividend paid by an Indian company outside India

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

- **SECTION 9(1)(vi) –ROYALTY**

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

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

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

- **SECTION 9(1)(viii) –SUM OF MONEY**
  - ✓ Income arising outside India, being **any sum of money** referred to in Section 2(24)(xviia), paid on or after 5th July, 2019 by a resident to a non-resident / foreign company shall be deemed to accrue or arise in India.
  - ✓ **Section 2(24)(xviia)** includes in Income-any sum of money covered u/s. **56(2)(x)** of the Act.
  - ✓ However, Gift of any sum of money **from relative** shall not be liable for withholding tax obligation u/s. 195.

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

  All income accruing or arising, whether directly or indirectly, through or from
  - ✓ **Business connection in India**
  - ✓ **Property in India**
  - ✓ **Asset or source of income in India**
  - ✓ **Transfer of a Capital asset situated in India**

- **EXPLANATION TO SECTION 9**

  For the removal of doubts, it is here by declared that for the purposes of this section, income of a **non-resident** shall be deemed to accrue or arise in India under **clause (v) [Interest]** or clause (vi) **[Royalty]** or clause (vii) **[Fees for technical services]** of sub-section (1) and shall be included in the total income of the non-resident, **whether or not:**
  - ✓ **The non-resident has a residence or place of business or business connection in India; or**
  - ✓ **The non-resident has rendered services in India.**

7) WITHHOLDING TAX OBLIGATION u/s. 195

- If the payment to non-resident or a foreign company is covered u/s. 9 of the Act and chargeable to tax, the provisions of Section195 of the Act shall come into play.

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

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

- **RATES IN FORCE –Section 2(37A)(iii)**
  - **Rate or Rates in force means**-The rates of income tax specified in the
    - ✓ **Finance Act of the relevant previous year,** or
    - ✓ **DTAA** (Double Taxation Avoidance Agreement)
  - **Section 90(2)**-The provisions of the Act or the DTAA, whichever is **more beneficial to the assessee** shall be applied.
  - **Surcharge and Education Cess** – Not required to be added separately if the rates mentioned in DTAA are applied.

- **RATES IN FORCE –Finance Act, 2020**
  - Some Important rates mentioned in the Finance Act, 2020 for the purpose of withholding tax u/s.195 are as under:
    - ✓ **Dividend**–20%
    - ✓ **Royalty**–10%
    - ✓ **Fees for technical services**–10%
    - ✓ **Interest** (other than 194LB / 194LC / 194LD) –20%
  - The above rates shall be increased by education cess @4% and applicable surcharge to corporate / non-corporate assessee. Rates mentioned in DTAA should be applied if they are more beneficial.

8) PERMANENT ESTABLISHMENT

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

- **Thus, for payments to Foreign Companies having a PE in India:**
  - ✓ If amount exceeds Rs.1 Crore: 40% + 4% Cess + 2% Surcharge (42.432%)
  - ✓ If amount exceeds Rs.10 Crores: 40% + 4% Cess + 5% Surcharge (43.68%)

9) LOWER / NIL DEDUCTION CERTIFICATE–Application By Payer u/s. 195(2)

- Application to be made by the the **Payer**.

- **When?**–When the payer considers that the whole of such sum would not be income chargeable in the case of the recipient

- The Assessing Officer shall determine the appropriate proportion of such sum, on which tax is required to be deducted u/s. 195 of the Act.

- **Nil Deduction Certificate** can also be obtained u/s. 195(2) by the payer.

10) NIL DEDUCTION CERTIFICATE–Application By Payee u/s. 195(3)

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

11) NIL / LOWER DEDUCTION CERTIFICATE u/s. 197 -FORM 13

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

12) FORM 15CA & FORM 15CB

❖ Introduction:

As per section 195 of the Income Tax Act, tax is required to be deducted for any sum which is taxable under the Income Tax Act. So when a person desires to make any payment or remit any money to non-resident, the bank will require to check whether the tax was paid or not. If not paid; it will be checked if it is certified by the Chartered accountant or the Assessing Officer. But there are at least 33 types of foreign remittance where assessee do not require any submission of Form 15CA or Form 15CB.

❖ Need of 15CA and 15CB:

Earlier, the person making a remittance to Non-Resident was required to furnish a certificate in specified format circulated by RBI. Basic purpose was to collect the taxes at a stage when the remittance is made as it may not be possible to collect the tax from the Non-Resident at a later stage. Thus to monitor and track the transactions in an efficient manner, it was proposed to introduce e-filling of information in the certificates. Section 195 of Income tax act, 1961 mandates the deduction of Income tax from payments made to Non Resident. The person making the remittance to non – resident needs to furnish an undertaking (in form 15CA) accompanied by a Chartered Accountants Certificate in Form 15CB.

❖ 15CA

1. What is Form 15CA?

Form 15CA is a Declaration of Remitter and is considered as a tool for collecting information in lieu of payments which are chargeable for tax in the hands of recipient non-resident of India. This is starting of an effective Information Processing System which may be utilized by the Income tax Department to freely track the foreign remittances and their source to determine tax liability.

Financial Institutions are now more vigilant in seeking such Forms before remittance is effected since now as per revised Rule 37BB a duty is implied on them to furnish Form 15CA received from remitter to an income-tax authority for the uses of any proceedings under the Income-tax Act.

2. Parts of Form 15CA

- **Part A –** Section A of Form 15CA is filled in by the remitter when the payment or the total sum of the payment extended by the remitter to NRI recipient during a particular Financial Year is Rs. 5 Lakhs or less.
- **Part B –** Section B of Form 15CA is in the role when such payments are more than Rs. 5 Lakhs. Information is entered by the filer in Section B after acquiring a certificate from Assessing Officer (valid under section 197) or the order from Assessing Officer (valid under sub-section (2) or sub-section (3) of section 195).
- **Part C –** If such payments made during a particular FY exceed Rs. 5 Lakhs, the related information has to be entered in Section C of Form 15CA after acquiring the Tax Determination Certificate or Form 15CB from **authorized CA** (valid under sub-section (2) of section 288).
- **Part D –** Payments made by the remitter during a particular FY which is not referred to in sub-section 37BB or in other words **is not taxable** under law, the information related to such payments is to be entered in Section D of Form 15CA.

Note: Form 15CB is required to be filled only when the remittance exceeds Rs 5 Lakh in the said fiscal under the income tax act 1961.

Analysis:-

A person responsible for making a payment to a non-resident or to a foreign company has to provide the following details –

(i) When payment made is below Rs 5 lakh
For such payments information is required in Part A of Form 15CA

(ii) When payment made exceeds Rs 5 lakh
- Part B of Form 15CA has to be provided
- Certificate in Form 15CB from an authorized CA.
- Part C of Form 15CA

(iii) When the payment made is not chargeable to tax under IT Act
- Part D of Form 15CA
- In the following cases, no submission of information is required

- The remittance is made by an individual and it does not require prior approval of Reserve Bank of India [as per the provisions of section 5 of the Foreign Exchange Management Act, 1999 (42 of 1999) read with Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000]

There are at least 33 types of foreign remittances where you do not require any submission of Form 15CA or Form 15CB under rule 37BB:

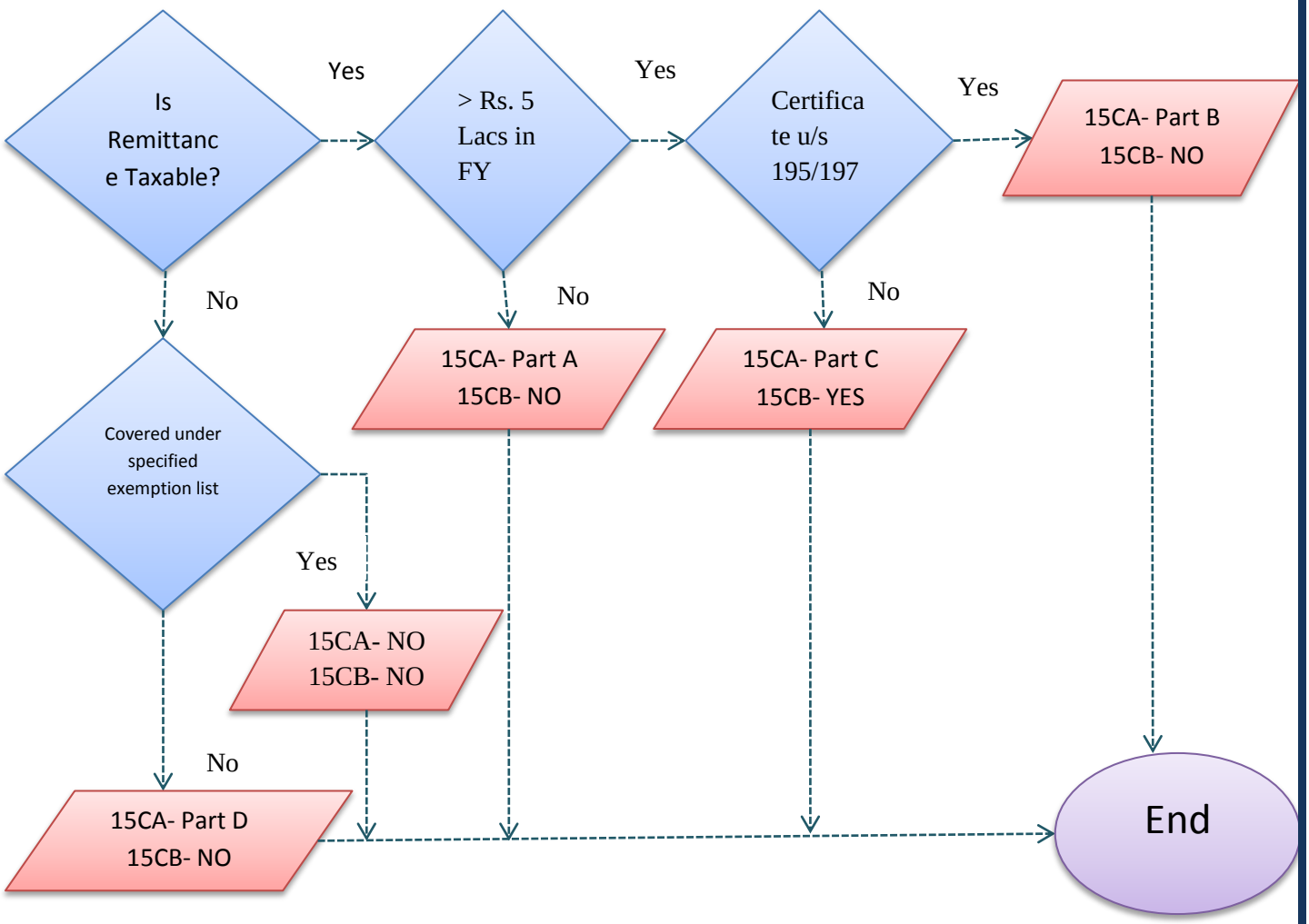
Sl. No.	Nature of Payment
1	Indian investment abroad – in equity capital (shares)
2	Indian investment abroad – in debt securities
3	Indian investment abroad- in branches and wholly owned subsidiaries
4	Indian investment abroad – in subsidiaries and associates
5	Indian investment abroad – in real estate
6	Loans extended to Non-Residents
7	Advance payment against imports
8	Payment towards imports- settlement of invoice
9	Imports by diplomatic missions
10	Intermediary trade
11	Imports below Rs.5,00,000- (For use by ECD offices)
12	Payment- for operating expenses of Indian shipping companies operating abroad.
13	Operating expenses of Indian Airlines companies operating abroad
14	Booking of passages abroad -Airlines companies
15	Remittance towards business travel.
16	Travel under basic travel quota (BTQ)
17	Travel for pilgrimage
18	Travel for medical treatment
19	Travel for education (including fees, hostel expenses etc.)
20	Postal Services
21	Construction of projects abroad by Indian companies including import of goods at project site
22	Freight insurance – relating to import and export of goods
23	Payments for maintenance of offices abroad
24	Maintenance of Indian embassies abroad
25	Remittances by foreign embassies in India
26	Remittance by non-residents towards family maintenance and savings
27	Remittance towards personal gifts and donations
28	Remittance towards donations to religious and charitable institutions abroad
29	Remittance towards grants and donations to other Governments and

	charitable institutions established by the Governments.
30	Contributions or donations by the Government to international institutions
31	Remittance towards payment or refund of taxes.
32	Refunds or rebates or reduction in invoice value on account of exports
33	Payments by residents for international bidding.

❖ 15CB

1. What is Form 15CB?

Form 15CB liability can be ascertained and certified by obtaining the Certificate from a Chartered Accountant in Form no. 15CB. This certificate has been prescribed under Section 195(6) of the Income-tax Act and is an alternate channel of obtaining Tax clearance apart from Certificate from Assessing Officer.



Section 195A — Income Payable "Net Of Tax"

195A. *In a case other than that referred to in sub-section (1A) of section 192, where under an agreement or other arrangement, the tax chargeable on any income referred to in the foregoing provisions of this Chapter is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon at the rates in force for the financial year in which such income is payable, be equal to the net amount payable under such agreement or arrangement.*

In a case other than that referred to in sub-section (1A) of section 192, Where under an agreement or arrangement, the tax chargeable on any income which is subject to tax deduction, is to be borne by the payer of income, then while deducting tax, such income shall be increased to such amount as would, after deduction of tax, be equal to the net amount payable under such agreement or arrangement.

Section 196B

TDS on long term capital gains (LTCG) from units referred to in section 115AB

196B. Where any income in respect of units referred to in section 115AB or by way of long-term capital gains arising from the transfer of such units is payable to an Offshore Fund, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.

1) Who is responsible to deduct tax u/s 196B?

Any person responsible for making payment to **Offshore Fund.**

2) Nature of Payment

a) Income from units referred to in section 115AB
b) Long-term capital gain arising from transfer of such units

3) When to Deduct TDS under Section 196B?

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

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

4) Rate of TDS under Section 196B

The rate of tax deduction u/s 196B is 10 %(+SC+H&E Cess)

Section 196C — TDS on Income from foreign currency bonds or GDRs

196C. Where any income by way of interest or dividends in respect of bonds or Global Depository Receipts referred to in section 115AC or by way of long-term capital gains arising from the transfer of such bonds or Global Depository Receipts is payable to a non-resident, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof [76]**[***by any mode***]**, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.

[77]**[***]**

1) Who is responsible to deduct tax u/s 196C?

Any person responsible for making payment to **Non-resident.**

2) Nature of Payment

(a) Interest on notified bonds referred to in section 115AC
(b) Dividends on Global Depository Receipts referred to in section 115AC
(c) Long-term capital gain arising from transfer of such bonds or Global Depository Receipts

3) When to Deduct TDS under Section 196C?

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

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

4) Rate of TDS under Section 196C

The rate of tax deduction u/s 1946C is 10%(+ SC+H&E Cess)

5) Other key point related to Section 196C

No deduction shall be made in respect of dividend referred to in section 115-O.

Section 196D — TDS on Income of foreign institutional investors from securities

196D. (1) Where any income in respect of securities referred to in clause (*a*) of sub-section (1) of section 115AD, not being income by way of interest referred to in section 194LD, is payable to a Foreign Institutional Investor, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof [78]**[***by any mode***]**, whichever is earlier, deduct income-tax thereon at the rate of twenty per cent.

[79]**[***]**

(2) No deduction of tax shall be made from any income, by way of capital gains arising from the transfer of securities referred to in section 115AD, payable to a Foreign Institutional Investor.

1) Who is responsible to deduct tax u/s 196D?

Any person responsible for making payment to **Foreign Institutional Investors**

2) Nature of Payment

Income in respect of securities referred to in section 115AD (not being interest referred to in section 194LD)

3) When to Deduct TDS under Section 196D?

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

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

4) Rate of TDS under Section 196D

The rate of tax deduction u/s 196D is 20% (+ SC+H&E Cess)

5) Other key point related to Section 196D

No deduction shall be made in respect of capital gains arising from transfer of such securities.

Section 197 — Certificate For Deduction at Lower Rate

197. (1) Subject to rules made under sub-section (2A), where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or, as the case may be, at the time of payment at the rates in force under the provisions of sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC [80][, 194M] [81]**[**, *194-O*] and 195, the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.

(2) Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be.

(2A) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (1) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

(3) [***]

1) What is Section 197?

Section 197 of the Income Tax Act, 1961 allows the taxpayer the facility of **NIL or Lower** tax rate deduction of TDS (or TDS exemption). In order to apply for this you need to submit Form 13 to the assessing officer. Also, this section strikes a delicate balance between the requirement of cash flow to the taxpayer and realizing the government dues at the earliest.

2) Income Covered Under Section 197

Section 197 application can be made by the recipient of income in case of the following category of receipts where TDS is required to be made under the following Sections:

- Section 192 – Salary income
- Section 193 – Interest on securities
- Section 194 – Dividends
- Section 194A – Interest other than interest on securities
- Section 194C – Contractors income

- Section 194D – Insurance commission
- Section 194G – Commission/remuneration/prize on lottery tickets
- Section 194H – Commission or brokerage
- Section 194-I – Rent
- Section 194J – Fee for Professional or technical services
- Section 194LA – Compensation on acquisition of immovable property
- Section 194LBB – Income in respect of units of investment fund
- Section 194LBC – Income in respect of investment in securitization trust
- Section 194M – Contractors income, Commission, Fee for Professional or technical services
- Section 195 – Income of non-residents

3) Eligibility for Making an Application Under Section 197

Application can be made where income of any person attracts TDS as per above mentioned sections and income of the recipient justifies non-deduction or lower deduction of income tax based on his estimated final tax liability.

4) Timeline for Making the Application

Income-tax provision does not provide for a deadline to make an application under Section 197. However, as TDS is made on income of on-going financial year it is advisable to make an application at the beginning of financial year in case of regular income throughout the financial year and as and when the need arises in case of one-off incomes.

5) Validity of an Application Made Under Section 197

Section 197 is issued for a particular financial year and stands valid from the date of issue and throughout the financial year unless cancelled by the assessing officer (TDS) before the expiry.

6) Procedure for Making the Application Under Section 197

- An application for nil/lower deduction of TDS using the FORM 13 is required to be filed with the Assessing Officer (TDS) for seeking permission. Such Form 13 can be filed either online or manually.
- If the applicant satisfies the AO, he would process the issue of the certificate;
- The copy of this certificate can be attached to the invoice given to the deductor, and he can use this to justify the lower tax deduction.

Section 197A — No Deduction to be Made In Certain Cases

197A. (1) Notwithstanding anything contained in section 194 or section 194EE, no deduction of tax shall be made under any of the said sections in the case of an individual, who is resident in India, if such individual furnishes to the person responsible for paying any income of the nature referred to in section 194 or, as the case may be, section 194EE, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*.

(1A) Notwithstanding anything contained in section 192A or section 193 or section 194A or section 194D or section 194DA or section 194-I or section 194K, no deduction of tax shall be made under any of the said sections in the case of a person (not being a company or a firm), if such person furnishes to the person responsible for paying any income of the nature referred to in section 192A or section 193 or section 194A or section 194D or section 194DA or section 194-I or section 194K, as the case may be, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*.

(1B) The provisions of this section shall not apply where the amount of any income of the nature referred to in sub-section (1) or sub-section (1A), as the case may be, or the aggregate of the amounts of such incomes credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the maximum amount which is not chargeable to income-tax.

(1C) Notwithstanding anything contained in section 192A or section 193 or section 194 or section 194A or section 194D or section 194DA or section 194EE or section 194-I or section 194K or sub-section (1B) of this section, no deduction of tax shall be made in the case of an individual resident in India, who is of the age of sixty years or more at any time during the previous year, if such individual furnishes to the person responsible for paying any income of the nature referred to in section 192A or section 193 or section 194 or section 194A or section 194D or section 194DA or section 194EE or section 194-I or section 194K, as the case may be, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*.

(1D) Notwithstanding anything contained in this section, no deduction of tax shall be made by the Offshore Banking Unit from the interest paid—

(*a*) on deposit made on or after the 1st day of April, 2005, by a non-resident or a person not ordinarily resident in India; or

(*b*) on borrowing, on or after the 1st day of April, 2005, from a non-resident or a person not ordinarily resident in India.

Explanation.—For the purposes of this sub-section "Offshore Banking Unit" shall have the same meaning as assigned to it in clause (*u*) of section 2 of the Special Economic Zones Act, 2005.

(1E) Notwithstanding anything contained in this Chapter, no deduction of tax shall be made from any payment to any person for, or on behalf of, the New Pension System Trust referred to in clause (*44*) of section 10.

[82]**[***(1F) Notwithstanding anything contained in this Chapter, no deduction of tax shall be made, or deduction of tax shall be made at such lower rate, from such payment to such person or class of persons, including institution, association or body or class of institutions, associations or bodies, as may be notified by the Central Government in the Official Gazette, in this behalf.***]**

(2) The person responsible for paying any income of the nature referred to in sub-section (1) or sub-section (1A) or sub-section (1C) shall deliver or cause to be delivered to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner one copy of the declaration referred to in sub-section (1) or sub-section (1A) or sub-section (1C) on or before the seventh day of the month next following the month in which the declaration is furnished to him.

1. What is Form 15G and Form 15H?

Form 15G and Form 15H are forms you can submit to prevent TDS deduction on your income, if you meet the conditions mentioned below. For this, PAN is compulsory. Some banks allow you to submit these forms online through the bank's website. Form 15H is for senior citizens, those who are 60 years or older; while Form 15G is for everybody else.

Form 15G and Form 15H are valid for one financial year. So, please submit these forms every year at the beginning of the financial year. This will ensure the bank does not deduct any TDS on your interest income.

- For FY 2020-21, in view of the spread of the disease COVID-19, taxpayers may not be able to submit the forms in the first week of April 2020. Hence, the government has extended the validity of the Form 15G and Form 15H expiring on 31 March 2020 up to 30 June 2020. Taxpayers can submit the Form 15G and Form 15H in the first week of July 2020. For the period beginning 1 April 2020 and up to 30 June 2020, the Form 15G and 15H submitted for FY 2019-20 will be valid proof for non-deduction of TDS. **Section 197A** of Income Tax Act, 1961 and **Rule 29C** of Income Tax Rules, 1962 contain the provisions related to the filing of Form 15G and Form 15H for non-deduction of income tax or TDS on certain incomes.
- Rule 29C rule prescribes the form to be furnished for non-deduction of income tax on certain incomes as below-
  Rule 29c(1)- A declaration –
  under section **197A(1)** or under section **197A(1A)** shall be in **Form No.15G** and under section **197A(1C)** shall be in **Form No.15H**.
- Section 197A(1) or section 197A(1A) applies to an Individual below 60 years of age. It also applies to non-Individuals.
  Section 197A(1C) applies only to Individuals who is a senior citizen.

- The provisions of Section 197A are discussed below:
  - ❖ **Section 197A(1):** No deduction of income tax shall be made for -

    Section 194 – TDS on dividend paid to a resident in India if exceeds Rs. 5,000. Section 194EE – TDS on payments in respect of deposits under National Savings Scheme, etc. if exceeds Rs. 2,500.

    in case of –
    - an Individual, who is resident in India,
    - if such individual furnishes
    - to the payer
    - a declaration in writing in duplicate
    - in the prescribed form and,
    - verified in the prescribed manner,
    - when-
    - tax on his estimated total income of the previous year in which such income is includible is NIL.

      Please note that here rebate u/s 87A is **not considered** for the purpose of this section.

  - ❖ **Section 197A(1A):** No deduction for income tax shall be made for -

    Section 192A – TDS on payment from Employees' Provident Funds if exceeds Rs. 50,000.

    Section 193 – Interest on securities if exceeds Rs. 10,000 except securities held in dematerialized form and listed securities.

    Section 194A – Interest other than interest on securities if exceeds Rs. 40,000 for bank and PO/Rs. 50,000 for senior citizen, and Rs. 5,000 from others.

    Section 194D – TDS on Insurance Commission if exceeds Rs. 15,000

    Section 194DA – TDS on Life Insurance Policy maturity proceeds if exceeds Rs. 1,00,000

    Section 194I – TDS on Rent payment if exceeds Rs. 2,40,000

    Section 194K – TDS on Payment of any income in respect of units of mutual fund if exceeds Rs. 5,000

    in case of a person-
    - not being a company or firm
    - if such person furnishes a declaration
    - in writing in duplicate
    - in the prescribed form and
    - verified in the prescribed manner.
    - when-
    - tax on his estimated total income of the previous year in which such income is includible
    - is NIL

      Please note that here rebate u/s 87A is **not considered** for the purpose of this section.

❖ **Section 197A(1B)**: The provisions of section 197A(1) or section 197A(1A) shall not apply –

- when the aggregate of income referred to above sections or
- the aggregate of the amount of such incomes-
- credited or paid or likely to be credited or paid
- during the previous year
- in which such income is to be included
- exceeds the basic exemption limit.

This provision means if the income for which **Form 15G** is being furnished such income shall not exceed the basic exemption limit. For example, in case of a bank, if payment of interest during a financial year exceeds the basic exemption limit(Rs. 2,50,000 at present) then Form 15G **cannot** be filed.

❖ **Section 197A(1C):** Contains filing of declaration for no deduction in the prescribed form for-

Section 194 – TDS on dividend paid to a resident in India if exceeds Rs. 5,000. Section 194EE – TDS on payments in respect of deposits under National Savings Scheme, etc. if exceeds Rs. 2,500.
Section 192A – TDS on payment from Employees' Provident Funds if exceeds Rs. 50,000.
Section 193 – Interest on securities if exceeds Rs. 10,000 except securities held in dematerialized form and listed securities.
Section 194A – Interest other than interest on securities if exceeds Rs. 40,000 for bank and PO/Rs. 50,000 for senior citizen, and Rs. 5,000 from others.
Section 194D – TDS on Insurance Commission if exceeds Rs. 15,000
Section 194DA – TDS on Life Insurance Policy maturity proceeds if exceeds Rs. 1,00,000
Section 194I – TDS on Rent payment if exceeds Rs. 2,40,000
Section 194K – TDS on Payment of any income in respect of units of mutual fund if exceeds Rs. 5,000

- by an individual **resident** in India
- who is a senior citizen.
- Thus, a non-resident senior citizen is expressly **prohibited** from filing of Form15H. In case of filing of Form 15G by a non-resident, it is impliedly prohibited, but for a senior citizen, it is **expressly** prohibited. The condition mentioned in section 197A(1B) is not applicable to a senior citizen filing Form 15H. In other words, Form 15H can be filed even if the aggregate of income referred to above sections exceeds the basic exemption limit which is Rs. 3,00,000 at present for a senior citizen and Rs. 5,00,000 for a very senior citizen but his **tax** on total income shall be nil.

Please note that The CBDT has come up with "*Notification No. 41/2019/F. No. 370142/5/2019-TPL dated 22 nd May, 2019"* which reads as below:

"Provided that such person shall accept the declaration in a case where income of the assessee, who is eligible for rebate of income-tax under section 87A, is higher than the income for which declaration can be accepted as per this note, but his tax liability shall be nil after taking into account the rebate available to him under the said section 87A." which means rebate u/s 87A is **considered** for the purpose of this section. This can be explained with the help of following comparative letter:-

	Taxable pre-mature withdrawal from provident fund [Section 192A]	**Interest [Section 193 and 194A] or Rent [Section 194-I] or Insurance Commission [Section 194D]**	**Dividend [Section 194]**	**Payment in respect of life insurance policy [Section 194DA]**	**National Saving Scheme [Section 194EE]**	**Income in respect of units of mutual fund [Section 194K]**
***Condition 1*- Who is recipient**	Individual	Other than a company or firm	Resident individual	Other than a company or firm	Resident individual	Other than a company or firm
***Condition 2*- What is tax on total income of the previous year**	Nil	Nil	Nil	Nil	Nil	Nil
***Condition 3*- How much is total of income covered by Sections 192A, 193, 194, 194A, 194D, 194DA, 194EE, 194-I and 194K**	Not exceeding the maximum amount not chargeable to tax					

Age	Interest Income	Other Income	Deductions	Taxable Income	15G/15H allowed?	Remarks
Below 60 Years	Rs. 3 Lakhs	Rs. 1 Lakh	Rs. 1.50 Lakhs	Rs. 2.50 Lakhs	15G not allowed	Interest income is above exemption limit of Rs. 2.50 Lakhs
	Rs. 2.50 Lakhs	Rs. 1.60 Lakhs	Rs. 1.50 Lakhs	Rs. 2.60 Lakhs	15G not allowed	Taxable income is above exemption limit of Rs. 2.50 Lakhs
	Rs. 2.50 Lakhs	Rs. 1.50 Lakhs	Rs. 1.50 Lakhs	Rs. 2.50 Lakhs	15G allowed	Both conditions satisfied
60 Years and above	Rs. 2.50 Lakhs	Rs. 2 Lakhs	Rs. 1.50 Lakhs	Rs. 3 Lakhs	15H allowed	Taxable income is within Rs. 3 Lakhs
	Rs. 2.50 Lakhs	Rs. 4.50 Lakhs	Rs. 1.50 Lakhs	Rs. 5.50 Lakhs	15H not allowed	Taxable income is both above exemption limit of Rs. 3 Lakhs and 5 Lakhs which means benefit of rebate u/s 87A also could not be availed
80 Years and above	Rs. 4 Lakhs	Rs. 2.50 Lakhs	Rs. 1.50 Lakhs	Rs. 5 Lakhs	15H allowed	Taxable income is within Rs. 5 Lakhs
	Rs. 4 Lakhs	Rs. 3 Lakhs	Rs. 1.50 Lakhs	Rs. 5.50 Lakhs	15H not allowed	Taxable income is above exemption limit of Rs. 5 Lakhs

Section 198 — Tax Deducted at Source shall be deemed to be income received

198. All sums deducted in accordance with the foregoing provisions of this Chapter shall, for the purpose of computing the income of an assessee, be deemed to be income received :

Provided that the sum being the tax paid, under sub-section (1A) of section 192 for the purpose of computing the income of an assessee, shall not be deemed to be income received:

[83][**Provided further** that the sum deducted in accordance with the provisions of section 194N for the purpose of computing the income of an assessee, shall not be deemed to be income received.]

Tax deducted at source shall be deemed to be income received. Accordingly, it shall be considered for the purpose of computing the income of assessee.
E.g. Mr. C received interest of ₹ 54,000/- after deduction of ₹ 6,000/- as TDS. The income of Mr. C will be ₹ 60,000/- i.e including the portion of TDS.

However in the following two cases, Tax deducted will not form part of income-

- TDS contributed by the employer on non-monetary perquisites provided to employee u/s 192(1A).
- TDS deducted by banks, post offices, cooperative banks u/s 194N

Section 199 Credit For Tax Deducted

199. (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given.

In pursuance of rules framed under section 199 of the Income Tax act, credit for tax deducted at source shall be given to the deductee for the assessment year for which such income is assessable.

- Where tax has been deducted at source and paid to the Central Government, and the income is assessable over a number of years, credit for tax deducted at source shall be allowed in the same proportion in which such income is offered for taxation.

- If the income on which tax has been deducted is assessable in the hands of a person other than the deductee, then tax credit will be given to such other person if deductee files a declaration with the deductor to that effect. Such declaration shall contain the name, address, PAN of the person to whom credit is to be given and reasons for giving credit to such person.

Section 200(1) & (2) — Time Limit for Deposit of Tax Deducted at Source

200. (1) Any person deducting any sum in accordance with the foregoing provisions of this Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.

(2) Any person being an employer, referred to in sub-section (1A) of section 192 shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs.

(2A) In case of an office of the Government, where the sum deducted in accordance with the foregoing provisions of this Chapter or tax referred to in sub-section (1A) of section 192 has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person, by whatever name called, who is responsible for crediting such sum or tax to the credit of the Central Government, shall deliver or cause to be delivered to the prescribed income-tax authority, or to the person authorised by such authority, a statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed

Time limit for deposit of tax deducted at source with Government is as under:

Different situations	Time limit
Tax is deducted by an office of the Government and tax is paid **(a) Without production of an income-tax challan** **(b) By income- tax challan**	Tax shall be deposited on the same day on which tax is deducted. Tax shall be deposited on or before 7 days from the end of the month in which it was deducted. Or Income tax due under section 192(1A)
Tax is deducted by other than the office of the government **Where the amount is credited in the month of march** **Where amount is credited before 1st March.**	Tax shall be deposited by 30th April Tax shall be deposited within 7 days from the end of month in which it was deducted. Or Income tax due under section 192(1A)
Tax is deducted by a person under section 194IA, 194IB &194M	Tax shall be deposited within 30 days from the last date of month in which tax was deducted.
Tax is deducted by a person other than the office of the Government and the Assessing Officer (with prior approval of Joint Commissioner) has permitted quarterly deposit of tax deducted under sections 192,194A, 194D and 194H.	For the quarter ending 30th June: - Tax shall be deposited by 7th July. For the quarter ending 30th September: - Tax shall be deposited by 7th October. For the quarter ending 31st December: - Tax shall be deposited by 7th January. For the quarter ending 31st March: - Tax shall be deposited by 30th April.

Section 200(3) — Forms And Time Limit For Submitting Quarterly Statement of Tax Deduction (TDS Returns)

200(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:

Provided that the person may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be specified by the authority.

Forms for quarterly statement of tax deduction

Any person deducting any sum in accordance with the foregoing provisions of this Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs. Further, quarterly TDS Return is required to be filed by the assessee who has deducted the TDS. TDS Returns include fields like TAN No., TDS Payment, amount deducted, type of payment, PAN No. etc.

Form No.	Particulars
Form 24Q	Statement for tax deducted at source from salaries
Form 26Q	Statement for tax deducted at source on all payments except salaries
Form 27Q	Statement for deduction of tax from interest, dividend or any other sum payable to non-residents
Form 26QB	For Section 194IA separate return is not required, challan cum return to be filed on Form 26QB to be deposited within a period of 30 days(w.e.f.01.06.2016) from the end of the month in which the deduction is made

Time Limit for filing the above quarterly statements of tax deduction (popularly known as TDS Returns)

A return of TDS is a comprehensive statement containing details of payment made and taxes deducted thereon along with other prescribed details. As per section 200(3) of the Act, the Due Date for filing TDS Return (both online as well as physical w.e.f. 01.06.2016) is as follows:

Quarter ending on	Due Date
30th June	31st July of the financial year
30th September	31st October of the financial year
31st December	31st January of the financial year
31st March	31st May of the financial year immediately following the financial year in which deduction is made

Note: 'Nil' TDS return is not mandatory, however to facilitate the deductors and update data government has provided a facility for declaring nil TDS return.

Section 203 TDS Certificate

203. (1) Every person deducting tax in accordance with the foregoing provisions of this Chapter shall, within such period as may be prescribed from the time of credit or payment of the sum, or, as the case may be, from the time of issue of a cheque or warrant for payment of any dividend to a shareholder, furnish to the person to whose account such credit is given or to whom such payment is made or the cheque or warrant is issued, a certificate to the effect that tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted and such other particulars as may be prescribed.

(2) Every person, being an employer, referred to in sub-section (1A) of section 192 shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed.

(3) [***]

Issue of TDS Certificate

Every person deducting tax at source is required as per Section 203 to furnish a certificate to the payee to the effect that tax has been deducted along with certain other particulars.This certificate is usually called the TDS certificate. Even the banks deducting tax at the time of payment of pension are required to issue such certificates. In case of employees receiving salary income including pension, the certificate has to be issued in Form No.16. In all other cases, the TDS certificate is to be issued in Form 16B. The certificate is to be issued in the deductor's own stationery. However, there is no obligation to issue TDS certificate in case of tax at source is not deducted /deductible by virtue of claims of exemptions/ deductions.

Form and Time Limit for issue of TDS Certificates

Form No.	Periodicity	Due Date
Form No.16 and Form No. 12BA	Annual	On or before May 31 of the financial year immediately following the financial year in which tax is deducted.
Form No.16A	Quaterly	Within 15 days from the due date of furnishing quarterly TDS returns.
Form No.16B	-	Within 15 days of furnishing challan in Form No.26QB

Issue of Duplicate Certificate

Where the original TDS certificate is lost, the deductee can approach the deductor for issue of a duplicate TDS certificate. The deductor may issue a duplicate certificate in Form No. 16 or Form 16A as the case may be. However such a certificate has to be certified as duplicate by the deductor. Further, the deductor may, at his option, use digital signatures to authenticate such certificates. In case of issue of such certificates the deductor shall ensure that-

a) The provisions of sub-rule (2) of Rule 31 regarding specification of TAN, PAN of deducteee book identification number; Challan identification number; receipt number of relevant quarterly statements etc. are complied with;
b) Once the certificate is digitally signed, the contents of the certificates are not amendable to change; and
c) The certificates have a control number and a log of such certificates is maintained by the deductor.

Section 200A — Processing of statements of tax deducted at source

"200A. *Processing of statements of tax deducted at source.*—(1) Where a statement of tax deduction at source has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—

(*a*) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—

(*i*) any arithmetical error in the statement; or

(*ii*) an incorrect claim, apparent from any information in the statement;

(*b*) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(*c*) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of amount computed under clause (*b*) against any amount paid under section 200 and section 201, and any amount paid otherwise by way of tax or interest;

(*d*) 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 (*c*); and

(*e*) the amount of refund due to the deductor in pursuance of the determination under clause (*c*) shall be granted to the deductor :

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(*i*) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(*ii*) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act;

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section."

Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner:

a. the sums deductible under this Chapter shall be computed after making any arithmetical error or an incorrect claim, apparent from any information in the statement.

b. the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

c. the fee, if any, shall be computed in accordance with the provisions of section 234E;

d. the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;

e. an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

f. the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor.

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Section 201 — Consequences of Non-Compliance to TDS

201. (1) Where any person, including the principal officer of a company,—

(*a*) who is required to deduct any sum in accordance with the provisions of this Act; or

(*b*) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a [84][payee] or on the sum credited to the account of a [84][payee] shall not be deemed to be an assessee in default in respect of such tax if such [84][payee]—

(*i*) has furnished his return of income under section 139;

(*ii*) has taken into account such sum for computing income in such return of income; and

(*iii*) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:

Provided further that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(*i*) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(*ii*) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,

and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200:

Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a [85][payee] or on the sum credited to the account of a [85][payee] but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (*i*) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such [85][payee].

(2) Where the tax has not been paid as aforesaid after it is deducted, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A) shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given [86][or two years from the end of the financial year in which the correction statement is delivered under the proviso to sub-section (3) of section 200, whichever is later].

(4) The provisions of sub-clause (*ii*) of sub-section (3) of section 153 and of *Explanation 1* to section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).

Explanation.—For the purposes of this section, the expression "accountant" shall have the meaning assigned to it in the *Explanation* to sub-section (2) of section 288.

Where any person, including the principal officer of a company, who is required to deduct any sum in accordance with the provisions of this Act; or referred to in sub-section (1A) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an **assessee in default** in respect of such tax. A deductor would broadly face the following consequences:

Sr. No.	Consequence	Section
1.	Interest	201(1A)
2.	Penalty	201(1),271C,271CA,271H, 272A,272BB
3.	Fees	234E
4.	Prosecution	276B,276BB
5.	Disallowance of expenses	40(a)(i)/(ii)

The same is divided into following parts:

- Provisions applicable to person deemed to be an “assessee in default”.
- Provisions applicable to a person not deemed to be an “assessee in default”.
- Penalties applicable, whether the Assessee is in default or not.
- Consequences for failure to furnish statements and other penalties.

A. Provisions applicable to person deemed to be an “assessee in default”

Levy of interest:-

- As per section 201 of the Income-tax Act, if a deductor fails to deduct tax at source or after the deducting the same fails to deposit it to the Government’s account then he shall be deemed to be an assessee-in-default and liable to pay simple interest as follows:
  - **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 **1.5%** for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid.

- Levy of interest is mandatory in nature: Levy of interest u/s. 201(1A) is mandatory and that the interest is to be paid whether the Assessee is an assessee in default or not.
- Interest – deduction as business expenditure: Whether the interest paid u/s 201(1A) can be claimed as deductible expenditure - Relying on the various judgments, it has been held that the interest paid u/s 201(1A) takes colour from its principal amount i.e., income tax and hence such interest cannot assume the character of business expenditure and hence is not allowable.

Levy of Penalty:

- Where a person is deemed to be an Assessee in default u/s. 201(1) then the Assessee is liable to pay penalty u/s. 221 in addition to the tax and interest u/s. 201(1A). The amount of penalty payable shall not exceed the amount of tax in arrears. Once a default occurs, penalty is payable even where the Assessee has subsequently paid the tax in arrears, whether before or after the imposition of the penalty. However, the Assessee is to be granted a reasonable opportunity of being heard to prove to the satisfaction of the ITO that the default was for good and sufficient reason**.**
- The term 'good and sufficient reasons' is not defined and depends upon the facts of each case. The following reasoning / circumstances have been considered as a good and sufficient reason by the courts:
  - ✓ TDS post deduction was not paid by the Assessee on account of a financial stringency. It was held as a good and sufficient reason in the matter of Sequoia Construction Co. Limited (Delhi High Court) (158 ITR 496).
  - ✓ Fair and honest estimate based on backdrop of various judicial decisions is a good and sufficient reason - Nestle India (ITAT Delhi)
  - ✓ However, TDS not deducted based on the ignorance - it was 'not' held to be a case of good and sufficient ground - Tata Chemicals Limited (Mum ITAT).

Disallowance of expenditure:

- As per section 40(a)(i) of the Income-tax Act, any sum (other than salary) payable outside India or to a non-resident, which is chargeable to tax in India in the hands of the recipient, shall not be allowed to be deducted if it is paid without deduction of tax at source or if tax is deducted but is not deposited with the Central Government till the due date of filing of return. However, if tax is deducted or deposited in subsequent year, as the case may be, the expenditure shall be allowed as deduction in that year.
- TDS is to be deducted and deposited before 7th of next month (or 30th April in case of payment in March) on sum payable as salary to any non-resident. Otherwise 100% of expense will be disallowed and shall not be allowed even if deposited after the due date.
- Similarly, as per section 40(a)(ia), any sum payable to a resident, which is subject to deduction of tax at source, would attract **30% disallowance** if it is paid without deduction of tax at source or if tax is deducted but is not deposited with the Central Government till the due date of filing of return. However, where in respect of any such sum, tax is deducted or deposited in subsequent year, as the case may be, the expenditure so disallowed shall be allowed as deduction in that year.

- **Note:** If the Assessee after deduction of TDS does not pay the same, then as per sub-section (2) of section 201, for the amount of tax not paid together with the simple interest - a charge is created on the assets of the person.

B. Provision applicable to a person not to be treated as "assessee in default"

A deductor who fails to deduct the whole or any part of the tax on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee-in-default in respect of such tax if such resident:

- has furnished his return of income under section 139 ;
- has taken into account such sum for computing income in such return of income; and
- has paid the tax due on the income declared by him in such return of income, and the deductor furnishes a certificate to this effect in Form No.26A from a chartered accountant.

Levy of interest: Levy of interest u/s. 201(1A) is mandatory in nature and that the interest (as discussed earlier) is to be paid whether the Assessee is an assessee in default or not.

Levy of Penalty: Penalty u/s. 221 is not payable where a person is not deemed to be an Assessee in default.

Disallowance of expenditure: Finance Act, 2012 w.e.f. 1.7.2012 has inserted second proviso to section 40(a)(ia), where it is provided that if a person is not an assessee in default as per section 201(1) then for the purpose of section 40(a)(ia) it will be deemed that the Assessee has deducted and paid the TDS on such amount and consequently no disallowance ought to be carried out. Hence if a person is not deemed to be an assessee in default then there will be no disallowance u/s. 40(a)(ia).

Note: The proviso is inserted only with context to section 40(a)(ia) and there is no such amendment to section 40(a)(i). Therefore the provision of disallowance specified u/s 40(a)(i) would be applicable.

As per section 40(a)(i) of the Income-tax Act, any sum (other than salary) payable outside India or to a non-resident, which is chargeable to tax in India in the hands of the recipient, shall not be allowed to be deducted if it is paid without deduction of tax at source or if tax is deducted but is not deposited with the Central Government till the due date of filing of return. However, if tax is deducted or deposited in subsequent year, as the case may be, the expenditure shall be allowed as deduction in that year.

C. Penalties, whether the Assessee is in default or not

Section 271C Specific Penalty: It is a specific provision dealing with levy of penalty on failure to deduct the tax at source. Penalty u/s 271C is payable only where a person fails to deduct the tax as required to be deducted. The amount of penalty payable u/s. 271C is equal to the amount of the tax which the person has failed to deduct. Penalty u/s. 271C is not imposable if the Assessee proves the reasonable cause u/s 273B for the failure of the person to deduct TDS.

Issue: Where there is default in deduction of TDS penalty is payable under sec.271C or sec. 221 or both?
→Section 271C is a specific provision dealing with assessee's failure of non-deduction or short-deduction of tax, therefore, to the extent a default is covered by the specific provision of section 271C, such default cannot be subject-matter of penalty under section 221(1).

Section 276B Prosecution: The assessee could also be prosecuted for the non-complying with the requirements of deducting and paying the TDS. However, the criminal proceedings can be initiated only when the default is of non-payment and not where the default is restricted to non- deduction of TDS. The prosecution u/s.276B is rigorous imprisonment for at least 3 months and upto 7 years along with amount to be paid as fine.

Note: No Prosecution where Penalty dropped.

D. Consequences for failure to furnish statements and other penalties

Section 271H [Penalty]:

- The provisions of section 271H levying the penalty are applicable in case of failure to deliver a quarterly statements being TDS/TCS Returns u/s. 200(3) / 206C(3) respectively, before the due of date of filing said returns; or submitting incorrect information in the statement. The penalty will be imposed minimum of ₹ 10,000/- to maximum ₹ 1,00,000/-.
- **Note:** No Penalty u/s 271H if there is Reasonable Cause for failure.
- **Exception** – No penalty shall be levied for the failure to submit the statement if it is proved that the statement has been delivered / submitted before the expiry of one year from the due date of filing the said return u/s. 200(3)/206C(3).

Section 234E [Fees]:

- The provision of section 234E of the Act provides for levy of a fee of ₹ 200/- for each day's delay in filing the statement of TDS. It is to be paid before the furnishing of the return of TDS. However, the amount of fee liable to be paid shall not exceed the amount of TDS.
- **Note:** The levy of the fee u/s. 234E mandatory in nature irrespective of the fact that there exists a reasonable cause of failure.

Section 272BB:

Section 272BB provides for imposition of penalty on non-compliance of provisions of section 203A. Therefore a penalty will be imposed where a person fails to:

- obtain the tax deduction account number or tax collection account number;

or

- fails to quote such number as required

The amount of penalty payable u/s. 272BB is be ₹10,000/-.
Note: No order imposing the penalty shall be passed unless an opportunity of being heard is given in the matter to such person.

Section 203A — Tax Deduction and Collection Account Number

203A. (1) Every person, deducting tax or collecting tax in accordance with the provisions of this Chapter, who has not been allotted a tax deduction account number or, as the case may be, a tax collection account number, shall, within such time as may be prescribed, apply to the Assessing Officer for the allotment of a "tax deduction and collection account number".

(2) Where a "tax deduction account number" or, as the case may be, a "tax collection account number" or a "tax deduction and collection account number" has been allotted to a person, such person shall quote such number—

(*a*) in all challans for the payment of any sum in accordance with the provisions of section 200 or sub-section (3) of section 206C;

(*b*) in all certificates furnished under section 203 or sub-section (5) of section 206C;

(*ba*) in all the statements prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (3) of section 200 or sub-section (3) of section 206C;

(*c*) in all the returns, delivered in accordance with the provisions of section 206 or sub-section (5A) or sub-section (5B) of section 206C to any income-tax authority; and

(*d*) in all other documents pertaining to such transactions as may be prescribed in the interests of revenue.

(3) The provisions of this section shall not apply to such person, as may be notified by the Central Government in this behalf.

- Every person, deducting tax or collecting tax, who has not been allotted a tax deduction account number or, as the case may be, a tax collection account number, shall, within one month from the end of the month in which tax was deducted or collected, apply to the Assessing Officer for the allotment of a "tax deduction and collection account number".

- The above number shall be quoted in -
  a. all challans for the payment of tax deducted at source or tax collected at source.
  b. all TDS or TCS certificates issued under the Act
  c. all the TDS and TCS returns prepared and delivered under the Act
  d. all other documents pertaining to such transactions as may be prescribed in the interests of revenue.

- The provisions of this section shall not apply to such person, as may be notified by the Central Government in this behalf.

Section 206AA — Mandatory Requirement of Furnishing PAN

206AA. (1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—

(*i*) at the rate specified in the relevant provision of this Act; or

(*ii*) at the rate or rates in force; or

(*iii*) at the rate of twenty per cent:

[89]**[Provided** *that where the tax is required to be deducted under section 194-O, the provisions of clause (*iii*) shall apply as if for the words "twenty per cent", the words "five per cent" had been substituted.***]**

(2) No declaration under sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A shall be valid unless the person furnishes his Permanent Account Number in such declaration.

(3) In case any declaration becomes invalid under sub-section (2), the deductor shall deduct the tax at source in accordance with the provisions of sub-section (1).

(4) No certificate under section 197 shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.

(5) The deductee shall furnish his Permanent Account Number to the deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

(6) Where the Permanent Account Number provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his Permanent Account Number to the deductor and the provisions of sub-section (1) shall apply accordingly.

(7) The provisions of this section shall not apply to a non-resident, not being a company, or to a foreign company, in respect of—

(*i*) payment of interest on long-term bonds as referred to in section 194LC; and

(*ii*) any other payment subject to such conditions as may be prescribed.

1) What is Section 206AA?

Section 206AA has been inserted to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates –

a. applicable rate of TDS or
b. at the rate of 20%

2) Additional points related to Section 206AA

- No certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

- Tax is required to be deducted at the rates (as suggested under this section) also in cases where the deductee files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN.

- If the PAN provided to the deductor is invalid or it does not belong to the deductee,it shall be deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the highest of the two rates specified above.

- Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.

- These provisions will also apply to non-residents or foreign company where tax is deductible on payments or credits made to them. However, the provisions of this section shall not apply to a non- resident or to a foreign company, in respect of—

  (i) payment of interest on long-term bonds as referred to in section 194LC; and
  (ii) any other payment subject to such conditions as may be prescribed.

3) Relaxation from deduction of tax at higher rate under section 206AA

Accordingly, the CBDT has, vide this notification, inserted Rule 37BC to provide that the provisions of section 206AA shall not apply to a non-corporate non-resident, or to a foreign company not having PAN in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the following details and documents to the deductor:

- Name, e-mail id, contact number;
- address in the country or specified territory outside India of which the deductee is a resident;
- a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory, if the law of that country or specified territory provides for issuance of such certificate;
- Tax Identification Number of the deductee in the country or specified territory of his residence. In case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or specified territory of which he claims to be a resident.

Section 206C — Tax Collection at Source

206C. (1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

TABLE

Sl. No.	*Nature of goods*	*Percentage*
(1)	*(2)*	*(3)*
(*i*)	Alcoholic Liquor for human consumption	One per cent
(*ii*)	Tendu leaves	Five per cent
(*iii*)	Timber obtained under a forest lease	Two and one-half per cent
(*iv*)	Timber obtained by any mode other	Two and one-half per cent than under a forest lease
(*v*)	Any other forest produce not being	Two and one-half per cent timber or tendu leaves
(*vi*)	Scrap	One per cent
(*vii*)	Minerals, being coal or lignite or iron ore	One per cent:

Provided that every person, being a seller shall at the time, during the period beginning on the 1st day of June, 2003 and ending on the day immediately preceding the date on which the Taxation Laws (Amendment) Act, 2003 comes into force, of debiting of the amount payable by the buyer to the account of the buyer or of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table as it stood immediately before the 1st day of June, 2003, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax in accordance with the provisions of this section as they stood immediately before the 1st day of June, 2003.

(1A) Notwithstanding anything contained in sub-section (1), no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the goods referred to in column (2) of the aforesaid Table are to be utilised for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

(1B) The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner one copy of the declaration referred to in sub-section (1A) on or before the seventh day of the month next following the month in which the declaration is furnished to him.

(1C) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as "licensee or lessee") for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

TABLE

Sl. No.	*Nature of contract or licence or lease, etc.*	*Percentage*
(1)	*(2)*	*(3)*
(*i*)	Parking lot	Two per cent
(*ii*)	Toll plaza	Two per cent
(*iii*)	Mining and quarrying	Two per cent.

Explanation 1.—For the purposes of this sub-section, "mining and quarrying" shall not include mining and quarrying of mineral oil.

Explanation 2.—For the purposes of *Explanation 1*, "mineral oil" includes petroleum and natural gas.

(1D) [***]

(1E) [***]

(1F) Every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ten lakh rupees, shall, at the time of receipt of such amount, collect from the buyer, a sum equal to one per cent of the sale consideration as income-tax.

[90]**[***(1G) Every person,—*

(a) *being an authorised dealer, who receives an amount, for remittance out of India from a buyer, being a person remitting such amount out of India under the Liberalised Remittance Scheme of the Reserve Bank of India;*

(b) *being a seller of an overseas tour program package, who receives any amount from a buyer, being the person who purchases such package,*

shall, at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier, collect from the buyer, a sum equal to five per cent of such amount as income-tax:

Provided *that the authorised dealer shall not collect the sum, if the amount or aggregate of the amounts being remitted by a buyer is less than seven lakh rupees in a financial year and is for a purpose other than purchase of overseas tour program package:*

Provided further *that the sum to be collected by an authorised dealer from the buyer shall be equal to five per cent of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, where the amount being remitted is for a purpose other than purchase of overseas tour program package:*

Provided also *that the authorised dealer shall collect a sum equal to one half per cent of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, if the amount being remitted out is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education:*

Provided also *that the authorised dealer shall not collect the sum on an amount in respect of which the sum has been collected by the seller:*

Provided also *that the provisions of this sub-section shall not apply, if the buyer is,—*

(i) *liable to deduct tax at source under any other provision of this Act and has deducted such amount;*

(ii) *the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the* Explanation *to clause (*20*) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.*

Explanation.—*For the purposes of this sub-section,—*

(i) *"authorised dealer" means a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of the Foreign Exchange Management Act, 1999 (42 of 1999) to deal in foreign exchange or foreign security;*

(ii) *"overseas tour programme package" means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.*

(1H) Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax:

Provided *that if the buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, then the provisions of clause (*ii*) of sub-section (1) of section 206CC shall be read as if for the words "five per cent", the words "one per cent" had been substituted:*

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

Explanation.—*For the purposes of this sub-section,—*

(a) *"buyer" means a person who purchases any goods, but does not include,—*

(A) *the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or*

(B) *a local authority as defined in the* Explanation *to clause (*20*) of section 10; or*

(C) *a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein;*

(b) *"seller" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding*

the financial year in which the sale of goods is carried out, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

(1-I) If any difficulty arises in giving effect to the provisions of sub-section (1G) or sub-section (1H), the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

*(1J) Every guideline issued by the Board under sub-section (1-I) shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person liable to collect the sum.***]**

(2) The power to recover tax by collection under [91]**[***this section***]** shall be without prejudice to any other mode of recovery.

(3) Any person collecting any amount under [91]**[***this section***]** shall pay within the prescribed time the amount so collected to the credit of the Central Government or as the Board directs :

Provided that the person collecting tax on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this section shall, after paying the tax collected to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority, or the person authorised by such authority, such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.

(3A) In case of an office of the Government, where the amount collected under sub-section (1) or sub-section (1C) has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person, by whatever name called, who is responsible for crediting such tax to the credit of the Central Government, shall deliver or cause to be delivered to the prescribed income-tax authority, or to the person authorised by such authority, a statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed.

(3B) The person referred to in the proviso to sub-section (3) may also deliver to the prescribed authority under the said proviso, a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under the said proviso in such form and verified in such manner, as may be specified by the authority.

(4) Any amount collected in accordance with the provisions of this section and paid to the credit of the Central Government shall be deemed to be a payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to such person for the amount so collected in a particular assessment year in accordance with the rules as may be prescribed by the Board from time to time.

(5) Every person collecting tax in accordance with the provisions of this section shall within such period as may be prescribed from the time of debit or receipt of the amount furnish to the buyer or licensee or lessee to whose account such amount is debited or from whom such payment is received, a certificate to the effect that tax has been collected, and specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be prescribed :

Provided that the prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) shall, within the prescribed time after the end of each financial year beginning on or after the 1st day of April, 2008, prepare and deliver to the buyer referred to in sub-section (1) or, as the case may be, to the licensee or lessee referred to in sub-section (1C), a statement in the prescribed form specifying the amount of tax collected and such other particulars as may be prescribed.

(5A) Every person collecting tax before the 1st day of April, 2005 in accordance with the provisions of this section shall prepare within the prescribed time after the end of each financial year, and

deliver or cause to be delivered to the prescribed income-tax authority or such other authority or agency as may be prescribed such returns in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:

Provided that the Board may, if it considers necessary or expedient so to do, frame a scheme for the purposes of filing such returns with such other authority or agency referred to in this sub-section.

(5B) Without prejudice to the provisions of sub-section (5A), any person collecting tax, other than in a case where the seller is a company, the Central Government or a State Government, may at his option, deliver or cause to be delivered such return to the prescribed income-tax authority in accordance with such scheme as may be specified by the Board in this behalf, by notification in the Official Gazette, and subject to such conditions as may be specified therein, on or before the prescribed time after the end of each financial year, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media (hereinafter referred to as the computer media) and in the manner as may be specified in that scheme:

Provided that where the person collecting tax is a company or the Central Government or a State Government, such person shall, in accordance with the provisions of this section, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme.

(5C) Notwithstanding anything contained in any other law for the time being in force, a return filed on computer media shall be deemed to be a return for the purposes of sub-section (5A) and the rules made thereunder and shall be admissible in any proceedings made thereunder, without further proof of production of the original, as evidence of any contents of the original or of any facts stated therein.

(5D) Where the Assessing Officer considers that the return delivered or caused to be delivered under sub-section (5B) is defective, he may intimate the defect to the person collecting tax and give him an opportunity of rectifying the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to deliver the return.

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

(6A) If any person responsible for collecting tax in accordance with the provisions of this section does not collect the whole or any part of the tax or after collecting, fails to pay the tax as required by or under this Act, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax:

Provided that any person responsible for collecting tax [92]**[***in accordance with the provisions of sub-section (1) and sub-section (1C)***]**, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee—

(*i*) has furnished his return of income under section 139;

(*ii*) has taken into account such amount for computing income in such return of income; and

(*iii*) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:

Provided further that no penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that the person has without good and sufficient reasons failed to collect and pay the tax.

(7) Without prejudice to the provisions of sub-section (6), if the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of one per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3):

Provided that in case any person responsible for collecting tax in accordance with the provisions of this section, fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee but is not deemed to be an assessee in default under the first proviso of sub-section (6A), the interest shall be payable from the date on which such tax was collectible to the date of furnishing of return of income by such buyer or licensee or lessee.

(8) Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the person responsible for collecting tax.

(9) Where the Assessing Officer is satisfied that the total income of the buyer or licensee or lessee justifies the collection of the tax at any lower rate than the relevant rate specified in sub-section (1) or sub-section (1C), the Assessing Officer shall, on an application made by the buyer or licensee or lessee in this behalf, give to him a certificate for collection of tax at such lower rate than the relevant rate specified in sub-section (1) or sub-section (1C).

(10) Where a certificate under sub-section (9) is given, the person responsible for collecting the tax shall, until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate.

(11) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (9) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

Explanation.—For the purposes of this section,—

(*a*) "accountant" shall have the meaning assigned to it in the *Explanation* to sub-section (2) of section 288;

(*aa*) "buyer" with respect to—

(*i*) sub-section (1) means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) or the right to receive any such goods but does not include,—

(*A*) a public sector company, the Central Government, a State Government, and an embassy, a High Commission, legation, commission, consulate and the trade representation, of a foreign State and a club; or

(*B*) a buyer in the retail sale of such goods purchased by him for personal consumption;

(*ii*) [***]

(*iii*) sub-section (1F) means a person who obtains in any sale, goods of the nature specified in the said sub-section, but does not include,—

(*A*) the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(*B*) a local authority as defined in *Explanation* to clause (*20*) of section 10; or

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

(*ab*) [***]

(*b*) "scrap" means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons;

(*c*) "seller" [93]**[***with respect to sub-section (1) and sub-section (1F)***]** means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society and also includes an individual or a Hindu undivided family whose total sales, gross receipts or turnover from the business or profession carried on by him exceed [94]**[***one crore rupees in case of business or fifty lakh rupees in case of profession***]** during the financial year immediately preceding the financial year in which the goods of the nature specified in the Table in sub-section (1) are sold.

a) Applicability and Rate [Section 206C(1)/(1C)/(1F)]

Section 206 C(1)

Sr. No.	Nature of goods	Rate of TCS (upto 13.05.2020)	Rate of TCS (w.e.f 14.05.2020 to 31.03.2021)
i.	Alcoholic Liquor for human consumption	1%	1% *(no change)
ii.	Tendu Leaves	5%	3.75%
iii.	Timber obtained under a forest lease	2.5%	1.875%
iv.	Timber obtained by any mode other than under a forest lease	2.5%	1.875%
v.	Any other forest produce not being timber or tendu leaves	2.5%	1.875%
vi.	Scrap	1%	0.75%
vii.	Minerals, being coal or lignite or iron ore	1%	0.75%

- Every person, being a 'Seller', shall collect from the 'Buyer' a tax , at a specified rate on the 'purchase value' of such specified goods-

- Tax has to be collected by the seller at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time or receipt of such amount from the buyer in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.

- **"Seller"** means-
    a. the Central Government,
    b. a State Government
    c. any local authority
    d. corporation
    e. authority established by or under a Central, State or Provincial Act
    f. any company
    g. firm
    h. Co – operative society.
    i. Individual or a HUF whose turnover in just preceding FY exceeds Rs. 1 Crore or Rs. 50 Lakhs, as the case may be.

- **"Buyer"** means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in section 206C(1) or the right to receive any such goods. However, buyer does not include the following:
    (b) a public sector company, the Central Government, a State Government, and an Embassy, a High Commission, Legation, Commission, Consulate and the trade representation, of a foreign State and a club.
    (c) a buyer in the retail sale of such goods purchased by him for personal consumption.
    - TCS u/s. 206C(1) shall not be required to be collected from a resident buyer, if the goods are to be utilized for the purpose of **manufacturing, processing or producing articles or things** or for the purposes of generation of power and **not for trading purposes**.
    - Buyer to furnish declaration in Form No. 27C to the seller at the time of each sale.
    - No time limit has been prescribed for furnishing Form No.27C by the buyer to the seller-**Chandmal Sancheti vs ITO (Jaipur ITAT)** (ITANo. 344&345/JP/2015)
    - Seller to submit Form No.27C ,on or before 7th day of the next month in which Form No. 27C is received.

- SCRAP has been defined u/s. 206C as under:

    *"(b)"scrap" means **waste and scrap** from the **manufacture or mechanical working of materials** which is definitely **not usable as such** because of breakage, cutting up ,wear and other reasons"*

- Thus, the two important conditions for an item to be considered as SCRAP are:
  1. The scrap should arise from manufacture or mechanical working of materials, and

  2. It should not be usable as such
  If any of the above 2 conditions is not satisfied, then the item will not be treated as Scrap, and thus No TCS u/s. 206C.

- The definition of Scrap does not suggests that the scrap should be generated by the seller himself. Thus, the **provisions of section 206C of the Act are applicable to a trader dealing in the scrap–Chandmal Sancheti vs ITO (Jaipur ITAT)** (ITA No. 344&345/JP/2015)

- The scrap sold should arise out of manufacturing or mechanical working of material. In absence of which, no requirement to collect tax at source-**Navine Fluorine International Ltd. vs. ACIT (Ahmedabad ITAT)** [2012] 14ITR (T) 481

- Provisions of TCS not applicable to dealer of scrap–**Lala Bharat Lal & Sons vs. ITO** (Lucknow ITAT) (ITA No.14,15,16/LKW/2019 dtd.19.02.2020)

- Where products obtained in course of **ship breaking activity** are **usable as such**, they do not fall within definition of scrap. Hence, not liable for TCS– **CIT vs. Priya Blue Industries Pvt. Ltd. (Gujarat HC)** [2016] 381 ITR 210

- Sale of railway scrap by dealer being certainly not usable due to its breakage or wear and tear, same would be subjected to TCS during **resale– Pramod Kumar Jain vs. ITO** [2020] 117 taxmann.com 649 (Jaipur-Trib.) dated 3rdJuly,2020.

- **Whether Sale of Scrap where Form 27C has been submitted by buyer is liable to TCS u/s.206C(1H)**

  - **Bare Text- Section 206C(1H)**:
  "(1H) Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India ***or goods covered*** *in* ***sub-section (1)*** *or* ***sub-section (1F)*** *or* ***sub-section(1G)*** *shall, at the time of receipt of such amount , collect from the buyer, a sum equal to 0.1per cent of the sale consideration exceeding fifty lakh rupees as income-tax…*
  2ndProviso*-Provided further that the provisions of this sub-section shall not apply, if the buyer is* ***liable to deduct tax at source under any other provision of this Act*** *on the goods purchased by him from the seller* ***and*** *has* ***deducted*** *such amount."*

  - Thus, from a plain reading, it can be concluded that since sale of scrap is covered u/s. 206C(1), the provisions of Section 206C (1H) shall not apply.

  - Thus, where the assessee has received declaration in **Form No. 27C** from the buyer that the goods shall be used in manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes, TCS shall not be required to be collected. **[Neither u/s. 206C(1) nor u/s. 206C(1H)]**

Section 206C(1C).

Sr. No.	Nature of contract or license or lease, etc.	Rate of TCS(upto13.05.2020)	Rate of TCS (w.e.f 14.05.2020 to 31.03.2021)
i.	Parking lot	2%	1.5%
ii.	Toll plaza	2%	1.5%
iii.	Mining and quarrying (doesnot includes mining and quarrying of mineral oil, including petroleum And natural gas)	2%	1.5%

- Every person, who grants a lease or a license or enters into a contract or otherwise, transfers any right or interest in
  a. any parking lot or
  b. toll plaza or
  c. mine or quarry,

  to another person (hereafter referred to as "licensee or leasee") for the use of such parking lot or toll plaza or mine or quarry, for the purpose of business, shall collect tax at source at the rate of **2%.** (1.5% w.e.f. 14.05.2020 to 31.03.2021)
  - ✓ The provisions of this section shall not apply to mining and quarrying of mineral oil, petroleum and natural gas.
  - ✓ The provisions of this section shall not apply if the licensee or lessee is a public sector company.

- Tax has to be collected by the seller at the time of debiting of the amount payable by the licensee or leasee to the account of the licensee or leasee or at the time or receipt of such amount from the licensee or leasee in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.

- **Individual / HUF** even if his turnover does not exceed Rs.1 Crore or Rs. 50 Lakhs, as the case may be are also **liable to collect tax u/s. 206C(1C)**.

- For the purpose of section 206C(1C) on parking lot, toll plaza or mining or quarrying, every **person** [person as defined u/s. 2(31) of the Income tax Act, 1961 [,should collect TCS.

- Thus, the Central Govt., State Govt., not included in the definition of person u/s .2(31) cannot be made liable to collect tax at source.

- Shree Jagannath Temple Office is not a person u/s. 2(31). Thus, not liable to collect tax at source u/s. 206C(1C)-**Shree Jagannath Temple Managing Committee vs. ACIT (Cuttack ITAT)** (ITA No.197 and 198/2013)

Section 206C(1F)

- Every person, being seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding **ten lakh rupees**, shall collect tax from buyer at the rate of **1%** of sale consideration.

- Tax shall be collected at the time of receipt of amount from the buyer.

- TCS on motor vehicle to be collected at the time of (receipt of) **Retail Sale** and not on sale of motor vehicle by manufacturers to dealers / distributors – **CBDT Circular No. 22/2016 dtd. 08.06.2016**

- **Receipt of Sale consideration from a dealer would be subjected to TCS under sub-section (1H) of the Act, if such sales are not subjected to TCS under sub-section (1F) of section 206C of the Act. [Para 4.5.2. (i) of the CBDT circular 17/2020]**

- As per Para 4.5 of CBDT Guidelines vide **Circular No. 17/2020** dated 29.09.2020– **Receipt of sale consideration by a dealer is liable for TCS u/s. 206C(1H)**.

  Thus, earlier exemption given on sale of motor vehicles by manufacturers to dealers/distributors vide **CBDT Circular No. 22/2016 dated 08.06.2016** is not relevant now since the same have been specifically included vide above Guidelines vide CBDT Circular No. 17/2020.

  Thus, the manufacturer/distributors are liable to collect TCS @ 0.1% as per Section 206C(1H) on receipts after 1st October,2020.

- TCS also applicable on **motor bikes** of amount exceeding Rs.10 Lakhs.

- Also applicable on second hand cars or any motor vehicle–if amount exceeds Rs.10 Lakhs.

- Eg. Value of Motor Vehicle-Rs.15 Lakhs, then TCS applicable on entire Rs.15 Lakhs.

- **"Buyer"** means buyer of motor vehicle of the value exceeding ten lakh rupees. However, the tax collection at source shall not be made in relation to sale of motor vehicle of the value exceeding ten lakh rupees to the following class or classes of buyers, namely :-

(a) the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State
(b) a local authority
(c) a public sector company which is engaged in the business of carrying passengers

- **"Seller"** means-
  a. the Central Government,
  b. a State Government
  c. any local authority
  d. corporation
  e. authority established by or under a Central, State or Provincial Act
  f. any company
  g. firm
  h. Co – operative society.
  i. Individual or a HUF whose turnover in just preceding FY exceeds Rs. 1 Crore or Rs. 50 Lakhs, as the case may be.

b) CBDT Clarification relating to certain issues with respect to Section 206C(1F)

Question I: Whether tax collection at source ('TCS') at the rate of 1 % is on sale of Motor Vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/distributors?

Answer: To bring high value transactions within the tax net, section 206C of the Act has been amended to provide that the seller shall collect the tax at the rate of one per cent from the purchaser on sale of motor vehicle of the value exceeding ten lakh rupees, This is brought to cover all transactions of **retail sales** and accordingly it will not apply on sale of motor vehicles by manufacturers to dealers / distributors,

Question 2: Whether TCS at the rate of 1 % is on sale of Motor Vehicle is applicable only to Luxury Cars?

Answer: No, As per sub section (1F) of Section 206C of the Act the seller shall collect the tax at the rate of one per cent from the purchaser on sale of any motor vehicle of the value exceeding ten lakh rupees,

Question 3: Whether TCS at the rate of 1 % is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions for sale of motor vehicle or any other goods or provision of services?

Answer: Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State and shall not be liable to levy of TCS at the rate of 1 % under sub-section (1F) of section 206 C of the Act.

Question 4: Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?

Answer: Tax is to be collected at source at the rate of 1 % on sale consideration of a motor vehicle exceeding ten lakh rupees. It is applicable to each sale and not to aggregate value of sale made during the year.

Question 5: whether TCS at the rate of 1 % on sale of motor vehicle is applicable in case of an individual?

Answer: The definition of "Seller" as given in clause (c) of the Explanation below subsection (II) of section 206C shall be applicable in the case of sale of motor vehicles also Accordingly, an individual who is liable to audit as per the provisions of section 44AB of the Act during the financial year immediately preceding the financial year in which the motor vehicle is sold shall be liable for collection of tax at source on sale of motor vehicle by him.

Question 6: How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?

Answer: The provisions of TCS on sale of motor vehicle exceeding ten lakh rupees is not dependent on mode of payment. Any sale of Motor Vehicle exceeding ten lakh would attract TCS at the rate of 1%.

The above percentages referred to in section 206C(1),206C(1C) and 206C(1F) shall be increased by a surcharge and health & education cess for assessment year 2020-21 as under:

Where buyer is:	Applicability of Surcharge & Education Cess
1. Foreign Company	The rates of TCS shall be increased by: a. Surcharge of 2%(where the payment collected or to be collected from buyer and which is subject to tax collection during the financial year exceeds Rs 1 crore but does not exceeds Rs 10 crores) b. Surcharge of 5%(where the payment collected or to be collected from buyer and which is subject to tax collection during the Financial year exceeds Rs 10 crores); and c. Health & education cess of 4% in all cases.
2. Individual or HUF or AOP or BOI being non-resident other than foreign Company	The rates of TCS shall be increased by: **(A)** Surcharge of 10%/15%/25%/37%(where the payment collected or to be collected from buyer and which is subject to tax collection during the financial year exceeds Rs 50 lakhs but upto Rs 1 crore/exceeds Rs 1 crore but upto Rs 2 crores/exceeds Rs 2 crores but upto Rs 5 crores/exceeds Rs 5 crores); and **(B)** Health & education cess of 4% in all cases.
3. Co-operative Society or firm, being a non-resident	The rates of TCS shall be increased by: **(A)** Surcharge of 12%(where the payment collected or to be collected from buyer and which is subject to tax collection during the financial year exceeds Rs 1 crore) **(B)** Health & education cess of 4% in all cases.

c) Collection of the tax at any lower rate than the relevant rate specified

Where the Assessing Officer is satisfied that the total income of the buyer or licensee justifies the collection of the tax at any lower rate than the relevant rate specified, the Assessing Officer shall, on an application made by the buyer or licensee in **Form No.13** in this behalf, give to him a certificate for collection of tax at such lower rate.

Where such certificate is given, the person responsible for collecting the tax shall, until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate. The certificate shall be issued directly to the person responsible for collecting the tax under advice to the buyer who made an application for issue of such certificate.

d) Time Limit for deposit of tax

The Tax so collected shall be deposited to the credit of Central Govt. within 7 days from the end of the month in which tax was required to be collected.

e) TCS Return

TCS return shall be submitted in form no. 27 EQ within the time limit give below:-

Quarter ending	Due Date
30th June	15th July of the financial year
30th September	15th October of the financial year
31st December	15th January of the financial year
31st March	15th May of the financial year immediately following the financial year in which deduction is made

f) Certificate of tax collection at source

Certificate of tax collection at source shall be issued within 15 days from the due date of furnishing quarterly TDS/TCS returns.

g) Credit for TCS

The amount collected under this section is deemed to be a payment of tax on behalf of the person from whom the amount has been collected. A tax credit is given to him for the amount so collected in the assessment for which the income is assessable.

h) Processing of statements of tax collected at source [Section 206CB]

i. Where a statement of tax collection at source or a correction statement has been made by a person collecting any sum (herein referred to as collector) under section 206C, such statement shall be processed in the following manner, namely:—

(a) the sums collectible under this Chapter shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the statement;

(ii)an incorrect claim, apparent from any information in the statement;

(b) the interest, if any, shall be computed on the basis of the sums collectible as computed in the statement;
(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;
(d) the sum payable by, or the amount of refund due to, the collector, shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 206C or section 234E and any amount paid otherwise by way of tax or interest or fee;
(e) an intimation shall be prepared or generated and sent to the collector specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and
(f) the amount of refund due to the collector in pursuance of the determination under clause (d) shall be granted to the collector

Provided that no intimation under this sub-section shall be sent after the expiry of the period of one year from the end of the financial year in which the statement is filed

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

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

ii. The Board may make a scheme for centralized processing of statements of tax collected at source to expeditiously determine the tax payable by, or the refund due to, the collector, as required under sub-section (1).

i) Consequences of failure to collect tax at source

Section 206 C(6A):

If any person responsible for collecting tax in accordance with the provisions of this section does not collect the whole or any part of the tax or after collecting, fails to pay the tax as required by or under this Act, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax: Provided that any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax if such buyer or licensee or lessee—

i. has furnished his return of income under section 139;
ii. has taken into account such amount for computing income in such return of income; and
iii. has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

Provided further that no penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that the person has without **good and sufficient reasons** failed to collect and pay the tax.

Section 206C(7):

Without prejudice to the above, if the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of one per cent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter.

Provided that in case any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee but is not deemed to be an assessee in default under the first proviso of sub-section (6A), the interest shall be payable from the date on which such tax was collectible to the date of furnishing of return of income by such buyer or licensee or lessee.

Section 206C(8):

Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the person responsible for collecting tax.

Section 206C(1G) TCS on Foreign remittance under Liberalized Remittance Scheme (LRS) and sale of overseas tour program package (w.e.f. 1st October 2020)

- **Purpose of Section 206C(1G)**
  1. For remittance overseas under Liberalized Remittance Scheme (LRS)
  2. Purchase of **Tour Package** which includes expenses for travel or hotel stay / boarding / lodging etc.

- **Who is liable to collect tax at Source (TCS) under section 206C(1G) ?**
  1. Authorised dealer for foreign remittance
  2. Seller of overseas tour program package

- **When to collect the TCS?**

  Earlier of :
  - at the time of debiting the buyer or ie amount due from buyer
  - at the time of Receipt from the buyer, ie. actual receipt

- **Threshold Limits**
  - No TCS if aggregate amount in FY is less than Rs. **7 Lakhs** and remittance is for the purpose other than overseas tour programme package.
  - If the payment is for overseas tour programme package to an operator, then TCS is liable to be collected **without any threshold**.
  - If TCS has already been collected by the Tour Operator, then no further TCS will be collected by the authorized dealer for remittance outside India.

- **Not applicable if**
  - Buyer is liable to deduct TDS and has deducted
  - Buyer is Central / State Government, Embassy, High Commission etc.

- **TCS Rates**
  - **5%** on an amount in excess of Rs. 7 lakhs in a FY (**0.5%** if the remittance is out of educational loan obtained from bank or notified financial institution)
  - Rate of TCS will be **10% / 5%** respectively, if the buyer does not furnishes PAN.
  - CBDT Press Release dated 13.05.2020 for relaxation in rates of TDS/TCS does not mentions reduction in rate of TCS u/s 206C(1G).

- **Example:** If remittance outside India for medical treatment of Rs.12 Lakhs. Then TCS u/s. 206C(1G) @5% to be collected on Rs. 5 Lakhs– i.e. Rs.25,000

Section 206C(1H) TCS on Receipt of Sale Consideration

"Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India ***or goods covered*** *in* ***sub-section (1)*** *or* ***sub-section (1F)*** *or* ***sub-section(1G)*** *shall, at the time of receipt of such amount , collect from the buyer, a sum equal to 0.1per cent of the sale consideration exceeding fifty lakh rupees as income-tax"*

- **Nature of Transaction**

Receipt of Sale consideration for Sale of Goods in India by a **Seller whose turnover exceeds Rs. 10 Crores** in the preceding FY is liable to collect tax at source.

The term **goods** have not been defined in the Income Tax Act, hence we may refer to Sales of Goods Act, 1930 or Goods and Service Tax Act 2017 for the meaning of goods. In both the Acts, the term "Goods" has been defined as *"Goods" means every kind of movable property other than money and securities but includes actionable claims, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.*

These provisions are applicable only in respect of transaction of sale of goods and do not apply to sale of services.

- **Who is liable to collect tax at Source (TCS) under section 206C(1H) ?**
  - **Seller whose Turnover of preceding year exceeds Rs. 10 Crores.**
  - As per Section 206C(1H) "**Seller** means a person whose total sales, **gross receipts** or **turnover** from the business carried on by him **exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out**, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein." However, as per **Para 2** of the **CBDT Press Release** dated 30th September, 2020-A seller would be required to collect tax only if his turnover exceeds Rs. 10 crore in the **last financial year**. **(not the year of sale)**
  - **Practically, it can be concluded that any person whose turnover exceeds Rs.10 Crores in the preceding year, shall be covered u/s. 206C(1H).**

- **From whom to collect?**

  Buyer from whom, **receipt (and not sales)** exceeds Rs. 50 Lakhs, in aggregate, in a financial year.

  The amount on which the tax needs to be collected shall be limited only to the consideration for sale of goods actually received. The liability is triggered at the point of receipt of amount once the threshold of Rs.50 Lakhs is crossed. In the absence of sale of goods and amount received, the liability does not exist. The sale consideration can be interpreted as amount received in advance or in arrears. In case, if there is some change in valuation say under GST law then too the requirement of TCS will be qua actual consideration and not qua valuation under the GST law.

- **Rate of Tax**
  - 0.1% of the amount exceeding Rs. 50 Lakhs. **(@0.075% upto 31.03.2021)**
  - If the buyer does not provide PAN/Aadhar number then the TCS shall be collected at **1%,** instead of 0.1%. In such situation, Covid-19 related concession is also not available.
  - Example: If Amount received in a FY is Rs. 70 Lakhs, then TCS is applicable only on Rs.20 Lakhs.

- **When to collect the TCS?**
  - **Section 206C(1H) provides that TCS is required to be collected at the time of receipt of the Sale consideration and not at the time of debiting the Party Ledger Account.**
  - **What about Sales made in FY 2020-21 where TCS @ 0.075% is levied on invoice ?**–If it's payment is received in FY2021-22, then @0.1% will be levied. Separate accounting /collection for such shortfall would be required.

- If the buyer is liable to deduct tax at source on goods purchased by him and the buyer has deducted the amount then the seller is not required to collect TCS on such transactions. Both the conditions need to be fulfilled i.e., the buyer should be liable for deduction of tax at source and has deducted such amount.

- **Tax not to be collected in certain cases**
  - **Explanation (a) to Section 206C(1H)**- **Buyer** means a person who purchases any goods, but does not include,
    (A) the Central Government, a State Government, etc.
    (B) a local authority as defined in the Explanation to Section10(20)
    (C) a person importing goods into India or any other notified person

  - Although, no tax is to be collected from them, but the same is **required to be mentioned in the quarterly TCS Statement (Form No. 27EQ)** and non-disclosure of such items in quarterly TCS Statement is required to be reported by the Tax Auditor under **Clause 34(b) of the Tax Audit Report**.

  - TCS is not required to be collected in respect of Export sales as the consideration for sale of goods excludes consideration towards goods exported out of India and even the definition of buyer excludes a person importing goods from India.

  - TCS not to be collected on Sale of immovable property as it is out of ambit of goods.

- **TCS on trade receivables standing in books as on 30 September 2020:**
  The trigger point of collection of TCS is receipt of consideration for sale of goods and hence one may say that as the consideration is received on or after 01 October 2020, TCS provisions are applicable on such transactions and TCS should be collected by the seller.
  The CBDT has recently issued a clarification which gives an impression that in cases where goods have been sold prior to 01 October 2020 and the consideration is received on or after 01 October 2020, TCS should be collected.
  However, an alternate view is also possible because for this provision to be applicable both the conditions need to be satisfied:
    - The sale of goods is carried out i.e., sale of goods must have been actually effected and
    - The consideration must be received in respect of such sale.

  Therefore, in cases where goods have already been sold prior to 01 October 2020, TCS may not be required to be collected because these provisions are effectively operative from 01 October 2020. Needless to mention, considering that CBDT has issued a clarification that TCS should be applicable on receipt of consideration on or after 01 October, 2020 even if sale is made before 01 October 2020, litigation cannot be entirely ruled out.

- **Point of Tax Collection**

Sr. No.	Situation	Remarks
1	Sale order is before 01/10/2020 but the sale is not completed as up to 30/09/2020.	TCS would be applicable in respect of amount received on or after 01/10/2020.
2	Sales Order executed on or after 01/10/2020	TCS shall be applicable on the amount received as consideration.
3	**Sale is completed before 01/10/2020 and the payment is received after 01/10/2020**	**As per CBDT Circular, TCS shall be applicable as the consideration is received after 01/10/2020.**

- **Cancellation of Sale**

Practical difficulties may arise where advance is collected for sale of goods and TCS is remitted and subsequently the contract is cancelled and the amount is refundable. In such cases, the seller may only refund the primary sale consideration received and not the TCS amount, since such TCS amount is already credited as prepaid taxes and will appear in Form 26AS and the buyer should not insist for refund of the TCS amount as the buyer would otherwise be entitled to credit of the TCS in the return of income.

- **Payments by third party**

In quite a few cases, the sale proceeds are partly paid by the Government as a release of subsidy, or the costs are funded by third-party payments. All such transactions also amount to receipt on behalf of the buyer and hence the seller will be under obligation to remit TCS.

- **Whether turnover of Rs. 10 Crores includes GST?**
  - For the purpose of determining applicability of Turnover of Rs. 10 Crores as per Explanation to Section 206C(1H), **the turnover limit of Rs. 10 Crores shall be determined <u>excluding</u> the amount of GST collected on Sales.**

  - **Example**:
    - ✓ Total Sales for the Financial Year 2019-20 (excluding GST) is **Rs. 9 Crores**.
    - ✓ GST Collected on Sales @ 18% is **Rs. 1.62 Crores**.
    - ✓ Total Amount (inclusive of GST) is **Rs. 10.62 (Rs. 9 Crores + Rs. 1.62 Crores)**.
    - ✓ In the above example, the assessee would **not be covered** under the provisions of Section 206C(1H) since his turnover is Rs. 9 Crores only, which is below the threshold limit of Rs. 10 Crores.

- **How to determine the limit of Rs. 50 Lakhs?**

  - **The seller is liable to collect TCS from the buyer if the receipt of sale consideration in the financial year (including receipts before 1st October, 2020) exceeds Rs.50 Lakhs.**

  - **Section 206C(1H)**–
    *"Every person, being a seller, **who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees** in any previous year, other than the goods being exported out of India or goods covered in sub-section (1)/ (1F)/ (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1% of the sale consideration exceeding Rs.50 Lakhs as income-tax"*

  - Further, as per CBDT Guidelines u/s. 206C(1-I) vide Circular No. 17/2020 dated 29.09.2020 provides that the seller is liable to collect TCS **if the receipt of sales consideration exceeds Rs.50 Lakhs.**

  - As per Para 4 of the CBDT Press Release dated 30.09.2020-**the threshold is based on the yearly receipt.**

  - **Thus, it can be concluded that the limit of Rs.50 Lakhs is of RECEIPT and not SALE.**

  - TCS is also required to be collected at the time of receipt of **advance** – Para No. 4.4.2 **(ii)** of CBDT Guidelines vide Circular No. 17/2020 dated 29.09.2020.

  - **Threshold of Rs.50 Lakhs–EVERY YEAR FOR EVERY DEBTOR.**

- **Should TCS amount be included in the invoice:**

  As such, there is no provision which mandatorily requires the seller to include the amount of TCS in the tax invoice. However, if the amount of TCS is not included in the invoice, then the buyer would not be aware of the total amount of consideration payable to the seller and therefore it would be advisable for the seller to add the TCS figure in the invoice itself and also raise an accounting entry in the books of accounts as a TCS liability even though not payable until the receipt of consideration. It may be noted that even though if the TCS amount is debited to the buyer, the liability to deposit TCS u/s 206C(1H) does not arise till receipt of consideration.

- **Impact of Credit notes and Debit notes:**

  If sales return/credit note/debit note is before receipt of any consideration, then the impact thereof will be included in the amount of consideration, and accordingly, on receipt of the revised consideration, the provisions of TCS would be applicable. If the amount of consideration is already received and TCS is collected and paid, no impact thereof will be required to be made at the time of

passing entry for sales return/credit note/debit note. However, against the subsequent realization, if the same gets adjusted and net consideration is paid then on such net consideration TCS should be collected.

- **Whether TCS Provisions would be applicable if the amount of sale consideration is adjusted against the amounts payable for purchases from said party:**

  in such a situation, though the amount is not received in cash mode, however there is a deemed receipt of consideration through indirect means i.e., through an adjustment of receivable and payables account and hence TCS should be collected under such transactions. Even a past, present or future act is valid consideration under the Contract Act and therefore consideration would be deemed to have been received on an adjustment of mutual liabilities.

- **TCS applicable even on part receipt of consideration:**

  M/s ABC (Turnover for the FY 2019-20 was Rs.20 Crores) from the period 01 April 2020 to 30 October 2020 has sold goods worth Rs.50 Lakhs to Mr A and the consideration has been received to M/s ABC. Thereafter, M/s ABC again sold goods worth Rs.75 Lakhs on 01/11/2020 and till 30/11/2020, M/s ABC has received only Rs.60 lakhs from Mr A. Here in this case, M/s ABC will have to consider the receipt of amount of Rs.60 lakhs inclusive of TCS and accordingly compute the amount of TCS on gross up basis as under;
  Amount Received / (100 + Rate of TCS) * Rate of TCS = 60,00,000/100.075 * 0.075% = Rs.4,497/-

- **Whether TCS set off would be available:**

  No set off is allowed under the Act. E.g., If M/s PS Ltd on 01/10/2020 has sold goods worth Rs 1 Crore to M/s SD Ltd and collected TCS of Rs.3,750/-. Thereafter, on 15/10/2020, M/s PS Ltd purchases goods worth Rs 2 Crores from M/s SD Ltd (or any other party), who therein collects Rs.11,250/- as TCS. Here in the given example, M/s PS Ltd cannot take credit of Rs.11,250 while depositing Rs.3,750/-, nor can M/s SD Ltd (or any other party) take any set off while depositing TCS of Rs.11,250/-.

- **Person having commission income along with sale of goods**

  This provision is applicable to those persons, whose sales or receipts or turnover during the previous year ended on 31 March is more than 10 Crores. Thus, if a person is having two types of income from a business i.e., commission income and sale of goods, then both the receipts from the Commission business and the sales from the trading business will be considered for determining the limit of turnover of Rs.10 Crore. E.g., If a seller is having commission income of Rs.5.5 Crores and Sales of Rs.6 Crores for the year ended 31 March 2020, then the provision u/s 206C(1H) will be applicable to such seller in the FY 2020-21 from

01 October 2020 onwards and accordingly the seller needs to collect TCS on receipt of consideration from the sale of goods subject to other conditions. Despite the applicability of this provision, TCS will not be required to be collected in respect of consideration received by the seller with regards to commission income.

- **TCS not applicable on transactions carried through Exchanges:**

CBDT has clarified that TCS is not applicable in relation to transactions in securities and commodities which are traded through recognised stock exchanges or recognised clearing corporation located in International Financial Service Centre.

- **TCS not applicable on supply of fuel to Non-resident airlines:**

CBDT has clarified that TCS is not required to be collected on sale consideration received for fuel supplied to non-resident airlines at airports in India.

- **TCS applicability on sales to a person located in special economic zone:**

TCS is not required to be collected if the goods are exported out of India. Given that the special economic zone (SEZ) is located within the country's national borders, sale of goods to a person located in SEZ would not mean that the goods are exported out of India, hence TCS should be applicable on such sales, subject to fulfilment of other conditions.

- **Consideration of 50 lakhs is per year qua buyer:**

TCS is required to be collected if the value of consideration in respect of sale of goods is more than 50 lakhs qua buyer for a year and only in respect of the consideration in excess of 50 Lakhs. E.g., M/s MU Ltd, has sold goods worth Rs 25 Lakhs to Mr. Ron from April 2020 to September 2020. Thereafter, M/s MU Ltd sells goods worth Rs 30 Lakhs to Mr. Ron on 01/10/2020. Here, M/s MU Ltd will have to collect TCS only on 5 lakhs.

- **TCS not applicable on transfer of one branch to another:**

The preliminary condition for applicability of provision of TCS is that there should be two parties involved in a transaction viz., a seller and a buyer. Further, there must be a sale of goods between the two parties. The activity of transfer of goods from one branch to another should not be construed as a sale transaction and accordingly TCS need not be collected on inter branch transfer of goods. Moreover, even if this type of transactions are held to be a sale of goods, TCS should not be applicable because as per the Income-tax Act, 1961 both the seller and the buyer are one and the same person and one cannot collect taxes for himself on his own.

Sr. No	Turnover for PY 2019-20 (Rs.)	Turnover for PY 2020-21 (Rs.)	Buyer (Nature of Goods)	Receipts from Buyer upto 30th September 2020 (Rs.)	Receipts from 01/10/2020 to 31/03/2021 (Rs.)	TCS u/s 206C(1H) (Rs.)	Remarks
1	13 crore	9 crore	M/s Sam Trading Co (Papers)	24 lakhs	65 lakhs	2,925	0.075%1 on 39 lakhs (Being excess of Rs.50 lakhs)
2	10 crore	25 crore	M/s Shyam & Co (Books)	50 lakhs	40 lakhs	Not applicable	Turnover of preceding PY does not exceed 10 crores
3	12 crore	14 crore	PK & Associates (Mobile phones)	55 lakhs	20 lakhs	1,500	0.075%1 on 20 lakhs.
4	15 crore	20 crore	Local Authority (Stationery)	85 lakhs	15 lakhs	Not applicable	The clause is not applicable for sale to local authority
5	16 crore	10 crore	Mayur (Motor Vehicle)	0	65 lakh	Not applicable	Section 206C(1F) shall be applicable.

TCS by Seller (Summary)
▪ TCS is to be collected at the time of receipt of the amount
▪ However, TCS is to computed as a % of sale consideration
▪ Basic Threshold of Rs. 50 Lakhs is provided – TCS to be collected only on amount in excess of 50 Lakhs
▪ Export and Import transactions are excluded – FA amendment
▪ Government as a buyer is excluded but government companies as seller is not excluded
▪ Applicable where sales, turnover, gross receipts in business of seller exceeded 10 Crore in immediately preceding financial year
▪ Lower collection certificate is not possible – Not covered by sub. Section 9
▪ If TDS deducted by buyer – TCS does not apply – Availability of trail

Journal Entries for recording TCS in the Books of Accounts:

Sr. No.	Particulars	Debit	Credit
1.	Debtors Account Dr.	1.18 Crores	
	To Sales Account		1 Crores
	To GST Payable Account		18 Lakhs
2.	Bank Account Dr.	1,18,05,100	
	To Debtors Account		1.18 Crores
	To TCS Payable Account		5,100 (@0.075% of Rs. 68 Lakhs)
3.	TCS Payable Account	5,100	
	To Bank Account		5,100

Section 206CC — Mandatory Requirement of Furnishing PAN

206CC. (1) Notwithstanding anything contained in any other provisions of this Act, any person paying any sum or amount, on which tax is collectible at source under Chapter XVII-BB (herein referred to as collectee) shall furnish his Permanent Account Number to the person responsible for collecting such tax (herein referred to as collector), failing which tax shall be collected at the higher of the following rates, namely:—

(*i*) at twice the rate specified in the relevant provision of this Act; or

(*ii*) at the rate of five per cent.

(2) No declaration under sub-section (1A) of section 206C shall be valid unless the person furnishes his Permanent Account Number in such declaration.

(3) In case any declaration becomes invalid under sub-section (2), the collector shall collect the tax at source in accordance with the provisions of sub-section (1).

(4) No certificate under sub-section (9) of section 206C shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.

(5) The collectee shall furnish his Permanent Account Number to the collector and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

(6) Where the Permanent Account Number provided to the collector is invalid or does not belong to the collectee, it shall be deemed that the collectee has not furnished his Permanent Account Number to the collector and the provisions of sub-section (1) shall apply accordingly.

(7) The provisions of this section shall not apply to a non-resident who does not have permanent establishment in India.

Explanation.—For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on

- Section 206CC has been inserted to provide that any person whose payments are subject to tax collection at source i.e. the collectee, shall mandatorily furnish his PAN to the collector failing which the collector shall collect tax at source at higher of the following rates –
  a. At twice the applicable rate of TCS or
  b. At the rate of 5%

- This section further provides as under:
  - ✓ No certificate under section 206C (9) will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

- ✓ Tax is required to be collected at the rates (as suggested under this section) also in cases where the collectee files a declaration in Form 27C [[under section 206C(1A)] but does not provide his PAN.

- ✓ If the PAN provided to the collector is invalid or it does not belong to the collectee, it shall be deemed that the collecctee has not furnished his PAN to the collector. Accordingly, tax would be collectible at the highest of the two rates specified above
  .
- ✓ Both the collector and the collectee have to compulsorily quote the PAN of the collectee in all correspondence, bills, vouchers and other documents exchanged between them.

- ✓ The provisions of this section shall not apply to Non-resident who does not have permanent establishment in India. For this purpose, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Disallowance of Tax Deducted at Source

1. What is Section 40(a)(i)?

Section 40(a)(i)- Non compliance of Provisions of TDS where payment is made to Non Resident

Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

(a) in the case of any assessee—

(i) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,—

(A) outside India; or

(B) in India to a non-resident, not being a company or to a foreign company,

on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:

[Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purposes of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.]

Explanation.—For the purposes of this sub-clause,—

(A) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;

(B) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

Analysis:

- If any interest, royalty, fees for technical services or other sum chargeable under this Act, which is payable,—
  (A) Outside India; or
  (B) In India to a non-resident, not being a company or to a foreign company,
  On which tax is deductible at source and such tax has not been deducted or, after deduction, has not been paid on or before the due date of filing the income tax Return under section 139(1), then such expenses **cannot be allowed** as deductions.
- **Conditions for Disallowance:**
  Disallowance under section 40(a)(i) shall be attracted if:
  Condition 1: The amount paid or payable is interest, royalty, fees for technical services or any other sum chargeable under I.T. Act. The aforesaid sums must be taxable in the hands of the recipient under the I.T. Act.

  Condition 2: The aforesaid sum is paid or is payable:
  (i) outside India to a non-resident or a foreign company
  (ii) in India to a non-resident or a foreign company

  Condition 3: Tax is deductible at source on the aforesaid payments

  Condition 4: And any of the following defaults takes place

  Default A: Tax at source has not been deducted or
  Default B: Tax at source has been deducted but has not been paid on or before the due date specified in section 139(1).

  The proviso to section 40(a)(4) provides that where
  (i) Tax has been deducted in the subsequent year; or
  (ii) Tax has been deducted in the previous year but paid after the due date specified in section 139(1).
  then such sum shall be allowed as deduction in the previous year in which such tax has been paid.

- **Relaxing the provisions of Sections 201 and 40 of the Act in case of Payments to Non- Resident**
  Section 201 of the Act provides that where any person, including the principal officer of company or an employer (hereinafter called the deductor), who is required to deduct tax at source on any sum in accordance with the provisions of the Act, does not deduct or does not pay such tax or fails to pay such tax after making the deduction, then such person shall be deemed to be an assessee in default in respect of such tax.
  The first proviso to sub-section (1) of section 201 specifies that the deductor shall **not be deemed to be an assessee in default** if he fails to deduct tax on a payment made to a **resident**, if such resident has furnished his return of income

under section 139 disclosed such payment for computing his income in his return of income, paid the tax due on the income declared by him in his return of income and furnished an accountant's certificate to this effect.

This relief in section 201 **is available** to the deductor, only in respect of payments made to a **resident**. In case of similar failure on payments made to a **non-resident**, such relief is **not available** to the deductor. To remove this anomaly, it is proposed to amend the proviso to sub-section (1) of section 201 to extend the benefit of this proviso to a deductor, even in respect of failure to deduct tax on payment to non-resident.

Consequent to this amendment, it is also proposed to amend the proviso to sub-section (1A) of section 201 to provide for levy of interest till the date of filing of return by the non-resident payee (as is the case at present with resident payee).

For the same reason, it is also proposed to amend clause (a) of section 40 to provide that where an assessee fails to deduct tax in accordance with the provisions of Chapter XVII B on any sum paid to a **non-resident**, but is **not deemed to be an assessee in default** under the first proviso to sub-section (1) of section 201, then it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in that proviso. Thus, there will be disallowance under section 40 in respect of such payments:

This amendment will take effect from 1 April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

(i) What is Section 40(a)(ia)?

Section 40(a)(ia)- Non compliance of Provisions of TDS where payment is made to a Resident

thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid :

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the 71[***] payee referred to in the said proviso.

Explanation.—For the purposes of this sub-clause,—

(i) "commission or brokerage" shall have the same meaning as in clause (i) of the Explanation to section 194H;

(ii) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;
(iii) "professional services" shall have the same meaning as in clause (a) of the Explanation to section 194J;
(iv) "work" shall have the same meaning as in Explanation III to section 194C;
(v) "rent" shall have the same meaning as in clause (i) to the Explanation to section 194-I;
(vi) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;

Analysis:

- If there is **any** sum payable to a resident, on which tax is deductible at source and such tax has not been deducted or, after deduction, has not been paid on or before the due date of filing the return under section 139(1) then **30%** of such sum should be disallowed.
- **Proviso to the section 40**
  - Where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, 30% of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.
  - Where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to section 201(1), then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee.
- Section 201(1) provides that if an assessee:
  (a) fails to deduct TDS; or
  (b) after deduction, fails to pay the TDS, then he shall be deemed to be assessee in default under section 220 & 221. Consequently he is liable to pay:
  (i) Penalty under section 221 which can be upto the amount of TDS not deducted/not paid.
  (ii) Interest under section 220 @ 1% p.m. from the date the tax was deductible payable till the date of passing of an order under section 201.

- It is well established law laid down by various courts that the deductor shall be treated as an assessee in default only if:
  - Deductor has failed to deduct TDS, and
  - Deductee has also failed to pay the tax directly.

  Therefore, deductor cannot be treated as an assessee in default where deductor has failed to deduct TDS but deductee has paid the tax directly.
  The Finance Act, 2012 seeks to incorporate the above provisions in section 201(1) by inserting Proviso in section 2011). The Finance Act. 2019 has further amended the said proviso to section 201(1).

- **First proviso to section 201(1)**

  Any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of relevant Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall **not be deemed to be an assessee in default** in respect of such tax if such resident—

  (i) has furnished his return of income under section 139;

  (ii) has taken into account such sum for computing income in such return of income; and

  (iii) has paid the tax due on the income declared by him in such return of income,

  and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

  The above proviso to section 201(1) is applicable in case of amount paid or payable to resident only. It is **not applicable** to Non Resident.

- The amendment also provides that deductor shall have to pay **interest** under Section 201(1A) @ 1% per month or part of the month from the date the tax was so deductible to the date of furnishing of return of income by the payee. The interest shall be levied on the amount of **TDS not deducted / short deducted** by the deductor.

(ii) TDS Compliance In Tax Audit Report (Particulars in Form No. 3CD)

Clause 21(b) of Form 3CD – Amounts inadmissible under section 40(a)(i), 40(a)(ia), 40(a)(ic), 40(a)(iia), 40(a)(iib), 40(a)(iii), 40(a)(iv), 40(a)(v). These sections broadly relate to disallowances made in respect of expenditure or a part of an expenditure where tax was required to be deducted at source but the assessee failed to do so.

Amount Inadmissible under **section 40(a)**

(i) As payment to non-resident referred to in sub clause (i)

(ii) As payment referred to in sub clause (ia)

(iii) As payment referred to in sub clause (ib)

Details are as under:

21(b)(i) As payment to non- resident referred to in sub clause (i)

(A) Details of payment on which tax is not deducted

Date of payment *	Amount of payment *	Nature of payment *	Name of the payee *	PAN	Address Line-1 *	Address Line-2	City *	Pin *

(B) Details of payment on which tax has been deducted but has not been paid during the previous year or in the subsequent year before the expiry of time

Date of payment *	Amount of payment *	Nature of payment *	Name of the payee *	PAN	Address Line-1 *	Address Line-2	City *	Pin *	Amount of tax deducted

21(b)(ii) As payment referred to in sub clause (ia)

(A) Details of payment on which tax is not deducted

Date of payment *	Amount of payment *	Nature of payment *	Name of the payee *	PAN	Address Line-1 *	Address Line-2	City *	Pin *

(B) Details of payment on which tax has been deducted but has not been paid on or before the due date specified in sub-section (1) of Section 139

Date of payment *	Amount of payment *	Nature of payment *	Name of the payee *	PAN	Address Line-1 *	Address Line-2	City *	Pin *	Amount of tax deducted	Amount of tax deposited, if any