

INTRICACIES IN TDS AND TCS

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Just like that-

- TDS / TCS has become a major source of revenue for Government. It is like that an SIP for the Government to function throughout the year.
- Every year new sections are added or modified to extend the scope and applicability of TDS / TCS provisions.
- As Auditors it becomes all the more important for us as we are required to confirm in our Tax Audit Report that all TDS / TCS provisions has been complied with completely.
- ***Particular situation at any point of time and content therein is more relevant rather than interpretation of Sections.***
- It's a very large and extensive topic and hence we would cover only the important TDS / TCS Sections intricacies.
- For ease of discussion and reference I have covered the TDS Rate Chart and then relevant TDS / TCS sections have been elaborated

Applicability of TDS-

- TDS Applicable irrespective of Turnover limit for –
 - Companies
 - Partnership Firms
 - LLP
 - Other than Individual / HUF; subject to various exemptions.
- **TDS Applicable only when Total Sales / Gross Receipts / Turnover exceeds Rs. 1 Crore for Businesses / Rs. 50 lacs for Professionals in case of Individual / HUF during the financial year immediately preceding the financial year in which sum sums are credited or paid.**
- TDS to be deducted at the time of receipt of amount or credit in books (by whatever name called) whichever is earlier.
- Remember in some sections it is –
 - TDS to be deducted at the time of payment or credit in books, (194C, 194J etc.)
 - Before Making any payment, (194, 194R etc.)

Whether Statutory Auditor of a Company can file TDS returns???

An auditor shall provide to the company only such services as are approved by the Board of Directors or the audit committee, as the case may be. However, as per section 144 auditors cannot provide following services “directly or indirectly” to the company or its holding company or subsidiary company, namely:—

- (a) accounting and book keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;
- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and
- (i) any other kind of service as may be prescribed.



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However, the nature of services in the question are grey, i.e. they are neither expressly allowed nor have they been restricted.

The issue is whether they are covered under the term "*Management Services*", expression the meaning and scope of which has not been explained even till date.

As per general understanding, management services could mean any services as may be provided in relation to the management and/or administration of the company.

As per the Code of Ethics issued by ICAI the expression "Management Consultancy and other Services" shall **NOT** include the function of statutory or periodical audit, tax (both direct taxes and indirect taxes) representation or advice Concerning tax matters or acting as liquidator, trustee, executor, administrator, arbitrator receiver.

Conclusion...

In a publication by ICSI following check was laid down:

Whether a particular service falls within management service under section 144(h) of the Companies Act, 2013 and hence is restricted, should be assessed on the following considerations:

1. Whether the service is within the purview of management services read with Regulation 190A;
2. Whether by rendering such a service the auditor is not performing any managerial function or not making any managerial decisions;
3. Whether the auditor is merely reviewing and reporting on the work done by the audit client or by a third-party specialist employed by the audit client because, in such a situation the “third party or the audit client is the source of the financial information subject to the review or audit” and “the auditor will not be reviewing or auditing his or her own work.

If the answers to above three considerations are in affirmative then such a service is not restricted under section 144(h) of the Companies Act, 2013.

For instance: **Filing VAT/ Service Tax Returns (Now GST), Filing IT/ TDS Returns**, Filing ROC forms which are not to be certified by any professional, Issuing opinions on Tax, FEMA or other issues etc. *do not fall* under the definition of Section 144(h) of the Act.

In view of the above literature, I am of the opinion that an auditor can take up filing work of returns of company and shall not violate section 144 in doing so.

TDS Rate Chart Page 1

TDS RATE CHART FY: 2024-25 (AY: 2025-26)				
Section	Nature of Payment	Threshold	Indv / HUF	Others
		Rs.	TDS Rate (%)	
192	Salaries	-	Slab Rate	Slab Rate
192A	Premature withdrawal from EPF	50000	10	-
193	Interest on Securities	10000	10	10
194	Dividends	5000	10	10
194A	Interest (Banks)	40000	10	10
194A	Interest - Senior Citizen (Banks)	50000	10	-
194A	Interest (Others)	5000	10	10
194B	Winning from Lotteries	10000	30	30
194BA	Winnings from online games	-	30	30
194BB	Winning from Horse Race	10000	30	30
194C	Contractor - Single Transaction	30000	1	2
194C	Contractor - During the F.Y.	1 Lakh	1	2
194C	Transporter (44AE) declaration with PAN	-	-	-
194D	Insurance Commission (15G - 15H allowed)	15000	5	10
194DA	Payment received - Life insurance Policy From : 01/10/2024 Upto : 30/09/2024	1 Lakh	2 5	2 5
194EE	Payment received - National Savings Scheme (NSS)	2500	10	10
194F	Repurchase Units by MFs (Upto 30/09/2024 - 20% TDS)	-	-	-
194G	Commission - Lottery From : 01/10/2024 Upto : 30/09/2024	15000	2 5	2 5
194H	Commission / Brokerage From : 01/10/2024 Upto : 30/09/2024	15000	2 5	2 5
194I(a)	Rent for Plant & Machinery	2.40 Lakh	2	2
194I(b)	Rent for Land, Building & Furniture	2.40 Lakh	10	10

TDS Rate Chart Page 2

TDS RATE CHART FY: 2024-25 (AY: 2025-26)				
Section	Nature of Payment	Threshold	Indv / HUF	Others
		Rs.	TDS Rate (%)	
194IA	Transfer of certain immovable property other than agriculture land	50 Lakh	1	1
194IB	Rent payment by individual / HUF not covered u/s 194I From : 01/10/2024 Upto : 30/09/2024	50000 P. M.	2 5	2 5
194IC	Payment under specified Joint Development Agreement	-	10	10
194J(a)	Fees - Technical Services, Call Centre, Royalty, Distribution / Exhibition of Cinematographic Films, etc.	30000	2	2
194J(b)	Fees - All other Professional Services	30000	10	10
194K	Payment of dividend by mutual Funds	5000	10	10
194LA	Compensation on transfer of certain immovable property other than agricultural land	2.50 Lakh	10	10
194LB	Income by way of interest from infrastructure debt fund (non-resident)	-	5	5
194LBA	Certain income from units of a business trust (applicable from 01.10.2014)	-	10	10
194LBB	Income in respect of investment of investment fund	-	10% for residents, 30% for non-residents	10% for residents, 40% for non-residents
194LBC	Income in respect of investment in securitization trust	-	30% for residents, 40% for non-residents, 25% for individual & HUF	30%, residents, 40% for non-residents, 25% for individual & HUF
194LD	Interest on certain bonds and Govt. Securities (from 01.06.2013)	-	5	5
194M	Payment made for Contracts, Brokerage or Professional Fees by individual & HUF (other than Section 194C, 194H & 194J) From : 01/10/2024 Upto : 30/09/2024	50 Lakh	2 5	2 5
194N	Cash withdrawal in excess of 1 crore during the previous year from 1 or more account with a bank or co-operative society (wef 01.09.2019)	1 Crore (Rs. 3 Crores if withdrawal is by Co-operative society) 20 Lakhs (If ITR not filed for previous 3 years)	2 2 (Rs. 20 Lakh - 1 Crore) 5 (Rs. 1 Crore and above)	2 2 5

TDS Rate Chart Page 3

TDS RATE CHART FY: 2024-25 (AY: 2025-26)				
Section	Nature of Payment	Threshold	Indv / HUF	Others
		Rs.	TDS Rate (%)	
194O	TDS on e-commerce participants From : 01/10/2024 Upto : 30/09/2024	5 Lakh	0.1 1	0.1 1
194P	TDS in case of Specified Senior Citizen (above 75 years) having Salary & Interest (ITR not required)	-	Slab Rate	NA
194Q	TDS on Purchase of Goods exceeding Rs. 50 Lakhs (Applicable From 01-July-2021)	In Excess of Rs. 50 Lakhs	0.1	0.1
194R	Benefits or perquisites of business or profession	20000	10	10
194S	Payment of consideration for transfer of virtual digital asset by persons other than specified persons	10000	1	1
194S	Payment of consideration for transfer of virtual digital asset by specified persons	50000	1	1

Note: TDS Rates without PAN – 20% flat (if TDS is lower than 20%)

Notes :

1. The above list covers most of the sections applicable for domestic transactions

2. Section - 206AA

Notwithstanding anything contained in any other provisions of the Income Tax Act-1961, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (i.e. deductor), failing which tax shall be deducted at the higher of the following rates, namely:-

- (i) at the rate specified in the relevant provision of this Act; or
- (ii) at the rate or rates in force; or
- (iii) at the rate of twenty per cent:

Provided that where the tax is required to be deducted under section 194-O, the provisions of clause (iii) shall apply as if for the words "twenty per cent", the words "five per cent" had been substituted.

Provided further that where the tax is required to be deducted under section 194Q, the provisions of clause (iii) shall apply as if for the words "twenty per cent", the words "five per cent" had been substituted.

3. Section - 206AB

Notwithstanding anything contained in any other provisions of the Income Tax Act-1961, where tax is required to be deducted at source under the provisions of Chapter XVIIIB, other than sections 192, 192A, 194B, 194BB, 194LBC or 194N on any sum or income or amount paid, or payable or credited, by a person to a specified person, the tax shall be deducted at the higher of the following rates, namely:-

- (i) at twice the rate specified in the relevant provision of the Act; or
- (ii) at twice the rate or rates in force; or
- (iii) at the rate of five per cent.

If the provisions of section 206AA is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA.

Provided that the specified person shall not include a non-resident who does not have a permanent establishment in India.

For the purposes of this section "specified person" means a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years.

TDS Rate Chart Page 4

TDS RATE CHART (FOREIGN) FY: 2024-25 (AY: 2025-26)				
Section	Nature of Payment	Threshold	Indv / HUF	Others
		Rs.	TDS Rate (%)	
192A	Payment against EPF Scheme	30000	10	10
194E	Non-resident Sportsman or Sports Assn	-	20	20
194LB	Interest from infrastr. debt fund payable to non-resident	-	5	5
194LBA	Certain income from units of a business trust	-	5	5
194LBA(a)	Income referred to in section 10(23FC)(a) from units of a business trust	-	5	5
194LBA(b)	Income referred to in section 10(23FC)(b) from units of a business trust	-	10	10
194LBA(c)	Income referred to in section 10(23FCA) from units of a business trust	-	30	30
194LBB	Income on units of Investment Fund	-	30	40
194LBC	Income in respect of investment in securitization trust	-	30	40
194LC *	Interest from specified company payable to non-resident	-	5	5
194LD	Interest on certain bonds and govt securities	-	5	5
194N	Payment of certain amounts in cash	-	2	2
194NF	Payment of certain amounts in cash to non-filers	-	1	1
195	Payment of any other sum to a Non-resident			
	a) Income in respect of investment made by a Non-resident Indian Citizen	-	20	20
	b) Income by way of long-term capital gains referred to in Section 115E in case of a Non-resident Indian Citizen	-	10	10
	c) Income by way of long-term capital gains referred to in sub-clause (iii) of clause (c) of sub-Section (1) of Section 112	-	10	10
	d) Income by way of long-term capital gains as referred to in Section 112A	-	10	10
	e) Income by way of short-term capital gains referred to in Section 111A	-	15	15
	f) Any other income by way of long-term capital gains [not being long-term capital gains referred to in clauses 10(33), 10(36) and 112A	-	20	20
	g) Income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency (not being income by way of interest referred to in Section 194LB or Section 194LC)	-	20	20

TDS Rate Chart Non Resident Page 5

TDS RATE CHART (FOREIGN) FY: 2024-25 (AY: 2025-26)				
Section	Nature of Payment	Threshold	Indv / HUF	Others
		Rs.	TDS Rate (%)	
195	h) Income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern where such royalty is in consideration for the transfer of all or any rights (including the granting of a license) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of Section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of Section 115A of the Income-tax Act, to a person resident in India	-	20	20
	i) Income by way of royalty [not being royalty of the nature referred to point h) above] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy	-	20	20
	j) Income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy	-	20	20
	k) Any other income	-	30	30
196A	Foreign Company being unit holder in Mutual Fund	-	20	20
196B	Units held by Off-shore Fund	-	10	10
196C	Income from Foreign Currency Bonds	-	10	10
196D	Income of FII on Securities	-	20	20
196DA	Income of specified fund from securities	-	10	10

Note: TDS Rates without PAN – 20% flat (if TDS is lower than 20%)

* TDS would be 4% in case where interest is payable in respect of long-term Bond or Rupee Denominated Bond listed on recognised stock exchange located in IFSC. TDS would be 9% where money borrowed from a source outside India by issuing long-term Bond or Rupee Denominated Bond on or after 01-04-2023, which is listed only on recognised stock exchange located in IFSC.

TCS Rate Chart Page 6

TCS RATE CHART FY: 2024-25 (AY: 2025-26)		
Collection Codes under section 206C		
Code	Nature of Payment	TCS Rate (%)
A	Alcoholic Liquor for human consumption & Tendu leaves	1
B	Timber obtained under a forest lease or other mode	2.5
C	Timber obtained under any other mode other than forest lease	2.5
D	Any other forest produce not being a timber or tendu leaves	2.5
E	Scrap	1
F	Parking Lot	2
G	Toll Plaza	2
H	Mining and Quarring	2
I	Tendu Leaves	5
J	Minerals	1
K	Bullion & Jewellery	1
L	Sale of Motor Vehicle (From 01/01/2025, more luxury items may be notified in addition to Motor Car)	1
M	Sale in cash of any goods (other than bullion)	1
N	Providing of any service (other than Ch-XVII-B)	1
O	Tour Program Package	5
P	LRS - Educational Loan - Financial Institution	0.5
Q	LRS - Other purposes - Liberalized Remittance Scheme	5
R	Sale of Goods	0.1
T	LRS – Education or Medical Treatment not covered under Code P	5

Note: TCS Rates without PAN – Double of TCS rate as above or 5%, whichever is higher

Notes :

- The above list covers most of the sections applicable for domestic transactions
- Section - 206CC** Notwithstanding anything contained in any other provisions of the Income Tax Act-1961, 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:
 - at twice the rate specified in the relevant provision of this Act; or
 - at the rate of five per cent.

The provisions of this section shall not apply to a non-resident who does not have permanent establishment in India.
- Section - 206CCA** Notwithstanding anything contained in any other provisions of the Income Tax Act-1961, where tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person (hereafter referred to as collectee) from a specified person, the tax shall be collected at the higher of the following two rates, namely:
 - at twice the rate specified in the relevant provision of the Act; or
 - at the rate of five per cent.

If the provisions of section 206CC is applicable to a specified person, in addition to the provisions of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC. For the purposes of this section "specified person" means a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be collected, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Provided that the specified person shall not include a non resident who does not have a permanent establishment in India.

Problem Area for all of us??

TDS u/s 194T –

With effect from 1-4-2025, Section 194T(1) provides that any person, being a firm, responsible for paying any sum in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm, shall, at the time of credit of such amount to the account of the partner (including the capital account) or at the time of payment thereof, whichever is earlier, deduct income-tax thereon at the rate of ten per cent sub-section (2) of the said section provides that no deduction shall be made under subsection (1) where such sum or, the aggregate of such sums credited or paid or likely to be credited or paid to the partner of the firm does not exceed twenty thousand rupees during the financial year.

TDS amendments 2024..

Amendments to TDS provisions

Payment of insurance commission (in case of person other than company)

Section 194D

Present TDS Rate: 5% ↓

w.e.f.: 1 April 2025: 2%

Payment in respect of life insurance policy

Section 194DA

Present TDS Rate: 5% ↓

w.e.f.: 1 October 2024: 2%

Commission etc. on sale of lottery tickets

Section 194G

Present TDS Rate: 5% ↓

w.e.f.: 1 October 2024: 2%

Payment of commission or brokerage

Section 194H

Present TDS Rate: 5% ↓

w.e.f.: 1 October 2024: 2%

Payment of rent by certain individuals or HUF

Section 194IB

Present TDS Rate: 5% ↓

w.e.f.: 1 October 2024: 2%

Payment of certain sums by certain individuals or HUF

Section 194M

Present TDS Rate: 5% ↓

w.e.f.: 1 October 2024: 2%

TDS on payment of certain sums by the e-commerce operator to the e-commerce participant

Currently, TDS is required to be done by an e-commerce operator while making payments to an e-commerce participant on the sale of goods at 1%. Sale or purchase of goods otherwise than on an e-commerce platform attracts TDS at 0.1% under Section 194Q. To align TDS on online sale of goods with physical sale/purchase of goods, it is proposed to reduce the TDS rate required by an e-commerce operator while making payments to an e-commerce participant to 0.1%.

TDS on payment of salary, remuneration, interest, bonus, or commission by partnership firm to partners

Presently, there is no provision for tax deduction at the source (TDS) on payment of salary, remuneration, interest, bonus, or commission to partners by the partnership firm. Budget 2024 has proposed to insert a new TDS **Section 194T** for payments to the partners by the partnership firm on aggregate amounts of more than INR 20,000 in the financial year. The applicable TDS rate will be 10%

The provisions of Section 194T of the Act will take effect from the 1 April 2025.

TDS Amendments 2024...

Amendment of provisions of TDS on sale of immovable property

Any person buying immovable property other than agricultural land from a resident should, at the time of credit or payment of such sum to the resident, deduct an amount equal to 1% of the sum or the stamp duty value of such property, whichever is higher.

No deduction is required where the consideration and the stamp duty value are less than INR 5 million.

A tax position was adopted such that the term consideration mentioned in the section refers to each buyer's payment rather than the total consideration paid for the immovable property. No TDS was done if such individual payments were less than INR 5 million.

It has now been clarified that consideration refers to the total aggregate consideration for the property. If the same exceeds INR 5 million, TDS shall apply.

The amendments will take effect on 1 October 2024.

Excluding sums paid under Section 194J from Section 194C

It is clarified that any sum covered under the provisions of Section 194J – TDS on payment for professional fees and fees for technical services are excluded from Section 194C – TDS on Payments to contractors.

The amendment will take effect from 1 October 2024.

Amendments to TCS provisions

TCS under sub-section (1F) of Section 206C on notified goods

A seller of a motor vehicle on sale of motor vehicle exceeding INR 1 million is required to collect from the buyer a sum equal to 1% of the sale consideration. However, it has been observed that people with high net worth have increased expenditure on luxury goods. For proper tracking of such expenses and to widen and deepen the tax net, it is proposed to levy TCS on any other goods of value exceeding INR 1 million, as may be notified by the Central Government on this behalf. Such goods would be luxury goods.

The amendment will take effect from 1 January 2025.

Ease in claiming credit for TCS collected/TDS deducted by salaried employees

Section 192 of the Act provides for tax deduction at source on salary income.

Last year, the Government expanded the scope of TCS on many transactions, including LRS, tour packages, etc. TCS was not considered a tax credit while computing the TDS on salary income and was claimed as a tax refund in the income tax return. This also resulted in cash flow issues for individuals.

To avoid cash flow issues for the employees, the budget has proposed considering TCS while computing the TDS liability under salary itself.

Claiming credit for TCS of minor in the hands of parents

It has been proposed that the TCS of the minor shall only be allowed where the income of the minor is being clubbed with the parent.

The amendment will take effect from the 1 January 2025.



TDS Amendments 2024..

Procedural amendments

Alignment of interest rates for late payment to Government account of TCS

In case of late deduction of TDS, interest at the rate of 1% per month is levied, and in case of late payment/deposit of TDS to the Government, a higher interest rate of 1.5% is applicable.

However, it was noted that the rate of interest applicable for late collection/late deposit of TCS is not aligned with provisions of late deduction/deposit of TDS. Thus, to align the rate of simple interest charged on failure to pay to the Government account after collection of tax, it is proposed to specify that simple interest for non-payment of tax collected at source to the Government account is to be increased from 1% to 1.5% for every month or part thereof on the amount of such tax from the date on which such tax was collected to the date on which such tax is actually paid.

The amendment will take effect from the 1 April 2025.

Extending the scope for lower deduction/ collection certificate of tax at source

There are instances where taxpayers incur losses, and due to tax deducted under Section 194Q of the Act, their funds are blocked. Moreover, the tax deducted has to be refunded in such cases. It is also stated that there is additional compliance as a seller liable for TCS needs to verify whether the buyer has deducted tax or not.

Therefore, to facilitate ease of doing business, it is proposed that a lower deduction certificate/ certificate for collection of taxes relating to TDS on the purchase of goods and TCS on the sale of goods may be obtained.

The amendments will take effect from the 1 October 2024.

Time limit to revise TDS returns and TDS assessments

There was no time limit specified to revise TDS returns earlier. It is proposed that TDS returns may now be revised with six years.

Likewise, it is proposed that TDS assessment under Section 201 shall be made within six years.

These proposed amendments are welcome as they give more clarity and certainty to assessments.

TDS other amendments

- Lower of TDS and TCS certificates can be applied for Section 194Q and Section 206C(1H)
- Interest rate increased from 1% to 1.5% where TCS collected but not deposited to government
- Credit of TCS of minor shall be allowed where income of minor clubbed with parent u/s. 64(1A)
- Exemption from penalty for delayed filing of TDS return limited from one year to one month from due date of filing return.
- No order can be issued treating a person as assessee in default for failing to deduct or collect tax after
 - 6 years from the end of FY of payment or credit OR
 - 2 years from the end of FY when correction statement delivered

Whichever is later

Section 194IA – Payment on transfer of certain immovable property other than agricultural land

- Section 194-IA(1) provides for deduction of tax by any person responsible for paying to a resident any sum by way of consideration for transfer of any immovable property (other than agricultural land) at the time of credit or payment of such sum to the resident at the rate of 1% of such sum as income-tax thereon. Sub-section (2) provides that no deduction of tax shall be made where **the consideration** for the transfer of immovable property is **less than fifty lakh rupees**.
- The **amended section 194-IA** of the Act to provide that in case of transfer of an immovable property (other than agricultural land), TDS is to be deducted at the rate of one per cent. of **such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher**.
- It is further **amended sub-section (2) of the said section** to provide that **no deduction of tax shall be made** where the **consideration for the transfer of immovable property and the stamp duty value of such property**, are **both less than Rs. 50 Lakh**.
- Clause (c) to the Explanation defines “stamp duty value”. Stamp duty value shall have the meaning assigned to it in clause (f) of the Explanation to clause (vii) of sub-section (2) of section 56.
- “Consideration for transfer of any immovable property” shall include all charges of the nature of club membership fees, car parking fees, electricity or water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

Lets discuss few issues for Section 194IA:

- Sale Deed Value – 60 lacs
 - Scenario 1 – 2 Buyers & 2 Sellers ??
 - Scenario 2 – 2 Buyers & 1 Seller ??
 - Scenario 3 - 1 Buyer & 2 Sellers ??
- What would be the date to be put for Form 26QB filling in a scenario where there is no formal written agreement?
- Whether TDS refund can be claimed in case of cancellation of agreement / deal?

Section 194IA

- Issue resolved-

In case of transfers involving multiple transferors and/or transferees, the exemption limit of INR 50 lakhs is proposed to apply on an aggregate basis for an immovable property. The amendment will take effect from 1 October 2024 and is expected to bring clarity for deductor's while applying these provisions.

Section 194B. Payment of rent by certain individuals or Hindu undivided family

- (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.

Sec 194N – Payment of certain amounts in Cash

- Every Person being a Banking Company, Co-op Society engaged in Banking or Post Office, paying Cash exceeding Rs. 1 crore to any person from one or more accounts maintained by the recipient with it, shall deduct TDS @2%,
- In case if the withdrawer has not filed his ROI for last 3 years; Limit of cash withdrawals would be 20 lacs instead of Rs. 1 crore and TDs would be deducted @2% up to Rs. 1 crore and over and above that @5%
- TDS only on the amount exceeding the threshold.
- Provided further that where the recipient is a co-operative society, the turnover criteria would be revised to 3 crores instead of 1 crore for deduction of tax u/s 194N.

Section 194Q & Section 206C(1H)

Basis of Distinction	TDS on purchase of goods (Section 194Q)	TCS on Sale of Goods (Section 206C(1H))
Who is liable for deduction / collection	Buyer is liable to deduct tax	Seller is liable to collect the tax
Turnover Limit of deductor / collector	Total Sales / Turnover / Gross receipts from business in immediately preceding PY should exceed INR 10 crores – of Buyer	Total Sales / Turnover / Gross receipts from business in immediately preceding PY should exceed INR 10 crores – of Seller
Threshold for purchase / sale	INR 50 lakhs	INR 50 lakhs
Rate	0.1%	0.1%
Amount on which tax is to be deducted or collected	On the amount of purchase in excess of INR 50 lakhs	On the amount of sale consideration in excess of INR 50 lakhs
Time of collection / deduction	At the time of payment or credit whichever is earlier	At the time of receipt
Preference	First	Second

Section 194Q & Section 206C(1H)

Situation	Buyer's Details	TDS u/s 194-Q	Seller's details	TCS u/s 206C(1H)
1	If the turnover etc of the buyer in the preceding financial year is more than 10 cr, and purchase of goods is Rs. 50 lakhs or more	Yes	NA	NA
2	Turnover is more than 10 cr, and purchase is less than 50 lakhs	No	Since sales is less than 50 lakhs	No
3	Turnover is less than 10 cr, and purchase is more than 50 lakhs	No	If turnover is more than 10 cr If turnover is less than 10 cr	Yes No
4	If turnover is less than 10 cr, and purchase is less than 50 lakhs	NA	Since sales are less than 50 lakhs	No

Section 194Q – Salient Points

- Buyer responsible for paying any sum to a Resident, for purchase of any goods; Of the value or aggregate value exceeding Rs. 50 lakhs in any previous year; To deduct tax at source at the time of credit or payment whichever is earlier; Rate of tax – 0.1% of the amount exceeding Rs. 50 lakhs
- Sec 194Q does not apply in cases-
 - Where Tax deductible under any of the provisions of this Act,
 - Tax is collectible under the provisions of Section 206C other than a transaction to which sub section (1H) of Section 206C applies.
- TDS to be done on amount net of GST.
- In case of non availability of PAN, TDS deductible @5%
- Section 194Q applies to purchases of both revenue and capital goods.

- **Scenarios?**
- Whether 194Q applicable in case of Goods purchased from SEZ / EOU?
- TDS on services purchased???
- Whether the purchases made from a single seller from different locations/units to be aggregated?
- Whether TDS to be made from payment in respect of transaction in electricity?
- Purchase of Jewellery? Purchase from Non Residents?

Section 194R: TDS on benefit or perquisite of a business or profession

TDS u/s 194R on Business Promotion Expenses shall be applicable as follows –

- This Section has far reaching implications even in the hands of the recipients of the Business Promotion Expenditure.
- 1. The TDS is applicable on Any Resident who is providing any benefit/perquisite to another Resident.
- 2. The Benefit/Perquisite has to be in kind and arising from Business & Profession (BP).
- 3. TDS should be deducted at 10% on the value or aggregate of value of such benefit or perquisite.
- 4. TDS should be deducted **before providing** such benefit or perquisite.
- 5. TDS applicable even when cash is not sufficient for payment of the same.
- 6. No TDS in case of benefit/perk per person is not more than 20,000 in a FY.
- 7. No TDS when deductor is an Individual / HUF having turnover less than 1 Crore or 50 lacs as the case may be for Profession.
- 8. NO TDS for non residents – Buyer / Seller
- 9. Value to be ascertained if benefit is in kind.

Section 194R Examples

There must be a circumvention of income by taking or receiving income in other forms to be taxable u/s 28(iv)

- An insurance company decided to provide TV of Rs. 50000/- to an agent who clocks insurance premium Rs. 10 Lakhs in one quarter. Now, this will be subject to the TDS provision and the agent has to disclose in his ITR as PGBP .
- An Electronics company decided to offer the tour to Dubai for the dealer who makes the purchases Rs. 1 Crore in one year. Now, this will be subject to the TDS provision and TDS will be done on the basis of market value of the tour the same has to be disclosed by the purchaser under PGBP.
- Provision of free mobile cell phones to distributors subject to sale of “N” number of cell phones during the particular (i.e. upon meeting sales target)
- Tour packages given to health professionals by pharma companies for promoting their medicines. In case this is not as per the Law for the doctors to receive, then even the Company will not be allowed deduction under PGBP for the same.

Section 194R interpretations-

Considering the express language of Section 194R and specific linking of proposed section with clause (iv) of Section 28 in the memorandum, we can deduce following:

1. That transactions through issuance of credit notes would not be covered in the ambit of section 194R due to following reasons:

- First proviso to section 194R also provides for cases where benefit is wholly in kind, benefit is partly in kind and partly in cash and in no case talks about benefit wholly in money.

Hon'ble Supreme Court was of the view that for section 28(iv) of the Act to be applicable, income must arise from business or profession and *the benefit, which is received, has to be in some other form rather than in the shape of money.* THE COMMISSIONER VERSUS MAHINDRA AND MAHINDRA LTD. THRG. M.D. [2018 (5) TMI 358 - SUPREME COURT]

2. Benefit or perquisite arising from business or exercise of a profession are only covered:

- It is essential that the benefit or perquisite is linked to the business or profession of the recipient and then only it would come in the coverage **hence there must exist nexus between the business of the recipient resident & benefit provided to him.** Section 28(iv) aims at taxing fringe benefits that are availed in addition to consideration earned in carrying out a profession or while doing business.

Accordingly, we can say that when consideration is paid in the form of benefit or perquisite, section 194R will stand attracted.

3. Sale of goods or assets at a lesser/ discounted price would not be covered:

- Under section 28(iv), it is the real income which is taxed and not hypothetical income which can be said to accrue on purchase at a lower price. Accordingly, TDS provision will be applicable only when there is actual benefit or perquisite.

Accounting under Section 194R & GST applicability

- Lets discuss the accounting entries ????
 - In books of Person providing the benefit
 - In books of person receiving the benefit
- Is GST applicable?
- Where to show this income in books – P & L account / Direct in Computation of Income

194C VS 194J

- Whether 194C or 194J

We may come across a situation where it is required to decide as to whether a particular transaction is subject to TDS u/s 194C or 194J. This doubt arises while dealing with AMC Contracts. If the nature of work is routine and normal maintenance, it falls u/s 194C. In contrast if it requires technical/professional expertise, the payments are subject to section 194J.

- It also depends on various factors:
 - 1) If the work involves specialized skills and specifically done for assessee, then it would qualify for 194J
 - 2) If routine in nature and standardized as product or set of services, then 194C may be applicable.
 - 3) Even if the terms of payment are on % basis, then if the nature is not of commission, 194H is not applicable.

194C versus 194J

- Payment to accountant versus payment to Professional
- TDS on the basis of services offered or on the basis of person specific?
- Income shown under 44ADA versus 44AD...Does it make any difference?
- Skill set involved – 194J vs 194CProfessional services versus AMC Contract
- Does Particular event make any difference

Whether the deduction of tax at source under sections 194C and 194J has to be made out of the gross amount of the bill including reimbursements or excluding reimbursement for actual expenses ?

Answer : Sections 194C and 194J refer **to any sum paid**. Obviously, reimbursements cannot be deducted out of the bill amount for the purpose of tax deduction at source.” As per the Circular No.715, dated 8.8.1995.

Many Tribunals and High courts reiterated this fundamental issue of chargeable of TDS on income only. One such recent verdict is CIT vs DLF Commercial Project Corporation in ITA 627/2012 & ITA 507/2013 (Del HC).

But to avoid litigation, it is advisable to take the supportings of reimbursement in the name of the payee and you are acting as agent in this regard.

194R APPLICABLE IN CASE OF RE-IMBURSEMENTS WHERE NAME OF SERVICE PROVIDER COMPANY IS MENTIONED ON BILLS OFFERED FOR REIMBURSEMENTS

194C vs 194J

Whether a particular transaction is subject to TDS or not?

This question arises when there is a conflict with respect to a particular transaction falls under “contract for sale” or “contract for work/service”.

Contract for sale involves transfer of property in goods for consideration for which TDS provisions are not applicable. In contrast Contract for work/service involves adding some value to the property by doing some workmanship or performance of an express task or service and is subject to TDS.

Section 195 – TDS on non residents

- Very tricky and it depends on the specific situation
- [TDS Rate Chart Page 4](#)
- Double Taxation Avoidance Agreement to be scrutinized properly to ensure TDS deduction
- Form 15CA / 15CB needs to be understood and applied properly to ensure appropriate TDS deduction and related compliances.
- Salary to Non residents?
- Property sale by NR in India? Lower rate of deduction of tax??

Short Deduction of TDS

- Whether disallowable u/s 40(1)(ia) is attracted?
- What about disallowance u/s 40(1)(ia) for capital expenditure payment?
- Whether on full amount or on proportionate amount?
- Whether No disallowance?
- Assessee in Default - YES

No disallowance can be done under section 40(a)(ia) even if there is a short deduction of TDS.

Various Case Laws-

1. Dish T.V. India Ltd. vs. ACIT 86 taxman.com 177 (Mumbai Tribunal)
2. DCIT Vs Shiv Build (ITAT Ahmedabad) Appeal Number : ITA No. 73/Ahd/2018
3. Kolkata High Court in the case of CIT vs. S.K. Tekriwal 46 com 444 (Kolkata)
4. Future First Info Services vs. PCIT, 147 taxman.com 35 (Delhi)
5. Three Star Granites vs. ACIT 49 taxman.com 578 (Cochin Trib)
6. **ITO vs. Premier Medical Supplies & Stores reported in 25 taxmann.com 171 [Kolkatta ITAT]**
7. **Mumbai ITAT in the case of DCIT vs. Chandabhoy & Jassobhoy reported in 17 taxman.com 158**

TDS Refund

Refund of Excess TDS Payment

- The asset has to apply for refund through the appropriate section provided in TRACES.
- The applicant deductor shall establish before the Assessing Officer that:
 - (i) it is a case of genuine error and that the error had occurred inadvertently;
 - (ii) that the TDS certificate for the refund amount requested has not been issued to the Deductee(s); and
 - (iii) that the credit for the excess amount has not been claimed by the Deductee(s) in the return of income or the Deductee(s) undertakes not to claim such credit.
 - (iv) Prior approval of the Additional Commissioner is required for refund in excess of Rs. 1 Lakh Prior approval of the Commissioner is required for refund in excess of Rs. 10 Lakhs
 - (v) After meeting any existing tax liability of the deductor, the balance amount may be refunded to the deductor.
 - (vi) **REFUND IN CASE OF 194IA???**

If agreement is cancelled the refund would be little complicated.

1. Not by TDS wing
2. Whether by Deductor or deductee?
3. Whether after return filing or earlier?

Late fees & Penalty

- **Fee u/s 234E for Delay in submission of TDS/TCS Returns**

- 1) The levy is in nature of Fees and hence no waiver is possible in the regard.
- 2) The fees is charged @200/day of delay subject to max of TDS/TCS amount in the return
- 3) Interest is also charged on the delayed payment of TDS/TCS

- **Penalty u/s 271H for Late or incorrect filing of Return**

- 1) Min Amt is Rs 10,000 & Max is Rs 1,00,000/-
- 2) It is not levied if return is filled within one year from the due date of return and all TDS/TCS payable and late fees and interest is paid by the assessee.
- 3) Principal commissioner on application may reduce/waive the penalty u/s 271H, within the provisions of section 273A(4) or consider the genuine reason under the provisions of section 273B.

Scenario of filing TDS returns showing only a small amount and then revising the return paying hefty TDS amounts to avoid levy of Late fees u/s 234E, whether 271H can be applied?

Sec 206AA / Sec 206CC

Section 206AA- Requirement to furnish Permanent Account Number by Deductee

-If PAN No not obtained then TDS shall be deducted at higher of-

- a) At the rate specified in the relevant provision of this Act; or
- b) At the rate or rates in force; or
- c) At the rate of 20%

For 194O & 194Q – 5%

Section 206CC- Requirement to furnish Permanent Account Number by Collectee

-If PAN No not obtained then TCS shall be collected at higher of-

- a) At twice the rate specified in relevant provision; or
- b) At the rate of 5%

Provided that the rate of tax collection at source under this section shall not exceed 20%

Sec 206AB / Sec 206CCB – Non filers of ITR

Section 206AB-

Tax deduction other than Section 192, 192A, 194B, 194BA, 194BB, 194IA, 194IB, 194LBC, 194M, 194N, Tax shall be deducted at higher of -

- a) At twice the rates specified in the relevant provision of this Act; or
- b) At twice the rate or rates in force; or
- c) At the rate of 5%

Section 206CCA – Special provision for Collection of tax at source for non filers of income tax return

Where TCS is required to be collected from a specified person, same provision as specified in Section 206CC will apply.

“Specified person” means a person who has not furnished the return of income for the AY relevant to the PY immediately preceding the FY in which tax is required to be collected, for which the time limit for furnishing the return of income u/s 139(1) has expired and the aggregate of TDS and TCS in his case is Rs. 50000/- or more in the said PY.

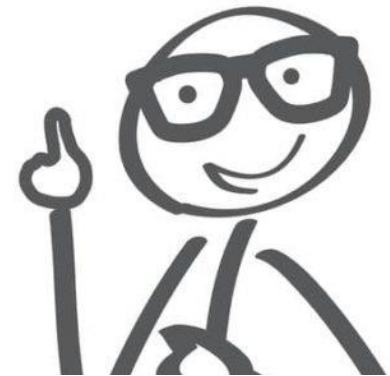
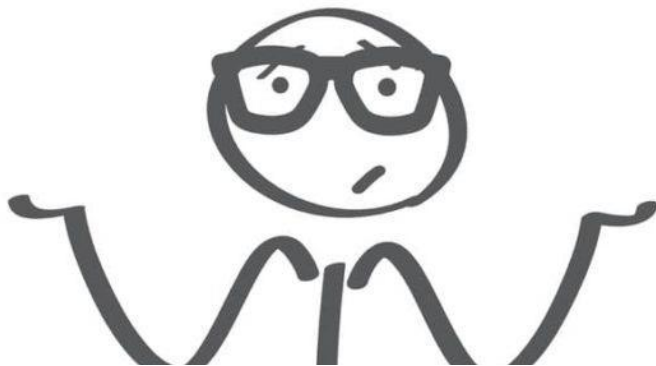
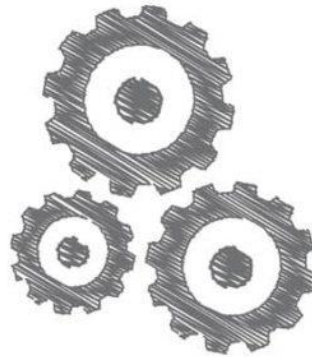
If 206AA/ 206CC provisions applicable to a specified person, then tax shall be deducted at higher of 2 rates provided in 206AA / 206AB / 206CC / 206CCA

Provided the said specified person does not include a non resident who does not have a permanent establishment in India.

TCS Provisions at a glance

- TDS Rate Chart Page 6
- A detailed discussion as regards Section 206C(1G) has been done in separate slides

Issues???



Issues

- Short Deduction of TDS whether would result in disallowance of expenditure?
- Under which TDS section would TDS deduction be done in case of Processing fees or other charges is paid to an NBFC?
- Whether TDS applicable in case of re-imbusement of expenses?
- Payment to a Hotel for an event Rs. 2.50 lacs ? Whether TDS deductible and under which Section?
- TDS Carried Forward option.
- What would be the rate applicable and which section of TDS in case Rent payment is made for Commercial premises as well as amount is paid for Maintenance services to the Owner of the property who then pays to Society?

Opinions and Interpretations along with specific scenario in each particular case are the basis for determination of exact liability for TDS or TCS.

Opinions are like Wrist Watch, Everyone has got its own and everyone feels that their time is right!!!

Thanks a lot!!!!!!

- CA SAKET BAGDIA

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