



# **TDS+TCS Recent Changes**

**BY CA Ninad Nandgaonkar**

# Introduction

The [Finance Act, 2022](#), has received the assent of the President, Shri Ram Nath Kovind, on March 30, 2022 [hereinafter called 'Finance Act 2022'].

TDS & TCS is becoming a major source of revenue to the Govt and its scope is widening with the passing of Finance Bill 2022

The Govt is also using TDS/TCS as a toll to increase Tax Base in the country by introduction of TDS /TCS provisions in every nook and corner of income as well as expenditure front.

# Overview

## **❑ Amendment in Existing TDS Provisions:**

- ❑ 1. Section 194-IA: TDS on Immovable Property shall be on the higher value of actual consideration or stamp duty value.**
- ❑ 2. Section 194-IB: Provisions of Section 206AB, higher rate of TDS in case of non-filer, is made inapplicable.**

## **❑ Introduction of New TDS Provisions:**

- ❑ 1. Section 194R: Deduction of tax on benefit of perquisite in respect of business or profession.**
- ❑ 2. Section 194S: Deduction of tax on Payment on transfer of virtual digital asset.**

## **❑ Amendment in TDS/TCS Compliance Provisions:**

- ❑ Section 201: Related on Interest on TDS default**
- ❑ Section 206AB: Certain TDS provisions excluded from its applicability and two years filing criteria reduced to one year**

- ❑ Section 206C: Related on Interest on TCS default**
- ❑ Section 206CCA: Certain superfluous words omitted and two years filing criteria reduced to one year**
- ❑ Section 271C: Penalty for failure to pay TDS u/s 194B amended**
- ❑ Section 272A: Penalty amount increased**
- ❑ Section 276B: Prosecution for failure to pay TDS u/s 194B amended**
- ❑ Section 278A: Prosecution for failure to pay TCS for second and subsequent time included**
- ❑ Section 278AA: Immunity from prosecution for failure to pay TCS is included**
- ❑ Other Issues related to TDS/TCS**



## **Amendment in Section 194-IA to provide TDS on immovable property on stamp duty value**

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**.

It is also proposed to insert clause (c) to the Explanation to define “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.

**These amendments will take effect from 1st April, 2022**

## **Amendment in Section 194-IB to exclude the provisions of section 206AB**

**Section 194-IB of the Act provides for deduction of tax @ 5% on payment on rent by an individual or HUF to a resident landlord in excess of Rs. 50,000 per month.**

Section 206AB which was inserted by the [Finance Act, 2021](#) in Act provides for a higher rate of deduction in case of non-filers on income-tax return.

The provisions of section 206AB were extended to section 194-IB also. It means the individual or HUF is required to check whether the landlord was a filer or non-filer. It has increased the compliance burden on individuals and HUF. In order to reduce the additional burden on individual and Hindu undivided family (HUF) taxpayers covered under section 194-IB, the reference to section 206AB is omitted from section 194-IB.

As a result, individual and HUF taxpayers shall not be required to check whether their landlord is a filer or non-filer of income-tax return. They shall continue to deduct TDS @ 5% (or 20% if no PAN of landlord is available).

However, this amendment shall apply from 1.4.2022. Thus, they have to check for the applicability of section 206AB for FY 2021-22.



## **Insertion of New Section 194R: TDS on benefit or perquisite of a business or profession**

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

In the recent budget 2022 in Income Tax, it is proposed to impose a TDS on business promotion expenditure expended by an organisation. It has far reaching implications even in the hands of the recipients of the business promotion Expenditure. Here we have discussed not only the TDS u/s 194R but also its impact on the resident.

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 incase of benefit/perk per person is not more than 20,000 in a FY
7. No TDS when deductor is an Individual/HUF in business/professional with turnover/receipts in business/professional below Rs.1Cr / Rs.50 Lakhs.
8. This amendment will take effect from 1st July, 2022.

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

## Challenges

The Recipient has to offer the Value of such Benefit/Perquisite for taxation in its ITR under PGBP u/s Section 28(iv) which provides for charging as PGBP the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;

2. In case the entire benefit is for kind, then the amount of TDS needs to be debited by a Debit note.
3. TDS needs to be deposited BEFORE providing the benefit/perquisite
4. Benefit/Perquisite has to be provided in Kind – Hon'ble Apex Court in the case of Mahindra & Mahindra Ltd has held that in order to invoke the provisions of section 28(iv) of the Income Tax Act, the benefit which is received has to be in some other form rather than in the shape of money.
5. What would be the Valuation for the Deductor is another It would involve disputes in case of both the total value disclosed as well as individual deductee
6. No TDS in case provider/recipient of the benefit/perquisite is a non-resident and/or recipient is a Non Resident

## 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 1



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

## Challenges

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.

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.

## **Insertion of New Section 194R: TDS on benefit or perquisite of a business or profession**

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.

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

For complying with the provisions of this section, the taxpayers have to ensure the following:

- The person responsible for deducting tax ['Deductor'] shall ensure that TDS @ 10% is deducted before providing the perquisite or benefit.
- The Deductor shall deposit the tax deducted to the credit of central government on or before 7<sup>th</sup> day of the following month (30<sup>th</sup> April in case of month of March), using its 'TAN' Number.
- The 'Deductor' shall file quarterly TDS Returns in [Form 26Q](#) on or before the due dates specified in the act.
- The 'Deductor' shall issue certificate of tax deducted in [Form 16A](#) at quarterly intervals to the deductees.
- TDS would not be required in case the value or aggregate of value of benefit or perquisite provided or likely to provided in a financial year is upto INR 20,000/-



# Insertion of new section 194S: TDS on transfer of Virtual Digital Asset

## Virtual Digital Asset

As the name suggests, digital assets that are not real or physical are called Virtual digital assets.

Virtual digital assets do not include digital gold, central bank digital currency (CBDC), or any other traditional digital assets. This term is specifically for cryptos, DeFi, and NFTs.

According to the definition laid down in the Finance bill, any code or information or token (neither an Indian currency nor a foreign currency) generated with the help of cryptographic means or otherwise, providing a digital representation of value exchanged with or without consideration, with an inherent value or functioning as a store of value or a unit of account including its use in any monetary transaction, not only limited to an investment scheme and that can be stored and transferred, or traded electronically.

A [non-fungible token](#) or any other token of similar nature are all included in the class of virtual digital assets.

## **Insertion of new section 194S: TDS on transfer of virtual digital asset**

- 1) 1% Tax to be deducted on transfer of VDA at the time of credit or payment whichever is earlier.
- 2) In case the consideration is in partly/wholly in kind, then person paying consideration , to ensure TDS is paid.
- 3) The provisions of sections 203A and 206AB shall not apply to a specified person.
- 4) Notwithstanding anything contained in section 194-O, in case of a transaction to which the provisions of the said section are also applicable along with the provisions of this section, then, tax shall be deducted under sub-section (1).
- 5) 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 credit of the sum shall be deemed to be the credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.
- 6) This provision will be effective from 1<sup>st</sup> July 2022

## **Insertion of new section 194S: TDS on transfer of virtual digital asset**

No tax shall be deducted under this provision in the following circumstance:

- If the consideration is payable by any person (other than a specified person) and its aggregate value does not exceed Rs. 10,000 during the financial year.
- if the consideration is payable by a specified person and its aggregate value does not exceed Rs. 50,000 during the financial year.

### **Specified person means:**

- (a) An individual or a HUF, whose total sales, gross receipts or turnover does not exceed Rs. 1 crore in case of business or Rs. 50 lakhs in case of a profession, during the financial year immediately preceding the financial year in which virtual digital asset is transferred;
- (b) An individual or a HUF who does not have any income under the head profits and gains of business or profession.



# Insertion of new section 194S: TDS on transfer of virtual digital asset

**Transaction in VDA can attract TDS under other provisions even if tax has been deducted under section 194S**

Sub-section (8) and sub-section (4) of section 194S provide as under:

- Where a transaction is subject to TDS under Section 194-O and Section 194S, tax shall be deducted under Section 194S [sub-section (8)].
- Where a transaction in respect of which tax has been deducted under section 194S, no tax shall be deducted or collected under any other provision of the Act [sub-section (4)].

Thereby, if a transaction is subject to TDS under section 194S, the deduction or collection of tax in respect of such transaction can also be made under any other provision of the Act except section 194-O.

***For example,* if an architect receives bitcoin from his client as consideration for services, then the architect shall be liable to deduct tax under section 194S as he is giving the consideration in the form of architecture services to the client transferring the VDA and, on the other side, the client may also be liable to deduct tax under section 194J as he is making payment in the form of VDA for services provided by the architect.**

## **Explaining the amendments in Section 206AB and Section 206CCA**

Finance Act, 2021 inserted sections 206AB and 206CCA in the Act. The said sections provide for special provision for deduction and collection of tax at source respectively, in case of specified persons at higher rates specified therein

It is proposed **to reduce two years requirement to one year by amending** sections 206AB and 206CCA of the Act to provide that “specified person” to mean as a person who has not filed its return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is to be deducted or collected, as the case may be, and the amount of tax collected and deducted at source is Rs. 50,000 or more in the said previous year.

Further, the provisions of section 206AB are not applicable in relation to transactions on which tax is to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act.

In order to reduce the additional burden on individual and Hindu undivided family (HUF) taxpayers covered under section 194-IA, 194-IB and 194M of the Act for whom simplified tax deduction system has been provided without requirement of TAN, it is proposed that the provisions of section 206AB will not apply in relation to transactions on which tax is to be deducted under the said sections of the Act.

## Explaining the amendments in Section 201 and Section 206C

**Sub-section (1A) of the said section provides** that if any person who is liable to deduct tax at source does not deduct it or after so deducting fails to pay the same to the credit of the Government, then, he shall be liable to pay simple interest at the rates specified therein.

The calculation of interest is always a matter of litigation and In order to reduce litigation on calculation interest

It is **amended to insert a new proviso to Section 201(1A)** to provide that where an order is made by the Assessing Officer for the default referred to in sub-section (1), the interest shall be paid by the person in accordance with such order.

### **Similar changes are carried in section 206c(7) in case of TCS**

It is amended to insert a new proviso to the said sub-section to provide that where an order is made by the Assessing Officer for the default referred to in sub-section (6A), the interest shall be paid by the person in accordance with such order.

These amendments will take effect from the 1st day of April, 2022.



## **Explaining the provisions of Section 271C related to Penalty for failure to pay TDS u/s 194B**

Clause 77 seeks to amend the section 271C of the Income-tax Act relating to penalty for failure to deduct tax at source. It provides for penalty for failure to credit tax deducted at source to the Central Government or the tax payable by him as required by or under the second proviso to section 194B.

The first proviso to section 194B was omitted by the Finance Act, 1999 with effect from the 1st day of April, 2000 and the said section currently has only one proviso.

To give consequential effect, it is proposed to omit the word “second” in sub-clause (ii) of clause (b) of sub-section (1) of the section.

This amendment will take effect from 1st April, 2022.

## **Amendment in section 272A to increase the penalty amount**

Section 272A of the Act provides for penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections etc. At present, the amount of penalty for failures listed under sub-section (2) of section 272A is one hundred rupees for every day during which the failure continues.

The penalty had not been increased since the section was introduced in 1999 and does not have an adequate deterrence value.

Therefore, it is proposed to increase the amount of penalty for failures listed under sub-section (2) of section 272A to Rs. 500 from the existing sum of Rs. 100 per day.

This amendment will take effect from 1st April, 2022.

## **Amendment in section 278A and section 278AA to include prosecution u/s 276BB for failure to pay TCS**

**Sections 278A and 278AA are related to punishment with prosecution** against persons for failure to pay tax to the credit of Central Government under **Chapter XVII-B for tax deducted at source.**

However, similar provisions for offence with respect to tax collected at source under Chapter XVII-BB, providing for punishment with prosecution against persons failing to pay tax collected at source is not there under sections 278A and 278AA.

Therefore, it is proposed to include section 276BB under sections 278A and 278AA owing to the similar nature of offences that are punishable under section 276B and section 276BB.

This amendment will take effect from 1st April, 2022.



## Issues in TDS

### 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.

| Sr No | Nature of Transaction    | TDS | Nature of Transaction | TDS |
|-------|--------------------------|-----|-----------------------|-----|
| 1     | Subscription to Journals | No  | Advt in Journal       | Yes |
| 2     | Mem Fee of Organisation  | No  | Training Fee          | Yes |
| 3     | S/w procured in CD       | No  | Customised S/w        | Yes |
|       |                          |     |                       |     |

## Issues in TDS

**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.

# Issues in TDS

## 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 a % basis, then if the nature is not of commission, 194H is not applicable.



# Issues in TDS

## Failure to Deduct or Deposit Tax

As per Section 40(a)(ia) in case of any sum on which tax is deductible but paid/credited to any Resident without complying TDS provisions, only 30% of such sum shall be disallowed in computing the income of the assessee.

However when it comes to non-resident payments, the whole amount shall be disallowed u/s 40(a)(i) in computing the income of the assessee.

As per proviso to Section 201(1) any person who fails to deduct the whole or any part of TDS on the sum paid/credited to 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 person furnishes a certificate (Form 26A) to this effect from an accountant. **However there is no such relief in respect of payments made to non-residents.**

# Issues in TDS

## 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.

# Issues in TDS

## **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 10000 & Max is Rs 100000/-
- 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.



The background is composed of several geometric shapes. On the left, there are overlapping triangles in shades of green, blue, and purple. To the right of these is a vertical red bar, and below it, an orange triangle. The right half of the image is a large, textured yellow area with a fine, grid-like pattern.

**THANK YOU**