

# TDS

# READY RECKONER

ASSESSMENT YEAR 2018-19



**THE INSTITUTE OF**  
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## PREFACE

In the present scenario, the provisions of the Income Tax Act relating to Tax Deduction at Source "TDS" are of immense importance when TDS collections account for almost 40% of total collection of Direct Taxes. TDS is a mechanism of collecting tax which combines twin concepts of "pay as you earn" and "collect as it is being earned." It is one of the modes or mechanisms of collecting tax under the Indian Income Tax Act, 1961. It facilitates the Government with a continuous flow of funds and at the same time, eases the burden on the taxpayer.

Keeping in view the significance of TDS and with a view to building the capacity of professionals along with updated information on processes, practices, rates and methods in TDS, Institute has brought out this publication titled "TDS Ready Reckoner", to objectify capacity building of our members and advance their understanding in effectively discharging their professional accountabilities under TDS.

This Ready Reckoner contains all aspects of Tax Deduction at Source, , the detailed scheme of TDS, various deductions under TDS, procedural compliances as well as consequences for non-compliance.

I place on record my sincere appreciation for Ms. Darshana Shah, Manager, Deloitte Haskins & Sells for value addition made to the publication. I appreciate the efforts of Mr. Govind Krishna Agarwal, Assistant Director, ICSI in preparing the manuscript of this publication and Mr. Akinchan B. Sinha, Assistant Director, Directorate of Professional Development, Perspective Planning & Studies in finalizing the publication for printing.

I am sure this ready reckoner will be of immense practical value to professionals, corporate executives, students and readers as well.

**CS (Dr.) Shyam Agrawal**

*Place* : New Delhi

*President*

*Date* : 19th June, 2017      The Institute of Company Secretaries of India



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## AN INTRODUCTION

The Indian Income Tax Act provides for scope of the total income of a person chargeable to tax on an annual basis. The tax liability is determined as per the provisions of the Income-tax Act and such tax liability is discharged vide any of the following mode:

- Advance Tax
- Self Assessment Tax (SAT)
- Tax Deducted at Source (TDS)
- Tax Collected at Source (TCS)
- Tax on Regular Assessment

**Tax Deducted at Source (TDS)** is a one of the mode or mechanism of collecting *income tax* under the Indian Income Tax Act of 1961, i.e., 'the Act'. As per the provision of section 191 of the Act, notwithstanding the regular assessment in respect of any income take place in a subsequent year called as assessment year, but in case of certain specified income, tax is deducted at source by the payer at the prescribed rate at the time of accrual or payment of such incomes to the payee. The tax so deducted is required to be deposited with the government within the specified time limit.

The concept of TDS was introduced with an aim to collect tax from the very source of income as per which, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income, tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS or TDS certificate issued by the deductor.

Tax deducted at source (TDS) is an indirect mechanism of collecting tax which combines twin concepts of "pay as you earn" and "collect as it is being earned." Its value lies in the fact that it provides the Government with a continuous flow of funds and at the same time eases the burden on the taxpayer.

It is managed by the Central Board for Direct Taxes (CBDT) and is part of the Department of Revenue managed by Indian Revenue Service (IRS).

### **OBJECTIVES OF TAX DEDUCTED AT SOURCE**

There are various objective of introducing the TDS provision under the Act. One is also to make sure that tax payment is not avoided by unscrupulous income tax assesses and the government receives its actual share of taxes. Therefore, to achieve this goal, the responsibility of deduction and deposition of part of the taxes was put on the payer rather than the receiver of payments of different nature.

The basic objective of introducing tax deducted at source provision under the Act are as follows:

- Government requires funds throughout the year. The provision of tax deducted at source help the government to get funds throughout the year and run the government smoothly.
- To enable the salaried people to pay the tax as they earn every month. This helps the salaried persons in paying the tax in easy installments and avoids the burden of a lump sum payment.
- To check that tax payment is not avoided by unscrupulous income tax assesses.



## SCHEME OF TAX DEDUCTION

The obligation to deduct/collect tax at source is upon the person responsible for paying the income/amount which is subject to TDS. Therefore such person i.e. the payer is required to follow the procedure for deducting/collecting tax at source mentioned as under:

Step - 1

The payer has to apply for tax deduction account number (TAN) in Form No-49B.

Step - 2

He is to deduct tax from the income/payment mentioned in the various sections i.e. Section 192 to 196D

Step - 3

The amount so deducted/collected should be deposited within the requisite stipulated time to the credit of central government.

Step - 4

The payer should prepare TDS Return statements for every quarter and file the same with the authority designated by the Income- Tax department (NSDL in this case) in such form and verified in such manner as may be prescribed.

Step - 5

Lastly, the payee should be issued certificate of tax deduction/collected at source within the specified date. The TDS certificate to be downloaded from tax portal.

## **APPLICATION FOR TAN**

TAN Number is a 10 Digit Alphanumeric Number and is used as an abbreviation for Tax Deduction and Collection Account Number. Every Assessee liable to deduct TDS is required to apply for a TAN No. and shall quote this number in all TDS Returns, TDS Payments and any other communication regarding TDS with the Income Tax Department.

As per Section 203A of the Income Tax Act 1961, it is mandatory for all assessee's liable to deduct TDS to quote this TAN Number in all communications regarding TDS with the Income Tax Department and failure to do so attracts a penalty.

## **STEPS FOR MAKING TAN APPLICATION**

TAN Number can be applied for online as well as offline. For making a TAN Application online, a person shall file his application in Form No. 49B on the following website of NSDL

### **Step – I**

Visit <https://tin.tin.nsdl.com/tan/index.html> and select "Online Application for TAN (Form 49B)"

### **Step – II**

Select Category of Deductors from the drop down menu and click on "Select Button";

### **Step – III**

Fill out the requisite details on the form

### **Step – IV**

If the data submitted by applicant fails in any format level validation, a response indicating the error(s) will be displayed on the screen;

### **Step – V**

Forms need to be re-submitted after rectifying the error(s);

### **Step – V**

In case form level error(s) do not exist a confirmation screen with data filled by the applicant will be displayed.

### **Step – VI**

In case applicant required any amendment to the data displayed in the confirmation screen, it may choose the edit option.

**Step – VII**

In case the displayed information is correct, applicant shall choose the confirm option.

**Step – VIII**

On successful payment of Fees (in case the mode of payment is other than DD or Cheque) an acknowledgment slip will be generated

**Step – IX**

Applicant shall save and print the acknowledgment and send it to NSDL alongwith requisite documents at :

NSDL e-Governance Infrastructure Limited,  
5th floor, Mantri Sterling,  
Plot No. 341, Survey No. 997/8,  
Model Colony,  
Near Deep Bungalow Chowk,  
Pune – 411016

The envelope should be superscribed as 'APPLICATION FOR TAN - Acknowledgment Number' (e.g. 'APPLICATION TAN - 88301020000244').

## TDS PROVISION UNDER VARIOUS SECTIONS OF INCOME TAX ACT, 1961

### SALARY PAYMENT [SECTION 192]

An employer paying any income chargeable under the head 'salary' is responsible for deducting TDS on an average rate of income tax based on the prevailing tax rate during the particular Financial Year by considering the estimated Income of assessee. Accordingly all employers making such payments like Individual, HUF, Partnership Firms, Companies, Co-operative societies, trust, and artificial judicial persons are liable to deduct TDS.

The following are the pre-requisites for TDS deduction u/s 192 –

- There exist an employer – employee relationship between deductor and deductee and the payment is in the nature of salary.
- Any person responsible for making payment to resident / non-resident employees.
- Payment is made by the employer to the employee.
- The income under the head salaries is above the maximum amount not chargeable to tax.

The deduction should be made at the time of making payment and not on when it becomes due or obligation arises. The employer is required to deduct tax at source on the amount payable by applying the average rate of income tax. Average rate of Income tax is calculated on the basis of rates in force for the particular financial Year in which payment is made. The rate varies for persons under various slab rate, may vary in different financial year and depends on total Income earnings and available deductions per year.

**Rate of deduction of tax:** As per Section 192 of the Act, the employer is required to deduct tax at source on the amount payable at the average rate of income tax. This has to be computed on the basis of **rates in force** for the financial Year in which payment is made.

The Finance Act of each financial year specifies the rates in force for deduction of

tax at source. For F.Y. 2017-2018 rate of TDS is specified and same is as follows:

**I. In case of individual & HUF (other than II and III below) :-**

<b>Sr. No.</b>	<b>Total Income</b>	<b>Tax</b>
1.	Where the total income does not exceed Rs. 2,50,000.	NIL
2.	Where the total income exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000.	5% of the amount in excess of Rs. 2,50,000.
3.	Where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000.	Rs. 12,500 + 20% of the amount by which total income exceeds Rs. 5,00,000.
4.	Where the total income exceeds Rs. 10,00,000.	Rs. 1,12,500 + 30% of the amount by which total income exceeds Rs. 10,00,000.

**II. In case of every individual resident in India who is of age of 60 years or more and below 80 years at any time during the previous year :-**

<b>Sr. No.</b>	<b>Total Income</b>	<b>Tax</b>
1.	Where the total income does not exceed Rs. 3,00,000.	NIL
2.	Where the total income exceeds Rs. 3,00,000 but does not exceed Rs. 5,00,000.	5% of the amount in excess of Rs. 3,00,000.
3.	Where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000.	Rs. 10,000 + 20% of the amount by which total income exceeds Rs. 5,00,000.
4.	Where the total income exceeds Rs. 10,00,000.	Rs. 1,10,000 + 30% of the amount by which total income exceeds Rs. 10,00,000.

**III. In case of an individual resident who is of the age of 80 years or more at any time during the previous year :-**

Sr. No.	Total Income	Tax
1.	Where the total income does not exceed Rs. 5,00,000.	NIL
2.	Where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000.	20% of the amount by which total income exceeds Rs. 5,00,000.
3.	Where the total income exceeds Rs. 10,00,000.	Rs. 1,00,000 + 30% of the amount by which total income exceeds Rs. 10,00,000.

- *Surcharge*: 10% of income tax, where total income exceeds Rs.50 lakh up to Rs.1 crore.
- *Surcharge*: 15% of income tax, where the total income exceeds Rs.1 crore.
- *Cess* : 3% on total of income tax + surcharge.
- Please also note that there is also a tax rebate of up to Rs.2,500 for a taxable income up to Rs. 3.5 lakhs.

**TDS on simultaneous employment with more than one employer or on change of employment:** In cases wherein, 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 (being one of the said employers as the assessee may, having regard to the circumstances of his case, choose), 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 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.

The person responsible for making the payment chargeable under the head salary shall, for the purposes of estimating income of the assessee or computing tax deductible, 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 prescribed in this regard.

**Payment of tax by employer on non monetary perquisite:** Sections 192 (1A) and 192 (1B) of the Act, enable the employer at his option, to make payment of the entire

tax or a part of the tax due on non monetary perquisites given to the employee. The tax payable is to be determined at the average rate of the income tax computed on the basis of rates in force and the payment will have to be made when such tax was otherwise deductible, i.e. at the time of payment of income chargeable under the head salaries, to the employee. Further, the tax so paid shall be deemed to be the TDS made from the salary of the employee. However, as per proviso to section 198, tax so paid will not be deemed to be income of the employee.

**TDS where the salary paid is net of tax:** Where the employee enters into an agreement or an arrangement as per which the tax chargeable on the income is borne by the employer then for the purpose of deduction of tax, the income is to be increased to such an amount as would, after deduction of tax thereon be equal to the net amount payable as per the agreement or arrangement (Section 195A). However, this provision is not applicable where the employer has made payment of tax on non-monetary perquisites as provided in section 192(1A).

**Salary paid in Foreign Currency [Rule 26 & 115]:** For the purpose of deduction of tax at source on any income payable in foreign currency, the rate of exchange for the calculation of the value in rupees of such income payable to an assessee outside India shall be the telegraphic transfer buying rate of such currency as on the date on which the tax is required to be deducted at source under the provisions of Chapter XVIIIB by the person responsible for paying such income.

It may be noted that this rule is applicable only for determination of TDS. However, in computing the salary income, the rate of conversion to be applied is the telegraphic transfer buying rate on the last day of month immediately preceding the month in which the salary is due or is paid in advance or arrears (Rule 115).

**“Telegraphic transfer buying rate (TTBR)”**, means the rate or rates of exchange adopted by the State Bank of India.

**Issue of Form 16 & Form 12 BA:** The TDS deducted to be deposited to Government and a FORM 16 should be issued to employees. The employees claim the TDS amount while submitting tax return against the total tax payable. The cut-off date for issuing Form 16 is 31 May of the Next Financial year in which tax is deducted.

The due date of issue Form 16 for the financial year 2016-17 is extended to 15 June 2017 vide Notification dated 2 June 2017.

Apart from issue of form 16 Form, Form 12BA is also issued that contains details of perquisites & Profit lieu of salary chargeable under section 17(3) of the Act.

With effect from 1 June 2016, as per Rule 26C, an employee shall furnish to employer evidence or particulars of the claims made in Form No.12BB for purpose of estimation of his income and TDS.

Nature of claim	Evidence or particulars
House rent allowance	Name, address and PAN of landlord/landlords where the aggregate rent paid during the financial year exceeds Rs. 1 lakh
Leave travel concession or assistance	Evidence pertaining to expenditure
Deduction of interest under the head "Income from house property"	Name, address and PAN of the lender
Deduction under Chapter VIA, viz., sections 80C, 80CCC, 80CCD, 80CCG, 80D, 80DD, 80DDB, 80E, 80EE, 80GG, 80GGA, 80TTA and 80U	Evidence of investment or expenditure

#### **PAYMENT OF ACCUMULATED BALANCE DUE TO AN EMPLOYEE [SECTION 192A]**

The provision of section 192A of the Act override the any other provisions of the 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 10%. If PAN of recipient is not available, tax will be deductible at maximum marginal rate of tax.

**Exception:** The deduction shall not be made where the amount of such payment is less than Rs.50,000.

#### **INTEREST ON SECURITIES [SECTION 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.



**Exception:** The deduction shall not be made in the following cases:

- (i) any interest payable on 4¼ 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 4¼ per cent National Defence Loan, 1968, or 4¾ per cent National Defence Loan, 1972; or
- (ib) any interest payable on National Development Bonds; or
- (iia) any interest payable on 7-Year National Savings Certificates; or
- (iib) any interest payable on 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;
- (iii) any interest payable on 6½ 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 6½ 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 Rs. 10,000 at any time during the period to which the interest relates;
- (iv) any interest payable on any security of the Central Government or a State Government:  

However, this clause shall not apply to the interest exceeding Rs. 10,000 payable on 8% Savings (Taxable) Bonds, 2003 during the financial year;
- (v) any interest payable to an resident individual or a Hindu undivided family, on any debenture issued by a company in which the public are substantially interested, if
  - (a) the aggregate amount of such interest paid or likely to be paid on such debenture during the financial year by the company to resident individual or Hindu undivided family does not exceed Rs. 5,000; 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 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 or to

any of the four companies formed by virtue of the schemes 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 which is in dematerialized form and listed in a recognized stock exchange.

### **DIVIDENDS [SECTION 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 in cash or before issuing any cheque or warrant 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 at the **rates in force**.

**Exception:** The deduction shall not be made in the case of a shareholder, being an individual, if

- a) the dividend is paid by the company by an account payee cheque; and
- b) 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 Rs. 2,500.

The provisions of this section shall not apply to such income credited or paid to

- (a) the Life Insurance Corporation of India in respect of any shares owned by it or in which it has full beneficial interest;
- (b) the General Insurance Corporation of India or to any of the four companies formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business (Nationalisation) Act, 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

**Exception:** The deduction shall not be made in respect of any dividends referred to in section 115-O.

**INTEREST OTHER THAN INTEREST ON SECURITIES [SECTION 194A]**

Any person, not being an individual or a Hindu undivided family not covered under section 44AB (during the financial year immediately preceding the financial year in which such interest is credited or paid) 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**.

**Exception:** The deduction shall not be made in the following cases:

- i. where 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 does not exceed
  - a) Rs. 10,000 where the payer is a banking company.
  - b) Rs. 10,000 where the payer is a co-operative society engaged in carrying on the business of banking.
  - c) Rs. 10,000 on any deposit with post office.
  - d) Rs. 5,000 in any other case.
- ii. Income credited or paid to
  - 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.

- iii. Income credited or paid to
  - a) any banking company 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
  - d) the Unit Trust of India
  - 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 notify in this behalf in the Official Gazette;
- iv. Income credited or paid by a firm to a partner of the firm;
  - v. Income credited or paid by a co-operative society (other than a co-operative bank) to a member thereof or to any other co-operative society;
  - vi. 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. 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;
  - viii. 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 engaged in carrying on the business of banking.
  - ix. Income credited or paid by the Central Government under any provision of this Act or the Indian Income-tax Act, 1922 or the Estate Duty Act, 1953 or the Wealth-tax Act, 1957 or the Gift-tax Act, 1958 or the Super Profits Tax Act, 1963 or the Companies (Profits) Surtax Act, 1964 or the Interest-tax Act, 1974;
  - x. Income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;
  - xi. Income paid by way of interest on the compensation amount awarded by

the Motor Accidents Claims Tribunal where the aggregate of the amounts of such income paid during the financial year does not exceed Rs. 50,000;

- xii. 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;
- xiii. Any income by way of interest referred to in clause (23FC) of section 10 of the Act.

#### **WINNINGS FROM LOTTERY OR CROSSWORD PUZZLE [SECTION 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 Rs. 10,000 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.

#### **WINNINGS FROM HORSE RACE [SECTION 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 Rs. 10,000 shall, at the time of payment thereof, deduct income-tax thereon at the **rates in force**.

#### **PAYMENTS TO CONTRACTORS AND SUB-CONTRACTORS [SECTION 194C]**

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

- i. 1% where payment for a contract is to be made to individuals/HUF;
- ii. 2% where payment for a contract is to be made to any other entity.

**Exception:** The deduction shall not be made in the following cases:

- i. where such sum is credited or paid by individual or Hindu undivided family exclusively for personal purposes of such individual or any member of Hindu undivided family.
- ii. Where single payment does not exceed Rs. 30,000 or aggregate payment within a financial year does not exceed Rs. 1 00,000 to be credited or paid to the account of the contractor or sub-contractor.
- iii. payments to a transport contractor who is in the business of plying, hiring or leasing goods carriages in cases where the transporter furnishes his permanent account Number (PAN) to the deductor. In such cases the deductor will be required to intimate PAN details of transporter to the Income Tax Department in Form 26Q while filing quarterly TDS returns. However, if PAN is not quoted, the rate of TDS will be 20% in all the cases.

The following are covered under the meaning of contractual work:

- a) advertising
- b) broadcasting and telecasting including production of programmes
- c) carriage of goods and passengers by any mode of transport other than by railways.
- d) Catering
- e) manufacture or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. However, it shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person other than such customer by using material purchased from a person other than such customer.

Further, in a decided case, the Supreme Court has held that the contractual work carries wide meaning and includes supply of labour also. The following **categories of staff hired** are to be covered specifically under **“Payment for Contractual Services”**

1. Receptionist/Clerk/Data Entry Operator
2. Female Attendant
3. Driver

4. Peon
5. Safai Wala

**Payment made for AMC contracts:** Payment made for annual maintenance contract is covered under Section 194 C i.e. as payment under contractual services.

The following are **NOT** covered under the meaning of contractual work:

- a) Contracts for sale of goods;
- b) Where contractor undertakes to supply any article or thing fabricated according to the specifications given by the payer and the property in such article or thing passes to such payer only after such article or thing is delivered;
- c) Contracts for rendering professional service by lawyers, physicians surgeons engineers, accountants, architects, consultants etc. It will covered under section 194J.

**Note:** Where any sum is paid or credited for carrying out manufacture or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, tax shall be deducted at source:

- a) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or
- b) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

**Where the tax is either not to be deducted or to be deducted at lower rate:**

Any person to whom an amount is payable, may make an application in Form No. 13 to the assessing officer of his respective Income Tax Ward and obtain such certificate from him as may be appropriate authorizing the payer not to deduct tax or to deduct tax at a lower rate. However, no certificate 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.

*Example:*

**Payment of Rs. 6,000/- per month-**ECHS makes a payment of Rs. 6,000/- on 1st of every month to Mr. ABC for certain work undertaken by him. Since it's a contract payment, it is covered under section 194C. However, since the payment amount is less than Rs. 30,000/- and even annual payment does not exceed Rs. 1,00,000/- TDS will NOT be deducted.

**Payment of Rs. 10,000/- per month-** ECHS makes a payment of Rs.10,000/- on 1st of every month to Mr. ABC, for certain work undertaken by him. Since it's a

contract payment, it is covered under section 194C and TDS will have to be deducted as the annual payment of Rs. 1,20,000/- exceeds Rs.1,00,000/-. Tax on the amount of Rs. 10,000/- will be deducted @ 1% (since the person is an individual). Therefore the TDS amount shall be Rs. 100/- and Mr. ABC will be paid Rs.9,900/- per month i.e. Rs. 10,000- Rs 100 after deduction of TDS.

**If annual payment less than Rs. 1,00,000/- but single payment more than Rs. 30,000/-** ECHS cell makes a one-time payment of Rs. 40,000/- to Mr. ABC for certain work undertaken by him. Since it's a contract payment, it is covered under section 194C and TDS will have to be deducted as one-time payment of Rs. 40,000/- exceeds Rs.30,000/-. Tax on the amount of Rs. 40,000/- will be deducted @ 1% (since the person is an individual). Therefore the TDS amount shall be Rs. 400/- and Mr. ABC will be paid Rs. 39,600/- i.e. Rs. 40,000- Rs. 400.

#### **INSURANCE COMMISSION [SECTION 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**.

**Exception:** The deduction shall not be made if any such income credited or paid before the 1st day of June, 1973 or the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial does not exceed Rs. 15,000.

#### **PAYMENT IN RESPECT OF LIFE INSURANCE POLICY [SECTION 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 1%.

**Exception:** No deduction shall be made where the aggregate amount of such payments to the payee during the financial year is less than Rs. 1,00,000.

#### **PAYMENTS TO NON-RESIDENT SPORTSMEN OR SPORTS ASSOCIATIONS [SECTION 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 20%.

#### **PAYMENTS IN RESPECT OF DEPOSITS UNDER NATIONAL SAVINGS SCHEME, ETC [SECTION 194EE]**

The person responsible for paying to any person any amount referred to in section 80CCA(a)(2) shall, at the time of payment thereof, deduct income-tax thereon at the rate of 10%.

**Exception:** No deduction shall be made where the aggregate amount of such payments to the payee during the financial year is less than Rs. 2,500.

#### **PAYMENTS ON ACCOUNT OF REPURCHASE OF UNITS BY MUTUAL FUND OR UNIT TRUST OF INDIA [SECTION 194F]**

The person responsible for paying to any person any amount referred to in sub-section (2) of section 80CCB, relating to re-purchase of units by mutual funds or units trust of India, shall at the time of payment thereof, deduct income-tax thereon at the rate of 20%.

#### **COMMISSION ON THE SALE OF LOTTERY TICKETS [SECTION 194G]**

Any person who is responsible for paying, on or after the 1st day of October, 1991 to any person, who is engaged in stocking, distributing, purchasing or selling lottery tickets, any income by way of commission, remuneration or prize on such tickets in an amount exceeding Rs. 15,000 shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of 5%.

#### **COMMISSION OR BROKERAGE [SECTION 194H]**

Any person, not being an individual or a Hindu undivided family not covered under section 44AB liable for audit, 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 5%.

**Exception:** No deduction shall be made where the aggregate amount of such payments to the payee does not exceed Rs. 15,000.

#### **PAYMENT AS RENT [SECTION 194 I]**

Any person, not being an individual or a Hindu undivided family not covered under section 44AB liable for audit, 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

- i. 2% for the use of any machinery or plant or equipment; and
- ii. 10% for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings;

**Exception:** No deduction shall be made in the following cases:

- i. where the aggregate amount of such payments to the payee does not exceed Rs. 1,80,000.
- ii. payment by way of rent is credited to business trust, being a real investment trusts in respect of any real estate referred to in clause 23FCA of section 10, owned directly by such business trust.

#### **Meaning of Rent**

“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. In other words, aside of land or land and building, tax shall now also be deductible for leasing or

hiring of machinery, plant, equipment furniture and fittings whether given separately or together. Further, it shall be deductible whether or not any or all of the above are owned by the payee.

**Where the tax is either not to be deducted or to be deducted at lower rate**

Any person to whom rent is payable may make an application in Form No. 13 to the Assessing Officer and obtain such certificate from him, as may be appropriate, authorizing the payer not to deduct tax or to deduct tax at a lower rate 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.

**Clarifications:** Following payment are covered as Rent and therefore TDS provision u/s 194 I shall be applicable.

- a) Any deposit given by the tenant which is adjustable against future rent in the nature of advance rent will be subject to TDS u/s 194I.
- b) Where a tenant makes a non- refundable deposit, the tax will have to be deducted at source as such deposit represents the consideration for the use of the land or the building etc. and therefore partakes the nature of rent as defined under section 194-I. No tax is to be deducted at source if deposit is refundable.
- c) Tax under this section shall be deductible on warehousing charges because the meaning of rent includes other agreement or arrangement for the use of any land or building etc.
- d) The tax is to be deducted from rent paid, by whatever name called, for hire of a property. The incidence of deduction of tax at source does not depend upon the nomenclature, but on the content of the agreement.
- e) If the composite arrangement is in essence the agreement for taking premises on rent, the tax will be deducted under section 194-I from payments thereof.
- f) Section 194-I is also applicable to rent paid for the use of a part or a portion of any land or building.

**Note:** If the municipal taxes, ground rent, etc, are borne by the tenant, no tax will be deducted on such sum.

**CBDT Circular no. 21/2017:** Non applicability of provisions of section 194-I on remittance of Passenger Service Fees (PSF) by an Airline to an airport Operator - A

dispute arose on applicability of the provisions of section 194-I on PSF wherein the Bombay High Court in case of CIT vs. Jet Airways (India) Ltd declined to admit the ground relating to applicability of provisions of section 194-I of the Act on PSF charges holding that no substantial question of law arises. While doing so it relied on the judgement of the Hon'ble Supreme Court dated 4.8.2015 in the case of Japan Airlines and Singapore Airlines where the Apex Court held that in view of explanation to section 194-I of the Act, though, the normal meaning of the word 'rent' stood expanded, however, the primary requirement is that the payment must be for the use of land and building and mere incidental/minor/insignificant use of the same while providing facilities and service would not make it payment for use of land and building so as to attract 194-I of the Act. In view of the Bombay High Court decision, CBDT clarified that section 194-I of the Act will not apply on PSF.

*Example:*

**Payment above Rs. 1,80,000/-** ECHS makes a monthly payment on 2nd of every month of Rs. 20,000/- to M/s ABC & Co., the landlord, as rent for making use of its premises. Since it's a rental payment, and the annual payment exceeds Rs. 1,80,000/-, it is covered under section 194I. Tax on the amount of Rs. 240,000/- will be deducted @ 10% (since the payment is not for plant, machinery or any equipment). Therefore the TDS amount shall be Rs. 24,000/-. For this, Rs. 2,000 has to be deducted as TDS every month while crediting/making the rental payment. This is to imply that the landlord will be paid only Rs. 18,000 i.e. Rs. 20,000 - Rs. 2,000.

**Payment below Rs. 1,80,000/-** ECHS makes a monthly payment of Rs. 10,000/- to M/s ABC & Co., the landlord, as rent for making use of its premises. Since the annual payment of Rs. 1,20,000/- does not exceed Rs. 1,80,000/-, **NO** TDS will be deducted.

#### **PAYMENT ON TRANSFER OF CERTAIN IMMOVABLE PROPERTY OTHER THAN AGRICULTURAL LAND [SECTION 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), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to 1% of such sum as income-tax thereon.

**Exception:** No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than Rs. 50 lakhs rupees.

**Note:** The provisions of section 203A relating to quoting of TAN No. shall not apply to a person required to deduct tax in accordance with the provisions of this section.

#### **PAYMENT OF RENT BY CERTAIN INDIVIDUALS OR HINDU UNDIVIDED FAMILY [SECTION 194IB]**

With effect from 1.6.2017, Any person, being an individual or a Hindu undivided family (not covered under section 44AB liable for audit), responsible for paying to a resident any income by way of rent exceeding Rs. 50,000 for a month or part of a month during the previous year, shall deduct an amount equal to 5% of such income as income-tax thereon.

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.

The provisions of section 203A relating to quoting of 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.

#### **PAYMENT UNDER SPECIFIED AGREEMENT [SECTION 194IC]**

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.

#### **PAYMENT AS FEES FOR TECHNICAL AND PROFESSIONAL SERVICES (SECTION 194J)**

Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of:

- a) fees for professional services, or
- b) fees for technical services, or

- c) 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
- d) royalty,

any sum referred to in clause (va) of section 28, relates to non-compete payment for not carrying out any activity in relation to any business or not sharing any know-how, patents copyrights, trade marks, etc.

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 on income comprised therein.

**Note:** Rate of TDS is 2% in the case of a payee, engaged only in the business of operation of call centre with effect from 1.6.2017

“Fees for technical services” means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration as that would be income of the recipient chargeable under the head “salaries”.

“Professional services” refers to services rendered by a person in the course of carrying out legal, medical, engineering or architectural profession or profession of accountancy or technical consultancy or interior decoration or advertising or any other profession notified by CBDT. Authorized representatives, film, artists, company secretaries and profession of Information Technology have since been notified. CBDT has notified that the services rendered by the following persons in relation to the sports activities as “Professional Services” for the purpose of the said section:

- a) Sports persons
- b) Umpires and Referees
- c) Coaches and Trainers
- d) Team Physicians and Physiotherapists
- e) Event Managers
- f) Commentators
- g) Anchors
- h) Sports Columnists

**Exception:** No deduction shall be made in the following cases:

- i. 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 -
  - Rs. 30,000, in the case of fees for professional services
  - Rs. 30,000, in the case of fees for technical services
  - Rs. 30,000, in the case of royalty
  - Rs. 30,000, in the case of non compete fee
- ii. 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.

**Where the tax is either not to be deducted or to be deducted at lower rate**

Any person to whom any fee is payable may make an application in Form No. 13 to the assessing officer and obtain such certificate from him, as may be appropriate, authorizing the payer not to deduct tax or to deduct tax at a lower rate. No certificate 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. It must be noted that the expenses, on which TDS has to be deducted, shall be allowed as a deduction in computing the income of only that previous year in which such tax has been deposited with the tax authorities.

**Provisions Specific to ECHS** - The following **categories of staff hired** are to be covered under **"Payment for Technical and Services" (Section 194J)**

- a. Medical Officer
- b. Specialist (Medical Specialist & Gynecologist)
- c. Dental Officer
- d. Officer in charge Polyclinic
- e. Nursing Assistant (Nurse)
- f. Nursing Assistant (General)
- g. Nursing Assistant (X Ray Assistant/Radiographer)

- h. Nursing Assistant (Physiotherapy)
- i. Laboratory Assistant
- j. Dental Hygiene/Dental Assistant

**Payment for medical expenses:**

- a) *Payment to hospitals directly* – As per circular number 8 of 2000 dated 24th November, 2009, issued by Central Board of Direct Taxes (CBDT), payment to hospitals for the treatment costs is to be covered under Section 194J i.e. it is to be treated as payment for technical services.
- b) *Payment to ex-servicemen as reimbursement* – Since its only a reimbursement and not a direct payment for technical or professional services, therefore TDS will NOT be deducted from such payments.

*Example:*

**Payment of Rs. 25,000**

ECHS makes a one time payment of Rs. 25,000/- to ABC Medicity, a hospital, for its services. Since it's a payment for the technical services, it is covered under section 194J. However, since the amount of payment does not exceed Rs. 30,000/- - therefore NO TDS shall be deducted from this payment and ABC Medicity shall be paid Rs. 25,000/- in full.

**Payment of Rs. 35,000**

ECHS makes a payment of Rs. 35,000/- to ABC Medicity, a hospital, for its services. Since it's a payment for the technical services, it is covered under section 194J. Tax on the amount of Rs. 35,000/- will be deducted @ 10% (since the payment is not for plant, machinery or any equipment). Therefore the TDS amount shall be Rs. 3,500/-. This is to imply that the hospital will be paid only Rs. 31,500 i.e. Rs. 35,000 - Rs. 3,500 TDS.

**Payment of Rs. 56,000**

ECHS makes a payment of Rs. 56,000/- to ABC Medicity, a hospital, for its services. Since it's a payment for the technical services, it is covered under section 194J. Tax on the amount of Rs. 56,000/- will be deducted @ 10% (since the payment is not for plant, machinery or any equipment). Therefore the TDS amount shall be Rs. 5,600/-. This is to imply that the hospital will be paid only Rs. 50,400 i.e. Rs. 56,000 - Rs. 5,600 TDS.



**PAYMENT OF COMPENSATION ON ACQUISITION OF CERTAIN IMMOVABLE PROPERTY [SECTION 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 10% of such sum as income-tax thereon.

**Exemption:** No TDS deduction shall be made in the following cases:

- i. where the aggregate amount of such payments to a resident during the financial year does not exceed Rs. 2,50,000.
- ii. 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.

**INCOME BY WAY OF INTEREST FROM INFRASTRUCTURE DEBT FUND [SECTION 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 5%.

**CERTAIN INCOME FROM UNITS OF A BUSINESS TRUST [SECTION 194LBA]**

Where any distributed income referred to in section 115UA, being of the nature referred to in [sub-clause (a) of] 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 10%.

Where any distributed income referred to in section 115UA, being of the nature referred to in [sub-clause (a) of] clause (23FC) of section 10, is payable by a business trust to its unit holder, 72[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 5%.

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**.

#### **INCOME IN RESPECT OF UNITS OF INVESTMENT FUND [SECTION 194LBB]**

Where any income, other than that proportion of income which is of the 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, 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 as follows:

- i. at the rate of 10%, 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.

**Note:** 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.

#### **INCOME IN RESPECT OF INVESTMENT IN SECURITIZATION TRUST [SECTION 194LBC]**

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. 25%, if the payee is an individual or a Hindu undivided family;
- ii. 30%, if the payee is any other person.

**INCOME BY WAY OF INTEREST FROM INDIAN COMPANY [SECTION 194LC]**

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 5%.

The interest referred to in sub-section 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, 2017; 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, 2017as approved by the Central Government in this behalf; and
- ii. 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, 2020, and
- iii. 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.

**INCOME BY WAY OF INTEREST ON CERTAIN BONDS AND GOVERNMENT SECURITIES [SECTION 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 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 5%.

The income by way of interest referred above shall be the interest payable on or

after the 1st day of June, 2013 but before the 83[1st day of July, 2017 in respect of investment made by the payee in:

- i. a rupee denominated bond of an Indian company ; or
- ii. a Government security:

Provided that the rate of interest in respect of bond referred to in clause (i) shall not exceed the rate as may be notified by the Central Government in this behalf.

#### **OTHERS PAYMENT [SECTION 195]**

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**.

**Exception:** No deduction shall be made in respect of any dividends referred to in section 115-O.

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 to the Assessing Officer to determine, by general or special order, 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.

**Rate of TDS under Section 195:** Rates prescribed under the Act has to be increased by surcharge and education cess at the prescribed rate. If the payment is being made as per DTAA rates, then there is no need to add surcharge and education cess. The rates are as follows:

<b>Particulars</b>	<b>TDS rates</b>
Income in respect of investment made by a NRI	<b>20%</b>
Income by the way of long term capital gains in Section 115E in case of a NRI	<b>10%</b>
Income by way of long-term capital gains	<b>10%</b>
Short Term Capital gains under section 111A	<b>15%</b>

Any other income by way of long-term capital gains	<b>20%</b>
Interest payable on money borrowed in Foreign Currency	<b>20%</b>
Income by way of royalty payable by Government or an Indian concern	<b>10%</b>
Income by way of royalty, not being royalty of the nature referred to be payable by Government or an Indian concern	<b>10%</b>
Income by way of fees for technical services payable by Government or an Indian concern	<b>10%</b>
Any other income	<b>30%</b>

#### **INCOME PAYABLE "NET OF TAX" [SECTION 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.

#### **INTEREST OR DIVIDEND OR OTHER SUMS PAYABLE TO GOVERNMENT, RESERVE BANK OR CERTAIN CORPORATIONS [SECTION 196]**

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

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

where such sum is payable to it by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or any other income accruing or arising to it.

**CERTIFICATE FOR DEDUCTION AT LOWER RATE [SECTION 197]**

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 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.

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.

**NO DEDUCTION TO BE MADE IN CERTAIN CASES [SECTION 197A]**

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. **[Section 197A (1)]**

Notwithstanding anything contained in section 192A or section 193 or section 194A or section 194D or section 194DA or section 194I 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 194I 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. **[Section 197A (1A)]**

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. **[Section 197A (1B)]**

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 or section 194I 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 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.

**[Section 197A (1C)]**

Notwithstanding anything contained in this section, no deduction of tax shall be made by the Offshore Banking Unit from the interest paid:

- i. 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
- ii. on borrowing, on or after the 1st day of April, 2005, from a non-resident or a person not ordinarily resident in India.

**CREDIT FOR TAX DEDUCTED [SECTION 199]**

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.

The Board for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make rules 37BA.

**CREDIT FOR TAX DEDUCTED AT SOURCE FOR THE PURPOSES OF SECTION 199 [RULE 37BA]**

Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.

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

source, as the case may be, shall be given to the other person and not to the deductee provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).

The declaration filed by the deductee shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.

Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of:

- (i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority; and
- (ii) the information in the return of income in respect of the claim for the credit,

subject to verification in accordance with the risk management strategy formulated by the Board from time to time.



## PROCEDURAL COMPLIANCES, PREPARATION AND FILING OF TDS RETURN

### ELECTRONIC PAYMENT OF TAXES

An optional scheme of electronic payment of taxes for income tax was introduced in 2004. However with a view to expand the scope of electronic payment of taxes, the scheme of electronic payment of taxes has been made mandatory for the following categories of tax-payers:

- i. All corporate assesseees;
- ii. All assesseees (other than company) to whom provisions of section 44AB of the Income Tax Act are applicable.

### TIME LIMIT FOR THE PAYMENT OF TDS TO THE GOVERNMENT

Sr. No.	Month	Non-Govt. Deductors	Government Deductors
1.	April to February	7th of the next month in which TDS is deducted	<ul style="list-style-type: none"> <li>• Same day in cases TDS deposited without challan no. ITNS 281.</li> <li>• 7th of the next month in which TDS is deducted in cases TDS deposited with challan</li> </ul>
2.	March	30th April of next financial year	<ul style="list-style-type: none"> <li>• Same day in cases TDS deposited without challan no. ITNS 281.</li> <li>• 7th of the next month in which TDS is deducted in cases TDS deposited with challan</li> </ul>

**Note:** Any sum deducted u/s 194IA shall be paid to the credit of the central government within a period of 30 days (w.e.f. 01.06.2016) 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.

The Due date to submit Form 24G extended from 10 days of the end of the relevant month to

- 30th day of April where the statement relates to the month of March and
- 15 days from the end of relevant month

It is furnished electronically under digital signature or electronically along with the verification of the statement.

### 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.

### DUE DATE FOR ISSUE OF CERTIFICATE

**FORM 16:** 31 May of the Next Financial year in which tax is deducted.

For issue of Form 16 for the financial year 2016-17, as per Notification, the due date is extended to 15 June 2017.

**FORM 16A:** Within 15 days from due date for furnishing the statement of tax deducted under rule 31A

Quarter ended	Due date of Form 16A
30 <sup>th</sup> June	15 <sup>th</sup> August
30 <sup>th</sup> September	15 <sup>th</sup> November
31 <sup>st</sup> December	15 <sup>th</sup> February
31 <sup>st</sup> March	15 <sup>th</sup> June

**Form 16B:** Within 15 days from due date for furnishing the challan cum statement in Form 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 deductee, 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.

### TDS FORMS

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 27EQ	Statement of collection of tax at source
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

The quarterly return statements should be accompanied by a signed verification in Form No. 27A. Form 27A is a control chart of quarterly TDS statements to be filed by deductors/collectors alongwith quarterly statements. It is a summary of TDS returns which contains control totals of 'amount paid' and 'income tax deducted at source'.

### TDS RETURN DUE DATE

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	Due Date for Form 24Q & Form 26Q	Form 27Q	Form 27EQ
April to June	31st July	31st July	15th July
July to Sept	31st Oct	31st Oct	15th Oct
Oct to Dec	31st Jan	31st Jan	15th Jan
Jan to March	31st May	31st May	15th May

**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.

The statement may be furnished in any of the following manners namely:

- a) Paper form
- b) Electronically, under digital signature in accordance with the procedures, formats and standards specified under sub-rule (5); of Rule 31A.
- c) Electronically, along with the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (5) of Rule 31A.

It is to be noted that in case of the following quarterly statements are to be delivered electronically;

- a) Every Government deductor,
- b) Corporate deductor,
- c) The deductor is a person required to get his accounts audited under sec. 44 AB in the immediately preceding financial year or
- d) The number of deductee's records in a statement for any quarter of the financial year is twenty or more;

Such quarterly statements are to be delivered electronically under digital signature or electronically with verification of statement in form 27A or verified through an electronic process in accordance with format and procedure specified in rule 31A(5). Further, a declaration in Form 27A is also to be submitted in paper format.

Quarterly statements are also to be filed by such deductors in electronic format with the e-TDS Intermediary at any of the TIN Facilitation Centres, particulars of which are available at [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in) and at <http://tin.nsd.com>.

A person other than a deductor specified above may at his option deliver the quarterly statements electronically in computer media as provided above. However, it is not mandatory for it to do so.

It is mandatory for the deductor to quote the following in quarterly statements:

- TAN
- PAN of the deductor (except where deductor is an office of the government)
- PAN of all the deductees
- Particulars of tax paid to the Central Government including Book Identification Number or Challan Identification Number as the case may be.
- Particulars of amount paid or credited on which tax was not deducted in view of issue of certificate of no deduction of tax u/s 197 by the assessing officer to the payee.

#### **PROCESSING OF STATEMENTS OF TAX DEDUCTED AT SOURCE [SECTION 200A]**

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.

### **REFUND OF TDS**

In case of excess deduction of tax at source, claim of refund of such excess TDS can be made by the deductor. The excess amount is refundable as per procedure laid down for refund of TDS vide Circular No.2/2011 dt. 27.4.11 (which supersedes the earlier circular no.285 dt 21.10.1980 on this subject). The difference between the actual payment made by the deductor and the tax deductible at source, will be treated as the excess payment made.

In case such excess payment is discovered by the deductor during the financial year concerned, the present system permits credit of the excess payment in the quarterly statement of TDS of the next quarter during the financial year. In case, the deduction of such excess amount is made beyond the financial year concerned, such claim can be made to the Assessing Officer (TDS) concerned. However, no claim of refund can be made after two years from the end of financial year in which tax was deductible at source.

## CONSEQUENCE – NON COMPLIANCES

The various provisions of TDS as discussed in the preceding chapters are statutorily required to be strictly complied with. Any default in compliance can attract, levy of interest, penalty and in certain cases initiation of prosecution proceedings.

### IMPACT OF NON-COMPLIANCE TO TDS

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.	Disallowances of expenses	40(a)(i)/(ii), 58(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”.
- Common provisions 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) (61 ITD 444).



- 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) (68 ITD 205).

**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.

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:

- 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 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. Common provisions applicable, 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 Rs. 10,000/- to maximum Rs. 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 Rs. 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 272A(2) Other Penalties:** Section 272(2) provides for levy of penalty for certain defaults in compliance with the TDS as mentioned below. The amount of penalty imposed is Rs.100/- per day for the period during which the default subsists.

Clause	Nature of Default
f	Failure to deliver the declaration u/s. 197A i.e., Form 15H & 15G to the CCIT or CIT before the 7th day of the month following the month in which declaration is received by him.
g	Failure to furnish the TDS/TCS certificates
h	Failure to deduct tax as per direction of AO / TRO from the amount payable as salary – this is a mode of recovery of demand.
i	Failure to furnish statement in Form 12BA & 16 giving particulars of perquisites
l	Failure by the banking company, co-operative society, public company as referred to in s. 194A(3) to furnish the return in Form 26QA and Form 26QAA u/s. 206A(1) in respect of interest paid to residents without deducting TDS.

**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 Rs.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.*

## FREQUENTLY ASKED QUESTION 'FAQ'

**• Under what circumstances a deductor would not be deemed as an assessee-in-default even after he fails to deduct TDS or after deducting the same fails to deposit it to the Government's account?**

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:

- iv. has furnished his return of income under section 139 ;
- v. has taken into account such sum for computing income in such return of income; and
- vi. 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.

**• What to do if tax is deducted but the ultimate tax liability of the payee is nil or lower than the amount of TDS?**

In such a case, the payee can claim the refund of entire/excess amount of TDS (as the case may be) by filing the return of income.

**• If the payer does not deduct tax at source, will the payee face any adverse consequences by means of action taken by the Income-tax Department?**

It is the duty and responsibility of the payer to deduct tax at source. If the payer fails to deduct tax at source, then the payee will not have to face any adverse consequences. However, in such a case, the payee will have to discharge his tax liability. Thus, failure of the payer to deduct tax at source will not relieve the payee from payment of tax on his income.

**• What are the duties of the person deducting tax at source?**

Following are the basic duties of the person who is liable to deduct tax at source.

- i. He shall obtain Tax Deduction Account Number and quote the same in all the documents pertaining to TDS.
- ii. He shall deduct the tax at source at the applicable rate.

- iii. He shall pay the tax deducted by him at source to the credit of the Government (by the due date specified in this regard).
- iv. He shall file the periodic TDS statements, i.e., TDS return (by the due date specified in this regard).
- v. He shall issue the TDS certificate to the payee in respect of tax deducted by him (by the due date specified in this regard).

**• How can I know the quantum of tax deducted from my income by the payer?**

To know the quantum of the tax deducted by the payer, you can ask the payer to furnish you a TDS certificate in respect of tax deducted by him.

You can also check Form 26AS from your e-filing account at <https://incometaxindiaefiling.gov.in>

You can also use the "View Your Tax Credit" facility available at [www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)

**• What to do if the TDS credit is not reflected in Form 26AS?**

Non-reflection of TDS credit in Form 26AS can be due to several reasons like non-filing of TDS statement by the payer, quoting incorrect PAN of the deductee in the TDS statement filed by the payer. Thus, in case of non-reflection of TDS credit in Form 26AS, the payee has to contact the payer for ascertaining the correct reasons for non-reflection of the TDS credit in Form 26AS.

**• At what rate the payer will deduct tax if I do not furnish my Permanent Account Number to him?**

As per section 206AA, if you do not furnish your Permanent Account Number to the payer (i.e. deductor), then the deductor shall deduct tax at the higher of the following rates:

- i. At the rate specified in the relevant provision of the Act.
- ii. At the rate or rates in force, i.e., the rate prescribed in the Finance Act.
- iii. At the rate of 20%.

However, the provisions of section 206AA 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.

**• I do not have PAN. Can I furnish Form 15G/15H for non-deduction of TDS from interest?**

As per section 206AA, a declaration in Form No. 15G or Form No. 15H is not a valid declaration, if it does not contain PAN of the person making the declaration.

**• Would I face any adverse consequences if instead of depositing TDS in the government's account I use it for my personal needs?**

Yes, failure to remit tax deducted by me in the government's account within stipulated time-limit would attract interest, penalty and rigorous imprisonment of upto seven years.

**• I have not received TDS certificate from the deductor. Can I claim TDS in my return of income?**

Yes, the tax credit in your case will be reflected in your Form 26AS and, hence, you can check Form 26AS and claim the credit of the tax accordingly. However, the claim of TDS to be made in your return of income should be strictly as per the TDS credit being reflected in Form 26AS. If there is any discrepancy in the tax actually deducted and the tax credit being reflected in Form 26AS then you should intimate the same to the deductor and should reconcile the difference. The credit granted by the Income-tax Department will be as per Form 26AS.

**• If I buy any land/building then is there any requirement to deduct tax from the sale proceeds to be paid by me to the seller?**

Yes, Finance Act, 2013 has introduced section 194-IA which provides for deduction of tax at source in case of payment of sale consideration of immovable property (other than rural agricultural land) to a resident. Section 194-IA is not applicable if the seller is a non-resident. Tax is to be deducted @ 1%. No tax is to be deducted if the consideration is below Rs. 50,00,000. If the sale consideration exceeds Rs. 50,00,000, then tax is to be deducted on the entire amount and not only on the amount exceeding Rs. 50,00,000.

If the seller is a non-resident then tax is to be deducted under section 195 and not under section 194-IA. Thus, in case of purchase of property from non-resident TDS provisions of section 195 will apply and not of section 194-IA

**• What is the difference between PAN and TAN?**

PAN stands for Permanent Account Number and TAN stands for Tax Deduction Account Number. TAN is to be obtained by the person responsible to deduct tax, i.e., the deductor. In all the documents relating to TDS and all the correspondence with the Income-tax Department relating to TDS one has to quote his TAN. PAN cannot be used for TAN, hence, the deductor has to obtain TAN, even if he holds PAN.

However, in case of TDS on purchase of land and building (as per section 194- IA) as discussed in previous FAQ, the deductor is not required to obtain TAN and can use PAN for remitting the TDS.

**• Can the payee request the payer not to deduct tax at source and to pay the amount without deduction of tax at source?**

A payee can approach to the payer for non-deduction of tax at source but for that they have to furnish a declaration in Form No. 15G/15H, as the case may be, to the payer to the effect that the tax on his estimated total income of the previous year after including the income on which tax is to be deducted will be nil.

- i. Form No. 15G is for the individual or a person (other than company or firm) and
- ii. Form No. 15H is for the senior citizens.

The following assessee who is in receipt of the specific incomes can approach to the payee for non-deduction of tax at source:

- i. A resident individual who is in receipt of income as referred to in 192A, 194 or 194EE if the amount of such income does not exceed the maximum amount which is not chargeable to income-tax.
- ii. Any person (other than a company or a firm) who is in receipt of income as referred to in section 193, 194A, 194DA or 194-I if the amount of such income does not exceed the maximum amount which is not chargeable to income-tax.
- iii. A resident senior citizen ( i.e., an individual resident in India who is of the age of sixty years or more at any time during the previous year) who is in receipt of income as referred to in section 192A , 193, 194, 194A, 194EE, or 194-I or 194DA

Alternatively, a payee who is in receipt of income referred to in section 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194LA, 194LBB, 194LBC, or 195 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 as may be appropriate. On receiving such an application, the AO may issue appropriate certificate in this regard if he is satisfied that the total income of the payee justifies the deduction of income-tax at any lower rate or nil deduction of income tax.

As per Income-tax (Ninth Amendment) Rules, 2014, Certificate for non-deduction of income-tax shall be issued directly to the person responsible for deducting the tax under an advice to the payee (i.e. who made an application for issue of such certificate).Whereas, certificate of lower deduction of income-tax shall be issued



to payee itself. If AO has issued certificate for no deduction of tax or lower deduction of tax, as the case may be, then payer should deduct tax accordingly.

• ***What are the consequences a deductor would face if he fails to deduct TDS or after deducting the same fails to deposit it to the Government's account?***

A deductor would face the following consequences if he fails to deduct TDS or after deducting the same fails to deposit it to the credit of Central Government's account:

**a) 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.

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.

**b) 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.

**c) Levy of Penalty:** Penalty of an amount equal to tax not deducted or paid could be imposed under section 271C.

## TDS CHART FY 2017-18 "AY 2018-19"

Tax is deductible at source at the rates given in table. If PAN of the deductee is not intimated to the deductor, tax will be deducted at source by virtue of section 206AA either at the rate given in the table or at the rate or rates in force or at the rate of 20 per cent, whichever is higher. Further, under section 94A(5), if payment or credit is made or given to a deductee who is located in a notified jurisdictional area, tax is deductible at the rate given in the table or at the rate of 30 per cent, whichever is higher. TDS rates for the financial year 2017-18 are as follows:

### CATEGORY A - WHEN RECIPIENT IS RESIDENT

<b>Nature of payment</b>	<b>TDS (SC : Nil, EC : Nil, SHEC : Nil)</b>
<b>Section 192</b> - Payment of salary: Normal slab rates are applicable + SC 15%/10% (if net income exceeds Rs. 1 crore or 50 lakh as the case may be ), EC : 2% and SHEC : 1%	
<b>Section 192A</b> - Payment of taxable accumulated balance of provident fund	10
<b>Section 193</b> - Interest on securities: a) Any debentures/securities for money issued by or on behalf of any local authority/statutory corporation, b) listed debentures of a company c) any security of the Central or State Government d) any other interest on securities (including interest on non-listed debentures)	10
<b>Section 194</b> - Dividend other than the dividend as referred to in Section 115-O	10
<b>Section 194A</b> - Interest other than interest on securities	10
<b>Section 194B</b> - Winnings from lottery or crossword puzzle or card game or other game of any sort	30

<b>Section 194BB</b> - Winnings from horse races	30
<b>Section 194C</b> - Payment or credit to a resident contractor/ sub-contractor	
a) payment/credit to an individual or a Hindu undivided family	1
b) payment/credit to any person other than an individual or a Hindu undivided family	2
<b>Section 194D</b> Insurance commission	
a) payment/credit to an individual or a Hindu undivided family	5
b) payment/credit to any person other than an individual or a Hindu undivided family	10
<b>Section 194DA</b> - Payment in respect of life insurance policy	1
<b>Section 194EE</b> - Payment in respect of deposits under National Savings Scheme, 1987	10
<b>Section 194F</b> - Payment on account of repurchase of units of MF or UTI	20
<b>Section 194G</b> - Commission on sale of lottery tickets	5
<b>Section 194H</b> - Commission or brokerage	5
<b>Section 194-I</b> – Rent	
a) rent of plant and machinery	2
b) rent of land or building or furniture or fitting	10
<b>Section 194IA</b> - Payment/credit of consideration to a resident transferor for transfer of any immovable property (other than rural agricultural land)	1
<b>Section 194IB</b> - Payment of rent by an individual or HUF not subjected to tax audit under Section 44AB	5
<b>Section 194IC</b> - Payment under Joint Development Agreement to a resident individual or HUF who transfers land or building as per such agreement	10
<b>Section 194J</b> - Professional fees, technical fees, royalty or remuneration to a director (2% if payee is engaged in the business of call center)	10

<b>Section 194LA</b> - Payment of compensation on acquisition of certain immovable property	10
<b>Section 194LBA(1)</b> - Payment of the nature referred to in section 10(23FC) or section 10(23FC)(a) (with effect from June 1, 2016) or section 10(23FCA) by business trust to resident unit holders	10
<b>Section 194LBB</b> - Payment in respect of units of investment fund specified in section 115UB	10
<b>Section 194LBC(1)</b> - Payment in respect of an investment in a securitisation trust specified in clause (d) of the Explanation occurring after section 115TCA (with effect from June 1, 2016)	–
– if recipient is an individual or a Hindu undivided family	25
– if recipient is any other person	30

**CATEGORY B - WHEN RECIPIENT IS NON-RESIDENT  
OR FOREIGN COMPANY**

Aggregate payment or credit subject to TDS during the financial year 2017-18	If recipient is non-resident Individual/HUF/AOP/BOI/Artificial juridical person			If recipient is non-resident co-operative society/firm		If recipient is non-domestic company		
	Rs. 50 lakh or less lakh but not more than Rs. 1 crore	More than Rs. 50 crore	More than Rs. 1 less	Rs. 1 crore or crore	More than Rs. 1 less	Rs. 1 crore or crore but not more than Rs. 10 crore	More than Rs. 1 crore	More than Rs. 10
Surcharge rate	SC: Nil	SC: 10%	SC: 15%	SC: Nil	SC: 12%	SC: Nil	SC: 2%	SC: 5%
Nature of payment	TDS (inclusive of SC: rate as applicable, EC: 2%, SHEC: 1%)							
<b>Section 192</b> - Payment of salary	Normal Tax Rate plus SC, EC and SHEC			–	–	–	–	–

<b>Section 192A</b> - Payment of taxable accumulated balance of provident fund	10.30	11.33	11.85	-	-	-	-	-
<b>Section 194B</b> -Winning from lottery or crossword puzzle or card game or other game of any sort	30.90	33.99	35.54	30.90	34.61	30.90	31.52	32.45
<b>Section 194BB</b> -Winning from horse races	30.90	33.99	35.54	30.90	34.61	30.90	31.52	32.45
<b>Section 194E</b> -Payment to a non-resident foreign citizen sportsman/ entertainer or non-resident sports association	20.60	22.66	23.69	20.60	23.07	20.60	21.01	21.63
<b>Section 194EE</b> -Payment in respect of deposits under National Saving Scheme, 1987	10.30	11.33	11.85	NA	NA	NA	NA	NA
<b>Section 194F</b> - Re-purchase of units of MF or UTI	20.60	22.66	23.69	NA	NA	NA	NA	NA
<b>Section 194G</b> - Commission on sale of lottery tickets	5.15	5.66	5.92	5.15	5.77	5.15	5.25	5.41
<b>Section 194LB</b> - Payment/credit by way of interest by infrastructure debt fund	5.15	5.66	5.92	5.15	5.77	5.15	5.25	5.41
<b>Section 194LBA(2)</b> - Payment of the nature referred to in Section 10(23FC) [or (with effect from June 1, 2016) section 10(23FC(a)) by business trust to unit holders	5.15	5.66	5.92	5.15	5.77	5.15	5.25	5.41

<b>Section 194LBA(3)-</b> Payment of the nature referred to in section 10(23FCA) by business trust to unit holders	30.90	33.99	35.54	30.90	34.61	41.20	42.02	43.26
<b>Section 194LBB-</b> Payment in respect of units of investment fund specified in Section 115UB	30.90	33.99	35.54	30.90	34.61	41.20	42.02	43.26
<b>Section 194LBC(2)-</b> Payment in respect of an investment in a securitisation trust specified in clause (d) of the Explanation occurring after section 115TCA (with effect from June 1, 2016)	30.90	33.99	35.54	30.90	34.61	41.20	42.02	43.26
<b>Section 194LC-</b> Payment/credit of interest by an Indian specified company on foreign currency approved loan/long-term infrastructure bonds (with effect from October 1, 2014, any bond) from outside India	5.15	5.66	5.92	5.15	5.77	5.15	5.25	5.41
<b>Section 194LD-</b> Interest on a rupee denominated bond of an Indian company or Government security (from June 1, 2013)	5.15	5.66	5.92	5.15	5.77	5.15	5.25	5.41
<b>Section 195 -</b> Payment/ credit of other sum to a non-resident:								
a) Income of foreign exchange assets payable to an Indian citizen	20.60	22.66	23.69	NA	NA	NA	NA	NA

b) income by way of long-term capital gains referred to in section 115E or section 112(1)(c)(iii)	10.30	11.33	11.85	10.30	11.54	10.30	10.51	10.82
c) short-term capital gains under section 111A	15.45	16.99	17.77	15.45	17.30	15.45	15.76	16.22
d) any other long-term capital gains [not being covered by section 10(33), 10(36) and 10(38)]	20.60	22.66	23.69	20.60	23.07	20.60	21.01	21.63
e) income by way of interest payable by Government/Indian concern on money borrowed or debt incurred by Government or Indian concern in foreign currency not being interest referred to in section 194LB or Section 194LC	20.60	22.66	23.69	20.60	23.07	20.60	21.01	21.63
f) royalty [see Note 5]	10.30	11.33	11.85	10.30	11.54	10.30	10.51	10.82
g) royalty [not being royalty of the nature referred to in (f) supra] [see Note 6] –								
• where the agreement is made after March 31, 1961 but before April 1, 1976	10.30	11.33	11.85	10.30	11.54	51.50	52.53	54.08
• where the agreement is made on or after April 1, 1976	10.30	11.33	11.85	10.30	11.54	10.30	10.51	10.82
h) fees for technical services [see Note 7] –								

• where the agreement is made after February 29, 1964 but before April 1, 1976	10.30	11.33	11.85	10.30	11.54	51.50	52.53	54.08
• where the agreement is made on or after April 1, 1976	10.30	11.33	11.85	10.30	11.54	10.30	10.51	10.82
i) any other income	30.9	33.99	35.54	30.90	34.61	41.20	42.02	43.26
<b>Section 196B-</b> Payment/credit of income from units (including long-term capital gains on transfer of such units) to an offshore fund	10.3	11.33	11.85	10.30	11.54	10.30	10.51	10.82
<b>Section 196C-</b> Payment/credit of interest of foreign currency bonds or GDR (including long-term capital gains on transfer of such bonds) (not being dividend referred in section 115-O)	10.3	11.33	11.85	10.30	11.54	10.30	10.51	10.82
<b>Section 196D-</b> Payment/credit of income from securities (not being dividend, short-term or long-term capital gain) to Foreign Institutional Investors	20.60	22.66	23.69	20.60	23.07	20.60	21.01	21.63

**Notes:**

- 1) Under sections 192 tax is deductible from salary. The payer shall calculate salary taxable in the hands of recipient. The amount so determined is subject to tax deduction under sections 192. Under sections 192A, tax is deductible on taxable accumulated balance of provident fund. Under section 195, tax is deductible only if income is taxable in the hands of recipient in India. In any other case, gross payment is subject to tax deduction.



- 2) In *Category B*, tax is deductible at the above rates or the rates specified in Double Taxation Avoidance Agreements entered into by the Central Government under section 90 (whichever is lower) [ section 2(37A)(iii)].
- 3) Tax is not deductible under section 192A, section 193, 194, 194A, 194D, 194DA, 194-I, or 194EE if the recipient makes a declaration in Form No. 15G/15H under the provisions of section 197A.
- 4) Under section 197 the recipient can apply the Assessing Officer in Form No. 13 to get a certificate of lower/no tax deduction. This benefit is, however, not available if tax is deductible under section 192A, section 194B, 194BB, 194E, 194EE, 194F, 194IA, 194LBA, 194LB, 194LC, 196B, 196C or 196D
- 5) Royalty payable by Government or an Indian concern in pursuance of an agreement made by non-resident with the Government or the Indian concern after March 31, 1976, where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to section 115A(1A) to the Indian concern or in respect of computer software referred to in the second proviso to section 115A(1A), to a person resident in India.
- 6) Not being royalty of the nature referred to above, payable by Government or an Indian concern in pursuance of an agreement made by non-resident 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 matter included in the industrial policy, the agreement is in accordance with that policy.
- 7) Fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by non-resident 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 matter included in the industrial policy, the agreement is in accordance with that policy.

#### **MINIMUM THRESHOLD LIMIT UPTO WHICH TDS NOT APPLICABLE**

In respect of various items liable to TDS, the Income-tax Law has prescribed a threshold limit. If the expenditure incurred/payment made during the year is below the threshold limit, then there is no requirement to deduct tax at source. Following list gives the threshold limit in respect of various items covered by TDS provisions:

Sr. No.	Particular	Section	Threshold limit
1.	No deduction of tax at source from salaries	192	If net taxable income is less than maximum amount which is not chargeable to tax (Rs. 2,50,000 for an individual, Rs. 3,00,000 for Senior Citizens and Rs. 5,00,000 for Super Senior Citizens)
1A.	No TDS from payment of provident fund account of an employee	192A	If amount paid is less than Rs. 30,000. (Rs. 50,000 w.e.f. 1-6-2016)
2.	No TDS from interest paid on debentures issued by a company in which public are substantially interested. Provident interest is paid by account payee cheque to resident individual or HUF	193	If amount paid or payable during the financial year does not exceed Rs. 5,000
3.	No TDS from interest on 8% Saving (Taxable) Bonds 2003 paid to a resident persons	193	If amount paid or payable during the financial year does not exceed Rs. 10,000
3A.	No TDS from interest on 6.5% Gold bonds, 1977 or 7% Gold bonds, 1980 paid to resident individual	193	If a declaration is made that the nominal value of such bonds did not exceed Rs. 10,000 at any time during the previous year
4.	No TDS from dividend paid by account payee cheque to resident persons	194	If amount paid or payable during the financial year does not exceed Rs. 2,500
5.	No TDS from interest other than on securities paid by a banking company or co-operative bank on time deposits	194A	If amount paid or payable during the financial year does not exceed Rs. 10,000
6.	No TDS from interest on deposit with a post office under Senior Citizens Saving Scheme Rules, 2004	194A	If amount paid or payable during the financial year does not exceed Rs. 10,000

7.	No TDS from interest other than on securities (in any other case)	194A	If amount paid or payable during the financial year does not exceed Rs. 5,000
8.	No TDS from interest on compensation awarded by Motor Accident Claims Tribunal	194A	If amount paid or payable during the financial year does not exceed Rs. 50,000
9.	No TDS from Lottery / Cross Word Puzzles	194B	If amount paid or payable during the financial year does not exceed Rs. 10,000
10.	No TDS from winnings from horse races	194BB	If amount paid or payable during the financial year does not exceed Rs. 5,000 (Rs. 10,000 w.e.f. 01/06/2016)
11.	No TDS from sum paid or payable to contractor	194C	a) If sum paid or payable to a contractor in a single payment does not exceed Rs. 30,000 b) If sum paid or payable to contractor in aggregate does not exceed Rs. 75,000 during the financial year (Rs. 1,00,000 w.e.f. 01/06/2016)
12.	No TDS from insurance commission paid or payable during the financial year	194D	If amount paid or payable during the financial year does not exceed Rs. 20,000 (Rs. 15,000 w.e.f. 01/06/2016)
12A	No TDS from sum payable under a life insurance a police (including bonus) to a resident (w.e.f. 01-10-2014) person	194DA	If amount paid or payable during the financial year does not exceed Rs. 1 lakh
13.	No TDS from payments made out of deposits under NSS	194EE	If amount paid or payable during the financial year does not exceed Rs. 2,500
14.	No TDS from commission paid on lottery tickets	194G	If amount paid or payable during the financial year does not exceed Rs. 1,000 (Rs. 15,000 w.e.f. 1.6.2016)

15.	No TDS from payment of commission or brokerage	194H	If amount paid or payable during the financial year does not exceed Rs. 5,000 (Rs. 15,000 w.e.f. 01/06/2016). Further no tax to be deducted from commission payable by BSNL/ MTNL to their PCO Franchisees.
16.	No TDS from payment of rent in respect of land & building, furniture or fittings or plant and machinery	194-I	If amount paid or payable during the financial year does not exceed Rs. 1,80,000
17.	No TDS from payment of consideration for purchase of an immovable property (other than agriculture land)	194-IA	If amount paid or payable during the financial year does not exceed Rs. 50 Lakhs
17A.	No TDS on payment of rent of any land or building or both by an individual/HUF [whose books of account are not required to be audited under section 44AB] to resident person.	194-IB	If amount of rent does not exceed Rs. 50,000 for a month or part of a month.
18.	No TDS from payment of professional fees, technical fees, royalty and directors' remuneration	194J	If amount paid or payable during the financial year does not exceed Rs. 30,000
19.	No TDS from payment of compensation on compulsory acquisition of immovable property (other than Agricultural Land)	194LA	If amount paid or payable during the financial year does not exceed Rs. 2,50,000
20.	Furnishing of quarterly return in respect of payment of interest (other than interest on securities) to residents without deduction of tax	206A	If amount paid or payable during the financial year does not exceed: <ul style="list-style-type: none"> <li>• Rs.10,000 where payer is banking company or co-operative society;</li> <li>• Rs.5,000 in other case</li> </ul>

## RECENT CASE LAWS

Formula One World Championship Ltd. v/s Commissioner of Income-tax, (International Taxation) – Hon'ble Supreme Court Judgement:

Section 9, read with section 195 of the Income-tax Act, 1961, read with article 5 of DTAA between India and UK - Income deemed to accrue or arise in India (Permanent establishment) - Assessee a UK based company entered into a Race Promotion Contract (RPC) by which it granted to Jaypee Sports, right to host, stage and promote Formula One (F-1) Grand Prix of India event at motor racing circuit owned by Jaypee - High Court by impugned order concluded that since, assessee had full access to circuit and could dictate as to who was authorized to access circuit and organising any other event on circuit was not permitted, said circuit constituted permanent establishment of assessee in India.

Further, it has been held that since as a part of its business, assessee as well as its affiliates undertook all possible commercial rights, including advertisement, media rights, etc. and even right to sell paddock seats, such arrangement clearly demonstrated that entire event was taken over and controlled by assessee and its affiliates on one hand and Jaypee Sports on other. Mere construction of track by Jaypee or its ownership or organising other events was immaterial. The fixed place of business in form of physical location, i.e. Buddh International Circuit, was at disposal of assessee through which it conducted business, taxable event had taken place in India and non-resident assessee was liable to pay tax in India on income it had earned in India through said track over which it had complete control during period of race.

Further also, it has been held that question of PE had to be examined keeping in mind duration of event, which was for limited days, and for entire duration assessee had full access through its personnel, hence, number of days for which access was there would not make any difference.

Thus High Court rightly concluded that based on exclusive nature of access and period for which it was accessed it could be concluded that circuit constituted a fixed place PE of assessee in India.

**Deputy Commissioner of Income-tax, Circle 2 (I) (I), Ahmedabad v/s Elitecore Technologies (P.) Ltd.**

Section 9, read with section 195, of the Income-tax Act, 1961 read with article 7 of the OECD Model Convention - Income deemed to accrue or arise in India (Business income) - Assessment year 2012-13 - Assessee-company paid commission to non-resident agents - Assessing Officer doubted genuineness of said payments - He also found that commission was paid without deducting tax at source - Assessing Officer thus disallowed said payments - As regards genuineness of payments, it was noted that commission payments were made with regulatory approvals and through banking channels and all requisite documentation was furnished.

So far as deduction of tax was concerned, it has been held that, it was undisputed that non-resident agents did not carry on any activity in India and, thus, payment of commission to them was not taxable in India requiring deduction of tax at source and therefore impugned disallowance was to be deleted.

II. Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Provision for warranty) - Assessment year 2012-13 - It has been held that the provision for warranty claims made by assessee in respect of software products on scientific basis and historical data, was to be allowed as deduction.

III. Section 28(i) of the Income-tax Act, 1961 - Business loss/deductions - Allowable as (Foreign exchange fluctuation loss) - Assessment year 2012-13 - It has been held that the foreign exchange loss incurred by assessee on forward contracts entered into for hedging export sales, was allowable as business loss.

IV. Section 37(1), read with section 40(a)(ii), of the Income-tax Act, 1961 - Business expenditure - Allowability of (Taxes) - Assessment year 2012-13 - It has been held that the deduction under section 37(1) cannot be allowed in respect of tax withheld abroad as same will be hit by disabling provisions of section 40(a)(ii).

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