CONSULTEASE

Dated: 02.06.2021

CA. Sangam Aggarwal

TDS(tedious) and TCS overall analysis

CA. Sangam Aggarwal

AGENDA

- ✓ Analysis of TDS provisions as per Income Tax Act (“the Act” or “IT Act”)
- ✓ Analysis of TCS provisions as per Income Tax Act
- ✓ Latest amendments
- ✓ Higher rate of deduction/collection

TDS AND TCS SECTIONS

Section	Headings
192	Salary
192A	Payment of accumulated balances due to employees
194	Dividends
194A	Interest other than “interest on securities”
194B	Winning from lottery or crossword puzzle
194BB	Winning from Horse Race
194C	Payment to contractors
194D	Insurance Commission
194DA	Payment in respect of life insurance policy
194EE	Payment in respect of deposits under NSS etc

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TDS AND TCS SECTIONS

Sections	Headings
194H	Commission or Brokerage
194I	Rent
194IA	Payment or transfer of certain immovable property other than agricultural land
194IB	Payment of rent by certain individual or HUF
194J	Fees for professional or technical services
194K	Income in respect of Units
194LA	Payment of compensation on acquisition of certain immovable property
194M	Payment of certain sums by certain individual or HUF **September 1, 2019**
194N	Payment of certain amounts in cash **September 1, 2019**

TDS AND TCS SECTIONS

contd…

Section	Headings
194O	Payment of certain sums by e-commerce operator to e-commerce participant **October 1, 2020**
194Q	TDS on purchase of goods **July 1, 2021**
206C	Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc 206C(1H) – **October 1, 2020**
206AA	Requirement to furnish permanent account number
206AB	Special provision for deduction of tax at source for non-filers of income-tax Return **July 1, 2021**
206CC	Requirement to furnish Permanent Account number by collectee
206CCA	Special provision for collection of tax at source for non-filers of income-tax return **July 1, 2021**

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SALARY RELATED – 192 AND 192A

Section	Nature of payment	Payer	Payee	Rate	Remarks
192	Salary	Any person	Employee (R or NR)	Slab rate	Note 1
192A	Accumulated balance of provident fund	Any person	Employee	10%	1. No TDS if amount < 5000 2. TDS applicable only if taxable in hands of employee

Liable to deducted @ time of payment

SALARY RELATED – 192 AND 192A

Note 1:

a) Employees shall provide details of other income and loss, if any from House property
b) Employees shall share income details from other employer, if any in Form 12B
c) Employees shall provide details of investments, deductions and allowance along with documentary evidence

a) Rebate u/s 87A shall be claimed if the income does not exceed Rs 500,000/-
b) Employer is under no obligation to verify the documents submitted with respect to declaration submitted

a) Fees paid to consultant doctor covered u/s 192 or u/s 194J (BHC Grant Medical Foundation (Ruby Hall Clinic)). Contract for Service or Contract of Service

a) Salary paid to MP, MLA, Ministers & chief Ministers shall attract u/s 192 or not
b) W.e.f April 1, 2021 employee can opt for concessional rates of taxes u/s 115BAC of IT Act

SALARY RELATED – 115BAC

- Effective from April 1, 2021
- concessional rate of income tax
- Conditions for opting 115BAC provisions
  - Without any exemptions/deductions under provisions of Income Tax Act
  - Without any set off of any loss
  - Without any additional depreciation
- Assessee having business or professional income
  - Option is exercised before due date u/s 139(1) of the Act
  - From April 1, 2021 and for all subsequent assessment years
  - Can be withdrawn only once in any other subsequent assessment years (except for the year opted)
  - Once withdrawn shall never be eligible again for same
- Assessee having income other than business or profession – can opt at the time of filing of ROI u/s 139(1)

COMPARISON OF SLAB RATES

Annual income	Old rates (with exemptions)	New rates (without exemptions)
Up to 250,000	Nil	Nil
250,000 to 500,000	5%	5%
500,000 to 750,000	20%	10%
750,000 to 1,000,000		15%
1,000,000 to 1,250,000	30%	20%
1,250,000 to 1,500,000		25%
> 1,500,000		30%

Assessee shall conduct comparable analysis to arrive at the best option for tax deduction

SALARY RELATED – LTC CASH VOUCHER SCHEME

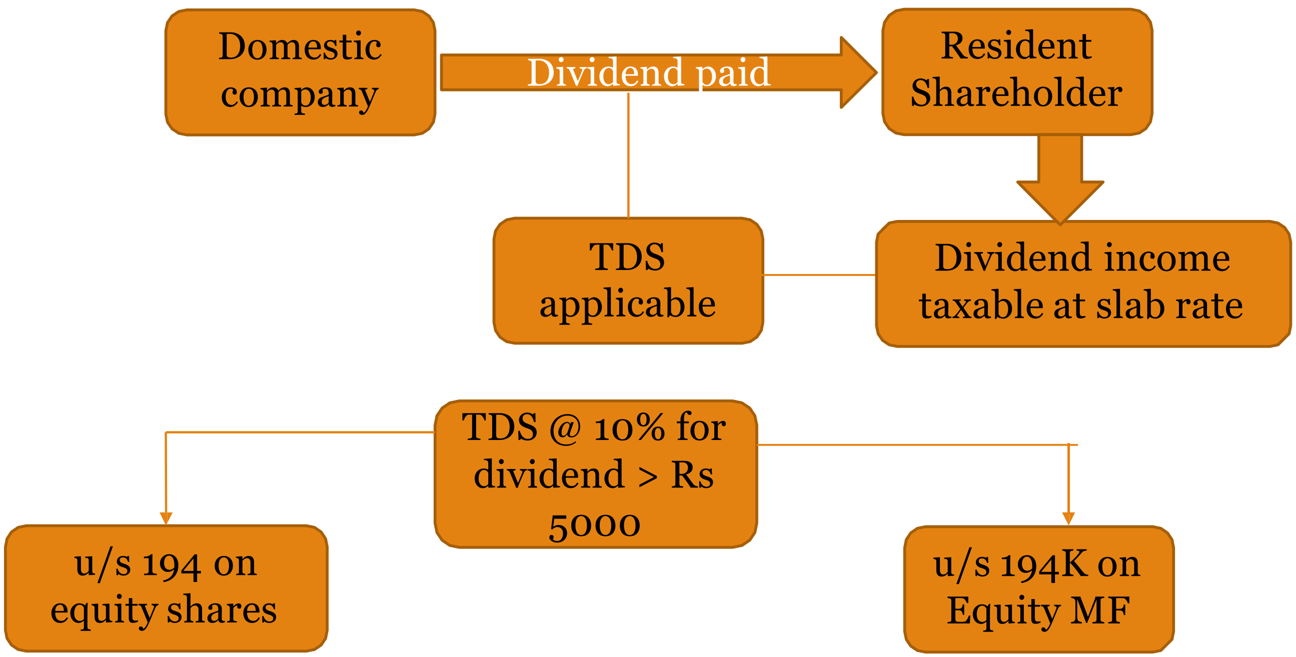
- Employee can purchase goods and services in lieu of the tax exempted portion of the Leave travel concession /allowance
- Employee need not take leave for this purpose nor undertake any travel
- This scheme is applicable to the LTC fare left unutilised during the block year
- Any goods or services with GST of 12% or higher rate would qualify
- The payment should have been made through digital mode
- The Purchase should been affects after 12.10.2020 and upto 31.03.2021.

194- DIVIDEND ON EQUITY SHARES – FY 2019-20

Company
- Pay DDT

Taxpayer
- Up to 10 lakhs exempt
- Above 10 lakhs taxable @ 10%

194- DIVIDEND ON EQUITY SHARES – FY 2020-21 onwards



194K – INCOME IN RESPECT OF UNITS

With effect from	April 1, 2020
Applicability	Any income in respect of • Units of MF u/s 10(23D) • Units from specified company • Units from specified undertaking
Tax rate	10%
Threshold limit	Aggregate amount exceeds Rs 5,000
Liable to deduct	At the time of credit or payment, whichever is earlier

194A – INTEREST OTHER THAN " INTEREST ON SECURITIES"

- Eligible for deduction - Any individual or HUF liable for tax audit in the immediately preceding financial year and any other assessee
- TDS rate @ 10%
- Interest paid or credited to residents up to Rs 5,000/-
- Interest paid by banks/co-op bank/post office up to Rs 40,000/- (Rs 50,000/- in case of payee being resident senior citizen) w.e.f 01.04.2018 earlier limit was Rs. 10,000/-
- Liable to deduct at the time of credit or payment, whichever is earlier
- TDS shall be deducted at lower rates or NIL rate, if declaration filed in Form 15H (Senior Citizen) or 15G or application filed u/s 197A

194A – INTEREST OTHER THAN "INTEREST ON SECURITIES"

Inclusion	Exclusions
Interest on deposit with banks	Interest paid by firm to partners
Interest on deposit with post office	Interest on saving bank account
Fixed deposit schemes	Interest on income tax
Recurring deposit schemes	Interest paid by Co-operative society to its members or any other co- operative society
	Interest paid in respect of certain schemes of post office, Kisan Vikas Patra, India Vikas Patra, National Saving Certificate, Post office Monthly income A/c, recurring deposits

194B AND 194BB

194B	194BB
Winning from lottery or crossword puzzle or card game and other game of any sort	Winning from horse race
30%	30%
Every person responsible for paying any person	Book maker or a person to whom license has been issued by Government for horse racing or for wagering
TDS shall be deductible if the amount exceeds Rs 10,000/-	TDS shall be deductible if the amount exceeds Rs 10,000/-
Liable to deduct at the time of payment	Liable to deduct at the time of payment
If the winning is wholly in kind or partly in kind, Then the available cash shall be used to pay the taxes first	

194B AND 194BB contd….

- A TV channel pays Rs 8 lakhs as prize money to winner of quiz program "KBC"? Whether TV channel is liable to deduct TDS?

  Yes, covered under game of any sort

- In continuation to the above, if the winner is eligible for claiming deductions u/s 80C of Rs 150,000/- can he do so?

  No, any deductions/allowances can be claimed against such income

- Whether TDS is liable on bonus or commission paid to lottery agent?

  No

194C – PAYMENT TO CONTRACTORS

Applicability	Payment made for carrying out any WORK (incl supply of labor)
Payer	Any person (other than Individual/HUF liable to tax audit in Last PY)
Payee	Any Resident person
TDS rate	If contractor Individual/HUF -1% Other-2%
Miscellaneous	Contract includes sub-contract **No TDS if exclusively for personal purpose (Subject to Section 194M)**
Liable to deduct	At the time of credit or payment, whichever is earlier

194C – DEFINITION OF WORK Contd..

WORK includes-

- Advertisement, Broadcast, Telecast
- Catering
- Carriage of goods, Passenger other than Railway
- Manufacturing/ Supplying of any product as per specification of customer or its associates out of material purchased / supplied by such customer (Job work)

194C – TDS ON ADVERTISMENT

contd..

TDS @ 1%	TDS @ 2%
Payment made to advertising agency by client @ 1%	If payments made for production of programmes for the purpose of broadcasting and telecasting, TDS deductible @ 2% (Question no. 3 of CBDT Circular no. 5/2002 dated 30.07.2002.)
If advertising agency gives consolidated bill including charges for artwork and other related jobs to the media, TDS shall be deducted @ 1%	
Sponsorship of debates, seminars to earn publicity by way of banners by the organizers – TDS u/s 194C deductible	
Payment for advertisement issued in Souvenirs brought out by various organisations	

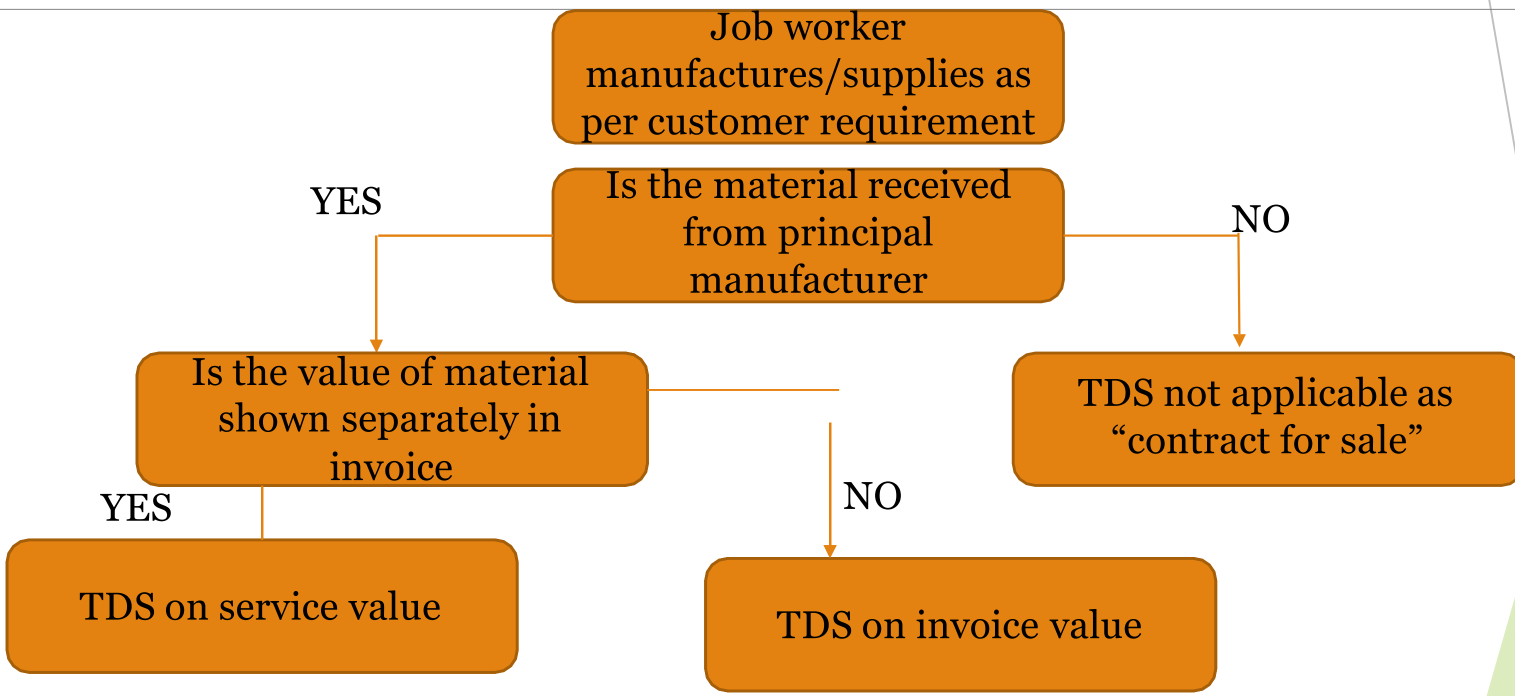
194C – TDS ON TRASNPORTER

contd..

Plying, hiring or leasing goods carriage → Owns ten or less goods carriage → Furnishes declaration along with PAN → 194C not applicable

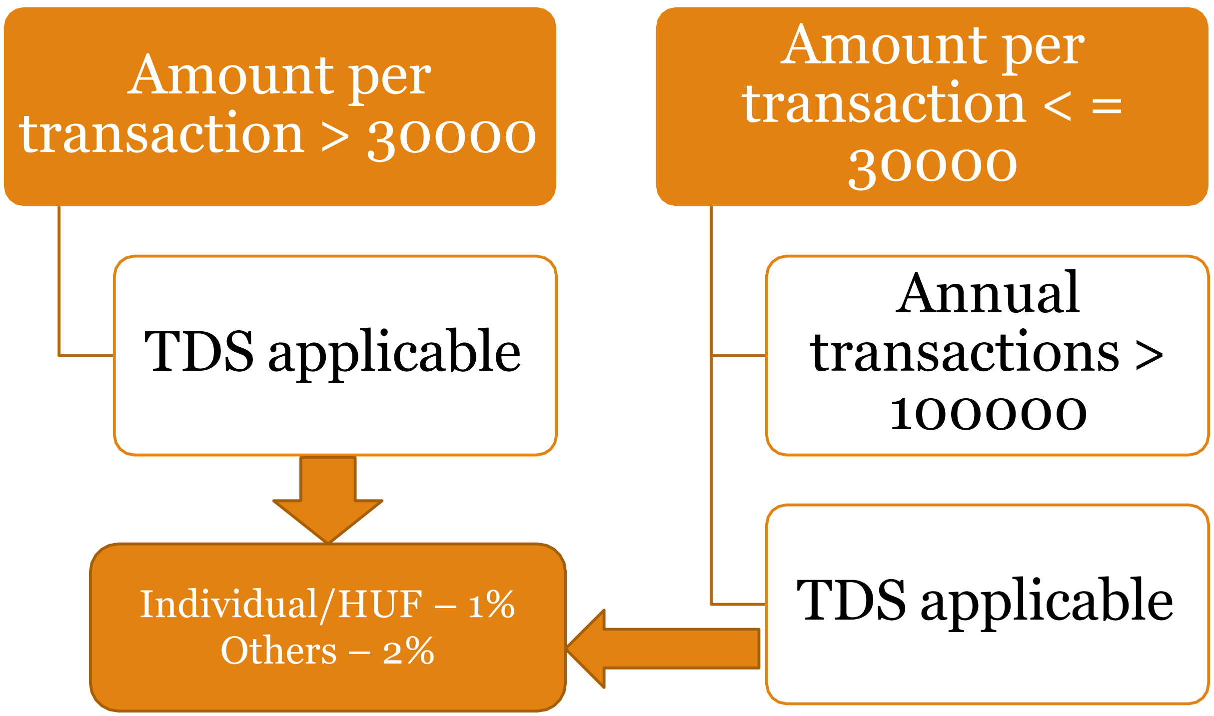
194C – TDS ON JOB WORK

contd..



194C – THRESHOLD LIMIT

contd..



194C – PAYMENT TO CONTRACTORS contd…

- Whether payment made to C&F agents for carriage of goods attract TDS u/s 194C?

  Yes

- Whether travel agent/ C&F agent is required to deduct TDS while making payments to airline or other carriage of goods or passengers ?

  Travel agent – No

  C&F agent – Yes (independent contractor)

- Whether TDS u/s 194C is applicable for payments made to courier for carrying documents, letters etc?

  Yes

194I – PAYMENT IN RESPECT OF RENT

Applicability	Person responsible for paying to any person any amount in form of Rent
Rate of TDS	• For Land, Building, Furniture and Fittings – 10% • For Plant, Machinery and Equipment's – 2%
Threshold Limit	If such income or aggregate of amounts of such income exceeds Rs. 240,000 during the FY w.e.f. 01.04.2019
Liable to deduct	At the time of the credit of the income to the account of the payee or at the time of making the payment to the payee, whichever is earlier
Non – Applicability	• Payment by Individual or HUF (if Turnover does not exceeds Rs. 1 Crore from Business and Rs. 50 Lakhs from Profession) • No deduction if payment made to Real Estate Investment Trust (in respect of real estate asset) Section 10(23FCA)

194I – PAYMENT IN RESPECT OF RENT contd…

Meaning of Rent

any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of either separately or together any:-

a)land; or

b)Building (including factory building); or

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

d)Machinery; or

e)Plant; or

f)Equipment; or

g)Furniture; or
h)Fittings whether or not any or all of the above are owned
by the payee Sub-letting is also covered.

194I – PAYMENT IN RESPECT OF RENT contd…

- Whether sharing or proceeds of film exhibition between a film distributor and a film exhibitor owning a cinema theatre attract TDS u/s 194I?

  No, as the distributor does not take cinema building on lease or sub-lease or tenancy or under any similar nature of agreement

- Whether TDS u/s 194I shall apply in case where payment for hotel is made by an individual representing company?

  No, as the company shall reimburse the same to employee

- Whether holding company is liable to deduct TDS u/s 194I in respect of premises shared with the subsidiary?

  No, as there is no lesser and lessee relation between holding and subsidiary company (ACIT v. Result Services (P.) Ltd. [2012] 23 taxmann.com 93 (Delhi))

- Whether upfront charges (non-refundable) attract TDS u/s 194I?
  Yes as it relates to lease

194IB – PAYMENT OF RENT BY CERTAIN INDIVIDUALS OR HUF

Applicable for Individual or HUF (other than covered u/s 194I)

TAN shall not be required

TDS @ 5% at time of credit or payment, whichever is earlier

To be deducted if the amount of rent exceeds Rs 50000 per month or part of the month

194 J – FEES FOR PROFESSIONAL OR TECHNICAL SERVICES

TDS @ 10%

- Fees for professional services
- Fees for technical services
- Royalty
- Director fees other than salary
- Any other sum referred in Section 28(va) – non competence fees

TDS @ 2%

- Business of operation of call centre
- Fees for technical services(not being professional service)
- Royalty being consideration for sale, distribution or exhibition of cinematography films

194J – MEANING contd….

Professional services	Technical services
Services rendered in course of • Legal • Medical • Engineering • Architectural profession • Profession of accountancy • Technical consultancy • Interior decoration • Advertising • Such other profession notified for this section or for 44AA (Authorized representatives, Film Artists, Certain sports related persons, Company Secretaries and Information technology)	As per Explanation 2 to Section 9(1)(vii) Consideration for rendering • Managerial services • Technical services • Consultancy services • provision for services of technical or other personnel Excludes • Consideration for construction, assembly, mining or like project of chargeable under salaries

194J – MISCELLANEOUS contd.....

Threshold limit	If the amount of every transaction for the following exceed Rs 30,000/- Professional service Technical service Royalty Non-competence fees
Liable to deduct	At the time of the credit of the income to the account of the payee or at the time of making the payment to the payee, whichever is earlier
Non-applicability	• Payment by Individual or HUF (if Turnover does not exceeds Rs. 1 Crore from Business and Rs. 50 Lakhs from Profession) w.e.f 01.04.2020. Any transaction in nature of personal purposes

194J – FEES FOR PROFESSIONAL OR TECHNICAL SERVICES contd…

- Whether provisions of S. 194J are applicable to payments made for rendering services in course of carrying on medical profession?

  Yes Payment is made to a recipient for rendering services in course of carrying on medical profession or other professions as stipulated in section 194J

- Whether provisions of S. 194J are applicable to service provided by MTNL/BSNL for services of interconnect/port/access/toll?

  NO, **C.I.T Vs M/S.Bharti Cellular Ltd. (Supreme Court of India)**

- Whether payment made to models, artist, photographers would be covered u/s 194J or 194C of the Act?

  194J

194C vs 194I vs 194J– FOOD FOR THOUGHT

- whether landing & parking charges paid by an airline to Airport Authority of India (AAI) subject to tax deduction?

  2 different school of thoughts – one says liable for TDS u/s 194I other says liable for TDS u/s 194C

- whether TDS needs to be deducted on reimbursement of expenses if mentioned on the bill?

  Yes

- Whether maintenance contract including supply of spares will be covered under 194C or 194J?

  If the maintenance is of routine nature then 194C, if it is of technical services that are rendered then 194J

194C vs 194I vs 194J contd…

- whether payment made to electrician will attract 194C or 194J?

  194C

- whether the limit of Rs 240,000/- would apply separately for each co-owner of a property?

  Yes

- Whether payments made to hotel for rooms hired during the year would be in nature of rent ?

  Yes u/s 194I

- Whether payment made to recruitment agency covered u/s 194C?

  No but u/s 194J

194C vs 194I vs 194J contd…

- whether payment to hotels for holding seminar including lunch attract TDS u/s 194I?

  If hotel do not charge for use of premises then 194I is not applicable, TDS shall be deductible u/s 194C

- Whether contract for putting up hoarding would be covered u/s 194I or 194C of the Act?

  Contract for putting hoarding is nature of contract and hence 194C is applicable , but however if the particular space is taken on rent and is sub let for hoarding then provisions of Sec 194I shall be applicable.

- Whether payment of commission to external agencies for procuring orders for company attract TDS u/s 194C or 194J?

  194J

194H – PAYMENT IN RESPECT OF COMMISSION OR BROKERAGE

Applicability	Person responsible for paying to any person any amount in form of Commission or Brokerage
Rate of TDS	5%
Threshold limit	If the aggregate income exceeds Rs 15,000/-
Liable to deduct	At the time of the credit of the income to the account of the payee or at the time of making the payment to the payee, whichever is earlier
Non – Applicability	• Payment by Individual or HUF (if turnover does not exceeds 1cr from Business and 50 lakhs from Profession) • Payment by BSNL or MTNL to their public office franchisees • Insurance commission

194H – PAYMENT IN RESPECT OF COMMISSION OR BROKERAGE contd…

- Meaning of commission or brokerage

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

  (a) for services rendered (not being professional services), or

  (b) for any services in the course of buying or selling of goods, or

  (c) in relation to any transaction relating to any asset, valuable article or thing, not being securities
- Whether payment of bank guarantee commission to bank is liable for TDS u/s 194H?
  No, there is no principal agent relationship
- Whether payment of commission by Mother Diaries to concessionaries is liable for TDS u/s 194H?

  No, there is no principal agent relationship

194H – PAYMENT IN RESPECT OF COMMISSION OR BROKERAGE contd…

- Whether TDS u/s 194H is liable on discounts offered by mobile companies to retailers of rechargeable coupons and starter packs?

  Yes, discounts are noting but commission

194M – PAYMENT OF CERTAIN SUMS BY CERTAIN INDIVIDUAL OR HUF

With effect from	September 1, 2019
Applicability	To individual or HUF other than those covered by Section 194C or 194H or 194J
When	Paying any sum to any resident for carrying out **any work (including supply of labour** for carrying out any work) in pursuance of a **contract, by way of commission** (not being insurance commission referred to in section 194D**) or brokerage or by way of fees for professional services** during the financial year,
TDS rate	5%
Threshold limit	If such amount does not exceed Rs 50,00,000/- during the FY
Liable to deduct	at time of credit or payment, whichever is earlier

194D – INSURANCE COMMISSION

Applicability	Any person responsible for paying to a resident any income by way of remuneration or reward, by commission or otherwise, for soliciting or procuring Insurance business for continuance or renewal or revival of policies of insurance
Rate of TDS	5% (resident other than companies) 10% (Domestic companies)
Liable to deduct	At the time of the credit of the income to the account of the payee or at the time of making the payment to the payee, whichever is earlier
Threshold limit	Tax to be deducted if such income or aggregate of amounts of such income exceeds Rs. 15,000 during the FY
Non-applicability	Reinsurance (no contractual relationship between direct insured and reinsurer) Profit commission by Reinsurance company

194DA – PAYMENT IN RESPECT OF LIFE INSURANCE POLICY

Applicability	Sum received under a life insurance policy which is not exempt under Sec 10(10D)
Rate of TDS	5%
Threshold limit	If the payment or aggregate payments in a FY to an assessee is Rs. 1,00,000 or more
Liable to deduct	At the time of payment

Exceptions to Section 10(10D)

- Any sum received under Keyman insurance policy
- Any sum received under an insurance policy in respect of which the premium payable for any of the years during the term of the policy exceeds 10% of the actual capital sum assured
- The limit shall be 15% in case of policy taken for person with disability or disease or ailment (Sec 80U or 80DDB)

194DA – PAYMENT IN RESPECT OF LIFE INSURANCE POLICY contd…

- Mr. Shashank Aggarwal took insurance policy on July 26, 2015 for Rs 220,000/-. He paid premium of RS 55,000/- every year. On July 25, 2020 he received Rs 250,000/- (including bonus) as the maturity proceeds. State whether TDS u/s 194DA applicable or not

Premium paid Rs 55,000/- is more than 10% of the sum assured

Proceeds are taxable

Proceeds received > 100,000/-

TDS deductible @ 5% on Rs 30,000/-

194EE – PAYMENT IN RESPECT OF DEPOSITS UNDER NATIONAL SAVING SCHEME ETC

Applicability	Person responsible for paying to any person any amount from National Savings Scheme Account
Rate of TDS	10%
Threshold limit	If the aggregate amount of payment exceeds Rs 2500
Non-applicability	Payments made to the heirs of the assessee shall not attract TDS under this Section.
Liable to deduct	At the time of payment

194IA – PAYMENT OR TRANSFER OF CERTAIN IMMOVABLE PROPERTY OTHER THAN AGRICULTURAL LAND

Applicable in case of transfer of immovable property

→ Compulsory acquisition of property not covered

→ Consideration shall exceed Rs 50 lakhs

→ Consideration shall also include payments incidental to transfer of immovable property

→ TDS shall be deductible @ 1% at time of credit or payment, whichever is earlier

→ Deductor shall not obtain TAN

194LA – PAYMENT OF COMPENSATION ON ACQUISITION OF CERTAIN IMMOVABLE PROPERTY

- Person responsible for paying to resident
- Compensation or enhanced compensation
- Consideration or enhanced consideration
- On account of compulsory acquisition
- TDS @ 10%
- If the amount exceeds Rs 250000
- Deductible at time of payment
- By whatever mode

194N – PAYMENT OF CERTAIN AMOUNTS IN CASH

With effect from	September 1, 2019
Applicability	Payment made by - a banking company a co-operative society engaged in carrying on the business of banking a post office,
	Paying any sum, being the amount or the aggregate of amounts, as the case may be, in cash exceeding Rs. 1 Crore during the previous year, to any person (herein referred to as the recipient) **from one or more accounts maintained by the recipient**
Payee	An individual HUF A company A partnership firm or LLP A local authority AOP or BOIs
Liable to deduct	At the time of payment

194N – PAYMENT OF CERTAIN AMOUNTS IN CASH

Not applicable	Payment made to ➢ the Government; ➢ any banking company or co-operative society engaged in carrying on the business of banking or a post office ➢ Any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking ➢ Any white label ATM operator of a banking company or co-operative society engaged in carrying on the business of banking ➢ Such other person or class of persons notified by the central government in consultation with the RBI

194N – PAYMENT OF CERTAIN AMOUNTS IN CASH CONTD...

Criteria
- File 3 years ITR
- Due date u/s 139(1)

If complied
- Threshold limit is Rs 1 crore
- TDS @ 2% on payment exceeding Rs 1 crore

Not complied
- Threshold limit is Rs 20 lakhs
- TDS @ 2% for payment > 20 lakhs and < 1 crore
- TDS @ 5% for payment > 1 crore

Deductible at the time of payment

194N – PAYMENT OF CERTAIN AMOUNTS IN CASH CONTD…

- Whether withdrawal from different branches of same bank should be aggregated for determining limit of Rs 1 crore or Rs 20 lakhs as the case may be ?

  Yes

- Whether cash withdrawal from 2 different banks should be aggregated for determining the limit?

  No

- Mr. Khemaka has withdrawn in cash the following amounts during the FY 2019-20 Rs. 98L on 2nd September, 2019 & Rs. 5L on 10th Oct, 2019 Will TDS u/s 194N be deducted in this case? If Yes, on what amount?

  Total withdrawal 1.03 cr
  Limit as per Section 194N 1 cr

  TDS to be deducted on 3 lakhs @ 2%

194O- PAYMENT OF CERTAIN SUMS BY E-COMMERCE OPERATOR TO E-COMMERCE PARTICIPANT

‘e-commerce operator

- One who owns, operates, manages
- A digital/electronic facility
- For the sale of goods or services

‘e-commerce participant

- **Resident of India**
- One who sells goods or services or both
- Through digital/electronic facility provided by e-commerce opeartor

194O- SCOPE

contd…

With effect from	October 1, 2020
TDS rate	1% of the gross amount of sales or services or both
Threshold Limit	If the e-commerce participant is Individual or HUF **<u>and</u>** If the gross amount of sales or services or both does not exceed Rs 500,000/- **<u>and</u>** Has furnished PAN or Aadhar number No TDS required to be deducted
Liable to deduct	At the time of credit or payment, whichever is earlier
Applicability of other sections	If TDS deducted under this section, other sections are not applicable

If purchaser of goods or services or both, makes direct payment to the e-commerce participant – in such case e-commerce operator shall deduct TDS on the same u/s 194-O

194O - ILLUSTRATION contd…

A proprietary firm XYZ is selling its products through Flipkart. Mr. A buys this product online from XYZ for Rs 550,000 on 1 October 2020

A. Who is e-commerce operator ?

-- Flipkart

B. Who is e-commerce participant?

– XYZ, proprietary firm

C.Mr. A makes payment directly to XYZ on October 15, 2020 but Flipkart credits to XYZ on October 1, 2020-

-- Flipkart shall deduct TDS @ 1% on Rs 550,000/-

194O - ILLUSTRATION contd…

- **Whether the TDS is to be deducted for Non-Resident Selling good through Ecommerce Portal u/s 194O?**

No TDS is required to be deducted when Participant is Non Resident.

If E-commerce operator is Non-resident, **Equalisation Levy** will be applicable

194O - Consequential amendment in Section 204

- The obligation of déduction of TDS by Non-résident on payment to resident has been a subject matter of judicial scrutiny in the past.
- W.e.f. 01.04.2020, this issue has again become a matter of debate due to the **insertion of clause (v) in section 204 of the Act by Finance Act, 2020 to include non-resident person under the category of 'Person responsible for paying any sum'.**
- Consequently, now non- resident may be required to deduct TDS on payment made to resident in respect of payment of any sum.
- Even though the Memorandum explaining the Finance Bill 2020 states that this amendment to Section 204 is consequential to introduction of Section 194-O.
- With this amendment, there is a possibility of litigation in the future on the issue of applicability of TDS provision on non- resident on making payment to resident in India.

206C – TAX COLLECTION AT SOURCE

Seller of certain goods are required to collect tax from the buyers at specified rate

Section	Particulars	Rate
206C(1)	Alcoholic liquor for human consumption	1%
	Tendu leaves	5%
	Timber obtained under forest leave	2.5%
	Timber obtained by any other mode	2.5%
	Scrap	1%
	Minerals, being coal or lignite or iron ore	1%
206C(1C)	Nature of contract or license or lease in form of parking lot, toll plaza, mining and quarrying	2%
206C(1F)	Sale of a motor vehicle of value exceeding RS 10 lakhs	1%

194Q and 206C(1H)

Basis of distinction	***TDS on purchase of goods [Section 194Q]***	***TCS on Sale of goods [Section 206C(1H)]***
With effect from	July 1, 2021	October 1, 2020
Who is liable for deduction/collection	Buyer	Seller
Turnover limit	The total sales, gross receipts or turnover of the buyer from the business should exceed Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased	The total sales, gross receipts or turnover of the collector from the business should exceed Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are sold
Threshold limit of purchase/sale	If the value of purchase exceeds Rs. 50 lakhs	If the value of purchase exceeds Rs. 50 lakhs

194Q and 206C(1H) contd.

Basis of distinction	*TDS on purchase of goods [Section 194Q]*	*TCS on Sale of goods [Section 206C(1H)]*
TDS Rate	0.1%	0.1%
Amount on which tax to be deducted/collected	On the amount of purchase in excess of Rs. 50 lakhs	On the amount of sale consideration in excess of Rs. 50 lakhs
Time of deduction/collection	At the time of credit or payment, whichever is *earlier*	At the time of receipt
Preference to be given	Purchaser is first liable to deduct the tax if the transaction could be subject to both provision	Seller shall be liable to collect the tax only if the purchaser is not liable to deduct the tax or purchaser failed to deduct tax

194Q and 206C(1H) contd.

Basis of distinction	***TDS on purchase of goods [Section 194Q]***	***TCS on Sale of goods [Section 206C(1H)]***
Non furnishing of PAN	206AA Higher rate @ 20% or rate as specified or in force	206CC Higher rate @ 5% or twice the rate specified
Default in filing ITR for previous 2 years and aggregate of TDS/TCS is > 50000 in both the years	206AB Twice the rate specified or in force or 5%	206CCA Twice the rate specified or 5%
Both PAN is not available and ITR not filed for 2 years	Higher of rate of Section 206AA and Section 206AB	Higher of rate of Section 206CC and Section 206CCA

194Q and 206C(1H) FOOD FOR THOUGHT contd.

- **Definition of Goods** – "Goods" are not defined under Income Tax Act and hence reference need to be drawn to either Sales of Goods Act, 1930 and Central Goods and Service Tax Act, 2017.

- **Whether transaction in securities shall be subject to 194Q and 206C(1H)?**

  Vide circular No 17 of 2020, it was clarified that 206C(1H) shall not be applicable to transaction in securities (and commodities) traded through recognised stock exchange.

  Applying the same analogy, CBDT may allow similar exemption from TDS u/s 194Q

194Q and 206C(1H)
FOOD FOR THOUGHT

contd.

- **Whether TDS is required to be deducted on the transaction in electricity?**

The CBDT has clarified that the transaction in electricity, renewable energy certificates and energy-saving certificates traded through power exchanges registered under Regulation 21 of the CERC shall be out of the scope of TCS under the provision of Section 206C(1H).

Applying the same analogy, CBDT may allow similar exemption from TDS u/s 194Q

- **Whether TDS should be deducted on the purchase of software?**

As per the provisions of Income tax Act, if purchase of software is treated as purchase of services then TDS shall be deducted u/s 194J or u/s 195 of the Act depending on residential status.

However, if the purchase of software is treated as Purchase of goods then provisions of Section 194Q shall apply.

No TDS on software if it is acquired in a subsequent transfer without modification and TDS has already been deducted under Section 194J/195 (**Notification 21/2012)**

194Q and 206C(1H)
FOOD FOR THOUGHT
contd.

- **From which date the threshold limit of Rs. 50 lakhs will be computed?**

CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of sale consideration for triggering TCS under this provision shall be computed from 01-04-2020. Hence, if a seller has already received Rs. 50 lakhs or more up to 30-09-2020 from a buyer, TCS under this provision shall apply on all receipts of sale consideration on or after 01-10-2020

Applying the same principle it should be concluded that threshold of Rs. 50 lakhs shall be computed from 01-04-2021. Thus, if a buyer has already purchased goods of value Rs. 50 lakhs or more up to 30-06-2021 from a seller, TDS under this provision shall apply on all purchases on or after 01-07-2021.

194Q and 206C(1H)

FOOD FOR THOUGHT contd.

- **Whether TDS is to be deducted on the total invoice value including the GST?**

  In respect of Section 206C(1H), **the CBDT vide Circular No. 17, dated 29-09-2020**, has clarified that since the collection is made with reference to receipt of the amount of sale consideration, no adjustment on account of indirect taxes including GST is required to be made for the collection of tax under this provision.

  Since deduction under Section 194Q is to be made with reference to the purchase value, applying the same principle it can be concluded that GST shall form part of the purchase value, therefore, the TDS is deductible on the purchase value inclusive of GST

- **If the seller has multiple units, whether purchase made from different units need to be aggregated?**

  If different units of the seller are under same PAN or Aadhar number, the amount paid or payable to all such units shall be aggregated to compute limit of Rs 50 lakhs

194Q and 206C(1H)

FOOD FOR THOUGHT

contd

- **Whether tax need to be deducted on the purchase of goods by one branch to another?**
  - No
- **Whether any changes need to be done to the ERP systems followed by Corporate or any other assessee?**

  Yes, to mitigate the complexities

194Q and 206C(1H) SUMMARY contd..

Scenario	Turnover of buyer	Turnover of seller	Purchase price	TDS u/s 194Q	TCS u/s 206C(1H)
I	> 10cr	> 10cr	> 50 lakhs	0.1%	NA
II	> 10cr	> 10cr	< 50 lakhs	NA	NA
III	> 10cr	< 10cr	> 50 lakhs	0.1%	NA
IV	< 10cr	> 10cr	> 50 lakhs	NA	0.1%
V	< 10cr	< 10cr	> 50 lakhs	NA	NA
VI	<10 cr	> 10cr	< 50 lakhs	NA	NA

If conditions as specified in Sec 206AB has not been complied then TDS shall be deducted @ higher rate of 5%

206AA VS 206AB

Particulars	206AA	206AB
Applicability	When PAN is not furnished	Where payment made to specified person ❑ who has not filed ITR for last 2 FY ❑ Time to file ITR is expired ❑ Total TDS and TCS is Rs 50,000 in each FY
TDS Rate Applicable	Higher of ❑ Rates specified in relevant provision ❑ Rate or rates applicable ❑ 20%	Higher of ❑ Twice the rate of Provision ❑ Twice the rate of Rates Applicable ❑ 5%
Sections excluded		192, 192A, 194B, 194BB, 194LBC, 194N
Effective from		July 01, 2021

206CC VS 206CCA

Particulars	206CC	206CCA
Applicability	When PAN is not furnished	Where payment made to specified person ❑ who has not filed ITR for last 2 FY ❑ Time to file ITR is expired ❑ Total TDS and TCS is Rs 50,000 in each FY
TCS Rate Applicable	Higher of ❑ Twice of the Rates specified in relevant provision ❑ 5%	Higher of ❑ Twice of the Rates specified in relevant provision ❑ 5%
Effective from		July 01, 2021

In case both 206AA and 206AB or 206CC and 206CCA are applicable then, Higher TDS rate shall be applicable

REFLECTIONS

Changes in accounting software

- To meet the latest provisions of the Act
- To track if TDS has been deducted by purchaser or not as the onus is on the purchaser
- Data of purchaser and seller need to be updated with respect to filing of Income tac return for last 2 years, PAN , Aadhar

DISCLAIMER

The views and opinions expressed in the following presentations are those of the individual presenter.

Do in-depth analysis of the relevant provisions before arriving at any particular conclusion/s

THANK YOU

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