# TAX DEDUCTION AT SOURCE

## CHAPTER – XVII

## Applicability of SC, EC & SHEC for the purposes of Effective rate of TDS

**SC** is applicable for TDS purposes only when the recipient is a ***foreign company*** and payment/credit subject to TDS exceeds Rs. 1 Crore. In no other case, SC is applicable at the time of deduction of tax at source.

**EC & SHEC** are applicable for TDS purposes in the case of tax deduction from payment of ***salary*** to a R/NR. EC & SHEC are also applicable in the case of payment or credit of ***any other sum*** to a NR or a foreign company. In no other case, EC & SHEC are applicable for TDS purposes.

| Payments/Credits | Category of Person | R/S | SC | EC | SHEC |
|---|---|---|---|---|---|
| Salary | Individual | R/NR | Nil | 2% | 1% |
| Others | Individual | R | Nil | Nil | Nil |
| | | NR | Nil | 2% | 1% |
| | Foreign Co. : Payment ≤ 1 Crore | R/NR | Nil | 2% | 1% |
| | : Payment > 1 Crore | R/NR | 2.5% | 2% | 1% |
| | Others (including domestic company) | R | Nil | Nil | Nil |
| | | NR | Nil | 2% | 1% |

### (a) Deduction of tax at source from salaries [Section 192]

- ***Any person*** responsible for paying any income chargeable under the head 'Salaries' is required to deduct income-tax. Therefore, the liability to deduct tax at source in case of salary is on all person, whether individual, HUF, firm or a company irrespective of the fact whether the person is carrying on business or not.

- Tax is to be deducted ***at the time of payment*** of salary. There is no question of tax deduction in cases where the employee's account is credited with salary due to him, which for some reason or other was not paid during the P.Y.

- Income-tax is to be deducted on ***estimated income*** of the employee under the head "Salaries" for relevant P.Y.

- No tax is required to be deducted at source unless the ***estimated income*** of the employee under the head "Salaries" exceeds the maximum amount not chargeable to tax.

- The total tax to be deducted, on the estimated income of the employee for the relevant financial year, is divided by the number of months of his employment during that financial year. The amount so arrived at is the monthly deduction of tax at source.

**Illustration :** The estimated taxable salary of the employee for the financial year 2009-10 is Rs. 3,50,000. Determine the amount of tax to be deducted at source every month by the employer.

**Solution :**

| | Rs. |
|---|---|
| Tax on Rs. 3,50,000 | 24,000 |
| Add : Education cess @ 2% | 480 |
| | 24,480 |
| Add : Secondary and higher education cess @ 1% | 240 |
| Estimated tax liability | 24,720 |
| Tax to be deducted every month (Tax liability/12) | 2,060 |

- Where during the financial year, as assessee :

  (a) is employed simultaneously under more than one employer, or

  (b) has changed the employment from one employer to another

he may furnish to the ***employer of his choice*** or the subsequent employer, as the case may be, such details of salaries due or received by him from other employer, the tax deducted at source therefrom etc. In this case, the employer, so chosen, shall take into account these details while making deduction of tax at source on the ***aggregate salary***.

**Illustration :** During the P.Y. 2009-10, X is employed simultaneously by A Ltd. (Salary : Rs. 20,000 per month) and B Ltd. (Salary : Rs. 32,000 per month) on part-time basis. Determine the tax to be deducted at source every month by each company.

**Solution :** X may select any of the two companies for deducting tax at source on ***aggregate salary***. Suppose X selects B Ltd., then tax will be deducted by both companies as follows :

| | **A Ltd. Rs.** |
|---|---|
| Estimated taxable salary (Rs. 20,000 x 12) | 2,40,000 |
| Tax on above | 8,000 |
| Add : Education cess @ 2% | 160 |
| | 8,160 |
| Add : Secondary and higher education cess @ 1% | 80 |
| Estimated tax liability | 8,240 |
| Tax to be deducted every month (Tax liability/12) | 686.67 |

The above information pertaining to A Ltd. will be submitted by X to B Ltd. in Form No. 12B. B Ltd. will deduct tax on the ***aggregate salary*** as follows :

| | **B Ltd. Rs.** |
|---|---|
| Estimated taxable salary (Rs. 20,000 x 12 + 32,000 x 12) | 6,24,000 |
| Tax on above | 91,200 |
| Add : Education cess @ 2% | 1,824 |
| | 93,024 |
| Add : Secondary and higher education cess @ 1% | 912 |
| Estimated tax liability (rounded off) | 93,936 |
| Less : Tax to be deducted by A Ltd. | 8,240 |
| Tax to be deducted by B Ltd. | 85,696 |
| Tax to be deducted every month (Tax liability/12) | 7141.33 |

**Illustration :** Y is employed by C Ltd. upto June 30, 2009 (salary being Rs. 50,000 per month). On July 1, 2009, he joins D Ltd. (salary being Rs. 55,000 per month). Determine the tax deducted by C Ltd. and to be deducted by D Ltd. at source every month.

**Solution :**

| | **C Ltd. Rs.** |
|---|---|
| Estimated taxable salary (Rs. 50,000 x 12) | 6,00,000 |
| Tax on above | 84,000 |
| Add : Education cess @ 2% | 1,680 |
| | 85,680 |
| Add : Secondary and higher education cess @ 1% | 840 |
| Estimated tax liability | 86,520 |
| Tax to be deducted every month (Tax liability/12) | 7,210 |
| Actual tax deducted from 1-4-2009 to 30-6-2009 (Rs. 7,210 x 3) | 21,630 |

The above information pertaining to C Ltd. will be submitted by Y to D Ltd. in Form No. 12B. D Ltd. will deduct tax on the ***aggregate salary*** as follows :

| | **D Ltd. Rs.** |
|---|---|
| Estimated taxable salary (Rs. 50,000 x 3 + 55,000 x 9) | 6,45,000 |
| Tax on above | 97,500 |
| Add : Education cess @ 2% | 1,950 |
| | 99,450 |
| Add : Secondary and higher education cess @ 1% | 975 |
| Estimated tax liability (rounded off) | 1,00,425 |
| Less : Tax deducted by C Ltd. | 21,630 |
| Tax to be deducted by D Ltd. | 78,795 |
| Tax to be deducted every month (Tax liability/9) | 8,755 |

- Employer shall have an option to pay tax on behalf of an employee, without making any deduction from his income, on the income in nature of perquisites, which are ***not provided by way of monetary payment***. For the purpose of paying tax, tax shall be determined at the average of income-tax computed on the basis of the rates in force for the financial year, on the income chargeable under the head "salaries" including the value of non-monetary perquisites **[Section 192(1A)]**.

  **Illustration :** During the P.Y. 2009-10, the income chargeable under the head "Salaries" of an employee of A Ltd. is Rs. 5,76,000 which includes taxable value of perquisite of Rs. 96,000 in respect of rent-free unfurnished house. Determine the amount of tax to be deposited by A Ltd.

| | Rs. |
|---|---|
| Income from salaries (inclusive of perquisite in respect of rent-free unfurnished house) | 5,76,000 |
| Tax on Rs. 5,76,000 (including EC and SHEC) | 79,104 |
| Average rate of tax (79,104/5,76,000 x 100) | 13.73% |
| Tax payable on Rs. 96,000 (13.73% of Rs. 96,000) | 13,181 |
| Amount required to be deposited each month (Rs. 13,354/12) | 1,098.33 |

  While calculating business income of A Ltd., Rs. 13,181 is not deductible as business expenditure. In the hands of employee Rs. 13,181 is not taxable as salaries.

## (b) Deduction of tax at source from interest on securities [Section 193]

- Any person responsible for paying any interest on securities to a ***resident*** is required to deduct income-tax @ 10%.

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

- No tax is to be deducted at source in respect of the following :

  (a) ***any security*** of the Central Government or State Government;

  **Note :**

  Person responsible for paying to a resident any interest on **8% Savings (Taxable) Bonds, 2003** shall deduct the income-tax if interest payable on such bonds exceeds Rs. 10,000 during a financial year.

  (b) any interest payable on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India..

## (c) Deduction of tax at source from interest other than interest on securities [Section 194A]

- Any person (other than an individual and a HUF) responsible for paying any interest other than interest on securities to a ***resident*** is required to deduct income-tax @ 10%.

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

- An individual or a HUF, whose total sales/turnover/gross receipts from the business or profession carried on by him exceed the monetary limit specified under Section 44AB (i.e. Rs. 40 lakh in the case of business and Rs. 10 lakh in the case of a profession) during the financial year immediately preceding the financial year in which the interest other than interest on securities is to be credited or paid, shall be liable to deduct income-tax

- Tax is not deductible in the following cases :

    1. where the aggregate amount of interest credited or paid or likely to be credited or paid during the financial year to the account of the payee during the financial year does not exceed Rs. 5,000.

       ***Note* : With effect from June 1, 2007, the aforesaid limit of Rs. 5,000 has been increased to Rs. 10,000 where the payer is :**

       ***a) a banking company and interest is paid or payable on time deposit; or***

       ***b) a co-operative society engaged in carrying on the business of banking and interest is paid or payable on time deposit; or***

       ***c) a post office in respect of any scheme framed by the Central Government and notified by it in this behalf. Presently "Senior Citizen Savings Scheme, 2004 has been notified.***

       ***In other cases, the threshold limit shall be retained at Rs. 5,000.***

    2. where interest is paid or credited 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, or

       d) the Unit Trust of India, or

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

    3. where interest is credited or paid by the firm to its partners(s);

    4. where interest is credited or paid by a co-operative society to its member(s) or to any other co-operative society;

    5. where interest is credited or paid in respect of Post Office (Time Deposits), Post Office (Recurring Deposits), Post Office Monthly Income Account, Kisan Vikas Patra, NSC VIII Issue and Indra Vikas Patra;

    6. where interest is credited or paid by the Central Government under any provision of Income-tax Act, 1961 or Acts relating to other direct taxes (e.g. Wealth-tax Act, 1957);

    7. where interest is credited or paid by an Infrastructure capital company or infrastructure capital fund or a public sector company or a scheduled bank in relation to a zero coupon bond.

## (d) Deduction of tax at source from winnings from any lottery or crossword puzzle or card game and other game of any sort [Section 194B]

- The person responsible for paying to ***any person*** any income by way of winnings** from ***any*** [1] lottery or crossword puzzle or ***card game and other game of any sort*** [2] in an amount exceeding Rs. 5,000 shall, ***at the time of payment*** [3] thereof, deduct income-tax thereon at the ***rates in force*** [4].

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[1] No tax is to be deducted where the amount of winning from ***each*** lottery, crossword puzzle, card game and other game of any sort does not exceed Rs. 5,000.

[2] **"Card game and other game of any sort"** includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game.

[3] Where amount of winning is paid in instalments, the deduction of tax is to be made at the time of actual payment of each such instalment.

[4] Rate of tax deduction at source is 30%.

**Income accruing to an agent/trader in respect of prizes on unsold/unclaimed lottery tickets in possession of the agent/trader is income from business and ***does not constitute winning*** from lotteries and as such the provisions of Section 194B for deduction of income-tax at source are not applicable in respect thereof **[Director of State Lotteries v CIT (Gauhati)]**.

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- 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.

  **Example** :

  X, a resident individual, wins a motor car in a lucky draw held by Y Limited. The market price of the car is Rs. 3,00,000. In this case before giving car to X, Y Limited will recover Rs. 90,000 from X [30% of Rs. 3,00,000 + EC = Nil + SHEC = Nil]. If Y Limited cannot recover the tax as per terms of the draw, then Y Limited shall have to pay TDS itself calculated as under :

  $$\text{Gross Winning} = \text{Net Winning} \times \frac{100}{100 - \textit{Rate of TDS}} = \text{Rs. } 3{,}00{,}000 \times \frac{100}{100-30} = \text{Rs. } 4{,}28{,}571/-$$

  $$\text{Therefore, the tax to be deducted shall be} = 4{,}28{,}571 \times \frac{30}{100} = 1{,}28{,}571/-$$

  Y Limited shall deposit Rs. 1,28,571/- as tax and the gross income of X shall be Rs. 4,28,571/-.

- The tax is to be levied on the entire gross winnings. However if a certain percentage has to be foregone either in favour of Government or as bonus or commission to lottery agent or agency conducting lotteries, then such amount will not be taxed in the hands of the recipient and consequently tax will be deducted after deducting such bonus/commission.

## (e) Deduction of tax at source from winnings from horse races [Section 194BB]

Any 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. 2,500 shall, at the time of payment thereof, deduct income-tax @ 30%.

## (f) Deduction of tax at source from payments to contractors or sub-contractors [Section 194C] [Effective upto 30-09-2009]

⏩ **Section 194C(1) :** Any person responsible for paying any sum to any ***resident*** contractor for carrying out any ***"work"*** (including supply of labour for carrying out any work) in pursuance of a contract between a ***"specified person"*** and the resident contractor, shall deduct income-tax at the time of credit of such sum to the account of the contractor or at the time of payment, whichever is earlier.

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The expression ***"work"*** shall also include :

(a) advertising;

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

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

(d) catering.

Following are the ***"specified person"*** for the above purpose :

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

(b) any local authority; or

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

(d) any company; or

(e) any co-operative society; or

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

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

(h) any trust; or

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

(j) any firm; or

(k) any individual/HUF/AOP/BOI, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under Section 44AB (i.e. Rs. 40 lakh in the case of business and Rs. 10 lakh in the case of a profession) during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor.

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

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⏩ **Section 194C(2) :** Any person being a resident contractor (and not being an individual or a Hindu undivided family) responsible for paying any sum to any ***resident sub-contractor*** in pursuance of a contract with the sub-contractor for carrying out (or for the supply of labour for carrying out) the whole (or any part) of the work undertaken by the contractor or for supplying whether wholly or partly any labour which the contractor has undertaken to supply, shall deduct income-tax at the time of credit of such sum to the account of the sub-contractor or at the time of payment, whichever is earlier.

**Note :** An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under Section 44AB (i.e. Rs. 40 lakh in the case of business and Rs. 10 lakh in the case of a profession) during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the sub-contractor, shall be liable to deduct income-tax.

- **Rate of tax deduction at source :**

| Work | Rate of tax-deduction | |
|---|---|---|
| | **Section 194C(1)** | **Section 194C(2)** |
| Advertising work | 1% | 1% |
| Other work | 2% | 1% |

- **Section 194C(3) :** No deduction shall be made under Section 194C(1) and 194C(2) from the amount of any sum credited or paid to the contractor or sub-contractor, if such sum does not exceed twenty thousand rupees. However, if the ***aggregate*** of the amounts of such sums credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sum shall be liable to deduct income-tax. In other words, the tax will required to be deducted at source where the amount credited or paid to a contractor or sub-contractor exceeds Rs. 20,000 at one time or Rs. 50,000 in the aggregate during a financial year inspite of the fact that separate contracts are entered into with that person.

## Payments to contractors
## [Section 194C]
## [Effective from 01-10-2009]

- **Section 194C(1) :** Any person responsible for paying any sum to any ***resident*** contractor for carrying out any ***"work"*** (including supply of labour for carrying out any work) in pursuance of a ***"contract"*** between a ***"specified person"*** and the resident contractor, shall deduct income-tax at the time of credit of such sum to the account of the contractor or at the time of payment, whichever is earlier.

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The expression ***"work"*** shall include :

(a) advertising;

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

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

(d) catering.

*(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from* ***such*** *customer.*

***Note : [Section 194C(3)] :*** *Where any sum is paid or credited for carrying out any work mentioned in (e) above, tax shall be deducted at source :*

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

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

***The expression "contract"' shall include "sub-contract".***

Following are the ***"specified person"*** for the above purpose :

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

(b) any local authority; or

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

(d) any company; or

(e) any co-operative society; or

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

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

(h) any trust; or

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

(j) any firm; or

(k) any individual/HUF/AOP/BOI, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under Section 44AB (i.e. Rs. 40 lakh in the case of business and Rs. 10 lakh in the case of a profession) during the financial year immediately preceding the financial year in which such sum is credited or paid.

Note : No individual or a HUF shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of HUF **[Section 194C(4)]**.

**------------------------------------------------------------------------------------------------------------**

- **Rate of tax deduction at source :**

| Work | Rate of tax-deduction** | |
|---|---|---|
| | Where recipient is Individual/HUF | Where recipient is any other person |
| Advertising work | 1% | 2% |
| Other work | 1% | 2% |

*****if the recipient does not furnish PAN, TDS rate will be @ 20% from April 1, 2010 [Section 206AA].***

- **Tax is deductible on the entire consideration including Service Tax, if any.**

- **Section 194C(5) :** No deduction shall be made under Section 194C from the amount of any sum credited or paid to the contractor or sub-contractor, if such sum does not exceed twenty thousand rupees. However, if the ***aggregate*** of the amounts of such sums credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sum shall be liable to deduct income-tax. In other words, the tax will required to be deducted at source where the amount credited or paid to a contractor or sub-contractor exceeds Rs. 20,000 at one time or Rs. 50,000 in the aggregate during a financial year inspite of the fact that separate contracts are entered into with that person.

- ***Section 194C(6)*** *: No deduction shall be made from any sum credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his Permanent Account Number, to the person paying or crediting such sum.*

- ***Section 194C(7)*** *: The person responsible for paying or crediting any sum to the person referred to in Section 194C(6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.*

**Illustrations :**

1. X Limited engages A (an individual) for repairing office furniture (consideration being Rs. 70,000), out of which an advance payment of Rs. 30,000 is given on September 1, 2009 and Rs. 40,000 is paid at the time of completion of work on October 1, 2009. In this case, tax will be deducted at the rate of 2% out of Rs. 30,000 and at the rate of 1% out of Rs. 40,000.

2. X Limited engages B & Co. (a partnership firm) for transportation of its manufactured goods from Cochin to Mumbai. The following four contracts are given during financial year 2009-10 :

| Different contracts | Consideration in INR | Date of payment or credit, whichever is earlier |
|---|---|---|
| Contract 1 | 18,000 | September 3, 2009 |
| Contract 2 | 19,000 | September 17, 2009 |
| Contract 3 | 6,000 | October 20, 2009 |
| Contract 4 | 7,500 | January 3, 2010 |

In this case, the aggregate consideration of four contracts exceeds Rs. 50,000. Therefore, tax is deductible. TDS rate will be 2% in the case of Contract 1 and Contract 2. If B & Co. (the transport firm) furnishes its PAN to X Limited, tax will not be deducted in the case of Contract 3 and Contract 4 (if PAN is not furnished, the TDS rate will be 2%).

## (g) Deduction of tax at source from 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, whichever is earlier, deduct income-tax @ 10%

- No deduction of tax shall be made in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year, does not exceed Rs. 5,000.

## (h) Deduction of tax at source from commission, etc., on the sale of lottery tickets [Section 194G]

Any person who is responsible for paying to ***any person***, who is or has been stocking, distributing, purchasing or selling lottery tickets, any income by way of commission, remuneration or prize (by whatever name called) on such tickets in an amount exceeding Rs. 1,000 shall, at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier, deduct income-tax thereon at the rate of 10% (*plus* SC, as applicable *plus* EC @ 2% *plus* SHEC @ 1%).

## (i) Deduction of tax at source from *commission or brokerage* [Section 194H]

- Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a ***resident***, any income by way of commission (not being Insurance commission referred to in Section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier, deduct income-tax @ 10%.

  **Note 1 :** An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under

Section 44AB (i.e. Rs. 40 lakh in the case of business and Rs. 10 lakh in the case of a profession) during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this Section.

**Note 2 :**

***"commission or brokerage"*** includes any payment received or receivable, directly or indirectly, by ***a person acting on behalf of another person*** [1] :

- for services rendered (not being ***professional services*** [2]), or
- for any services in the course of buying or selling of goods, or
- in relation to any transaction relating to any asset, valuable article or thing, not being securities.

[1] The element of agency must be present in all services or transactions in order to fall within the expression ***"commission or brokerage"***.

[2] ***"professional services"*** means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the CBDT for the purposes of Section 44AA.

- No deduction of tax shall be made in a case where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid during the financial year, does not exceed Rs. 2,500.
- **CBDT Circular No. 619, dated 4-12-1991 : Commission and brokerage retained by the consignee/agent :** A question may arise whether there would be deduction of tax at source under Section 194H where commission or brokerage is retained by the consignee/agent and not remitted to the consignor or principal while remitting the sale consideration. It may be clarified that since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission. Therefore, the consignor/principal will have to deposit the tax deductible on the amount of commission income to the credit of Central Government, within the prescribed time.
- **CBDT Circular No. 6/2003, dated 3-9-2003 : No TDS under Section 194H on Turnover Commission payable by RBI to Agency Banks :** The work of receipt of tax payments and issue of refunds is conducted by banks authorized for such purpose by the RBI. As a compensation for the work so conducted, the Central Government pays to the banks, through RBI, commission termed as "Turnover Commission". The CBDT has decided that tax would not be required to be deducted by RBI on the amount of Turnover Commission paid or credited by it as the Agency Banks (Banks authorized for conducting Government business) are performing the general banking business of the Central and State Government on behalf of RBI.

## (j) Deduction of tax at source from income by way of rent [Section 194-I]

- Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a ***resident*** any income by way of ***rent***, shall, at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier, deduct income-tax.

**Note 1 :** An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under Section 44AB (i.e. Rs. 40 lakh in the case of business and Rs. 10 lakh in the case of a profession) during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this Section.

- **<u>Rate of tax deduction at source</u> :**

| | When recipient is an individual/HUF | | When recipient is any other person | |
|---|---|---|---|---|
| | **Rent of plant or machinery or equipment** | **Rent of land or building or furniture or fitting** | **Rent of plant or machinery or equipment** | **Rent of land or building or furniture or fitting** |
| Up to 30-09-2009 | **10%** | 15% | **10%** | 20% |
| On or after 1-10-2009 | **2%** | 10% | **2%** | 10% |

- No deduction of tax shall be made in a case where the amount of such income or the aggregate of the amounts of such income credited or paid during the financial year, does not exceed Rs. 1,20,000.

- **Tax is not deductible on Service Tax [Circular No. 4/2008, dated April 28, 2008].**

- **The benefit of this circular cannot be extended to Section 194J – Board Letter : F. No. 275/73/2007-IT(B), Dated June 30, 2008, addressed to Bombay Chamber of Commerce & Industry.**

## (k) <u>Deduction of tax at source on fees for professional or technical services [Section 194J]</u>

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

(a) fees for ***professional services*** [1], or

(b) fees for ***technical services*** [2], or

(c) royalty, or

(d) any sum, whether received or receivable, in cash or kind, under an agreement for :
- not carrying out any activity in relation to any business; or
- not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services.

shall, at the time of credit of such sum to the account of the payee or at the time of payment, whichever is earlier, deduct income-tax as under @ 10%.

[1] ***"professional services"*** means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the CBDT for the purposes of Section 44AA.

[2] ***"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 which would be income of the recipient chargeable under the head "Salaries".

**<u>Note</u> :** An individual or a HUF, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under Section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid, shall be liable to deduct income-tax under this Section.

**Note :** No individual or a HUF 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 HUF.

- No deduction shall be made where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid during the financial year does not exceed Rs. 20,000.

## Deduction of tax at source from other payments

*Tax is required to be deducted in case of following payments also :*

| *Sections* | *Payments Covered* |
|---|---|
| *194* | *Payment of deemed dividend covered under Section 2(22)(e) to a resident* |
| *194E* | *Payment to a NR Sportsman or Sports Association* |
| *194EE* | *Payment in respect of deposits under NSS, 1987 to any person* |
| *194F* | *Payment on account of repurchase of units of MF or UTI to any person* |
| *194LA* | *Payment of compensation to a resident on acquisition of certain immovable property* |
| *195* | *Payment of any sum other than salary to NR & Foreign company* |

*Since above topics are generally not asked in the examinations, discussion about them is not necessary.*

## OTHER PROVISIONS RELATING TO TDS

### No tax deduction from any sum payable to Government, RBI or certain corporations [Section 196]

No deduction of tax shall be made by any person from ***any sum*** payable to :

(a) the Government, or

(b) the Reserve Bank of India, or

(c) a corporation established under a Central Act which is exempt from income-tax on its income, or

(d) a Mutual Fund specified under Section 10(23D),

### Obtaining a certificate for deduction at lower rate from A.O. [Section 197]

- Where, in the case of any income of any person, income-tax is required to be deducted under the provisions of Sections ***192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194LA and 195***, the Assessing Officer is satisfied that the ***total income*** of the recipient justifies the deduction of income-tax at a lower rate or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application (in **Form No. 13**) 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 rate specified in such certificate or deduct no tax, as the case may be.

**Note :** It may be noted that recipient of income under the following Section cannot make application in Form No. 13 to the A.O. for deduction at lower rate or no deduction :

(a) Section 194B – Lottery income etc.

(b) Section 194BB – Income from horse race

(c) Section 194E – Payment to NR sportsman/association.

(d) 194EE – National Saving Scheme (NSS)

(e) 194F – Repurchase of units by MF/UTI

## No deduction to be made in certain cases [Section 197A]

**In case of a person (not being a company or a firm) [Section 197A(1A)] :** No tax will be deducted at source under Section 193 (i.e. Interest on securities) and 194A (i.e. Interest other than interest on securities), in case of a person (not being a company or a firm), if such person furnishes to the payer a declaration in writing in duplicate in new **Form No. 15G** to the effect that the tax on his ***estimated total income*** (including such income) will be nil.

**Senior citizen can furnish declaration even if such income exceeds the exemption limit [Section 197A(1C) :** No tax will be deducted under Section 193, 194, 194A and 194EE in the case of a senior citizen, if such individual furnishes to the person responsible for paying any income to the payer a declaration in writing in duplicate in new **Form No. 15H** to the effect that the tax on his ***estimated total income*** (including such income) will be nil.

**Section 197A(2) :** The person responsible for paying any income of the nature referred to in Section 197(1A) or 197(1C) shall deliver to the CCIT/CIT one copy of the declaration referred to in Section 197(1A) or 197(1C) on or before the seventh day of the month next following the month in which the declaration is furnished to him.

## Tax deducted is income received [Section 198]

All sums deducted in accordance with the provisions of Chapter - XVII shall, for the purpose of computing the income of an assessee, be deemed to be income received. In other words, for the purpose of computation of total income of the payee amount actually received (after TDS) plus the amount of TDS will have to be considered. However, the tax paid by the employer under Section 192(1A) on the non-monetary perquisites of the employee shall not be deemed to be income received.

## Credit for tax deducted [Section 199]

Any deduction made in accordance with the provisions of Chapter - XVII 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. Any tax paid by the employer on non-monetary perquisites of the employee to the Central Government shall also be treated as tax paid on behalf of the employee and credit shall be given to such employee for the amount so paid.

## Duty of person deducting tax [Section 200]

**Section 200(1) :** Any person deducting any sum in accordance with provisions of Chapter - XVII shall pay within the prescribed time, the sum so deducted to the credit of the Central Government.

**Section 200(2) :** Any person being an employer, referred to in Section 192(1A) shall pay, within the prescribed time, the tax to the credit of the Central Government.

Rule 30(1) deals with the time limit for deposit of TDS as follows :

<table>
<tr><th>Section under which deduction is made</th><th>Tax deductor</th><th>Time limit of deposit</th></tr>
<tr><td rowspan="2">192 : Salaries<br>194 : Dividend U/S 2(22)(e)<br>194B : Winning from lottery etc.<br>194BB : Horse race<br>194EE : NSS<br>194F : MF/UTI<br>194LA : Acquisition of immovable property</td><td>Government</td><td>Same day of deduction</td></tr>
<tr><td>Any other person</td><td>Within one week from the last day of the month in which deduction is made</td></tr>
<tr><td rowspan="3">Other Sections i.e. :<br>193 : Interest on securities<br>194A : Interest other than interest on securities<br>194C : Contractors and sub-contractors<br>194D : Insurance commission<br>194E : NR sportsman/association<br>194G : Commission on Sale of lottery tickets<br>194H : Commission or brokerage<br>194-I : Rent<br>194J : Professional or technical services<br>195 : Payment to NR & Foreign company</td><td>Government</td><td>Same day of deduction</td></tr>
<tr><td>Any other person :<br>➢ If the amount is credited to the account of the payee as on the last date of the accounting year</td><td>Within 2 months from the last date of the accounting year</td></tr>
<tr><td>➢ In any other case</td><td>Within one week from the last day of the month in which deduction is made</td></tr>
</table>

**<u>Special cases where tax deducted at source can be deposited quarterly</u> :**

In the following cases, the Assessing Officer may with the prior approval of the Joint Commissioner, allow payment of TDS quarterly as follows :

| | |
|---|---|
| 194A : Interest other than interest on securities<br>194D : Insurance commission<br>194H : Commission or brokerage | Quarterly on July 15, October 15, January 15 and April 15 |
| 192 : Salaries | Quarterly on June 15, September 15, December 15 and March 15 |

**<u>Note</u> :** After 31.03.2008, all Corporate assessees and other assessees (who are subject to compulsory audit under Section 44AB) will have to make electronic payment of tax through internet banking facility offered by authorised banks. Alternatively, these taxpayer can make electronic payment of tax through internet by credit or debit card **[Circular No. 5/2008, dated July 17, 2008]**.

**<u>Section 200(3)</u> :** Any person deducting any sum in accordance with provisions of Chapter - XVII or, as the case may be, any person being an employer referred to in Section 192(1A) shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare quarterly statements/return for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year and deliver to the prescribed income-tax authority within such time as may be prescribed.

The following forms for filing quarterly statement/return have been prescribed under Rule 31A :

| Payments | Residential Status of Deductee | Return Form* |
|---|---|---|
| Salary | Resident/Non-resident | Form No. 24Q |
| Others | Resident | Form No. 26Q |
| | Non-resident | Form No. 27Q |

These quarterly statements should be delivered to the prescribed income-tax authority on or before 15th July, 15th October, 15th January in respect of the first three quarters of the financial year and on or before the ***15th June*** following the last quarter of the financial year.

**<u>Note</u> :** In case the person deducting tax is a Government department or a company or a person required to get his accounts audited under Section 44AB in the immediately preceding financial year or a person in whose case the number of deductees' records in a quarterly statement for any quarter of the immediately preceding financial year is equal to or more than fifty, Form No. 24Q, 26Q and 27Q, as the case may be must be furnished in electronic format and **Form No. 27A** in paper format.

## Certificate for tax deducted [Rule 31]

The payer of income is suppose to issue a certificate of tax deduction (i.e. TDS certificate) in the following forms as per Rule 31 :

| Payments | Form No. |
|---|---|
| Salary | Form No. 16 |
| others | Form No. 16A |

The time limit for issue of TDS certificate as per Rule 31 :

| Payments | Time Limit |
|---|---|
| Where the tax is deducted from salaries (Section 192) and insurance commission (194D) | Within one month from the close of the financial year |
| Where the income/payment referred to in Sections 193, 194A, 194C, 194D, 194E, 194G, 194H, 194-I, 194J, 195 is credited by a person to the account of the payee as on the last date of the accounting year | Within 2 months 7 days from the last date of the accounting year |
| In any other case | Within one month from the end of the month in which tax is deducted at source |

## Processing of statements/return of TDS [Section 200A]

Section 200A has been inserted by the Finance (No. 2) Act, 2009, with effect from April 1, 2010, to provide for processing of statements of TDS on computer so that liabilities on account of interest and other defaults in TDS payment are promptly calculated and intimated to the deductor.

The following adjustments can be made during the computerized processing of statements of TDS :

a) Any arithmetical error in the statement; or

b) An incorrect claim, if such incorrect claim is apparent from any information in the statement, for example, in respect of rate of TDS where such rate is not in accordance with the provisions of the Act.

After making adjustments, tax and interest would be calculated and sum payable by the deductor or refund due to the deductor will be determined. An intimation will be sent to the deductor informing him of his tax liability or granting him the refund due within one year from the end of the financial year in which the statement is filed. Further it is provided that the processing of these statements can be undertaken in a centralized processing centre.

## Tax Deduction And Collection Account Number [Section 203A]

- Every person, deducting tax or collecting tax in accordance with the provisions of Chapter - XVII, who has not been allotted a Tax Deduction Account Number ***(i.e. TAN)*** or, as the case may be, a Tax Collection Account Number ***(i.e. TCN)***, shall, within one month from the end of the month in which tax is deducted or collected, apply to the Assessing Officer for the allotment of a "Tax Deduction And Collection Account Number" ***(i.e. TDCAN)***.

- Where a TAN/TCN/TDCAN has been allotted to a person, such person shall quote such number :
  (a) in all challans for the payment of TDS/TCS to the Government;
  (b) in all TDS/TCS certificates;
  (c) in all the TDS/TCS Return;
  (d) in all other documents pertaining to such transactions as may be prescribed.

**Application for allotment of a tax deduction and collection account number [Rule 114A] :**

- An application for the allotment of a TDCAN shall be made in duplicate in ***Form No. 49B***.
- The application in Form No. 49B shall be made :
  (a) in cases where the function of allotment of TDCAN has been assigned by the CCIT/CIT to any particular A.O., to that A.O.;
  (b) in any other case, to the A.O. having jurisdiction to assess the applicant.

## Penal provisions relating to tax deduction at source

| Section No. | Nature of default | Penalty |
|---|---|---|
| 271C | Failure to deduct the whole or any part of tax | Sum equal to the amount of tax which the assessee has failed to deduct |
| 272BB | Failure to apply for allotment of TDCAN and failure to quote TDCAN in challans, certificates, quarterly statements and other prescribed documents or to quote a number which is false | Rs. 10,000/- |
| 276B | Failure to pay the tax deducted at source to the credit of Central Government | Rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years and with fine |
| 272A(2)(g) | Failure to issue TDS certificates as required by Section 203 | Rs. 100 for every day during which the failure continues but the penalty shall not exceed the amount of tax deducted |
| 272A(2)(k) | Failure to deliver quarterly statements within the time specified in Section 200(3) | Rs. 100 for every day during which the failure continues but the penalty shall not exceed the amount of tax deducted |

**Note :** Where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied.

## Requirement to furnish Permanent Account Number (PAN) [Section 206AA]

Section 206AA has been inserted with effect from April 1, 2010. The provisions of section are as under :

- Every person whose receipts are subject to TDS (i.e. the Deductee) shall furnish his PAN to the Deductor. It will be compulsory from 01.04.2010.
- If the Deductee does not furnish PAN to the Deductor, the Deductor will deduct tax at source at higher of the following rates :
  - (a) the rate prescribed in the Income Tax Act, 1961
  - (b) the rate mentioned in the Finance Act
  - (c) at the rate of 20%
- The provision that TDS would be deductible at the above-mentioned rates, will also apply in cases where the Deductee files a declaration under section 197A in Form No. 15G or 15H but he does not provide his PAN.
- No Certificate of tax deduction at a lower rate or no deduction of income-tax, as the case may be under Section 197 will be granted by the A.O. unless the application in Form No. 13 contains the PAN of the applicant.
- These provisions will also apply to non-residents where tax is deductible on payments or credits made to them.
- To ensure that the Deductor knows about the correct PAN of the Deductee, there is a provision for mandatory quoting of PAN of the Deductee by both the Deductor and Deductee in all correspondences, bills and vouchers exchanged between them.
- In the case of a transport operator engaged in the business of plying, hiring and leasing goods carriages; tax will not be deducted if he furnishes his PAN to the Deductor. If PAN is not furnished, the rate will be 1% for an individual/HUF transporter and 2% for other transporters during 01.10.2009 and 31.03.2010 and 20% from 01.04.2010 onwards.

## Assessee in default [Section 191 read with Section 201]

Where a person who is required to deduct tax at source, does not deduct, or after deducting fails to pay, the whole or any part of the tax, as required by the Act, then such person shall be deemed to be an assessee in default in respect of such tax under section 191 read with section 201(1). He will be liable for payment of tax, interest, penalty and/or prosecution. Besides disallowance under Section 40(a) will be attracted.

***Section 201(3) has been inserted with effect from 01.04.2010*** which provides that, an order under Section 201(1), holding a person assessee in default for failure to deduct the whole or any part of the tax as required under the Act, if the assessee is resident taxpayer, shall be passed within the time limit given below :

In case TDS Statement is filed by the Deductor : Within 2 years from the end of the financial year in which statement is filed under Section 200.

In case no such TDS Statement is filed by the Deductor : Within 4 years from the end of the financial year in which payment is made or credit is given.

However, an order pertaining to financial year 2007-08 (or earlier years) can be passed at any time upto March 31, 2011.

# T D S  R E F E R E N C E R

| Sections | Payment Covered | Deductor | Deductee | Exemption | Rate of TDS |
|---|---|---|---|---|---|
| 192 | Salary | Employer | Any employee | Rs. 1,60,000/ Rs. 1,90,000/ Rs. 2,40,000 | NTR |
| 193 | Interest on securities | Person paying interest on securities | Any resident security holder | -- | 10% |
| 194A | Interest other than interest on securities | Any person paying interest other than interest on securities (not being an individual or a HUF whose accounts were not liable to be audited in the immediately preceding P.Y.) | Any resident person | Rs. 10,000/ Rs. 5,000 | 10% |
| 194B | Winnings from lotteries/crossword puzzles/card games/ other games | Any person paying winnings from lotteries/crossword puzzles/card games/ other games | Any person | Rs. 5,000 | 30% |
| 194BB | Winnings from horse races | Any person paying income from horse races | Any person | Rs. 2,500 | 30% |
| 194C | Consideration for any work contract | Any person responsible for paying any sum to any resident contractor (not being an individual or a HUF whose accounts were not liable to be audited in the immediately preceding P.Y. ***or not being an individual or HUF making aforesaid payment for services availed for personal purposes***) | Any resident contractor (contractor includes sub-contractor) | Rs. 20,000 at one time or Rs. 50,000 in the aggregate | 1% if recipient is individual or HUF & 2% for others |
| 194D | Insurance commission | Any person paying insurance commission | Any resident person | Rs. 5,000 | 10% |
| 194G | Commission on sale of lottery tickets | Any person paying commission on sale of lottery tickets | Any person | Rs. 1,000 | 10% |
| 194H | Commission or brokerage (not being insurance commission) | Any person paying commission or brokerage (not being an individual or a HUF whose accounts were not liable to be audited in the immediately preceding P.Y.) | Any resident person | Rs. 2,500 | 10% |
| 194-I | Rent | Any person paying rent (not being an individual or a HUF whose accounts were not liable to be audited in the immediately preceding P.Y.) | Any resident person | Rs. 1,20,000 | For use of P&M – 2% & For use of other assets – 10% |
| 194J | Fees for professional/ technical services/royalty | Any person paying Fees for professional/technical services/royalty (not being an individual or a HUF whose accounts were not liable to be audited in the immediately preceding P.Y. ***or not being an individual or HUF making aforesaid payment for services availed for personal purposes***) | Any resident person | Rs. 20,000 | 10% |