

SECTION 194C

Deduction of tax at source - Payment to contractors

Payments to munshis in bidi industry - In the bidi manufacturing industry, the provisions of section 194C would apply in respect of payments made to munshis. By the very nature of the functions performed by the munshis, there is an implied contract between the manufacturer and the munshis and consequently the munshis are contractors even though there is no written contract or agreement.—[Circular : No. 433 \[F.No. 275/30/82-IT\(B\)\], dated 25-9-1985.](#)

The deductions under section 194C to be made from the payments to munshis need not include payments to such home workers as are employed through the medium of agency such as munshis but the workers bring bidi to the factory for quality check and for getting their payments.—[Circular : No. 487 \[F.No. 275/34/86-IT\(B\)\], dated 8-6-1987.](#)

Works executed under NREP and RLEGP - The provisions of section 194C are not attracted in the case of payments made in respect of works executed under the National Rural Employment Programme (NREP) and Rural Landless Employment Guarantee Programme (RLEGP)—[Circular: No. 502 \[F. No. 385/49/86-IT\(B\)\], dated 27-1-1988.](#)

Payments to RTCs - Section 194C can be applied *qua* payments made by a State Road Transport Corporation to private bus owners, from whom buses are hired for plying on specified routes.—[Circular : No. 558, dated 28-3-1990.](#)

Guidelines pursuant to Supreme Court decision - In view of the Supreme Court decision in *Associated Cement Co. Ltd. v. CIT* [1993] 201 ITR 435, the CBDT has issued the following guidelines in regard to the applicability of the provisions of section 194C :—

- (i) The provisions of section 194C shall apply to all types of contracts for carrying out any work including, transport contracts, service contracts, advertisement contracts, broadcasting contracts, telecasting contracts, labour contracts, material contracts and works contracts.
- (ii) No deduction at source under section 194C shall be required to be made in the consideration for the contract does not exceed the prescribed amount which at present is Rs. 10,000.
- (iii) The provisions of section 194C would not apply in relation to payments made for hiring or renting of equipments, etc.
- (iv) The provisions of section 194C would not apply in relation to payments made to banks for discounting bills collecting/receiving payments through cheques/drafts, opening and negotiating Letters of Credit and transactions in negotiable instruments.
- (v) Service contracts would be covered by the provisions of this section since service means doing any work as explained above.
- (vi) The provisions of this section will not cover contracts for sale of goods:
 - (a) Since contracts for the construction, repair, renovation or alteration of buildings or dams or laying of roads or airfields or railway lines or erection or installation of plant and machinery are in the nature of contracts for work and labour, income-tax will have to be deducted from payments made in respect of such contracts. Similarly, contracts granted for processing of goods supplied by Government or any other specified person, where the ownership of such goods remains at all times with the Government or such person, will also fall within the purview of this section. The same position will obtain in respect of contracts for fabrication of any article or thing where materials are supplied by the Government or any other specified person and the fabrication work is done by a contractor.
 - (b) Where, however, the contractor, undertakes to supply any article or thing fabricated according to the specifications given by Government or any other specified person and the property in such article or thing passes to the Government or such person only after such article or thing is delivered, the contract will be a contract for sale and as such outside the purview of this section.
 - (c) In *State of Himachal Pradesh v. Associated Hotels of India Ltd.* [1972] 29 STC 474, the Supreme Court observed that where the principal objective of work undertaken by the payee of the price is not the transfer of a chattel *qua* chattel, contract is of work and labour. The test is whether or not the work and labour bestowed end in anything that can properly

become the subject of sale; neither the ownership of the materials nor the value of skill and labour as compared with the value of the materials is conclusive although such matters may be taken into consideration in determining, in the circumstances of a particular case, whether the contract is, in substance, one of work and labour or one for the sale of a chattel. A building contract or a contract under which a movable is fixed to another chattel or on the land, where the intention plainly is not to sell the article but to improve the land or the chattel and the consideration is not for the transfer of the chattel, but for the labour and work done and the material furnished, the contract will be one of work and labour. In case of doubt whether a particular contract is a contract for work and labour or for sale, the matter should be decided in the light of the principles laid down by the Supreme Court in the above-mentioned case.

- (vii) The provisions of this section would apply in relation to payments made to persons who arrange advertisement, broadcasting, telecasting, etc.
- (viii) The provisions are wide enough to cover not only written contracts but also oral contracts.
- (ix) Where the total payment under the contract is likely to exceed Rs. 10,000 (now Rs. 20,000) for the entire period during which the contract will remain in force, income-tax will have to be deducted at source. In a case where, at the time when the contract was entered into, it was expected that the total payment thereunder would not exceed Rs. 10,000 but later on it is found that the payment exceeds that amount, deduction should be made in respect of earlier payments as well.
- (x) The percentage deduction prescribed in law is with reference to the amount of payment and not income comprised in the payment. The person responsible for making payment, therefore, is not required to estimate the income comprised in the payment.
- (xi) In a case where advance payments are made during the execution of a contract and such payments are to be adjusted at the time of final settlement of accounts, tax will have to be deducted at the time of making advance payments if the total payment is likely to exceed Rs. 10,000.
- (xii) Where any contractor is the recipient of any amount under a contract but the income of the recipient is not subject to income-tax, such contractor may obtain a certificate from his Assessing Officer under section 194C(4) for receiving payment without deduction of tax at source.
- (xiii) Every contractor, other than an individual or a HUF, who is responsible for paying any sum to any sub-contractor (who is resident in India), in pursuance of a contract with such sub-contractor for carrying out or for the supply of labour for carrying out, wholly or in part, of the work undertaken by the contractor or for supplying whether wholly or partly any labour which the contractor had undertaken to supply, will be required to deduct income-tax at the rate of 1 per cent of such sum.

It may be noted that—

- (i) The term ‘service contracts’ would include services rendered by such persons as lawyers, physicians, surgeons, engineers, accountants, architects, consultants, etc. However, services rendered for which payment is in the nature of salaries which is chargeable under the head of income “A. Salaries” in Chapter IV of the Income-tax Act, 1961 shall not be covered by section 194C.
- (ii) The term ‘transport contracts’ would, in addition to contracts for transportation and loading/unloading of goods, also cover contracts for plying of buses, ferries, etc., along with staff (e.g., driver, conductor, cleaner, etc.). Reference in this regard is also invited to Board’s [Circular No. 558, dated the 28th March, 1990](#).
- (iii) The term ‘materials contracts’ in the context of section 194C would mean contracts for supply of materials where the principal contract is for work and labour and not a contract for sale of materials.

Board’s [Circular No. 86, dated 29-5-1972](#) and [No. 93, dated 26-9-1972](#) and para 11 of [Circular No. 108, dated 20-3-1973](#) are hereby withdrawn. Board’s [Circular No. 558, dated 28-3-1990](#) is reiterated.

This circular explaining the provisions of section 194C will apply with effect from 1st of April, 1994. Tax deductions made in accordance with Circular Nos. 86, 93 and 108 upto 31st March, 1994 will be

regarded as compliance of the provisions of section 194C—[Circular : No. 681, dated 8-3-1994.](#)

Contract for fabrication of articles or things as per specification given by assessee - Applicability of TDS provisions of section 194C on contract for fabrication of article or thing as per specifications given by the assessee - Contradiction between two Circulars of CBDT - Resolution thereof -

Representations have been received in the Board seeking clarification on the applicability of section 194C on such transactions, where the assessee has outsourced certain work relating to fabrication or manufacturing of article or thing in accordance with the specifications given by the assessee. Circular No. 681, dated 8-3-1994 of the Board clarifies in para 7(vi) that the provisions of section 194C would not apply to contracts for sale of goods and further clarifies that where the property in the article or thing so fabricated passes from the fabricator-contractor to the assessee only after such article or thing is delivered to the assessee, such contract would be a contract for sale and so outside the purview of section 194C. However, in reply to question No. 15 in Circular No. 715, dated 8-8-1995 on the subject of applicability of section 194C, in respect of contract for supply of printed material as per prescribed specifications, it has been said that such contracts would also be covered under section 194C. It has been represented that the views expressed in these two circulars, to the extent as pointed out above, are in contradiction to each other.

The matter has been examined by the Board and it is considered that exclusive reliance on Question/Answer No. 15 of Circular No. 715, without taking into account the principles laid down in Circular No. 681 is not justified. Before taking a decision on the applicability of TDS under section 194C on a contract, it would have to be examined whether the contract in question is a 'contract for work' or a 'contract for sale' and TDS shall be applicable only where it is a 'contract for work'.

It is, therefore, clarified that the provisions of section 194C would apply in respect of a contract for supply of any article or thing as per prescribed specifications only if it is a contract for work and not a contract for sale as per the principles in this regard laid down in para 7(vi) of Circular No. 681, dated 8-3-1994—[Circular : No. 13/2006, dated 13-12-2006.](#)

Payments to airlines/travel agents - The provisions of section 194C do not apply to the payments made to the airlines or the travel agents for purchase of tickets for air travel of individuals. The provisions shall however apply when payments are made for chartering an aircraft for carriage of passengers or goods. This clarification will apply *mutatis mutandis* to the tickets for travel of individual by any other mode of transport also—[Circular : No. 713, dated 2-8-1995.](#)

The payments made to a travel agent or an airline for purchase of a ticket for travel would not be subjected to tax deduction at source as the privity of the contract is between the individual passenger and the airline/travel agent, notwithstanding the fact that the payment is made by an entity mentioned in section 194C(1). The provisions of section 194C shall however apply when a plane or a bus or any other mode of transport is chartered by one of the entities mentioned in section 194C—[Circular : No. 715, dated 8-8-1995.](#)

Scope and meaning of 'advertising' - Regarding the scope and meaning of the term 'advertising' used in section 194C(1), it is clarified that advertising may be in print or electronic media, i.e., in newspapers, periodicals, radio, television, etc. In such cases, tax will be deducted at the rate of 1 per cent of the payment made for advertising including production of programmes for such broadcasting and telecasting to be used in such advertising. In all other cases of work of broadcasting and telecasting including production of programmes for such broadcasting and telecasting, where advertising is not involved, tax will be deducted at the rate of 2 per cent of the sum—[Circular : No. 714, dated 3-8-1995.](#)

Clarifications on advertising contracts - The following clarifications need be noted :

- As to the scope of an advertising contract for the purpose of section 194C, the term 'advertising' has not been defined in the Act. During the course of consideration of the Finance Bill, 1995, the Finance Minister clarified on the floor of the House that the amended provisions of tax deduction at source would apply when a client makes payment to an advertising agency and not when advertising agency makes payment to the media, which includes both print and electronic media. The deduction is required to be made at the rate of 1 per cent. When an advertising agency makes payments to their models, artists, photographers, etc., the tax shall be deducted at the rate of 5 per cent as applicable to fees for professional and technical services under section 194J of the Act.

- If the advertising agencies give a consolidated bill including charges for art work and other related jobs as well as payments made by them to media, the deduction will have to be made under section 194C at the rate of 1 per cent. The advertising agencies shall have to deduct tax at source at the rate of 5 per cent under section 194J while making payments to artists, actors, models, etc. If payments are made for production of programmes for the purpose of broadcasting and telecasting, these payments will be subject to TDS at 2 per cent. Even if the production of such programmes is for the purpose of preparing advertisement material, not for immediate advertising, the payment will be subject to TDS at the rate of 2 per cent.
- The payments made directly to print and electronic media would be covered under section 194C as these are in the nature of payments for purpose of advertising. Deduction will have to be made at the rate of 1 per cent. However, the payments made directly to Doordarshan may not be subjected to TDS as Doordarshan, being a Government agency, is not liable to income-tax.
- The contract for putting up a hoarding is in the nature of advertising contract and provisions of section 194C would be applicable. However, if a person has taken a particular space on rent and thereafter sublets the same fully or in part for putting up a hoarding, he would be liable to TDS under section 194-I and not under section 194C. In the case of advertising contracts, tax is to be deducted at the rate of 1 per cent of the gross amount of the bill (including bill of media), and not on that portion of commission paid to the person who arranges release of advertisement, etc.
- In the case of sponsorship for debates, seminars and other functions held in colleges, schools and associations with a view to earn publicity through display of banners, etc., put up by the organisers, the agreement of sponsorship is in essence an agreement for carrying out a work of advertisement. Therefore, provisions of section 194C will apply.
- Tax is deductible at source on payments for costs of advertisements issued in the souvenirs brought out by various organisations—[Circular No. 715, dated 8-8-1995.](#)

Payments to clearing and forwarding agents - Payments made to clearing and forwarding agents for carriage of goods are subjected to deduction of tax at source under section 194C, since unlike the travel agents, they are independent contractors. They would also be liable to deduct tax at source while making payments to a carrier of goods—[Circular : No. 715, dated 8-8-1995.](#)

Payments to couriers - The carriage of documents, letters, etc., is in the nature of carriage of goods, and therefore, provisions of section 194C would be attracted in respect of payments made to the couriers—[Circular : No. 715, dated 8-8-1995.](#)

Payments to transporters - In the case of payments to transporters, each GR can be said to be a separate contract, if the goods are transported at one time. But if the goods are transported continuously in pursuance of a contract for a specific period or quantity, each GR will not be a separate contract and all GRs relating to that period or quantity will be aggregated for the purpose of TDS. Even when the goods are received on 'freight to pay' basis, the TDS provisions would be applicable, irrespective of the actual payment—[Circular : No. 715, dated 8-8-1995.](#)

Payments to restaurants/cafes - TDS is not required to be made when payment is made for serving food in a restaurant in the normal course of running of the restaurant/cafe—[Circular : No. 715, dated 8-8-1995.](#)

Payments to recruitment agencies - Payments to recruitment agencies are in the nature of payments for services rendered and not for carrying out any work including supply of labour for carrying out any work. Hence provisions of section 194C will not apply. The payments will however be subjected to TDS under section 194J. Similar would be the position in respect of payments made by a company to a share registrar—[Circular : No. 715, dated 8-8-1995.](#)

FD commission/brokerage - FD commission and brokerage are not covered under section 194C—[Circular : No. 715, dated 8-8-1995.](#)

Supply of printed material - Supply of printed material is covered by section 194C—[Circular : No. 715, dated 8-8-1995.](#)

Procurement of orders - Rendering of services by external parties for procurement of orders is not covered under section 194C. If rendering of such services involved payment of fees for professional or technical services, tax may be deductible under section 194J—[Circular : No. 715, dated 8-8-1995.](#)

Electrical contracts - Where the services of a regular electrician are engaged on a contract basis or

the services of an electrician are provided by a contractor, the payments made to the electrician or the contractor will be in the nature of payment made in pursuance of a contract for carrying out any work, and provisions of section 194C will apply in such cases—[Circular : No. 715, dated 8-8-1995](#).

Maintenance contracts - Routine maintenance contracts including supply of spares would be covered under section 194C. However, where technical services are rendered, the provisions of section 194J will apply in regard to tax deduction at source—[Circular : No. 715, dated 8-8-1995](#).

Reimbursement of actual expenses - Section 194C refers to 'any sum paid'. Obviously, reimbursement of actual expenses cannot be deducted out of the bill amount for the purpose of tax deduction at source—[Circular : No. 715, dated 8-8-1995](#).

Applicability to shipping business of non-residents - It is clear from section 194C that the area of operation of TDS is confined to payments made to any 'resident'. On the other hand, section 172 operates in the area of computation of profits from shipping business of non-residents. Thus, there is no overlapping in the areas of operation of these sections. Since the provisions of section 172 override other provisions of the Act, the provisions of section 194C are not applicable to non-resident shipping business. Even where payments are made to shipping agents of non-resident ship-owners or charterers for carriage of passengers, etc., shipped at a port in India, the agent acts on behalf of the non-resident ship-owner or charterers and thus steps into the shoes of the principal. Hence, even in such cases, section 194C will not apply—[Circular: No. 723, dated 19-9-1995](#).