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SeC. 194H

TDS on payment of Commission or Brokerage

Sec.	Description	Threshold Amount Rs.	TDS rate If PAN provided	TDS rate if PAN NOT provided or Invalid PAN
194H	**Commission Or Brokerage**	5,000	10%	20%

Particulars	**Response**
Person Responsible to Deduct Tax (Payer)	ANY PERSON paying commission or brokerage, not being an INDIVIDUAL or HUF whose accounts are **NOT** subject to **Tax Audit** under section 44AB in the immediately preceding financial year
Category of Payee (Recipient)	Any Person **RESIDENT** In India.
Payment covered	Commission Or Brokerage (**NOT BEING** an Insurance Commission)
Rate of Deduction of Tax	10% **Note:** TDS has to be made on total payments inclusive of service tax.
No TDS	☞ No deduction is required if the amount of such income or the aggregate of such amount does not exceed Rs.5, 000 during the financial year. ☞ Further, there would be **NO REQUIREMENT** to deduct tax at source on commission or brokerage payments ☞ **BY** BSNL or MTNL ☞ **TO** their public call office (PCO) franchisees.
Time for Deduction of Tax at source	At the of the credit to the account of payee or payment thereof, whichever is earlier

☞ As per section 194H,

- any person **Not Being An Individual Or A Hindu Undivided Family Not Subject To Tax Audit Under Section 44AB In The Immediately Preceding Financial Year,**
- who is responsible for paying **COMMISSION or BROKERAGE**
- to **a RESIDENT**
- shall deduct **TAX** at source
- If the amount of such income or the aggregate of the amounts of such income credited or paid during the financial year **exceeds Rs. 5, 000**.

- 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
  - clause (a) of section 44AB or
  - clause (b) of section 44AB
  - 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 u/s 194H.

Tax Deduction Event

Tax is required to be deducted at source under section 194H **at the earlier of the following events**:

- **at the time of credit** of such income to the account of the payee or to suspense account or any other account by whatever name called; or
- **at the time of payment** of such income in cash or by the issue of a cheque or draft or by any other mode.

Thus, where income is **credited** or when the same is **paid**, tax is required to be deducted under section 194H.

- AGAIN, it is to be noted that Where income is credited to some other account, whether called **"Suspense account"** or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit to the account of the payee for the purposes of u/s 194H.

NO DEDUCTION shall be made under u/s 194H 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 to the account of, or to, the payee, DOES NOT EXCEED RS. 5,000.

- No Tax is required to be deducted at source
  - If a payment of commission is made to Non-Resident Overseas Agent for the services rendered outside India.
  - As No income is arising to the Non-Resident Agent in India.
  - So, NO TDS is deductible u/s 194H of the Act, which is applicable for Resident Indians Only,
  - Even the provisions of section 195 are not applicable in such a case, as payments are made to Non-Resident Overseas Agents for the services rendered outside India.

  - NO DEDUCTION shall be made under u/s 194H on any COMMISSION OR BROKERAGE payable
    - BY Bharat Sanchar Nigam Limited or
    - BY Mahanagar Telephone Nigam Limited
    - TO their Public Call Office Franchisees.

- Sec. 194H is **NOT APPLICABLE TO PROFESSIONAL SERVICES**.

- **"Professional Services" Means Services Rendered By a Person In The Course Of Carrying On**
  - Legal profession,
  - Medical profession,
  - Engineering profession
  - Architectural profession or
  - The profession of accountancy or
  - Technical consultancy or
  - Interior decoration or
  - Such other profession as notified by the CBDT for the purpose of compulsory maintenance of books of account **under Section 44AA.**

"Commission or brokerage" includes

- any payment received or receivable,
- **Directly Or Indirectly ****,
- by a person acting **On Behalf Of Another Person**
- *for services rendered, 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, **other than SECURITIES**.

- ****** The words '**directly or indirectly**', as given above, assume importance.
  - The word '**direct**' is synonymous with 'straightforward'.
  - **'Indirect'** will, thus, be opposite of straightforward.
  - Thus, where **discount is allowed to an agent**, the same would amount to commission, since it is payment **received indirectly**.
  - Thus, any payment **Received or Receivable** either **directly or indirectly** requires deduction of tax at source.

Commission:

- **The Recompense, Compensation Or Reward of a/an**
  - Agent, Salesman,
  - Executor, Trustee, Receiver,
  - Factor, Broker, Or
  - Bailee,
  - **When the same is calculated as a percentage on the amount of his transactions or on the profit to the principal.**

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At a glance;

For deduction of tax at source under section 194H the following conditions must be satisfied:

- The income paid or credited must be "**Commission Or Brokerage**"
- Person paying such income should be a person other than an INDIVIDUAL or a HINDU UNDIVIDED FAMILY (however, where the INDIVIDUAL or HINDU UNDIVIDED FAMILY is covered by provisions of section 44AB they are liable to deduct tax at source)
- The aggregate amount or amounts paid or credited to a payee **exceed Rs. 5,000 per annum.**
- **The Payee should**
  - act **On Behalf Of The Person** paying commission or brokerage or
  - have rendered services to the Payer i.e. person paying commission or brokerage.
    - In the course of Buying/Selling goods or
    - In relation to any transaction relating to any asset, valuable article or thing, not being securities.

- It is to be noted that **To Receive** '**Commission Or Brokerage**', the person receiving such an income must act on behalf of another person for services rendered (**Not Being Professional Services**) 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**.

- **Where a person acts on behalf of another person, a relationship of principal and agent is implied.**

- The expression 'commission' must be confined to a payment made to agents etc. for effecting sales and carrying out business transactions.
- Commission or Brokerage does not include any payment for professional services.
- A principal-agent relationship is a Sine Qua Non for invoking the provisions of Sec. 194 H.
- E.g. Because there is No Principal - Agent Relationship between a bank issuing the bank guarantee and the assessee, the payment, though termed "commission", is Not Covered By Sec. 194H.
- The deduction of tax at source under section 195 would arise if the payment of commission to the non-resident agent is made which (i.e. Such Commission) is chargeable to tax in India.