ALL ABOUT SEC 194N OF THE INCOME TAX ACT, 1961

BARE ACT

[33a] **[Payment of certain amounts in cash.**

194N. *Every person, being, —*

(i) *a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);*

(ii) *a co-operative society engaged in carrying on the business of banking; or*

(iii) *a post office,*

who is responsible for paying any sum, being the amount or the aggregate of amounts, as the case may be, in cash exceeding one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent of such sum, as income-tax:

Provided *that in case of a recipient who has not filed the returns of income for all of the three assessment years relevant to the three previous years, for which the time limit of file return of income under sub-section (1) of section 139 has expired, immediately preceding the previous year in which the payment of the sum is made to him, the provision of this section shall apply with the modification that—*

(i) *the sum shall be the amount or the aggregate of amounts, as the case may be, in cash exceeding twenty lakh rupees during the previous year; and*

(ii) *the deduction shall be—*

(a) *an amount equal to two per cent of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds twenty lakh rupees during the previous year but does not exceed one crore rupees; or*

(b) *an amount equal to five per cent of the sum where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds one crore rupees during the previous year:*

Provided further *that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the first proviso shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such notification:*

Provided also *that nothing contained in this section shall apply to any payment made to—*

(i) *the Government;*

(ii) *any banking company or co-operative society engaged in carrying on the business of banking or a post office;*

(iii) *any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934);*

(iv) *any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007):*

Provided also *that the Central Government may specify in consultation with the Reserve Bank of India, by notification in the Official Gazette, the recipient in whose case the provision of this section shall not apply or apply at reduced rate, if such recipient satisfies the conditions specified in such* *notification.*]]

33a. Substituted by the Finance Act, 2020, w.e.f. **1-7-2020**. Prior to its substitution, section 194N read as under:

"194N. *Payment of certain amounts in cash.*—Every person, being,—

(*i*) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);
(*ii*) a co-operative society engaged in carrying on the business of banking; or
(*iii*) a post office,

who is responsible for paying any sum, or, as the case may be, aggregate of sums, in cash, in excess of one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two per cent of sum exceeding one crore rupees, as income-tax:

Provided that nothing contained in this sub-section shall apply to any payment made to,—

(*i*) the Government;
(*ii*) any banking company or co-operative society engaged in carrying on the business of banking or a post office;
(*iii*) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934);
(*iv*) any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007 (51 of 2007);
(*v*) such other person or class of persons, which the Central Government may, by notification in the Official Gazette, specify in consultation with the Reserve Bank of India."

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CBDT COMMENTARY

Finance Act, 2020

14.12A Cash withdrawals and deduction of tax by banking company and others [Section 194N]

Finance (No. 2) Act, 2019 inserted a new provision, namely, section 194N, in Chapter XVII-B, to provide for "TDS on cash withdrawal to discourage cash transactions", with effect from 1-9-2019.

In the Memorandum, reasons for the provision, as explained, were:

> "In order to further discourage cash transactions and move towards less cash economy it is proposed … to provide for levy of TDS at the rate of 2% on cash payments in excess of one crore rupees in aggregate made during the year, by a banking company or cooperative bank or post office, to any person from an account maintained by the recipient". (Emphasis supplied)

14.12A-1 Statutory background[1]

Hitherto, it provided as follows:

- every person being:
    - a banking company [to which the Banking Regulation Act, 1949 applies (including a bank or banking institution referred to in section 51)];
    - a co-operative society engaged in carrying on business of banking; and
    - a post office,
- was obliged to deduct tax (hereafter the above persons are collectively referred as "the banker");
- the banker must be responsible for paying any sum or aggregate sums, in cash, in excess of Rs. 1 crore, during a previous year;
- such payment must be made to any person ("the recipient") from one or more accounts maintained by the recipient with the banker;
- the banker shall deduct 2% of the sum exceeding Rs. 1 crore, as income tax; and
- the tax must be deducted at the time of the payment to the recipient in cash.

14.12A-1a ***Excluded Payment*** - It was further provided by proviso to section 194N that the provision would not apply to any payment made to:

- Government,
- any banking company,
- any co-operative society engaged in carrying on banking business,
- post office,
- any business correspondent of a banking company or a co-operative society engaged in banking business, in accordance with guidelines issued in this regard by the RBI,
- any white label automated teller machine operator of a banking company or co-operative society engaged in banking business, as per authorisation issued by RBI under the Payment and Settlement Systems Act, 2007, and
- such other person or class of persons as may be notified by Central Government in consultation with RBI.

14.12A-2/3 Amendments

Finance Act 2020 carries out the amendments in the section, by substituting it, with effect from 1-7-2020 as follows:

- Section is substituted to provide that the tax shall be deducted on the sum being amount(s) exceeding the threshold of rupees one crore and not only on the excess of rupees one crore (as can be inferred from the modified language of the section, discussed later);
- First proviso provides for differential rate of deduction of tax at source in case of a person who has not furnished return of income of preceding three previous years;
- Second proviso is inserted to empower Central Government to notify a recipient in whose case the differential rate specified in First proviso may not apply or may apply at a reduced rate, subject to satisfaction of conditions specified in notification;
- Third proviso deals with the exclusions as stated above except the residual category; and
- Fourth proviso empowers Central Government to notify the residual category of the recipient

for non-applicability of the section or applicability at a reduced rate, subject to fulfilment of specified conditions.

The relevant part of the redrafted provision reads as follows:

> "… who is responsible for paying any sum, being the amount or the aggregate of amounts, as the case may be, in cash exceeding one crore rupees … shall, at the time of payment of such sum, deduct an amount equal to two per cent of such sum, as income-tax".

Having regard to the change in language, it appears, as and when the payment in cash exceeds the threshold of rupees one crore, tax needs to be deducted on the entire amount. To illustrate, a person has withdrawn Rs. 95 lakhs; he withdraws Rs. 10 lakhs more from his account; the aggregate withdrawal is Rs. 105 lakhs; hitherto, the tax was required to be deducted on the excess, that is, Rs. 5 lakhs; pursuant to the amendment, the deduction of tax would be required from the entire amount of Rs. 105 lakhs; thus, hitherto, the tax deductible was Rs. 10,000; after the amendment the tax-deductible would be Rs. 210,000.[*]

14.12A-4 Differential rate of deduction for recipient not having filed returns

The first proviso is applicable to a recipient, who has not filed his returns of income for all three assessment years relevant to the three previous years [in respect of which time-limit to file the return of income under section 139(1) has expired] immediately preceding the previous year in which the payment is made. In such a case, the modified threshold limit of Rs. 20 lakhs would apply; and the banker will have to deduct tax at the differential rates as specified, namely:

- 2% of the sum paid, where it exceeds Rs. 20 lakhs but does not exceed rupees one crore; and
- 5% of the sum paid in cash exceeding Rs. 1 crore.

To illustrate, in case of an individual, say, the relevant previous year is financial year 2020-21. In respect of assessment years 2017-18, 2018-19 and 2019-20 (relevant to the financial years 2016-17, 2017-18 and 2018-19 and 2019-20), he has not furnished the returns of income and the time limit for filing the return under section 139(1) has expired; during the financial year 2020-21, the banker has paid Rs. 50 lakhs in cash; in case of his HUF similar position prevails and during the financial year 2020-21 the amount paid in cash to it by the banker is, say, Rs. 120 lakhs.

In the above cases, the proviso would apply. To them, the modified threshold limit of Rs. 20 lakhs would apply.

The banker will have to deduct 2% of Rs. 50 lakhs in case of the individual and 5% of Rs. 120 lakhs in case of the HUF, respectively, amounting to Rs. 100,000 and Rs. 600,000.

14.12A-5 Non-application of the first proviso

The second proviso empowers Central Government to notify, in consultation with Reserve Bank of India that the modified limit and/or the differential rate of deduction may not apply to a recipient, if such recipient satisfies the conditions specified in the notification.

The non-application of the first proviso, in case of a recipient, could be in its entirety or application of reduced rate for deduction of tax at source.

14.12A-6 Non-application of the section

Hitherto, the Central Government was authorised to notify such person or class of persons to whom the provision may not apply.

The fourth proviso lays down that Central Government may specify, in consultation with RBI, by notification, a recipient in whose case the section shall not apply or the section shall apply at reduced rate, subject to fulfilment of the conditions.

The non-application of the section, in case of a recipient, could be in its entirety or application of reduced rate for deduction of tax at source.

It may also be mentioned that, hitherto, CBDT[1] had clarified certain matters relating to the applicability of the provision having regard to which effective date as well as issued certain notifications[2] providing for non-application of the section to certain persons, like, a trader who is member of Agricultural Produce market Committee, which would be revived under the substituted section.

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CBDT CIRCULR NO. 14/2020 DT. 20/07/2020

Circular no. 14/2020

F. No. 370142/27/2020-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)
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Room no. 147B-II, North Block,
New Delhi, dated 20th July, 2020

Subject: Clarification in relation to notification issued under clause (v) of proviso to section 194N of the Income-tax Act, 1961 (the Act) prior to its amendment by Finance Act, 2020 (FA, 2020)-Reg.

Section 194N of the Act as inserted by Finance (No.2) Act 2019 provided for deduction of tax at source on payment made by a banking company, a cooperative society engaged in the business of banking or post office, in cash to a recipient exceeding Rs. I crore in aggregate during a financial year from one or more account maintained by such recipient.

Clause (v) of proviso to the said section had empowered the Central Government, in consultation with the Reserve Bank of India (RBI), to exempt by way of notification in Official Gazette, persons or class of persons so that payments made to such persons or class of persons shall not be subjected to TDS under this section. Accordingly, in exercise of the said power, Central Government has issued three notifications which are as under:

a) **Notification 68 of 2019 dated 18.09.2019**: Cash Replenishment Agencies (CRAs) and franchise agents of White Label Automated Teller Machine Operators (WLATMOs) for the purpose of replenishing cash in ATMs operated by these entities subject to conditions mentioned in the said notification

b) **Notification 70 of 2019 dated 20.09.2019**: Commission agent or trader operating under

Agriculture Produce market Committee (APMC) and registered under any law relating to Agriculture Produce Market of the concerned State have been exempted subject to conditions specified in the said notification

c) **Notification 80 of 2019 dated 15.10.2019**: The authorized dealer and its franchise agent and sub-agent and Full-Fledged Money Changer (FFMC) licensed by the Reserve Bank of India and its franchise agent for the purposes of, -

   i. Purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by Reserve bank of India; or

   ii. Disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MFSS) of the Reserve Bank of India;

   and subject to the conditions specified in the said notification.

Section 194N of the Act was amended by the Finance Act, 2020 (the FA, 2020) in order to make the provisions of the said section more stringent for non ITR filers. It is to note that the clause (v) of the proviso to section 194N prior to its amendment has now become fourth proviso to the said section. Representations have been received seeking clarification regarding the validity of the above-mentioned notifications in light of the amendments carried out by FA, 2020.

The matter has been examined by the Board and it is hereby clarified that the above mentioned three notifications shall be deemed to be issued under fourth proviso to section 194N as amended by the FA, 2020. It is further reiterated that the exemption allowed under the said notifications shall be subject to the conditions laid down therein.

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AUTHOR'S COMMENTARY

<u>TAX DEDUCTION AT SOURCE (TDS) ON CASH WITHDRAWL</u>

(Amendment in Sec 194N of the Income Tax Act, 1961)

1. Finance (No. 2) Act, 2019 inserted a new provision, namely, section 194N, in Chapter XVII-B, to provide for "TDS on cash withdrawal to discourage cash transactions", with effect from 1-9-2019.

2. The **Finance Bill 2020 (Bill) introduced vide Union Budget 2020-21 is** passed by both Houses of Parliament, <u>with few amendments on 27th March 2020</u> and also received President's assent .

3. One of the amendments which will affect a large number of people is change in scope of TDS on cash withdrawal under sec 194N of Income Tax Act.

4. **<u>Existing Scope of Sec 194N:</u>** Section 194N for deduction of tax at source (TDS) on cash withdrawals exceeding Rs 1 crore. was introduced by Honourable Finance Minister in Union Budget 2019. This section applies to an aggregate of sums withdrawn from a particular payer in a financial year. The Government has introduced Section 194N in the

Union Budget 2019 in order to discourage cash transactions in the country and promote the digital economy,

5. **<u>Amendment in Sec 194N: -</u>** Section 194 N of the Income Tax Act has been amended vide clause 84 of Finance Act 2020.

6. **<u>Amended Scope of Sec 194N:</u>** - The Scope of TDS on cash withdrawal has been extended. TDS @ 2% is required to be deduced if the withdrawer ***has not filed his tax return for three years*** and withdrawal during the year exceeds Rs 20 lakhs but less than Rs 1 crore. For withdrawal more than Rs 1 crore TDS @ 5%. Is required to be deducted.

7. **<u>Effective date of Amendment</u>**: - Amendment of Section 194N will be with effect from 01 July 2020.

8. **<u>Who will Deduct TDS: -</u>** The person (payer) making the cash payment will have to deduct TDS under Section 194N. Here is the list of such persons:

    - Any bank (private or public sector)
    - A co-operative bank
    - A post office

9. **<u>When TDS to be deducted</u>**: TDS under Section 194N tax shall be required to be deducted only when the aggregate amount of cash withdrawal during the previous year by a person from one or more of his bank or post office account, as the case may be, exceeds Rs. 20 Lakhs and the said person has not filed his Income Tax Returns for last three years. Further, the tax shall be required to be deducted only on the amount exceeding Rs. 20 Lakhs

    For the purpose of computation of threshold limit of Rs. 20 Lakhs, the total amount of cash withdrawn during the previous year shall be considered.

10. **<u>Illustration:</u>**

<table>
<tr><td colspan="4">Payers: - Bank / Post Office / Co -operative Societies</td></tr>
<tr><td colspan="2">Mr. X – Filed all his Returns</td><td colspan="2">Mr. Y -Not Filed his returns for 3 preceding Assessment years
AY [2019-20, 2018-19 & 2017-18]
FY [2018-19.2017-18 & 2016-17]</td></tr>
<tr><td>Cash Withdrawal upto Rs 1 crores</td><td>Cash Withdrawal more than Rs 1 crores</td><td>Cash Withdrawal 20 Lakhs to 1 Crore</td><td>Cash Withdrawal more than Rs 1 crores</td></tr>
<tr><td>No TDS</td><td>TDS @ 2%</td><td>TDS @ 2%</td><td>TDS @ 5%</td></tr>
</table>

Further, Mr Y has saving and current account with 2 Branches of the same bank. The details of total cash withdrawn from both the accounts / branches are as follows:

Date of Cash Withdrawal	Cash Withdrawn from saving Bank of Branch1	Cash Withdrawn from saving Bank of Branch 2	Cash Withdrawn from Current Account – Branch 1	Total Withdrawn	TDS
2019-20	20,00,000	25,00,000	1,25,00,000	1,70,00,000	1,40,000
2020-21	0	25,00,000	0	25,00,000	10,000
2020-21	20,00,000	25,00,000	1,25,00,000	1,70,00,000	3,50,000

Since Amendment is w.e.f 01 July 2020, for FY 2019-20 TDS will be deducted on 70,00,000(1,70,00,000-1,00,00,000) @ 2% = 1,40,000.

For FY 2020-21 TDS will be deducted as follows:

a) In case total cash withdrawal for the year is Rs 25,00,000/- TDS will be deducted @ 2% on Rs 5,00,000/- (amount exceeding Rs 20,00,000)

b) In case of total cash Withdrawal is Rs 1,70,00,000 /- TDS will be deducted @ 5% on Rs 70,00,000/ (amount exceeding Rs 1 Crores)

11. **Point of Tax Deduction:** TDS will be deducted by the payer while making the cash payment over and above Rs 1 crore in a financial year to the payee. If the payee withdraws a sum of money on regular intervals, the payer will have to deduct TDS from the amount, once the total sum withdrawn exceeds Rs 1 crore in a financial year. Further,

    10.1 The TDS will be done on the amount exceeding Rs 1 crore. In the example given above, Mr Y withdraws 45 Lakhs in the aggregate in the financial year and in the next withdrawal, an amount of Rs 1.25 crores is withdrawn, the TDS liability is only on the excess amount of Rs.70 Lakhs (0 .45+1.25-1.00)

12. **Applicability:** The section will apply to withdrawals made by following taxpayers:-

    a) An Individual

    b) A Hindu Undivided Family (HUF)

    c) A Company

    d) A partnership firm or an LLP

    e) A local authority

    f) An Association of Person (AOPs) or Body of Individuals (BOIs)

13. **Non-Applicability:** Sec 194N will not apply to withdrawals made by following taxpayers:

    - Government Body
    - Bank including co-operative banks

- Business correspondent of a banking company
- White label ATM operator of any bank
- Farmers – Central Government specifies the commission agent or trader, operating under **Agriculture Produce Market Committee (APMC)**– **Notification No. 70/2019-Income Tax Dated 20th September, 2019**
- CBDT exempts cash withdrawal by the authorised dealer and its franchise agent and sub-agent; and Full-Fledged Money Changer (FFMC) licensed by the Reserve Bank of India and its franchise agent from TDS under Section 194N subject to conditions specified in **Notification No. 80/2019-Income Tax dated 15th October, 2019**.

14. Further CBDT vide its Circular no. 14/2020 dt. 20/07/2020 clarified that the following three notifications shall be deemed to be issued under fourth proviso to section 194N as amended by the FA, 2020: -
    - Notification 68 of 2019 dated 18.09.2019
    - Notification 70 of 2019 dated 20.09.2019
    - Notification 80 of 2019 dated 15.10.2019

Source: Taxmann.com; Taxguru.com