TDS ON NON-SALARY PAYMENTS

STAGE OF DEDUCTION

- At the time of credit of such income to the account of the payee or at the time of payment in cash / cheque / draft or by any other mode whichever is earlier
- Credit to any account whether called suspense account or by any other name amounts to credit of the income to the account of the payee
- Advance payments are liable for deduction

GENERAL EXEMPTIONS

- Payments to the following persons are exempt from TDS u/s. 196 –
  1. Government
  2. RBI
  3. Mutual funds
  4. Corporations established under central Law whose income is exempt
- Funds / authority / Boards / Bodies whose income is unconditionally exempt u/s.10 and statutorily not required to file return of income (Circular No.4 of 2002)
  1. Local authorities
  2. Khadi and village industries Board
  3. Insurance regulatory and development authority
  4. Recognized / Statutory provident funds
  5. Approved Superannuation / gratuity funds
  6. ESI fund
  7. Corporations for promoting the interest of minority community set up by the government
  8. Body / authority constituted under the Law for administration of public religious trusts / endowments
  9. Coffee Board, Tea Board, Rubber Board, Tobacco Board, Spices Board, Coir Board, Marine products exports development authority, agricultural and processed food products export development authority

OTHER CASES OF NON DEDUCTION / LOWER DEDUCTION

- Cases of payees covered by certificate of non deduction or deduction at a lower rate issued by the Income tax department u/s.197 (not applicable for 194B,194BB,194E,194EE,194F)
- Cases of individual payees who furnish declarations in form No. 15G / 15H in respect of dividends or NSS deposits
- Cases of payees other than company or firm who furnish declarations in form No 15G / 15H in respect of interest on securities and other interest

CONDITIONS FOR VALIDITY OF 15G / 15H DECLARATIONS

- Declaration in form No. 15G not valid if the amount paid / credited exceeds the tax exemption limit

- Declaration in form No. 15H is to be filed only by senior citizens
- Declarations valid only for the assessment year mentioned therein
- Declarations valid only for the payment / credit made subsequent to the date of declaration

ADJUSTMENT OF EXCESS DEDUCTION

- Excess deduction can be adjusted against the amounts deductible subsequently
    1. During the same financial year only
    2. Applicable only in respect of deduction on salary payments and interest (other than interest on securities)

TDS ON INTEREST

SCOPE OF INTEREST:

- Interest payable in respect of
    - Monies borrowed
    - Debt incurred (including a deposit, claim etc..)
- Service fee or other charges in respect of
    - Monies borrowed
    - Debt incurred
    - Unutilised Credit facility

WHO HAS TO DEDUCT

- All Persons other than individual / HUF
- Individual / HUF carrying on business / profession and having turnover exceeding Rs. 40 Lakhs in the business or Rs. 10 Lakhs in the profession during the immediately preceding financial year

RATE OF TDS

- 20% in case of payments to companies (reduced to 10% w.e.f 01/10/2009)
- 10% in case of payments to others

THRESHOLD LIMITS

- Rs. 10,000/- in the case of payments by banks, cooperative banks and post office (in respect of senior citizen savings scheme)
- Rs. 50,000/- in the case of interest on compensation awarded by motor accidents claims tribunal
- Rs. 5,000/- in all other cases

GENERAL PRINCIPLES

- TDS to be made on gross interest payments

EXEMPTIONS FROM TDS –

- Ø Interest paid to banks, cooperative banks, financial institutions established under the law, LIC, UTI, Insurance companies
- Ø Interest paid by a cooperative society to its member or another cooperative society
- Ø Interest paid by a firm to its partners
- Ø Interest paid on deposits by primary agricultural credit society / primary credit society / cooperative land mortgage bank / cooperative land development bank
- Ø Interest paid to notified institutions/associations/bodies
- Ø Interest paid by banks and cooperative banks in respect of deposits other than time deposits
- Ø Interest paid by the government on refunds under Income tax Act and other Direct Tax Acts
- Ø Interest paid by post office in respect of time deposits, recurring deposits, monthly income schemes, NSCs, Kisan Vikas Patras and Indira Vikas Patras
- Ø Interest paid by infrastructure capital company / fund in respect of zero coupon bonds
- Ø Interest paid by offshore banking unit in a SEZ to non residents in respect of deposits or borrowings

INTEREST ON BANK DEPOSITS –

- Ø TDS applicable to interest on
  - v term / fixed deposits
  - v cumulative deposits
  - v reinvestment deposits
  - v variable / flexi deposits
- Ø TDS not applicable to interest on
  - v recurring deposits
  - v deposits in savings bank accounts
- Ø each branch of a bank is considered as a unit for reckoning the threshold limit for TDS
- Ø interest payable on all the deposits in the branch standing in the name of a payee should be aggregated
- Ø interest payable in the case of a deposit in joint names should be aggregated with the interest payable to joint account holder having higher interest income (circular No. 256)

TDS ON CONTRACT PAYMENTS

SCOPE OF THE SECTION:

- v Contract payments for
  - o Carrying out any work in pursuance of a contract
  - o Supply of labour for carrying out any work
  - o Payments made by a contractor to a sub-contractor for
  - o carrying out whole or any part of the work undertaken by the contractor
  - o Supply of labour for carrying out whole or any part of the work undertaken by the contractor

WHO HAS TO DEDUCT

- Central / State government
- Local authority
- Company
- Firm
- Cooperative Society
- Trust / Registered society
- Public sector corporation
- University
- Individual / HUF carrying on business / profession and having turnover exceeding Rs. 40 Lakhs in the business or Rs. 10 Lakhs in the profession during the immediately preceding financial year. Payments made exclusively for personal purposes are excluded.

RATE OF TDS

- 2% in case of contract payments other than advertising
- 1% in case of advertising
- 1% in the case of sub-contract payments
- 1% in the case of contract as well as sub-contract payments made to individuals / HUF w.e.f 01/10/2009
- 2% in the case of contract as well as sub-contract payments made o others w.e.f 01/10/2009

THRESHOLD LIMITS

- Rs. 20,000/- in respect of each contract
- Rs. 50,000/- in the aggregate to the payee during the year in respect of all the contracts

GENERAL PRINCIPLES

- TDS to be made on gross payments and not on income comprised therein

EXEMPTIONS FROM TDS –

- Payments to an individual transport sub-contractor not owning more than two goods carriage vehicles
- Payments towards transport contracts/sub contracts if PAN is furnished by the payee w.e.f 01/10/2009
- Payments in respect of works executed under NREP and RLEGP programmes (circular No. 502)
- Freight payments made to foreign shipping companies or its Indian agents (circular No. 726)
- Payments to Airlines or its travel agents for purchase of air tickets (circular No.713)

SCOPE OF “WORK”

- Works contracts
- Labour contracts
- Advertising contracts
- Broadcasting and telecasting contracts
- Transportation contracts for carriage of goods and passengers (other than by railways)
- Catering contracts
- Contracts for manufacture or supply of products according to the specifications / requirements of the contractee by using material supplied by the contractee (w.e.f 01/10/2009)

INSTANCES OF CONTRACT PAYMENTS LIABLE FOR TDS

- Contracts for putting up a hoarding
- Payments made to clearing and forwarding agents
- Payments made to couriers
- Payment of freight by the consignee on “freight to pay” basis
- Payments towards sponsorship for debates, seminars and other functions held in colleges, schools and associations
- Payments towards advertisements issued in the souvenirs
- Payments towards services of an electrician, plumber etc
- Payments towards routine and normal maintenance contracts including supply of spares
- Payments to cold storages towards cooling charges (circular No.1 of 2008)

INSTANCES OF CONTRACT PAYMENTS LIABLE FOR TDS

- Payment towards security service contracts
- Payment for cargo handling by airlines to airport authority

TDS ON RENT

MEANING OF RENT

Ø Any payment under a lease / sub-lease / tenancy or any other agreement for use of
  1. Land
  2. Building (including factory building)
  3. Land appurtenant to a building
  4. Plant
  5. Machinery
  6. equipment
  7. Furniture
  8. Fittings

  Either separately or together and whether they are owned by the payee or not

WHO HAS TO DEDUCT

Ø All Persons other than individual / HUF

- Individual / HUF carrying on business / profession and having turnover exceeding Rs. 40 Lakhs in the business or Rs. 10 Lakhs in the profession during the immediately preceding financial year

RATE OF TDS

- 10% for the use of plant, machinery or equipment (reduced to 2% w.e.f 01/10/2009)
- 15% for the use of other assets where payee is an individual or HUF (reduced to 10% w.e.f 01/10/2009)
- 20% for the use of other assets where payee is other than an individual or HUF (reduced to 10% w.e.f 01/10/2009)

THRESHOLD LIMITS

- Rs. 1,20,000/- per annum

GENERAL PRINCIPLES

- In the case of jointly owned property, the threshold limit of Rs.1.20 Lakhs will apply in respect of each co-owner if the shares of the co-owners are definite and ascertainable
- No tax is deductible on the municipal taxes, ground rent etc. borne by the tenant (circular No.718)
- TDS is not required to be made on the service tax payable with the rent (circular No. 4 of 2008)
- TDS to be made even if the rent receipt is assessable as a business receipt in the hands of the receipient.

EXEMPTIONS FROM TDS –

- Rent paid to local authorities whose income is exempt u/s.10(20) (circular No. 699)
- Rent paid to regimental funds and non-public fund established by armed forces (circular No. 735)

INSTANCES OF PAYMENTS LIABLE FOR TDS

- Space for hoarding taken on lease and sub-let(circular no.715)
- Ware housing charges (circular No. 718)
- Hotel accommodation taken on a regular basis (circular No.715 & circular No.5 of 2002)
- Rent for hiring of exhibition grounds or exhibition halls
- Amount paid towards business centre agreement
- Composite arrangements for use of premises and provision of other services where service charges not specifically defined (circular no.715)
- Non refundable deposit whether adjustable against rent or otherwise and whether interest bearing or not (circular No.718)

INSTANCES OF PAYMENTS LIABLE FOR TDS

- Advance rent
- Premium for lease

- Landing and parking charges and rent for space used for cargo handling paid by airline companies to airport authority
- Lease of storage tanks
- Demurrage paid on goods to be loaded or unloaded from ship
- Payment for hiring of showroom windows for display of products
- Payment to studio owner by film/TV serial producers for use of floors/sets/locations for shooting
- Payment of lease rental for transmission towers by cell phone companies

TDS ON COMMISSION OR BROKERAGE

MEANING OF COMMISSION OR BROKERAGE

- Payment to a person acting on behalf of the payer for
  - the services rendered (other than professional services)
  - any services in the course of buying or selling of goods
  - Services in relation to transactions in any asset, valuable articles or things other than securities
- Relationship of principle and agent is essential between the payer and payee to characterize it as commission / brokerage

WHO HAS TO DEDUCT

- All Persons other than individual / HUF
- Individual / HUF carrying on business / profession and having turnover exceeding Rs. 40 Lakhs in the business or Rs. 10 Lakhs in the profession during the immediately proceeding financial year

RATE OF TDS

- 10%

THRESHOLD LIMITS

- Rs. 2,500/- per annum

INSTANCES OF PAYMENTS LIABLE FOR TDS

- Discount allowed to the franchisees / distributors of SIM cards and recharge vouchers by the telecom companies
- Commission allowed to the consignee by the consignor (circular No. 619)
- Payments made by hospitals to referral doctors for referring the patients
- Commission paid to travel agents by airlines

INSTANCES OF PAYMENTS NOT LIABLE FOR TDS

- Ø Commission paid by BSNL / MTNL to the PCO franchisees
- Ø Turnover commission paid by RBI to the banks for the government transactions (circular no.6 of 2003)

TDS ON FEES FOR PROFESSIONAL OR TECHNICAL SERVICES

SCOPE OF THE SECTION

- Ø Fees for professional services
- Ø Fees for technical services
- Ø Royalty
- Ø Payment towards non-compete agreement

MEANING OF PROFESSIONAL SERVICES

- Ø Services rendered by a person in the course of carrying on
  - Legal profession
  - Medical profession
  - Engineering or architectural profession
  - Accountancy profession
  - Technical consultancy
  - Interior decoration
  - Advertising
  - Authorised representative

MEANING OF PROFESSIONAL SERVICES

- Ø Services rendered by a person in the course of carrying on
  - v Film artists i.e. actor, camera man, director, assistant director, music director, assistant music director, art director, assistant art director, dance director, assistant dance director, editor, singer, lyricist, story writer, screen play writer, dialogue writer, dress designer
    - o Company secretary profession
    - o Sports persons
    - o Umpires and referees
    - o Coaches and trainers
    - o Team physicians and physiotherapists
    - o Event Managers
    - o Commentators
    - o Anchors
    - o Sports columnists

MEANING OF TECHNICAL SERVICES

- Ø Rendering of managerial, technical or consultancy services

- Providing services of technical or other personnel
- Does not include consideration for any construction, assembly, mining or like project
- Does not include consideration which is chargeable under the head salaries in the hands of the recipients

MEANING OF ROYALTY

- Consideration for
  - Transfer of all or any rights in or the use of or the imparting of any information concerning the working of a patent, invention, model, design, trade mark, secret formula
  - The imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill
  - The use or the right to use any industrial, commercial or scientific equipment
  - The transfer of all or any rights in respect of any copy right, literary, artistic or scientific work including films but does not include consideration for sale, distribution or exhibition of cinematographic films
  - Rendering of any services in connection with the above mentioned activities

MEANING OF PAYMENT TOWARDS NON COMPETE AGREEMENT

- Any sum payable under an agreement for
- Not carrying out any activity in relation to any business
- Not sharing any know – how, patent, copy right, trade mark, license, franchise or any other business or commercial right of similar nature, information or technique likely to assist in manufacture/processing of goods or provision for service

WHO HAS TO DEDUCT

- All Persons other than individual / HUF
- Individual / HUF carrying on business / profession and having turnover exceeding Rs. 40 Lakhs in the business or Rs. 10 Lakhs in the profession during the immediately proceeding financial year. Payments made exclusively for personal purposes are excluded.

RATE OF TDS

- 10%

THRESHOLD LIMITS

- Rs. 20,000/- per annum

GENERAL PRINCIPLES

- TDS to be made on gross payment including the reimbursement for expenses (circular no.715)

INSTANCES OF PAYMENTS LIABLE FOR TDS

- Ø Payments to recruitment agencies (circular No.715)
- Ø Payments made by a company to share registrar (circular No. 715)
- Ø Payments made to the Airport Authority of India towards Navigational facilities
- Ø Payments made by banks to MICR centre for processing and clearing MICR cheques
- Ø Payments made to a hospital for rendering medical services (circular no.715)
- Ø Payments made by an advertising agency to the models, artists and other technicians (circular no. 714)
- Ø Royalty paid by publishers to the authors
- Ø Port/access/interconnect charges paid by telecom operators

INSTANCES OF PAYMENTS LIABLE FOR TDS

- Ø Payments to merchant bankers
- Ø Payments to credit rating agencies
- Ø Payments for market research
- Ø Payments to surveyors, approved valuers
- Ø Payments to landscape consultants, decoration consultants
- Ø Payments by hospitals to consultant doctors
- Ø Payment of charges for internet services, VSAT, bandwidth
- Ø payment by banks for professional services for loan processing, credit verification
- Ø Payments for satellite rights/TV rights of films

INSTANCES OF PAYMENTS LIABLE FOR TDS

- Ø Payments made for film processing, graphic designs, special effects
- Ø Payments for oil testing by oil companies
- Ø Payments to players, coaches, managers, fitness experts by sports bodies