

COLLECTION AND RECOVERY OF TAX

Some Key Points : Recent Amendments

The Finance Act, 2010 has increased the threshold limit for tax deduction at source under section 194C. No deduction of tax at source is required to be made where the sum credited or paid to a contractor does not exceed Rs.30,000. The limit was previously Rs.20,000.

Similar upward revision in respect of aggregate of the contract payments has been made by the Finance Act, 2010 w.e.f. 01.07.2010. The aggregate of such sums credited or paid if exceeds Rs.75,000, the tax is deductible at source. The limit was previously Rs.50,000.

The Finance Act, 2010 has increased the threshold limit for tax deduction at source in respect of insurance commission under section 194D from Rs.5,000 to Rs.20,000 w.e.f. 01.07.2010.

Similarly, the limit for tax deduction in respect of commission or brokerage under section 194H has been enhanced to Rs.5,000 as against the previous limit of Rs.2,500. This change is also effective from 01.07.2010.

The tax deduction in respect of rent under section 194-I has been enhanced to Rs.1,80,000 w.e.f. 01.07.2010.

In respect of professional charges for which tax is deductible at source under section 194J, the threshold limit for tax deduction has been increased to Rs.30,000 as against the previous limit of Rs.20,000. It covers payment for fees for professional services, fees for technical services, royalty and any other sum referred to in section 28(va) of the Act.

Credit for tax deducted

Section 199(3) empowers the Board to make such rules as may be necessary for the purpose of giving credit in respect of TDS to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given.

Increase in rate of interest under section 201(1A)

Where an assessee does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest –

- (i) at 1% for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and
- (ii) at 1.5% for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid.

Direct Tax Laws

No order deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, shall be made, at any time after the expiry of –

- (i) two years from the end of the financial year in which the statement is filed in a case where a statement referred to in section 200 has been filed;
- (ii) four years from the end of the financial year in which the payment is made or credit is given, in any other case.

Question 1

Discuss, whether tax is deductible at source from payment made for landing fee and parking fee of aircraft paid to Airport Authorities.

Answer

The Delhi High Court has, in *United Airlines vs. CIT (2006) 287 ITR 281*, held that the landing and parking fee for aircraft charged by the Airport Authorities is considered as rent for the purpose of section 194-I. As per Explanation (i) to section 194-I, rent means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of, *inter alia*, land. When the wheel of an aircraft coming into an airport touches the surface of the air-field, the use of the land of the airport immediately begins. Similarly, for parking the aircraft in that airport, there is use of the land. Thus, even the landing of aircraft or parking of the aircraft amounts to use of the land of the airport. Hence, the landing fee and parking fee will amount to rent for the purpose of section 194-I.

Question 2

Mahanadi Limited has taken one flat (3,000 sq. ft) on rent from Yamuna Limited to set up its Branch Office. The rent payable to Yamuna Limited for the flat is Rs.60,000 per month plus applicable service tax. Mahanadi Limited wishes to know whether tax is required to be deducted at source under section 194-I from gross amount of rent including service tax. Give your advice.

Answer

CBDT Circular No.4/2008 dated 28.04.2008 has clarified that service tax paid by the tenant does not partake the nature of income of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax. Therefore, tax deduction at source under section 194-I would be required to be made on the amount of rent paid/payable without including the service tax.

Question 3

M/s Soft Drinks Limited entered into an agreement for the warehousing of its products with XYZ Warehousing and deducted tax at source as per provisions of section 194C out of

warehousing charges paid during the year ended on 31.03.2011. The Assessing Officer, while completing the assessment for A.Y. 2011-12 of Soft Drinks Limited, treated the warehousing charges as rent as defined in section 194-I and asked the company to make payment of difference amount of TDS with interest. It was submitted by the company that the recipient had already paid tax on the entire amount of warehousing charges and therefore, now the difference amount of TDS cannot be recovered. However, it will make the payment of due interest on the difference amount of TDS.

Answer

The facts given in the case are identical to the facts, which were before the Apex Court in the case of *Hindustan Coca Cola Beverage P. Ltd v. CIT (2007) 293 ITR 226*. The Court held that though the assessee was as an assessee-in-default, the difference of tax deducted cannot be recovered from him since the same had already been paid by the recipient of income. Therefore, the Supreme Court had, in view of the Circular No. 275/201/95-IT(B) dated 29.1.97 and considering the payment of interest under section 201(1A) by the assessee, held that the tax cannot once again be recovered from the assessee. Therefore, the action of Assessing Officer to recover the amount of difference along with interest from M/s Soft Drinks Ltd., when the tax has been paid by the recipient and the assessee is making the payment of interest, is incorrect in view of the decision of the Apex Court.

Question 4

East Bengal Club, a renowned football club, has engaged Raghu, a resident in India, as its coach at a remuneration of Rs.6 lacs annually. The club wants to know from you whether it is liable to deduct tax at source from such remuneration.

Answer

Section 194J requires deduction of tax at source @10% from the amount credited or paid by way of fees for professional services, where such amount or aggregate of such amounts credited or paid to a person exceeds Rs.30,000 in a financial year. As per Explanation (a) to section 194J, professional services includes, inter alia, services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purpose of section 194J.

Accordingly, the CBDT has, vide Notification No.88 dated 21.8.2008, in exercise of the powers conferred by clause (a) of the Explanation to section 194J notified the services rendered by, inter alia, coaches and trainers in relation to the sports activities as professional services for the purpose of section 194J.

Therefore, the club is liable to deduct tax at source under section 194J from the remuneration payable to the Coach, Raghu.

Question 5

P Ltd. is engaged in manufacture of a product. It paid a lump-sum deposit and obtained 50 mobile phone services so that the employees of the assessee can be contacted immediately. The company paid Rs.45,000 every month towards the service and call charges to the mobile phone franchise. On these facts decide whether P Ltd. has to deduct tax at source on the payment? If so, under which provision of the Act?

Answer

In this case, the assessee pays the service and call charges every month to a mobile phone franchise. *Explanation 2* to section 9(1)(vii) provides that “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). Therefore, mere collection of fee by the mobile phone franchise from the customers for use of mobile phone services will not amount to receipt of fees towards technical services. When a subscriber pays money to the mobile phone franchise, it is towards the benefit of availing the services to communicate with others and not for any technical services. The payment made is for the use of airtime. Installation of technical equipment to ensure connectivity to the subscriber cannot make it technical services. Therefore, P Ltd. need not deduct tax at source under section 194J on the payments made to the mobile phone franchisee towards the service and call charges. This view was upheld by the Madras High Court in *Skycell Communications Ltd. v. Dy. CIT (2001) 251 ITR 53*.

Question 6

ABC Ltd. took on sub-lease a building from J, an individual, with effect from 1.9.2010 on a rent of Rs.20,000 per month. It also took on hire machinery from J with effect from 1.10.2010 on hire charges of Rs.15,000 per month. ABC Ltd. entered into two separate agreements with J for sub-lease of building and hiring of machinery. The rent of building and hire charges of machinery for the financial year 2010-11 amounting to Rs.1,40,000 and Rs.90,000 respectively were credited by ABC Ltd. to the account of J in its books of account on 31.3.2011. Examine the obligation of ABC Ltd with regard to deduction of tax at source in respect of the rent and hire charges.

Answer

Section 194-I dealing with deduction of tax at source from payment of rent has been amended by the Finance (No.2) Act, 2009 with effect from 01.10.2009 by reducing the rate of tax deduction. The rate of TDS applicable is 2% for machinery hire charges and 10% for building lease rent w.e.f. 1.10.2009. The scope of the section includes within its ambit, rent for machinery, plant and equipment. Tax is required to be deducted at source from payment of

rent, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of, *inter alia*, building and machinery, irrespective of whether such assets are owned or not by the payee. The limit of Rs.1,80,000 for tax deduction at source w.e.f. 01.07.2010 will apply to the aggregate rent of all the assets. Even if two separate agreements are entered into, one for sub-lease of building and the other for hiring of machinery, rent and hire charges under the two agreements have to be aggregated for the purpose of application of the threshold limit of Rs.1,80,000. Therefore, ABC Ltd. has to deduct tax at source under section 194-I in respect of the rent and hire charges aggregating to Rs.2,30,000 credited to the account of J, the payee.

Question 7

M, an individual, had let out his building on a monthly rent of Rs.20,000. The tenant deducted tax under section 194-I from the rent paid to M, but did not remit such tax to the credit of the Central Government. M filed his return of income for the assessment year 2011-12 including therein the rental income from the said building and paid the balance tax on his total income after taking credit for tax deducted at source by the tenant. The Assessing Officer has called upon M to pay the tax to the extent of tax deducted at source. Is the Assessing Officer justified in doing so?

Answer

Section 205 of the Income-tax Act, 1961 provides that where tax is deductible at source under the provisions of Chapter XVII, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income. Section 205, therefore, bars a direct demand being made on an assessee to the extent of tax deducted from the income. The Income-tax Department can recover the tax deducted at source from the tenant and not from M in view of the clear mandate in section 205. The Karnataka High Court has in *Smt. Anusuya Alva v. DCIT (2005) 278 ITR 206* ruled that tax deducted at source by the tenant from the rent paid but not remitted to the credit of the Central Government can be recovered only from the tenant and not from the landlord. Therefore, in view of the clear mandate in section 205, the Assessing Officer is not justified in law in calling upon M to pay the said tax.

Question 8

Examine the obligation of the person responsible for paying the income to deduct tax at source and indicate the due date for payment of such tax, wherever applicable, in respect of the following items:

- (i) *MNO Ltd., the employer, credited salary due for the financial year 2010-11 amounting to Rs.2,40,000 to the account of Q, an employee, in its books of account on 31.3.2011. Q has not furnished any information about his income/loss from any other head or proof of investments/payments qualifying for deduction under section 80C.*

Direct Tax Laws

- (ii) T, an individual whose total sales in business during the year ending 31.3.2010 was Rs.1.20 crores, paid Rs.9 lakhs by cheque on 1.1.2011 to a contractor (an individual), for construction of his business premises, in full and final settlement. No amount was credited earlier to the account of the contractor in the books of T.
- (iii) BCD Ltd. credited Rs.28,000 towards fees for professional services and Rs.27,000 towards fees for technical services to the account of HG in its books of account on 6.10.2010. The total sum of Rs.55,000 was paid by cheque to HG on 18.12.2010

Answer

- (i) Section 192 requires deduction of tax from salary at the time of payment. Thus, the employer is not required to deduct tax at source when salary has not been paid but is merely credited to the account of the employee in its books of account. MNO Ltd. therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee Q which is not paid.
- (ii) An individual who is liable for tax audit under section 44AB in the immediately preceding financial year is liable to deduct tax at source under section 194C for the financial year 2010-11 in respect of the payment made to contractor exceeding Rs. 30,000 in a single payment and Rs. 75,000 in aggregate during the financial year. Turnover of the individual T exceeded Rs.40 lakh in the financial year 2009-10. Therefore, T is liable to get his accounts for that year audited under section 44AB. As the payment during financial year 2010-11 to the contractor had exceeded the limits prescribed in section 194C, tax has to be deducted under section 194C.

The rate of tax deduction is 1% as the contractor is an individual.

- (iii) The limit of Rs.30,000 for non-deduction of tax under section 194J has been separately fixed for fees for professional services and fees for technical services. This means that if a person has rendered services falling under both the categories, tax need not be deducted if the fees for each category does not exceed Rs.30,000 even though the aggregate of the amounts credited to the account of such person or paid to him for both the categories of services exceed Rs.30,000. Therefore, BCD Ltd., is not required to deduct tax at source in respect of the fees either at the time of credit or at the time of payment.

Question 9

Alap Ltd. has made payments on various dates in financial year 2010-11 to Vilambit Ltd. towards work done under different contracts as follows :

<i>Contract Number</i>	<i>Date of payment</i>	<i>Amount (Rs.)</i>
1.	5.5.2010	10,000
2.	6.6.2010	15,000
3.	8.8.2010	25,000
4.	10.12.2010	20,000
5.	29.03.2011	10,000

Alap Ltd. claims that it is not liable for deduction of tax at source under section 194C. Examine the correctness of the claim made by the company. What would be the position if the value of the contract no. 5 is Rs. 1,000 only and there is no other contract during the year.

Answer

The limit for tax deduction under section 194C has been increased by the Finance Act, 2010 w.e.f. 01.07.2010. As per section 194C(5) tax has to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds Rs.30,000 in a single payment or Rs.75,000 in aggregate during a financial year.

Therefore, in the given case, even though the value of each individual contract does not exceed Rs.30,000, the aggregate amount of the sums paid exceeds Rs.75,000. Therefore, Alap Ltd's contention is not correct and tax is required to be deducted at source from Rs.10,000, being the contract no.5 in which the aggregate payment exceeded Rs.75,000.

No tax deduction is to be made if the value of the last contract is Rs.1,000 as the aggregate amount in such case would only be Rs.71,000, which is below the aggregate monetary limit of Rs.75,000.

Question 10

Discuss the liability for tax deduction at source in the following cases for the assessment year 2011-2012 :

- (i) *Mr. Anand has been running a sole proprietary business whose accounts are audited under section 44AB of Income-tax Act, 1961. He pays a monthly rent of Rs.15,000 for the office premises to Mr. R, the owner of building and an individual. Besides, he also pays service charges of Rs.10,000 per month to Mr. R towards the use of furniture, fixtures and vacant land appurtenant thereto.*
- (ii) *By virtue of an agreement with a nationalised bank, a catering organisation receives a sum of Rs.50,000 per month towards supply of food, water, snacks etc. during office hours to the employees of the bank.*
- (iii) *An Indian company pays gross salary including allowances and monetary perquisites amounting to Rs.6,80,000 to its General Manager. Besides, the company provides non-monetary perquisites to him in the same period whose value is estimated at Rs.1,20,000.*

Answer

- (i) Where the payer is an individual or HUF whose accounts are required to be audited as per the provisions of section 44AB for the immediately preceding financial year, he has to deduct tax at source. If the accounts of Mr. Anand are subject to tax audit for the assessment year 2010-11 under section 44AB of the Income-tax Act, 1961, he is liable to deduct tax at source under section 194-I in respect of rental payments during the financial year 2010-11.

Direct Tax Laws

Accordingly, Mr. Anand is liable to deduct tax at source under section 194-I on the rental payments made. Section 194-I provides that rent includes any payment, by whatever name called, for the use of land or building together with furniture, fittings etc. Therefore, in the given case, apart from monthly rent of Rs.15,000 p.m., service charge of Rs.10,000 p.m. for use of furniture and fixtures would also attract TDS under section 194-I. Since the aggregate rental payments to Mr. R during the financial year 2010-11 exceeds Rs. 1,80,000, Mr. Anand is liable to deduct tax at source @10% under section 194-I from rent paid to Mr. R.

- (ii) The definition of “work” under Explanation to section 194-C includes catering services and therefore, TDS provisions under section 194C are attracted in respect of payments to a caterer. As the payment exceeds Rs.30,000, the nationalised bank is required to deduct tax at source at 2% on the payments made to catering organisation under 194-C. If the catering organization is an individual or HUF, then the tax deduction shall be @ 1%.

(iii) Gross salary, allowances and monetary perquisites	6,80,000
Non-Monetary perquisites	<u>1,20,000</u>
	<u>8,00,000</u>

Tax Liability 96,820

Average rate of tax $(96,820 / 8,00,000 \times 100)$ 12.10%

The company can deduct Rs. 96,820 at source from the salary of the General Manager. Alternatively, the company can pay tax on non-monetary perquisites as under –

Tax on non-monetary perquisites = 12.10% of Rs. 1,20,000 = Rs. 14,520

Balance to be deducted from salary = Rs. 82,300

If the company pays tax of Rs. 14,520 on non-monetary perquisites, the same is not deductible expenditure as per section 40(a). It is not chargeable to tax in the hands of the employee under section 10(10CC).

Question 11

The following issues arise in connection with the deduction of tax at source under Chapter XVII-B. Discuss the liability for tax deduction in these cases:

- (a) *An employee of the Central Government receives arrears of salary for the earlier 3 years. He enquires whether he is liable for deduction of tax on the entire amount during the current year.*
- (b) *A T.V.channel pays Rs.10 lakhs on 1.9.2010 as prize money to the winner of a quiz programme. Who will be a Millionaire?*

- (c) *State Bank of India pays Rs.50,000 per month as rent to the Central Government for a building in which one of its branches is situated.*
- (d) *A television company pays Rs.80,000 to a cameraman for shooting of a documentary film.*
- (e) *A State Government pays Rs.20,000 as commission to one of its agent on sale of lottery tickets*
- (f) *A Turf Club awards a jack-pot of Rs.5 lacs to the winner of one of its races.*

Answer

- (a) As per section 192, tax is deductible at source by any person who is responsible for paying any income chargeable under the head salaries. However, under sub-section (2A) of that section, the employee will be entitled to relief under section 89(1) and consequently he will be required to furnish to the person responsible for making the payment, such particulars in the prescribed form. The person responsible for making the payment shall compute the relief and take it into account the same while making deduction of tax at source from salary.
- (b) Under section 194B the person responsible for paying by way of winnings from any card game and other game in an amount exceeding Rs.10,000 shall at the time of payment deduct income-tax at 30%.
- (c) Section 194-I, which governs the deductions of tax at source on payment of rent, exceeding Rs.1,80,000 per annum is applicable to all taxable entities excepting individuals and HUF's. However, under section 196, exemption is provided in respect of payments made to Government from application of provisions of tax deduction at source.
- (d) If the cameraman is an employee of the T.V. Company, the provisions of section 192 will apply. However, if he is a professional, TDS provisions under section 194-J will apply. Tax at 10% will have to be deducted at the time of credit of Rs.80,000 or on its payment, whichever is earlier.
- (e) Under section 194G, the person responsible for paying to any person stocking, distributing, purchasing or selling lottery tickets shall at the time of credit of the commission or payment thereof, whichever is earlier, amounting to more than Rs.1,000, deduct income-tax at 10%.
- (f) The payment by way of winnings from horse race is governed by section 194BB. Under this section, the people responsible for payment shall, at the time of payment deduct tax at source @ 30%, if the payment exceeds Rs. 5,000.

Question 12

Discuss the following propositions:

Interest levied under section 220 of the Act can be waived

Answer

Under section 220(2A), the Chief Commissioner or the Commissioner, may reduce or waive the amount of interest paid or payable by an assessee, if he is satisfied that.

- (i) Payment of such interest has caused or would cause undue hardship to the assessee;
- (ii) Default in the payment of the amount on which interest has been charged was due to circumstances beyond the control of the assessee and
- (iii) The assessee has cooperated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

Question 13

How do you deal with the following issues under the respective provisions of the Income-tax Act?

- (a) *A foreign company, which has a branch operating in India pays salary to its employees "net of tax". It declines to issue certificate under section 203 to its employees of the tax deducted at source on the ground that it had not deducted any tax at source.*
- (b) *A foreign company pays fee for professional and technical services rendered to it by an Indian law and accountancy firm. The foreign company does not have any branch, agent or establishment in India. Advise the foreign company as to, how it could comply with provisions of section 194J.*

Answer

- (a) This position was considered by the Board and Circular No. 785 dated 24-11-1988, issued on this point.

"Payments net of tax" has been contemplated under section 195 A.

In cases where the amount is paid, "net of tax", then for the purpose of deduction of tax at source, such income should be increased by such an amount as would, after deduction of tax thereon, be equal to the net amount payable. In all such cases, where the amount is agreed to be paid "net of tax", the payer is under legal obligation to furnish a certificate for the tax deducted at source in the prescribed form to the payee within the time prescribed under section 203. The foreign company is under a legal obligation to pay the tax on behalf of its employees and also issue the certificate to its employees under section 203.

- (b) In its Circular No.726 dated 18.10.1995, the Board considered such a situation and having regard to the practical difficulties involved, decided that any fees paid through regular banking channels to any chartered accountant, lawyer, advocate or solicitor who is resident in India by the non-residents who do not have any agent or business connection or permanent establishment in India may not be subject to the provisions of tax deduction at source under section 194J of the Income-tax Act.

Question 14

You are consulted on the justifiability of the following claims. Your advice is to be framed based on the provisions of the Income-tax Act, 1961.

- (i) Mr. Govind won the first prize in a lottery ticket and the prize money was a Maruti car worth Rs.2 lakhs. According to section 194B, tax has to be deducted at source from the winnings of lottery at the time of payment of the prize money. What is the procedure to be adopted before handing over the Maruti Car to Mr.Govind?.*
- (ii) A private trust has two individuals and one HUF as beneficiaries and their shares were equal. The trust borrowed certain amounts on which interest payable to a single lender was Rs.15,000. Is the trust obliged to deduct tax at source at the time of payment/credit of such interest to the lender?*

Answer

- (i) This position is covered by the second proviso to section 194B itself. It is provided therein that where the winnings are wholly in kind or partly in kind and partly in cash, but the cash part of it is not sufficient to meet the liability for tax deduction at source, the person responsible shall, before releasing the winnings, ensure that the tax has been paid in respect of the winnings. Therefore, in the case under consideration, the entire winnings being in kind, a sum equal to the tax to be deducted at source (i.e. Rs. 60,000 being @ 30% of Rs. 2 lakhs) must be collected from Mr. Govind by the agent and remitted to the Government account before releasing the Maruti car to him.
- (ii) Under section 194A, any person, not being an individual or a Hindu undivided family who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities shall at the time of credit of such income to the account of the payee or at the time of payment thereof, whichever is earlier, deduct income-tax thereon at the rates in force. In this case, the beneficiaries as well as their shares are known. The trust can be assessed in the same manner and to the same extent as the beneficiaries and therefore, the trust will have the same status as that of the beneficiaries i.e. individuals or HUF as the case may be. Since interest paid or credited to an individual or HUF is not covered by section 194A, no tax needs to be deducted at source. However, in case the accounts of the trust are required to be audited as per the provisions of section 44AB, then it is liable to deduct tax at source @10%.