



TDS : Basics & Recent Amendments

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TDS : Department's perspective

- TDS contributed 43% of the Direct Taxes Revenue (recent statistics)
- Significant proportion of the Indirect Tax Revenue
- Most Regular source of revenue for the Department

- Owing to above, Government has placed more reliance on this mode of tax collection

- TDS – “PAYE” (Pay as you Earn) Concept
- Payer: person making the payment is responsible for deducting tax
- Payee: in respect of whose income the TDS is made

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Always snatch and eat one third of your child's chocolate and ice-cream. This will prepare them to pay income tax when they grow up. You can even take the first bite to prepare them for TDS!

BASICS:

- Due Dates for Deduction of TDS:

1) In case deductor is an office of the Government

- **Due Date**
- a) Where tax is paid without production of an income-tax challan On the same day when tax is deducted
- b) Where tax is paid accompanied by an income-tax challan. On or before 7 days from the end of the month in which the deduction is made or income-tax is due under Section 192(1A)

2) In case of any other deductor

- **Due Date**
- a) Where the amount is credited or paid in the month of March On or before 30th day of April
- b) In any other case On or before 7 days from the end of the month in which the deduction is made or income-tax is due under sub-section (1A) of Section 192
- Any sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of 30 days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QB.
- Similarly, any sum deducted under section 194-IB shall be paid to the credit of the Central Government within a period of 30 days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QC.



BASICS:

Consequences of Default:

- a) Disallowance of expenditure: As per section 40(a)(i) of the Income-tax Act, any sum (other than salary) payable outside India or to a non-resident, which is chargeable to tax in India in the hands of the recipient, shall not be allowed to be deducted if it is paid without deduction of tax at source or if tax is deducted but is not deposited with the Central Government till the due date of filing of return. However, if tax is deducted or deposited in the subsequent year, as the case may be, the expenditure shall be allowed as deduction in that year.
- Similarly, as per section 40(a)(ia), any sum payable to a resident, which is subject to deduction of tax at source, would attract 30% disallowance if it is paid without deduction of tax at source or if tax is deducted but is not deposited with the Central Government till the due date of filing of return.
- However, where in respect of any such sum, tax is deducted or deposited in subsequent year, as the case may be, the expenditure so disallowed shall be allowed as deduction in that year.



BASICS:

Consequences of Default:

- Levy of interest: As per [section 201](#) of the Income-tax Act, if a deductor fails to deduct tax at source or after the deducting the same fails to deposit it to the account of Central Government then he shall be deemed to be an assessee-in-default and liable to pay simple interest as follows:(i) at one per cent 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 one and one-half per cent 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.



BASICS:

Consequences of Default:

- Levy of Penalty: Penalty of an amount equal to tax not deducted could be imposed under [section 271C](#). Penalty shall be charged under [section 221](#) if deductor fails to deduct and pay tax to the credit of Central Government. The penalty shall be levied to the extent the Assessing Officer directs, however, the total amount of penalty shall not exceed the amount of tax in arrears.
- d) Prosecution: If a person fails to pay to the credit of the Central Government the tax deducted at source by him he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.





TDS Statement:

- Quarterly TDS statements shall be furnished in following forms:-
- 1) Form 24Q - Statement of deduction of tax from salary under section 192.
- 2) Form 27Q - Statement of deduction of tax under section 193 to 196D in respect of the deductee who is a non-resident (not being a company) or a foreign company or resident but not ordinarily resident.
- 3) Form 26Q - Statement of deduction of tax under section 193 to 196D in any other case.
- However in case tax is deducted under section 194-IA, the deductor shall furnish a challan-cum-statement in Form 26QB within a period of seven days from the end of the month in which the deduction is made. In this case, no statement shall be filed separately.
- Similarly, in case tax is deducted under section 194-IB, the deductor shall furnish a challan-cum-statement in Form 26QC within a period of seven days from the end of the month in which the deduction is made. In this case, no statement shall be filed separately.



TDS Statement - Due Dates

year	30th June	31st July of the financial
financial year	30th September	31st October of the
	31st December	31st January of the financial year
year immediately	31st March	31st May of the financial
	following the financial year in which deduction is made	

Recent Amendments:

- Section 194-IA
- Any person being transferee, paying any consideration for transfer of immovable property (other than agricultural land) will deduct TDS @ 1% at the time of payment of such sum in cash or by issue of cheque / draft whichever is earlier.
- *All charges in the nature of club membership fee, car parking, electricity or water facility, maintenance fee, advance fee or any other charges of similar nature incidental to transfer of immovable property will also be included in the meaning of “consideration” for the purpose of TDS.*



Recent Amendments: Implications

- With the advent of townships & high rises, lot of charges are payable along with the purchase of flat, which are classified as parking charges, club membership / electricity / water charges etc.
- As the term “consideration” was not specifically defined, there was lot of anomaly as regards what should comprise of “consideration” for the purpose of TDS
- By amending the relevant section to expressly define the term, the amount that should be the subject matter of TDS has now been made specific



Recent Amendments:

- Section 194M
- Individual / HUF (Other than those required to deduct tax u/s 194C / 194H / 194J); paying to a resident any amount in the nature of payment towards contract charges / professional fees / commission (not including insurance commission)
- Liable to make TDS @ 5%; at the time of payment / credit whichever is earlier
- TDS warranted in case such sum or the aggregate of sum sums paid / credited are in excess of INR 50 Lakhs
- TAN not required
- W.e.f 01/09/2019



Recent Amendments: Implications

- Purpose of the Amendment : Widening the Tax Base
- Amounts paid by Individuals / HUFs towards contractual / professional engagements not related to business were erstwhile not included in the ambit of TDS
- Large amounts of payments made were escaping TDS and leaving a loophole for possible tax evasion
- Payments made to caterers, professionals etc for personal purposes or by such individuals / HUF's not covered by Audit, will now be liable for TDS.



Recent Amendments:

- Section 194 N: TDS on Cash Withdrawals

- Payer:

- a banking company to which the Banking Regulation Act, 1949 applies

- a co-operative society engaged in carrying on the business of banking

- a post office

responsible for paying any sum / aggregate of sums in excess of INR 1 crore during the previous year to any person (recipient) from one or more accounts maintained by recipient; shall at the time of payment deduct TDS @ 2%

- of such amount exceeding INR 1 Crore



Recent Amendments:

- These provisions do not apply to any payment made to:
- The Government
- Any banking company or co-operative society engaged in carrying on the business of banking or a post office
- any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking
- any white label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking,
- such other person or class of persons, which the Central Government may, by notification in the Official Gazette



Recent Amendments:

- Purpose of the amendment- discourage cash payments and promote digital economy
- Payer will deduct TDS from the amount once the total sum withdrawn exceeds INR 1 crore; and on such amount that exceeds 1 Crore
- Limit of INR 1 crore is applicable with respect to per bank or post office and not a taxpayer's account.
- or example, a person having three bank accounts with three different banks, he can withdraw cash of Rs 1 crore * 3 = Rs 3 crores without any TDS.
- Ambiguity surrounding bearer cheque issued to third party: Would the payer still be liable to deduct TDS on the funds of the account holder?
- Bearer cheque whether equivalent to Cash?



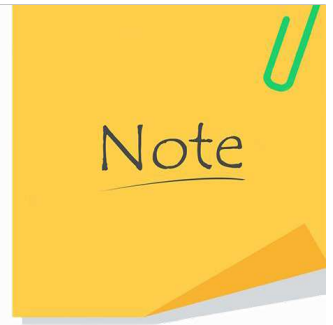
Recent Amendments:

- The Section comes into effect from 01.09.2019
- Any cash withdrawal prior to 1st September 2019 shall not be subjected to TDS u/s 194N
- Threshold of INR 1 crore is with respect to the Previous Year; calculation of cash withdrawal for triggering deduction u/s 194N shall be counted w.e.f 01.04.2019
- Assessee will be eligible to claim credit of the amount of TDS
- Deduction will be available to the assessee only, and in the year of deduction



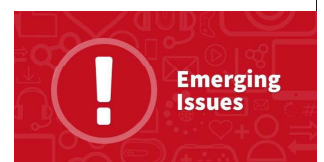
Points to be Noted:

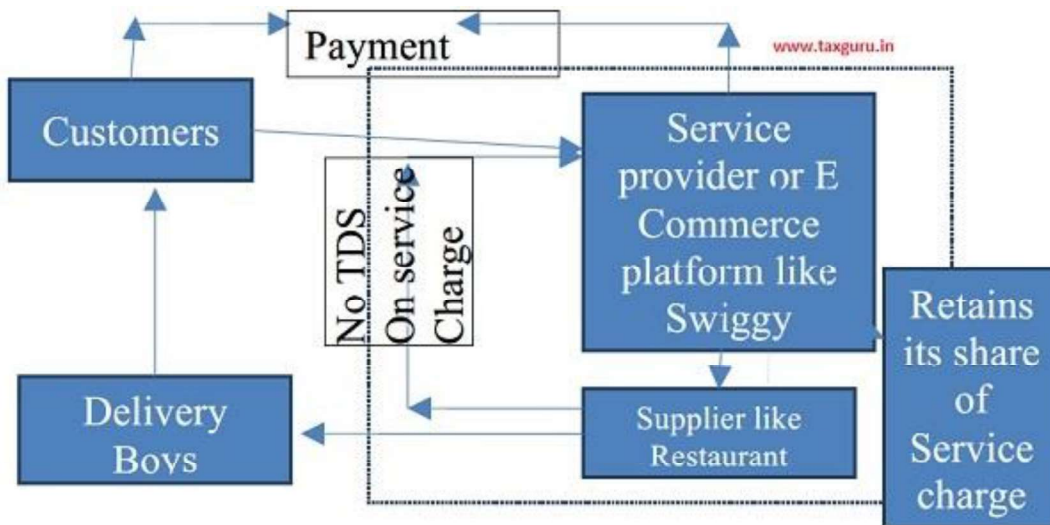
- No TDS on Goods & Service Tax: As per Circular No. 23/2017 dated 19.07.2017 of CBEC, TDS is not applicable on Goods & Service Tax where GST is shown separately.
- No Surcharge, Health & Education Cess deductible on payments made to residents other than salary
- Practical Issues:
 - Section 194IB: TDS on Rent
 - TDS on Reimbursements
 - TDS – Discounts / Cash Backs



Emerging Issues: TDS in E-commerce scenario

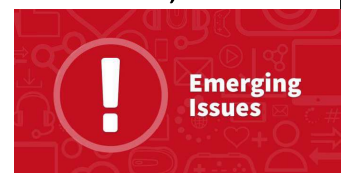
- Under TDS Mechanism : Obligation is on the payer to make TDS
- Under E-Commerce Model, there might be difficulties in applying existing TDS Provisions
- E-Commerce operators act as facilitator between actual buyer and sellers
- Eg: Amazon , Swiggy, Zomato, Make My Trip Etc.





Emerging Issues: TDS in E-commerce scenario

- One possible mechanism : treating the operator as “deemed payer”, and the amounts being remitted by the E-commerce operators to the actual suppliers can be subjected to TDS.
- These transactions constitute payment of commission by prospective sellers to the e-commerce platforms, and delivery charges paid to these entities new could be a subject matter of section 194H / 194C
- Proposed new section to be inserted to bring into the ambit of TDS, payments made to such e-commerce operators.



Latest decisions:

- Where assessee made payments to various artists like singers, musicians etc who participated in reality shows hosted by it as guests or judges, tax was required to be deducted at source under section 194C and not under section 194J – Cochin ITAT
- Where assessee-hospital made payments for services rendered towards maintenance of its medical equipments for proper and long functioning, it was required to deduction TDS under section 194C, and not under section 194J – Bombay HC
- Tax withholding provisions under section 194H are not applicable to discount extended to pre-paid SIM distributors on transfer of pre-paid SIM cards/talk time – Chandigarh ITAT (Telecom)
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Latest decisions:

- Where assessee, which was selling travel products, paid fees to banks for providing payment gateway facility, same could not be treated as commission or brokerage; hence, not liable to tax under section 194H – Delhi HC (Make my Trip)
- **INCOME TAX:** Process of roaming does not require human intervention and cannot be considered as a technical service and, therefore, provisions of section 194J are not attracted in case of payment of roaming charges – Chandigarh ITAT (Telecom)





X company awarded a contract to Y Company for procurement of materials. As per contract, X Company issues purchase requisition to Y. Y is having a team which in turn does market research and analysis in pricing trends and arrives at estimates; Y accordingly gives advertisement and collects quotations from vendors. Based on the quotations, purchase order is placed to lowest quotation. Y collects agreed % of value of Purchase Order for this job as its remuneration.

There arise 3 issues: Whether payment to Y is subject to TDS?

U/s 194C since it is contractual payment?

U/s 194J since the assignment involves some research and analysis activity which requires professional expertise?

u/s 194H since the payment is nothing but commission by way of a prefixed %?



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