

# **DEDUCTION AND COLLECTION OF TAX AT SOURCE**

## **GENERAL NOTES ON TDS**

- Note 1:** Where any income is credited to any 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 of such income to the account of the payee.**
- Note 2:** **TDS is required to be deducted even if payments are made for personal purposes. Exception to this rule is**
- (i) Where Individual/HUF makes payment to contractor under section 194C for personal purposes.
  - (ii) Where Individual/HUF makes payment of professional fees under section 194J for personal purposes.
- This is subject to provisions of section 194M.**
- Note 3:** TDS shall be deducted on the amount without including GST, if GST is separately indicated in the bill. **TCS shall be collected on the amount including GST.**
- Note 4:** In case of payment made to residents, TDS rate shall not be increased by Surcharge and Education cess.  
However, TDS on salary paid to a resident shall be increased by Surcharge and Education cess.
- Note 5:** In case of payments made to Non-Residents (including firms/ co-operative societies/ AOPs) and foreign companies, the TDS rate shall be increased by Surcharge and Education cess. For applicability of surcharge on total income exceeding ₹ 50 lakhs/ ₹ 1 crore/ ₹ 2 crores/ ₹ 5 crores/ ₹ 10 crores, the total payment to a foreign company/ Non-Resident during the financial year, are to be seen instead of total income.
- Note 6:** In case of payments received from Residents, TCS rates shall not be increased by Surcharge and Education cess.
- Note 7:** In case of payments received from Non-Residents and foreign companies, the TCS rates shall be increased by Surcharge and Education cess.

## Section 192

<b>TDS on Salaries</b>	<p><b>Deductor</b> – Any Person</p> <p><b>Deductee</b> – Resident or Non-resident</p> <p><b>Time of Deduction</b> – At the time of payment</p> <p><b>Rate of TDS</b> – Slab rate applicable to the estimated income of the employee.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Income from previous employer may be considered.</li> <li>• Relief under section 89(1) shall also be considered while deducting TDS.</li> <li>• Income from all sources may be considered and any TDS thereon shall also be considered.</li> <li>• <b>Only loss under the head house property shall be taken into account for the purpose of TDS and not any other loss.</b></li> <li>• The employer may deposit from his own pocket tax on the non-monetary perquisites to employees. Such tax is exempt income in hands of employee under section 10(10CC) and is disallowable expenditure to employer.</li> <li>• <b>Section 192(2D): The evidence/ proof/ particulars of the deductions/ exemptions/ allowances/ set-off of loss claimed by the employee such as rent receipt for claiming exemption of HRA, evidence of interest payments for claiming loss from self-occupied house property etc. should be furnished by employee to employer. The employer will allow the deduction/ exemption/ set-off of loss only if proofs are furnished by the employee.</b></li> <li>• <b>Section 192(1A):</b> No grossing up of tax is required in case of tax payment for non-monetary perquisites.</li> <li>• <b>CIT VS. ELI LILLY &amp; CO. (INDIA) P. LTD. (SUPREME COURT):</b> Tax-deductor-assessee was duty bound to deduct tax at source under section 192(1) from the home salary/special allowance(s) paid abroad by the foreign company, particularly when no work stood performed for the foreign company and the total remuneration stood paid only on account of services rendered in India during the period in question.</li> <li>• <b>ITC Ltd. v. Commissioner of Income-tax (TDS) [2016] (Supreme Court):</b> Tips collected by Hotel from customers and paid to employees did not amount to salary from employer and hence employer was not liable to deduct tax at source on such payments under section 192.</li> <li>• <b>As employee having income other than the income under the head P/G/B/P may intimate his intention to opt for section 115BAC for each previous year. In such a case, deductor will deduct TDS as per section 115BAC. The</b></li> </ul>
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	<p><b>employee cannot modify the intimation. However such intimation shall not amount to exercise of option under section 115BAC(5) which shall only be done alongwith the return of income to be furnished. In return of income assessee may not opt for section 115BAC.</b></p>
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## **Section 192A**

<b>TDS on payment of Accumulated Balance due to an Employee if same is taxable in hands of employee</b>	<p><b>Deductor</b> – Trustees of Employees Provident Fund Scheme  <b>Deductee</b> – Resident or Non-resident  <b>Time of Deduction</b> – At the time of credit or payment, whichever is earlier  <b>Rate of TDS</b> – 10%  <b>Notes:</b></p> <ul style="list-style-type: none"> <li>• TDS will not be deducted where payment is less than ₹50,000.</li> <li>• If PAN is not furnished then tax shall be deducted at maximum marginal rate. (42.744%) [Section 206AA]</li> </ul>
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## **Section 193**

<b>TDS on Interest on Securities</b>	<p><b>Deductor</b> – Any Person  <b>Deductee</b> – Resident  <b>Time of Deduction</b> – At the time of credit or payment, whichever is earlier.  <b>Rate of TDS</b> – 10% (20% if PAN not furnished by deductee and/or if he is a specified person as per section 206AB)  <b>Notes:</b>  <b>TDS shall not be deducted in following cases:</b></p> <ul style="list-style-type: none"> <li>• Interest payable on Central Govt. or State Govt. Securities. <b>However, TDS shall be deducted on 7.75% Savings (Taxable) Bonds, 2018.</b></li> <li>• Interest paid to LIC, GIC or any other insurer, in respect of securities owned by it or held by it as beneficiary.</li> <li>• <b>Interest paid on any listed security issued by a company held in dematerialized form.</b> (If security is not listed or is not in dematerialized form, then TDS shall be deducted. However, in such a case no TDS shall be deducted if the interest paid to an individual/HUF does not exceed ₹5,000 during the financial year).</li> <li>• Interest on Indian Railway Finance Corporation Ltd. and Power Finance Corporation Ltd. (Section 54EC Capital Gain Bonds)</li> </ul>
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## Section 194

TDS on Dividend (Effective from A.Y. 2021-22)	<p><b>Deductor – Indian Company</b> <b>Deductee – Resident</b> <b>Time of Deduction – Before making payment or before distribution</b> <b>Rate of TDS – 10% (20% if PAN not furnished by deductee and/or if he is a specified person as per section 206AB)</b></p> <p><b>Notes:</b></p> <ol style="list-style-type: none"><li><b>1. Deduction shall be made</b><ul style="list-style-type: none"><li>– before making any payment of dividend (Equity or preference shares) or</li><li>– before making any distribution/ payment of dividend under section 2(22)(a)/ (b)/ (c)/ (d)/ (e).</li></ul></li><li><b>2. No deduction where payment is made to</b><ol style="list-style-type: none"><li><b>(a) any insurance company</b></li><li><b>(b) a resident individual, provided:</b><ul style="list-style-type: none"><li>– dividend is paid by any mode other than cash and</li><li>– dividend distributed/ paid or likely to be distributed/ paid does not exceed ₹ 5,000 in a financial year.</li></ul></li><li><b>(c) a business trust, by an SPV referred in Explanation to Section 10(23FC) i.e., who does not opt to be taxed u/s 115BAA.</b></li><li><b>(d) a notified person</b></li></ol></li></ol>
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## Section 194A

TDS on interest other than “Interest on Securities”	<p><b>Deductor – Any Person, [other than individual or HUF whose total sales or gross receipts from business or profession did not exceed ₹ 1 crore or ₹ 50 lakhs respectively in preceding financial year]</b></p> <p><b>Deductee – Resident</b></p> <p><b>Time of Deduction – At the time of credit or payment, whichever is earlier</b></p> <p><b>Rate of TDS – 10% (20% if PAN not furnished by deductee and/or if he is a specified person as per section 206AB)</b></p> <p><b>Notes:</b></p> <ol style="list-style-type: none"><li><b>1. Exceptions to Section 194A i.e., NO TDS IN FOLLOWING CASES:</b><ol style="list-style-type: none"><li><b>(i) 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 payee, including interest on time deposits, does not exceed:</b><ol style="list-style-type: none"><li><b>(a) ₹ 40,000* where payer is Banking Company.</b></li><li><b>(b) ₹ 40,000* where payer is a Co-operative Society Bank.</b></li></ol></li></ol></li></ol>
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	<p>(c) ₹ 40,000* on deposit with post office.</p> <p>(d) ₹ 5,000 in any other case.</p> <p>* ₹ 50,000 in case of a senior citizen</p> <p><b>Time deposit means fixed Deposits and also the Recurring Deposits repayable after fixed period.</b></p> <p>Where core banking solution software has been adopted, TDS shall be deducted on aggregate of interest paid by all the branches of the bank i.e., where aggregate interest paid by all the branches of the bank exceed ₹ 40,000 (₹ 50,000 in case of senior citizen).</p>
	<p>(ii) <b>Where such income is credited or paid to -</b></p> <ul style="list-style-type: none"> <li>• any banking company to which Banking Regulation Act applies, or</li> <li>• any co-operative society engaged in the carrying on the business of banking i.e., cooperative bank (including a co-operative land mortgage bank), or</li> <li>• any financial corporation established by or under a Central, State or Provincial Act, or</li> <li>• the LIC; or</li> <li>• the Unit Trust of India; or</li> <li>• any company or co-operative society carrying on insurance business.</li> </ul>
	<p>(iii) <b>Where such income is credited or paid by a firm to a partner of the firm, being a resident.</b> (TDS shall be deducted under section 195 on interest paid by a firm to Non-Resident partner).</p>
	<p>(iv) Interest credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or co-operative land mortgage bank or a co-operative land development bank.</p>
	<p>(v) Where such income credited or paid by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society.</p> <p><b>Note: Interest paid by cooperative bank to its members is liable to TDS.</b></p> <p>Provided that a co-operative society referred to in clause (iv) or clause (v) shall be liable to deduct income-tax if:</p> <ul style="list-style-type: none"> <li>(a) Total sales/ Gross receipts/ Turnover of such society exceeds ₹ 50 crores in preceding financial year AND</li> <li>(b) amount/ aggregate of amount of interest credited/ paid or likely to be credited/ paid exceeds ₹ 40,000 (₹ 50,000 in case of senior citizen) in a financial year.</li> </ul> <p style="text-align: right;">(Finance Act, 2020)</p>
	<p>(vi) <b>Interest on savings account with banks or with a co-operative society engaged in the business of banking</b></p>

**(However tax shall be deducted on interest on time deposits i.e., FDR's and recurring deposits with such banks or co-operative society engaged in banking).**

- (vii) Where interest is credited or paid in respect of deposits under certain schemes of Post Office (Recurring Deposit), Post Office Monthly Income Account, Kisan Vikas Patra, Indra Vikas Patra and National Savings Certificates.
- (viii) **Where interest is credited or paid by the Central Government under the Income-tax Act.** (However, TDS shall be deducted under section 195 where such interest is paid to a non-resident)
- (ix) **such income CREDITED by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;** (i.e. no TDS where amount is credited but not paid)
- (ixa) **such income PAID by way of interest on the compensation amount** awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year **does not exceed ₹ 50,000.** (i.e. TDS only on actual payment and that too, when it exceeds ₹ 50,000)
- (x) such income which is paid or payable in relation to a zero coupon bond.

**2. CBDT Circular:**

It is clarified that since no constructive credit to the depositor's/payee's account takes place while calculating interest on time deposits on daily or monthly basis in the **CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only.** In such cases, tax shall be deducted at source on accrual of interest at the end of financial year or at periodic intervals as per practice of the bank.

**3. CBDT Circular:**

It is clarified that **interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS** till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the **provisions of section 194A will apply to the recipient of the income.**

**4. CBDT Notification:**

**No TDS on the payments of the nature specified below,** in case such payment is made by a person to a bank listed in the Second Schedule to the RBI Act **excluding a foreign bank**, or payment is made to any payment systems company authorized by the Reserve Bank of India:-

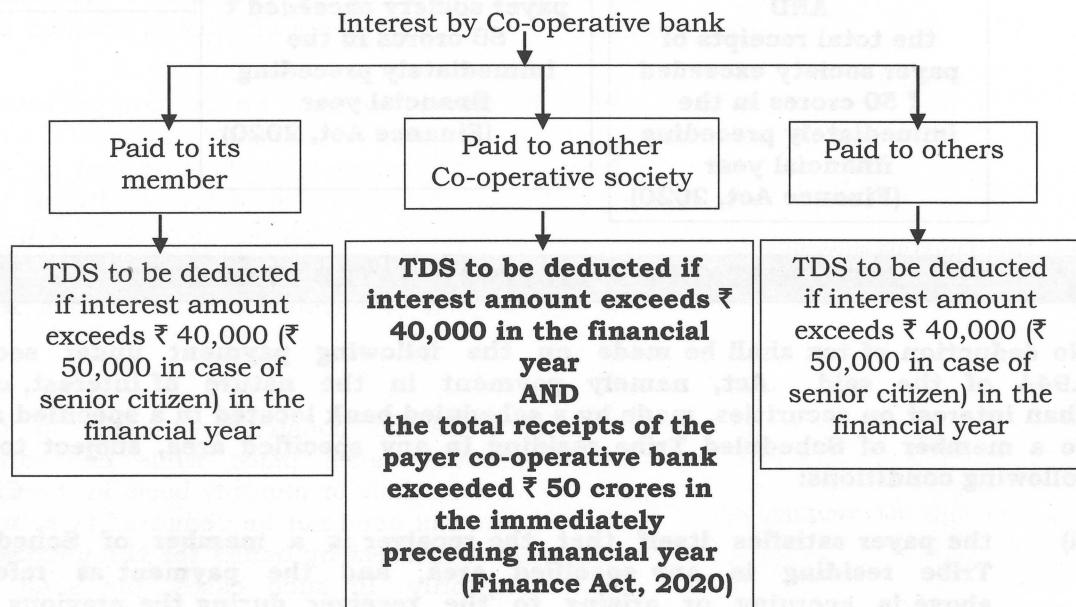
- (i) **bank guarantee commission;**
- (ii) **cash management service charges;**

- (iii) depository charges on maintenance of DEMAT accounts;
- (iv) charges for warehousing services for commodities;
- (v) **underwriting service charges;**
- (vi) **clearing charges (MICR charges);**
- (vii) **credit card or debit card commission** for transaction between the merchant establishment and acquirer bank.

**5. Avenue Super Chits (P.) Ltd.**

**Chit dividend paid by chit fund company** to its members is not interest and, consequently, **no deduction of TDS under section 194A is required to be made.**

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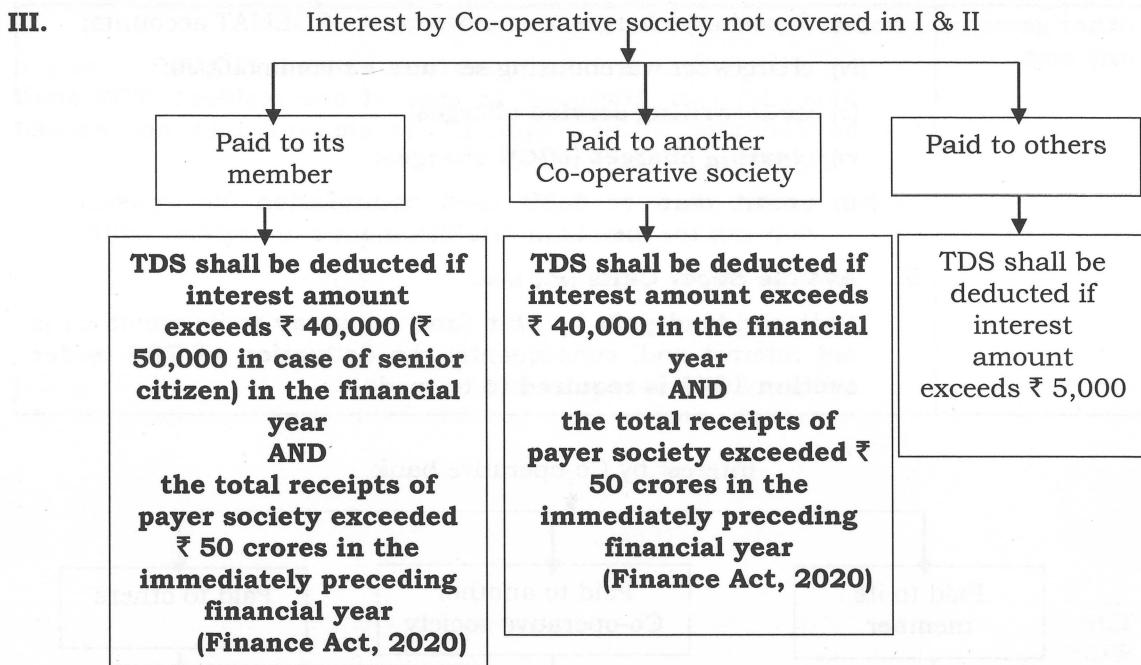
**Interest paid by Co-operative society being:**

- Primary agricultural credit society; or
- Primary credit society; or
- Co-operative land mortgage bank; or
- Co-operative land development bank

Prior to the amendments made by Finance Act, 2020, the above forms of co-operative societies were not required to deduct TDS on interest paid irrespective of the amount.

**The Finance Act, 2020 has amended these provisions to extend the scope of this section to large co-operative societies and accordingly, the above forms of co-operative societies shall also be liable to deduct TDS if:**

- the amount or the aggregate of amounts credited or paid during the financial year is more than ₹ 40,000 (₹ 50,000 in case of a senior citizen), AND
- the total sales, gross receipts or turnover of the payer society exceeded ₹ 50 crores during the immediately preceding financial year.



#### NOTIFICATION NO. 110/2021, DATED 17.09.2021

No deduction of tax shall be made on the following payment under section 194A of the said Act, namely payment in the nature of interest, other than interest on securities, made by a scheduled bank located in a specified area, to a member of Scheduled Tribe residing in any specified area, subject to the following conditions:

- (i) the payer satisfies itself that the receiver is a member of Scheduled Tribe residing in any specified area, and the payment as referred above is accruing or arising to the receiver, during the previous year relevant for the assessment year in which the payment is made, by obtaining necessary documentary evidences in support of the same;
- (ii) the payer reports the above payment in the quarterly return of TDS;
- (iii) the payment made or aggregate of payments made during the previous year does not exceed twenty lakh rupees.

**Note:** Specified area means the States of Arunachal Pradesh, Manipur, Mizoram, Nagaland, Tripura and Ladakh.

#### Section 194B

<b>TDS on winning from lottery or crossword puzzle or card game and</b>	<b>Deductor – Any Person</b> <b>Deductee – Any Resident</b> <b>Time of Deduction –</b> At the time of payment <b>Rate of TDS –</b> 30% (Same rate even if deductee does not furnish PAN)
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<b>other game of any sort</b>	<p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• No TDS where amount <b>does not exceed ₹10,000</b> during a Financial Year. However, in case of non-resident, TDS shall be deducted @ 30% even if the amount does not exceed ₹10,000 under section 195:</li> <li>• <b>In a case where:</b> <ol style="list-style-type: none"> <li>(i) the winnings are <b>wholly in kind</b>; or</li> <li>(ii) <b>partly in cash and partly in kind</b> but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings,</li> </ol> <p style="text-align: center;"><b>the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.</b></p> </li> </ul>
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## Section 194BB

<b>TDS on Winning from Horse Race</b>	<p><b>Deductor</b> – Any Person being the holder of license for the horse racing</p> <p><b>Deductee</b> – Any Resident</p> <p><b>Time of Deduction</b> – At the time of payment</p> <p><b>Rate of TDS</b> – 30% (Same rate even if deductee does not furnish PAN)</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• No TDS where amount does not exceed ₹10,000 during a Financial Year. However, in case of non-resident, TDS shall be deducted @30% even if the amount does not exceed ₹10,000.</li> </ul>
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## Section 194C

<b>TDS on payment to contractors</b>	<p><b>Deductor</b> – Any Person [other than individual or HUF whose <b>total sales/ gross receipts from business or profession does not exceed ₹ 1 crore / ₹ 50 lakhs respectively in preceding Financial Year</b>]</p> <p><b>Deductee</b> – Any resident</p> <p><b>Time of Deduction</b> – At the time of credit or payment, whichever is earlier.</p> <p><b>Rate of TDS</b> – (i) <b>1%</b> in case payee is individual or HUF  (ii) <b>2%</b> in case of any other assessee</p> <p>[Rate shall be 20% where deductee does not furnish PAN. Rate shall be 5% if the deductee is a specified person as per section 206AB.  Also, in case of applicability of both provisions, rate shall be 20%.]</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• <b>No TDS where amount payable does not exceed:</b></li> </ul>
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- (i) ₹30,000 in case of a **single contract**.
- (ii) ₹1,00,000 in case of **aggregate** of contracts during a Financial Year.

- **No TDS** is required to be deducted by individual or HUF under a **contract for personal purpose** even if his total sales or gross receipts exceeded ₹ 1 crore / ₹ 50 lakhs respectively in preceding Financial Year. (**Exception Section 194M**)

- **“Work” includes:**

**Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or by using material purchased from related persons of such customer as defined in section 40A(2).** However, it shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer **or related person of such customer.**

If a job work is given by an assessee and Job-worker has to purchase the material from the assessee or related persons of the assessee as defined in section 40A(2) then it amounts to a works contract on which TDS shall be deducted.

However if Job-worker has to purchase material from an outsider who is not a related person of the assessee as per section 40A(2), then it is not a works contract and TDS shall not be deducted.

- **TDS shall be deducted:**

- ✓ On the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or
- ✓ On the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

- **No deduction** shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a **contractor during the course of business of plying, hiring or leasing goods carriages**, where such contractor **owns 10 or less goods carriages at any time during the Previous Year** and furnishes a declaration to that effect along with his PAN, to the person paying or crediting such sum.

- ✓ As per CBDT Circular, this exemption from TDS is applicable **only** in respect of transport charges received for plying, hiring or leasing of **goods carriage(s) owned by the transporter**. Therefore, if a person receives payment in respect of plying, hiring or leasing of goods carriage(s) which are **not owned by him**, he shall not be entitled to claim exemption from TDS in respect of these payments.

- ✓ The condition of **not owning more than 10 goods carriages** by the transporter is **required to be fulfilled on the date on which the amount is credited or paid**, whichever is earlier. In case a transporter does not own 10 goods carriages on the date on which the amount is credited

or paid but becomes owner of 10 goods carriages later in the previous year, the payer shall not be required to deduct tax from the payment made to the transporter during the period of the previous year when he was not owning more than 10 goods carriages. **However, the tax shall be required to be deducted from the payment made during that part of the previous year during which the transporter owned more than 10 goods carriages.**

- ✓ Further, for determining the aggregate amounts of sum credited or paid for the **purposes of computing limit of ₹1,00,000**, all the payment made during the financial year shall be taken into account including the amount credited or paid during the period of the financial year during which the transporter was not owning more than 10 goods carriages.

- **CBDT Circular**

**It is clarified that in case the Owner/Seller of the gas sells as well as transports the gas to the purchaser till the point of delivery**, where the ownership of gas to the purchaser is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a '**contract for sale**' and not a '**works contract**' as envisaged in section 194C of the Act. Hence in such circumstances, **provisions of section 194C are not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. The use of different modes of transportation of gas by Owner/Seller will not alter the position.**

It is needless to mention that transportation charges paid to a third-party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and TDS shall be deductible on such payment to the third party at the applicable rates.

- **CBDT Circular**

While applying the relevant provision of TDS on a contract for content production, a distinction is required to be made between (i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster and (ii) a payment for acquisition of broadcasting/telecasting rights of the content already produced by the production house.

In the first situation **where the content is produced as per the specifications provided by the broadcaster/telecaster and the copyright of the content/programme also gets transferred to the telecaster/broadcaster**, it is hereby clarified that such **contract is covered by the definition of the term 'work' in section 194C** of the Act and, therefore, subject to TDS under that section. This position clearly flows from the definition of 'work' given in clause (iv)(b) of the Explanation to section 194C.

However, in a case where the telecaster/broadcaster acquires only the telecasting/broadcasting rights of the content already produced by the production house, there is no contract for 'carrying out any work', as required in section 194C(1). Therefore, such payments are not liable for TDS under section 194C.

- Is the assessee-company engaged in refining, distribution and sale of petroleum products, liable to deduct tax under section 194C or under section 194-I, in respect of payment made to the carrier engaged for road transport of bulk petroleum products?

#### **INDIAN OIL CORPORATION**

**High Court's Decision:** Upon perusing the terms of the contract, the High Court observed that the parties understood the agreement as one where the carrier would be paid transport charges, and that too, for the shortest route travelled by it in the course of transporting the goods of the assessee. The contract did not require payment of idle charges and it was clear that there was no entitlement to any payment other than the actual transportation of the goods. Hence, the carrier was not being hired for full time.

The carrier under the contract was undoubtedly obliged to maintain the requisite number of trucks of a particular type subject to various restriction and conditions. However, the carrier was under the obligation to operate the trucks for the specific purpose of transporting the goods belonging to the assessee.

**The High Court held that, the contract is one for transportation of goods and, therefore, is a contract of work within the meaning of section 194C and not section 194-I.**

### **Section 194D**

<b>TDS on Insurance Commission</b>	<b>Deductor – Any Person</b> <b>Deductee – Any resident</b> <b>Time of Deduction</b> – At the time of credit or payment, whichever is earlier <b>Rate of TDS – 5% (20% if deductee does not furnish PAN. 10% if deductee is a specified person as per section 206AB. 20% in case of applicability of both 206AA and 206AB)</b> <b>Notes:</b> <ul style="list-style-type: none"><li>• No TDS where amount <b>does not exceed ₹15,000</b> during a Financial Year.</li><li>• <b>The recipient of commission can furnish declaration under section 197A in Form 15G/15H for non-deduction of TDS.</b></li></ul>
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## Section 194DA

<b>TDS on payment in respect of Life insurance policy</b>	<p><b>Deductor</b> – Any Person  <b>Deductee</b> – Any resident  <b>Time of Deduction</b> – At the time of payment  <b>Rate of TDS</b> – 5% (20% if deductee does not furnish PAN. 10% if deductee is a <b>specified person</b> as per section 206AB. 20% in case of applicability of <b>both</b> 206AA and 206AB)  <b>As per Finance Act, 2019, 5% TDS shall be on the amount of income comprised therein and not on the amount received from insurance company. Therefore 5% TDS shall be on:</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;"><b>Amount received from insurance company</b></td><td style="width: 30%; text-align: right;"><b>xxx</b></td></tr> <tr> <td><b>Less: Amount of insurance premiums paid</b></td><td style="text-align: right;"><b>xxx</b></td></tr> <tr> <td><b>5% TDS on Balance</b></td><td style="text-align: right;"><b>xxx</b></td></tr> </table> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• No TDS on amount exempt under section 10(10D).</li> <li>• No TDS where amount does <b>not exceed ₹1,00,000</b> during a Financial Year.</li> </ul>	<b>Amount received from insurance company</b>	<b>xxx</b>	<b>Less: Amount of insurance premiums paid</b>	<b>xxx</b>	<b>5% TDS on Balance</b>	<b>xxx</b>
<b>Amount received from insurance company</b>	<b>xxx</b>						
<b>Less: Amount of insurance premiums paid</b>	<b>xxx</b>						
<b>5% TDS on Balance</b>	<b>xxx</b>						

## Section 194G

<b>TDS on commission, etc. on the sale of lottery tickets</b>	<p><b>Deductor</b> – Any Person  <b>Deductee</b> – Any Resident  <b>Time of Deduction</b> – At the time of credit or payment, whichever is earlier  <b>Rate of TDS</b> – 5% (20% if deductee does not furnish PAN. 10% if deductee is a <b>specified person</b> as per section 206AB. 20% in case of applicability of <b>both</b> 206AA and 206AB)</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• No TDS where amount <b>does not exceed ₹15,000</b> during a Financial Year.</li> </ul>
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## Section 194H

<b>TDS on Commission (other than insurance commission) or Brokerage</b>	<p><b>Deductor</b> – Any Person, [other than individual or HUF whose <b>total sales/ gross receipts from business or profession does not exceed ₹ 1 crore / ₹ 50 lakhs respectively in preceding Financial Year</b>].  <b>Deductee</b> – Any resident  <b>Time of Deduction</b> – At the time of credit or payment, whichever is earlier  <b>Rate of TDS</b> – 5% (20% if deductee does not furnish PAN. 10% if deductee is a <b>specified person</b> as per section 206AB. 20% in case of applicability of <b>both</b> 206AA and 206AB)</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• No TDS where amount <b>does not exceed ₹15,000</b> during a Financial Year.</li> </ul>
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- No TDS is required to be deducted by BSNL or MTNL on commission or brokerage paid to their PCO franchisees.
- Commission to employees and employee directors will form part of salary income and is liable to TDS under section 192 of the Act and not under this section.
- No TDS on brokerage and commission on securities.
- TDS will be deducted on brokerage and commission paid for commodities transactions.**
- Vodafone Essar Cellular Ltd. (Kerala)**  
Discount given on supply of SIM cards and recharge coupons by a telecom company to its distributors under a prepaid scheme will be treated as commission to attract the TDS provisions under section 194H.  
The distributor only acts as a middleman on behalf of the assessee for procuring and retaining customers and therefore, the discount given to him was within the meaning of commission under section 194H on which tax was deductible.
- CBDT Circular**  
There are two types of payments involved in the advertising business:
  - Payment by client to the advertising agency, and**
  - Payment by advertising agency to the television channel/newspaper company**

It has been clarified that while **TDS under section 194C** (as work contract) **will be applicable on the first type of payment**, there will be **no TDS under section 194C on the second type of payment e.g. payment by advertising agency to the media company.**

However, another issue has been raised in various cases as to whether the fees/charges taken or retained by advertising companies from media companies for canvassing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount'. Since the relationship between the media company and the advertising company is on a principal-to-principal basis, such payments are in the nature of trade discount and not commission and, therefore, outside the purview of TDS under section 194H.

**It is hereby clarified that no TDS is attracted on payments made by television channels/newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements.**

- CBDT Clarification on commission/ supplementary commission received by travel agents from airlines**  
Tax should be deducted at source under **section 194H** on amount available to agents being **difference between airfare fixed by Airlines and price at which agents are enabled to sell tickets.**
- CIT v. Intervet India P Ltd. (Bom)**  
The assessee-company engaged in manufacture of pharmaceutical products, sold the same either through consignment or commission agents or directly through

	<p>distributors or stockists. During the relevant financial year, it introduced a sales promotion scheme to boost sales by way of product discounts and product campaign. It passed on the incentives to distributors through consignment agents by way of sales credit notes.</p> <p>The High Court observed that the assessee had undertaken <b>sales promotion by way of product discount</b> scheme under which it offered incentive to the stockists/distributors and dealers. <b>The relationship between the assessee and the distributors/stockists was that of principal to principal.</b></p> <p>The High Court, accordingly, held that the stockists and distributors were not acting on behalf of the assessee and most of the credit was by way of goods on meeting the sales target which could not be said to be a commission within the meaning of section 194H. Accordingly, the High Court held that such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.</p>
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## Section 194-I

<b>TDS on Rent</b>	<p><b>Deductor</b> – Any Person, [other than individual or HUF whose <b>total sales/ gross receipts from business or profession does not exceed ₹ 1 crore / ₹ 50 lakhs respectively in preceding Financial Year</b>]</p> <p><b>Deductee</b> – Any resident</p> <p><b>Time of Deduction</b> – At the time of credit or payment, whichever is earlier</p> <p><b>Rate of TDS</b> – (i) <b>For use of Plant &amp; Machinery – 2%</b>  (ii) <b>For use of Land, building, Furniture or fitting – 10%</b></p> <p>[Rate shall be 20% if deductee does not furnish PAN.</p> <p>Rate shall be 5% (Plant &amp; Machinery)/ 20% (Land, Building, Furniture &amp; Fitting) if deductee is specified person as per section 206AB.</p> <p>Rate shall be 20% in case of applicability of both 206AA and 206AB.]</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• <b>No TDS when rent is paid or credited to REIT.</b></li> <li>• No TDS where amount does not exceed <b>₹2,40,000</b> during a Financial Year.</li> <li>• Where the <b>share of each co-owner</b> in the property is definite and ascertainable, the limit of <b>₹2,40,000</b> will be applicable to <b>each co-owner separately</b>.</li> <li>• "rent" means any payment, by whatever name called, under any lease, sublease, tenancy or any other agreement or arrangement</li> </ul>
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for the use of **(either separately or together)** any,

- (a) land; or
- (b) building (including factory building); or
- (c) land appurtenant to a building (including factory building);  
or
- (d) machinery; or
- (e) plant; or
- (f) equipment; or
- (g) furniture; or
- (h) fittings,

**whether or not any or all of the above are owned by the payee.**

- TDS should also be deducted on advance rent, warehousing charges and non-refundable deposits.
- RECENT CBDT Circular:  
**Section 194-I is not applicable on remittance of Passenger Service Fees by an airline to an airport operator.**
- Other CBDT Circulars:
  - ✓ Section 194-I is applicable in cases of non-refundable deposit made by tenant. Further, if the deposit carries interest, tax is required to be deducted on the amount of interest under section 194A.
  - ✓ **No TDS is required at the time of payment of security deposit** since it cannot be treated as advance rent. However, **TDS has to be deducted when the security deposit has been adjusted.**
  - ✓ If municipal taxes, ground rent, etc. are borne by the tenant, no TDS will be deducted under section 194-I on such taxes.
  - ✓ Where an agreement with hotel is merely in the nature of a rate contract, it cannot be said to be accommodation 'taken on regular basis', as there is no obligation on the part of the hotel to provide a room or specified set of rooms. Consequently, section 194-I while applying to hotel accommodation taken on regular basis would not apply to rate contract agreements.
  - ✓ The **main function of the cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only incidental in nature.** The customer is also not given any right to use any demarcated space/place or the machinery of the cold store and thus does not become a tenant. **Therefore, the provision of 194-I is not applicable** to the cooling charges paid by the customers of the cold storage.

However, since the arrangement between the customers and cold storage owners are basically contractual in nature, the **provision of section 194C will be applicable to the**

	<p>amounts paid as cooling charges by the customers of the cold storage.</p> <ul style="list-style-type: none"> <li><b>JAPAN AIRLINES CO. LTD. V. COMMISSIONER OF INCOME-TAX [2015] (SUPREME COURT)</b> Landing and parking charges payable by Airlines in respect of aircrafts are not for the 'use of land' per se but the charges are in respect of number of facilities provided by the Airport Authority of India. Thus, landing and parking charges payable by Airlines would attract TDS under Section 194C and not under Section 194-I.</li> <li><b>INDUS TOWERS LIMITED</b> The assessee owned a network of telecom towers and infrastructure services which were let out to major telecom operators in the country. Assessee contends that TDS should be deducted under section 194C whereas Assessing Officer wants to apply section 194-I and deduct TDS @10%. The High Court held that the Revenue's contention that the transaction is primarily "renting of land" is incorrect. The assessee contention that TDS should be deducted under section 194C is also incorrect. The underlying object of the arrangement was the use of machinery, plant or equipment i.e., the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises. It directed that tax deduction be made at 2% as per section 194-I, the rate applicable for payment made for use of plant and machinery.</li> </ul>
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## Section 194-IA

<b>TDS on payment on transfer of certain immovable property</b>	<p><b>Deductor</b> – Any purchaser (other than person referred to in section 194LA)  <b>Deductee</b> – Any seller being resident  <b>Time of Deduction</b> – At the time of credit or payment, whichever is earlier  <b>Rate of TDS</b> – 1% of the total consideration for transfer of immovable property <b>OR THE STAMP DUTY VALUE OF SUCH PROPERTY WHICHEVER IS HIGHER</b>  <i>(Words in Bold Added by Finance Act, 2022)</i>  [Rate shall be 20% if deductee does not furnish PAN.]</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>As per Finance Act, 2019, "consideration for transfer of any immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.</li> <li>Every person is liable to deduct TDS @ 1% on payment made for purchase of immovable property to a person resident in</li> </ul>
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**India, except for:**

- (i) rural agricultural land (which is not coming in definition of capital asset), and
- (ii) where the **sale consideration AND THE STAMP DUTY VALUE** for the property **ARE BOTH less than ₹50 lakh.**

(Amended by Finance Act, 2022)

Therefore, if the immovable property is **purchased from a non-resident person for any value, no TDS is required to be deducted** under this section. However, TDS shall be deducted under section 195.

- In the case of property whose sale price **or stamp duty value** is ₹50 lakhs or more and in the event part payment is being made for the purchase, then such **TDS would be required to be deducted on every part payment of consideration and not at the time of final tranche of payment.**
- If sellers jointly own a property and **sell for total consideration of ₹50 lakh or more**, then section 194-IA is attracted even if **each co-owner's consideration is less than ₹50 lakhs.**
- It is **not necessary that the land or building should be situated in India**. If any person is purchasing property outside India from a person resident in India, he is liable to deduct tax at source on sale consideration @ 1%.
- In case section 194-IA is attracted then **the purchaser isn't required to obtain TAN**, i.e., Tax Deduction Account Number i.e., section 203A is not applicable.
- TDS is required to be deducted **irrespective of the fact** that immovable property is **held as capital asset or stock-in trade by the buyer and seller.**
- In case **immovable property** (other than agricultural land which is not capital asset) is **acquired under any law** in force, the provisions of **section 194LA shall apply** and provisions of section 194-IA is not applicable.

### **Section 194-IB**

<b>TDS on payment of Rent by Certain Individuals or HUF</b>	<b>Deductor – Any Individual/ HUF, whose total sales/ gross receipts from business or profession does not exceed ₹ 1 crore/ ₹ 50 lakhs respectively in the preceding Financial Year, but is paying rent in excess of ₹50,000 per month</b> <b>Deductee – Resident</b> <b>Time of Deduction – Only one time in a year i.e. annually in the last month of the previous year. In case the tenant is vacating the premises during the previous year, then tax deduction required in the month when the tenant vacates the premises</b> <b>Rate of TDS – 5% of the rental income (20% if deductee does not furnish PAN. Also, in such a case TDS shall not exceed last month rent)</b> <b>Notes:</b> <ul style="list-style-type: none"> <li>• This section is not applicable to the individuals/ HUF who are covered under section 194-I.</li> <li>• Tenant can be resident or non-resident. Both are liable to</li> </ul>
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	<p>deduct TDS under this section.</p> <ul style="list-style-type: none"> <li><b>It is irrelevant where the building is situated</b> i.e. in India or abroad. What is relevant is the residential status of the person to whom the payment is made. TDS will be deducted only if the payment is made to the resident.</li> <li><b>TDS shall be deducted only on the component of rent paid for the use of land or building.</b> Any other thing taken on rent eg. furniture, shall not be covered.</li> <li>The land or building taken by tenant <b>can be used</b> for any purpose i.e. <b>commercial or residential</b>.</li> <li>In case section 194-IB is attracted, individual or HUF is <b>not required to obtain TAN</b> i.e. section 203A is not applicable.</li> <li>TDS deducted under this section shall be payable within 30 days from the end of the month in which deduction is made.</li> </ul>
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### **Section 194-IC**

<b>Payment under Specified Agreement</b>	<p><b>Deductor – Any person paying any sum by way of consideration (not being consideration in kind) under Joint Development Agreement</b></p> <p><b>Deductee – Any resident</b></p> <p><b>Time of Deduction – At the time of credit or payment, whichever is earlier.</b></p> <p><b>Rate of TDS – 10% of the sum paid [20% in case deductee does not furnish PAN and/ or he is a specified person as per section 206AB]</b></p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>Capital gains are taxable in the hands of the assessee in the previous year <b>in which certificate of completion is issued by competent authority</b>. Thus, TDS credit under section 194-IC shall be claimed by the assessee in the previous year in which capital gains are taxable.</li> </ul>
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### **Section 194J**

<b>TDS on:</b> <ul style="list-style-type: none"> <li>fees for professional services, or</li> <li>fees for technical services, or</li> <li>royalty, or</li> <li>non-compete fees</li> <li>director</li> </ul>	<p><b>Deductor – Any Person, [other than individual or HUF whose total sales/ gross receipts from business or profession does not exceed ₹ 1 crore/ ₹ 50 lakhs respectively in preceding financial year]</b></p> <p><b>Deductee – Any resident</b></p> <p><b>Time of Deduction – At the time of credit or payment, whichever is earlier</b></p> <p><b>Rate of TDS –</b></p> <ul style="list-style-type: none"> <li>10% (20% if deductee is specified person as per section 206AB);</li> <li>2% (5% in case deductee is specified person as per section 206AB) in case of <ul style="list-style-type: none"> <li>payee engaged only in the business of operation of call centre.</li> <li>fees for Technical Services</li> <li>royalty where such royalty is in the nature of</li> </ul> </li> </ul>
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<p><b>sitting fees</b></p> <p><b>[Rate shall be 20% in case deductee does not furnish PAN.]</b></p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• TDS shall be deducted on:           <ul style="list-style-type: none"> <li>(a) fees for professional services, or</li> <li>(b) fees for technical services, or</li> <li>(c) royalty, or</li> <li>(d) non-compete fee referred to in section 28, or</li> <li>(e) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company.</li> </ul> </li> <li>• <b>No TDS where amount does not exceed ₹30,000 during a Financial Year</b> for each type of payment referred to in (a) to (d).</li> <li>• If any fees is 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 in India, then <b>no TDS is required to be deducted on such fees.</b></li> <li>• No TDS is required to be deducted by individual or HUF for professional fees paid for personal purpose, even if total sales or gross receipts from business or profession exceed ₹ 1 crore/ ₹ 50 lakhs respectively in preceding Financial Year. This is subject to Section 194M.</li> <li>• <b>CBDT Notification:</b> Services rendered by following persons in relation to the sports activities as "Professional Services" have been <b>notified for the purpose of the section 194J:</b> <ul style="list-style-type: none"> <li>✓ Sports Persons</li> <li>✓ Umpires and Referees,</li> <li>✓ Coaches and Trainers,</li> <li>✓ Team Physicians and Physiotherapists,</li> <li>✓ Event Managers,</li> <li>✓ Commentators,</li> <li>✓ Anchors, and</li> <li>✓ Sports Columnists.</li> </ul> </li> <li>• Any sitting fees paid to director is subject to TDS @ 10% (7.5%). No threshold limit has been provided and even if sitting fees of ₹5,000 is paid, then the company is liable to deduct TDS.</li> <li>• Provisions under section 194J shall be applicable on payments made by Third Party Administrators (TPAs) to hospitals on behalf of insurance companies for settling medical/insurance claims etc. with the hospitals.</li> <li>• Explanation 4 to section 9 clarifies that payment received for transfer of:           <ul style="list-style-type: none"> <li>✓ All or any right to use a computer software</li> <li>✓ Including granting of a license for computer software</li> <li>✓ is royalty.</li> </ul> </li> <li>• <b>CBDT Notification:</b> No deduction of tax shall be made on payment by a person (hereafter referred to as the transferee) for acquisition of software from another person, being a resident, (hereafter referred to as the transferor), where-</li> </ul>	<p><b>consideration for sale, distribution or exhibition of cinematographic film.</b></p>
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	<p>(i) the <b>software is acquired in a subsequent transfer</b> and the transferor has transferred the software <b>without any modification</b>,</p> <p><b>(ii) tax has been deducted-</b></p> <ul style="list-style-type: none"> <li>(a) <b>under section 194J</b> on payment for any previous transfer of such software; or</li> <li>(b) <b>under section 195</b> on payment for any previous transfer of such software from a non-resident, and</li> </ul> <p>(iii) the transferee obtains a declaration from the transferor that the tax has been deducted either under sub-clause (a) or (b) of clause (ii) along with the PAN of the transferor.</p> <ul style="list-style-type: none"> <li>• <b>Kotak Securities Ltd. (SC) (2016):</b> Service made available by Bombay Stock Exchange Online Trading System for which transaction charges are paid by BSE members are common services that every member of Stock Exchange is necessarily required to avail of to carry out trading in Stock Exchange; such services do not amount to 'technical services' provided by Stock Exchange and hence, no TDS would be deductible under section 194J.</li> <li>• <b>Manipal Health Systems (P) Ltd. (Kar)</b> Where remuneration paid to doctors is variable based on number of patients and treatment given to them, would the liability to deduct tax at source arise under section 192 or under section 194J ?</li> </ul> <p>The High Court examined the terms of the contract entered into between the assessee company and the doctors. As per the said terms,</p> <ul style="list-style-type: none"> <li>✓ The remuneration paid to the doctors depends on the treatment given to patients and on the number of patients - if the number of patients are more, remuneration would be on a higher side or if no patients, no remuneration;</li> <li>✓ The timing of the doctors is fixed; and</li> <li>✓ They cannot have private practice or attend any other hospital.</li> </ul> <p>It was observed that mere provision of non-competition clause in the agreement shall not change the nature of contact from profession to that of employment.</p> <p>Considering the totality of facts and terms of the agreement, the Court held that in this case, the <b>consultancy charges paid to doctors rendering professional service would be subject to tax deduction under section 194J and not section 192.</b></p>
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### Section 194K

Income in respect of units (Applicable)	Deductor – Mutual Fund/ Administrator of Specified Undertaking/ Specified Company Deductee – Any resident Time of Deduction – All the time of credit or payment,
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w.e.f. A.Y.  
2021-22)

whichever is earlier.

**Rate of TDS – 10% (20% if deductee does not furnish PAN and/or deductee is a specified person as per section 206AB)**

**Notes:**

- **TDS shall be deducted on dividend income in respect of units paid by:**
  - Mutual fund
  - Administrator of Specified Undertaking
  - Specified Company
- **No TDS if amount or aggregate of amount of dividend does not exceed ₹ 5,000**

### **Section 194LA**

**Payment of compensation on compulsory acquisition of any immovable property (Other than agricultural land)**

**Deductor** – Any person

**Deductee** – Any resident

**Time of Deduction** – At the time of payment

**Rate of TDS – 10% (20% if deductee does not furnish PAN and/or deductee is a specified person as per section 206AB)**

**Notes:**

- No TDS where amount does not exceed ₹2,50,000 during a Financial Year.
- No TDS where payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCLARR Act).

### **Section 194M**

**TDS on Payment of Certain Sums by Individual and HUF not covered by section 194C, section 194H and section 194J**

**Deductor** – Individual/ HUF (other than those required to deduct TDS under section 194C/ 194H/ 194J)

**Deductee** – Any resident

**Time of Deduction** – At the time of credit or payment, whichever is earlier.

**Rate of TDS – 5% (20% if deductee does not furnish PAN)**

**Notes:**

- **An individual/ HUF is not required to deduct TDS**
  - under section 194H if sales/ receipts in business/ profession in preceding financial year did not exceed ₹ 1 crore/ ₹ 50 lakhs respectively
  - under section 194C/ 194J
    - (a) if sales/ receipts in business/ profession in preceding Financial year did not exceed ₹ 1 crore/ ₹ 50 lakhs respectively OR
    - (b) if sales/ receipts in business/ profession in preceding financial year exceeded ₹ 1 crore/ ₹ 50 lakhs respectively BUT payment is exclusively for personal purposes of deductor.
- **Such individual/ HUF is required to deduct TDS under**

**section 194M on**

- payment made under any contract
- commission or brokerage
- fees for professional services

**if sum paid/ credited to resident exceeds ₹ 50 lakhs in the financial year.0**

- Deductor is not required to apply for TAN
- Certificate for no/ lower deduction can be issued by Assessing Officer under section 197.

## **SECTION 194N : TDS ON PAYMENT OF CERTAIN AMOUNTS IN CASH**

### **♦ ANALYSIS OF SECTION 194N ♦**

1. The provisions of section 194N shall apply where cash withdrawals exceeds ₹ 1 crore from bank/co-operative bank/post office during the previous year. The section applies to cash withdrawals made by **Resident as well as Non-Resident**.
2. The provisions of this section apply if aggregate cash withdrawals **from one or more accounts maintained** with the bank/cooperative bank/post office exceeds ₹ 1 crore in a previous year. Accordingly if Mr. X withdraws ₹ 60 Lakhs from his saving account on 15.7.2022 and ₹ 50 lakhs from his current account on 20.8.2022, with Bank of India, then Bank of India shall deduct TDS of ₹ 2,20,000 from payment of ₹ 50 lakhs.
3. The limit of ₹ 1 crore has to be seen for cash withdrawals made from all branches of a bank/cooperative bank/post office. If a company has current accounts with State Bank of India at Mumbai Branch, Delhi Branch and Kolkata Branch and cash withdrawn by the company is ₹ 50 lakh from each branch, then bank shall deduct TDS of ₹ 3,00,000.
4. However cash withdrawals from **two different banks/co-operative banks shall not be aggregated**. Therefore if a company has an account with SBI and an account with PNB and company withdraws cash of ₹ 60,00,000 each from SBI and PNB, then TDS shall not be deducted.
5. Proviso is added in Section 198 to provide that TDS deducted under section 194N will not be considered as income of the assessee. As per law, the credit of TDS is given in the year in which income is offered for taxation. Income Tax Rules have been amended to provide that the credit of TDS shall be given to the person in whose name TDS under section 194N has been deducted irrespective of the fact that corresponding income has not been offered for taxation.

### **PERSONS EXEMPTED FROM SECTION 194N**

1. **Section 194N shall not be attracted in case of cash payment made to**
  - (i) **the Government;**
  - (ii) **any banking company or co-operative bank or a post office;**
  - (iii) **any business correspondent of a banking company or co-operative bank;**
  - (iv) **any white label automated teller machine operator of a banking**

**company or co-operative bank;**

2. **Cash Replenishment Agencies (CRA's) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's) maintaining a separate bank account from which withdrawal is made only for the purposes of replenishing cash in the Automated Teller Machines (ATM's) operated by such WLATMO's.**
3. (a) **The authorised dealer and its franchise agent and sub-agent; and**  
(b) **Full-Fledged Money Changer (FFMC) licensed by the Reserve Bank of India and its franchise agent;**  
maintaining a separate bank account from which withdrawal is made only 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 (MTSS)** of the Reserve Bank of India;
4. **The 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, who has intimated to the banking company or co-operative bank or post office his account number through which he wishes to withdraw cash in excess of ₹ 1 crore in the previous year along with his Permanent Account Number (PAN) and withdrawal of cash from the account in excess of ₹ 1 crore during the previous year is for the purpose of making payments to the farmers on account of purchase of agriculture produce.**

#### ♦ ANALYSIS OF FIRST PROVISO TO SECTION 194N ♦

First proviso applies, if cash is withdrawn by a person (called recipient) during previous year ended on 31.3.2023 and if the recipient has not filed the returns for the three previous years ended on 31.3.2021, 31.3.2020 and 31.3.2019, AND the due dates for filing the return under section 139(1) have expired for the said 3 previous years before the commencement of the previous year in which payment is made/cash is withdrawn.

In simple words, First Proviso to section 194N applies if cash is withdrawn in previous year 31.3.2023 by recipient and recipient has not filed returns of income for all of the previous years ending on 31.3.2021, 31.3.2020 and 31.3.2019.

**Note:** **First proviso shall not apply** if recipient has filed return for any one or more previous years i.e. previous year 31.3.2021 and/or previous year 31.3.2020 and/or previous year 31.3.2019.

In case of the recipient referred to in the **First proviso of section 194N**, TDS shall be deducted as follows:

<b>Cash withdrawn during the previous year</b>	<b>TDS Rate</b>
upto ₹ 20 lakhs	NIL
Above ₹ 20 lakhs but upto ₹ 1 crore	2% of cash withdrawn
Above ₹ 1 crore	₹ 2 lakhs plus 5% of cash withdrawn in excess of ₹ 1 crore

**Illustration:**

Mr. X withdraws the following sums in cash during the financial year 2021-2022:

Date	Amount withdrawn
01-08-2022	10,00,000
15-09-2022	35,00,000
17-11-2022	25,00,000
28-01-2023	45,00,000
16-03-2023	30,00,000

He has not furnished his return of income for the previous years 2018-19, 2019-20 and 2020-21. Compute TDS to be deducted under section 194N.

**Answer:**

Since Mr. X has not filed returns of income for three previous years ending 31.3.2021 whose due dates under section 139(1) have expired in the previous year immediately preceding the previous year in which cash is withdrawn, the tax shall be deducted as follows:

Date	Amount withdrawn	Aggregate of amount withdrawn	Tax Deducted at Source		
			Rate	Computation	Tax to be deducted
01-08-2022	10 lakhs	10 lakhs	-	-	-
15-09-2022	35 lakhs	45 lakhs	2%	45 lakhs	90,000
17-11-2022	25 lakhs	70 lakhs	2%	25 lakhs × 2%	50,000
28-01-2023	45 lakhs	115 lakhs	2% and 5%	30 lakh × 2% + 15 lakh × 5%	1,35,000
16-03-2023	30 lakhs	145 lakhs	5%	30 lakh × 5%	1,50,000

If Mr. X had furnished his returns and the first proviso had not been applicable to him, TDS would have been deducted on cash withdrawals on 28.01.2023 @ 2% i.e., ₹ 2,30,000 (115 lakhs × 2%) and on 16.03.2023 @ 2% i.e., ₹ 60,000 (30 lakhs × 2%).

**SECTION 194-O: PAYMENT OF CERTAIN SUMS BY E-COMMERCE OPERATOR TO E-COMMERCE PARTICIPANT (Introduced by Finance Act, 2020)**

**1. New Provision**

**The section applies if all the following conditions are fulfilled:**

- (a) There is a sale of goods or provision of services.
- (b) Such sale or provision of services is of an e-commerce participant.
- (c) Such sale or provision of services is facilitated by an e-commerce operator.

- (d) Such facilitation is through the digital or electronic facility or platform of the e-commerce operator.

If the aforesaid conditions are fulfilled,

- (a) The e-commerce operator shall deduct income-tax @ 1% of the gross amount of such sales or services or both.
- (b) Such deduction shall be made—
- (i) at the time of credit of amount of sale or services or both to the account of an e-commerce participant; or
- (ii) at the time of payment thereof to such e-commerce participant by any mode,

whichever is earlier.

2. Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be—

- (i) deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant; and
- (ii) included in the gross amount of such sale or services for the purpose of deduction of income-tax under this section.

3. Exception:

No deduction shall be made if ALL the following conditions are satisfied:

- (a) The e-commerce participant is an individual or HUF.
- (b) The gross amount of such sale or services or both during the previous year does not exceed ₹ 5 lakh.
- (c) The e-commerce participant has furnished his PAN or Aadhaar number to the e-commerce operator. (If PAN/Aadhaar not given and/ or deductee is specified person as per section 206AB, then TDS shall be deducted @ 5% instead of 1%)

The following transactions shall not be liable to tax deduction at source under any other provision of Part B of Chapter XVII:—

- (a) A transaction in respect of which tax has been deducted by the e-commerce operator under section 194-O, or
- (b) A transaction which is not liable to deduction in respect of payment to individual or HUF under section 194-O(2).

However, this non-deduction of TDS under any other section and non-applicability to individual/HUF where gross amount of sale/service does not exceed ₹ 5,00,000 shall not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator for—

- (a) hosting advertisements; or
- (b) providing any other services which are not in connection with the sale or services referred to in section 194-O(1).

4. Applicability

The provision

- (a) does not apply in case the e-commerce participant is a non-resident.
- (b) applies to both resident and non-resident e-commerce operators.
- (c) applies even if the purchaser of goods/recipient of services is a non-resident.
- (d) does not apply if the e-commerce participant conducts business through its own website.
- (e) shall apply irrespective of whether the payment is made by the purchaser of goods/recipient of services directly to the e-commerce participant or the payment is first received by the e-commerce operator and then remitted to the e-commerce participant. In the former case, since the purchaser/recipient would make entire payment to the e-commerce participant, without deducting any tax, the e-commerce operator would be required to deduct tax at source under section 194-O, deposit the same with the government and later collect the said amount from the e-commerce participant.
- (f) applies irrespective of the amount of sales/services in case of assessees other than individuals/HUF (that is, partnership firms, LLPs, companies, AOPs, etc.).

**Question 1:**

Samsung India Ltd has sold 1,000 television sets at ₹ 50,000 each through Reliance Digital on 01.12.2022. Reliance Digital receives payment of ₹ 5,00,00,000 from various buyers and deducts commission of 10% and wants to remit ₹ 4,50,00,000 to Samsung India Ltd. Advise.

**Answer:**

**Samsung India Ltd is the E-Commerce Participant and Reliance Digital is the E-Commerce Operator.** As per section 194-O(1), Reliance Digital shall deduct TDS of 1% on ₹ 5,00,00,000 i.e. ₹ 5,00,000. Therefore Reliance Digital will remit ₹ 4,45,00,000 to Samsung India Ltd after deducting TDS of ₹ 5,00,000.

**There is no liability of Samsung India Ltd to deduct TDS under section 194H on the commission of ₹ 5,00,000 it pays to Reliance Digital since:**

- (i) section 194-O overrules the entire chapter of TDS and
- (ii) as per section 194-O(3), a transaction on which tax has been deducted by e-commerce operator under section 194-O(1), shall not be liable to tax deduction under any other section. TDS has been deducted on the entire transaction of ₹ 5,00,00,000.

**Question 2:**

Suppose in Question 1, all facts remaining the same and instead of Samsung India Ltd, it was Samsung Japan, a non-resident foreign company.

**Answer:**

As per section 194-O, “**E-Commerce Participant**” means a person resident in India. Samsung Japan is a non-resident and therefore it does not fall in definition of “E-Commerce Participant” and hence TDS under section 194-O shall not be deducted.

The tax liability of Samsung Japan and TDS obligation of Reliance Digital shall be discussed in module of International Taxation in chapter of Business connection.

**Question 3:**

Suppose in Question 1, all facts remaining the same and instead of Reliance Digital, it was AMAZON USA facilitating sale of products by Samsung India Ltd. AMAZON USA is a non-resident.

**Answer:**

As per section 194-O, "E-commerce Operator" includes resident as well as non-resident. Therefore, AMAZON USA being a non-resident is "E-commerce Operator" and is required to deduct TDS under section 194-O @ 1% on ₹ 5,00,00,000. The tax liability of AMAZON USA shall be discussed in module of International Taxation in Chapter of Business Connection and Equalisation Levy.

**Question 4:**

Suppose in Question 1, Reliance Digital sold televisions of ₹ 4,00,00,000 to Indian buyers and ₹ 1,00,00,000 to foreign buyers.

**Answer:**

Section 194-O does not distinguish as to whether buyers should be residents or non-residents. Therefore section 194-O shall apply and TDS shall be deducted on ₹ 5,00,00,000.

**Question 5:**

Mr. A, a resident manufactures perfumes and sells through Flipkart. The total sales made by Mr. A through Flipkart are ₹ 5,00,000 in previous year 31.3.2023. Flipkart deducts commission @ 10% and remits ₹ 4,50,000 to Mr. A.

**Answer:**

Section 194-O shall not be applicable since the gross sales do not exceed ₹ 5,00,000. Hence Flipkart shall not deduct TDS **provided that** Mr. A gives his PAN/Aadhaar to Flipkart. If he does not give PAN/Aadhaar to Flipkart, then TDS shall be deducted @ 5% on ₹ 5,00,000.

TDS on commission paid to Flipkart is also not required to be deducted. [Section 194-O(3)]

**Question 6:**

Will your answer be different if in Question 5, M/s ABC partnership was there instead of Mr. A.

**Answer:**

Section 194-O shall be applicable since exemption is only in case of individuals and HUF whose gross sales through E-Commerce Operator does not exceed ₹ 5,00,000.

Flipkart will deduct TDS @ 1% under section 194-O on ₹ 5,00,000. M/s ABC shall not deduct TDS on commission paid to Flipkart. [Section 194-O(3)]

**Question 7:**

M/s ABC sells Women Apparel through Myntra and total sales of M/s ABC through Myntra are ₹ 2,00,00,000 during the previous year 31.3.2023. Myntra charges 10% commission on sales made by it. The payment gateway of Myntra is so designed that ₹ 20,00,000 comes to Myntra from customers and ₹ 1,80,00,000 goes to M/s ABC directly.

**Answer:**

As per Explanation to section 194-O(1), any payment by purchaser directly to E-Commerce participant for sale of goods facilitated by an E-Commerce Operators shall be deemed to be the amount credited or paid by E-Commerce Operator to E-Commerce Participant and shall be included in gross amount of sale for purpose of tax deduction under section 194-O.

Therefore Myntra shall pay TDS of 1% of ₹ 2,00,00,000 i.e. ₹ 2,00,000 to the credit of Government and shall recover ₹ 2,00,000 from M/s ABC.

M/s ABC is not required to deduct TDS on commission paid to Myntra.

**Question 8:**

A Chartered Accountant renders professional advices to various clients through “**Consult-CA**”, a website run by E-Commerce Operator. Various clients pays ₹ 1,00,00,000 to **Consult-CA** and **Consult-CA** deducts 20% commission and remits ₹ 80,00,000 to the Chartered Accountant for the financial year ending 31.3.2023.

**Answer:**

As per section 194-O, “Services” include professional services. Therefore **Consult-CA** will deduct 1% TDS on ₹ 1,00,00,000 and remit ₹ 79,00,000 to the Chartered Accountant. Section 194J shall not apply and TDS shall not be deducted @ 10%.

Section 194H shall also not apply as per section 194-O(3).

**SECTION 194P: DEDUCTION OF TAX IN CASE OF SPECIFIED SENIOR CITIZEN (ADDED BY FINANCE ACT, 2021)**

♦ ANALYSIS OF SECTION 194P ♦

The provisions of section 194P shall only apply in case of a RESIDENT “Specified Senior Citizen” i.e.:

- (1) A person who is of the age of seventy-five years or more at any time during the previous year; and
- (2) Who is having pension income and no other income except interest income received or receivable from any account maintained by such individual in the same specified bank in which he is receiving his pension income; and
- (3) He furnishes a declaration to the specified bank in Form 12BBA

If all the above 3 conditions are satisfied, then the “specified bank” i.e. a scheduled bank (A bank enlisted under Second Schedule to the Reserve Bank of India Act, 1934) shall compute the total income of such specified senior citizen for the relevant assessment year (i.e. for which the declaration is furnished) after giving effect to the deduction allowable under Chapter VI-A (as per the evidence furnished by the specified senior citizen) and rebate allowed under section 87A and then, deduct income-tax on such total income on the basis of the rates in force.

**Note 1:** The tax to be deducted should be at the rates in force as increased by Surcharge and Health & Education Cess.

**Note 2:** The specified bank responsible for deduction shall preserve the declaration and evidence furnished by the specified senior citizen for claiming deduction under Chapter VI-A and shall be required to furnish the same to the Principal Director General/ Director General of Income-tax (Systems) when asked for.

If the specified bank deducts income-tax on total income of the specified senior citizen, then such specified senior citizen shall not be required to file his return of income under section 139(1).

**Note:** The provisions of section 194P overrides all other provisions of Chapter XVII-B (Chapter of TDS). Thus, if any tax is also deductible under any other section say, section 194A from interest payable by a bank on time deposit, the bank shall deduct the tax under this provision only.

Section 194Q is discussed alongwith section 206C(1H).

### NEW SECTION INSERTED BY FINANCE ACT, 2022

## **SECTION 194R: DEDUCTION OF TAX ON BENEFIT OR PERQUISITE IN RESPECT OF BUSINESS OR PROFESSION**

### I. APPLICABILITY OF SECTION

The provisions of Section 194R are attracted when:

- Any Person provides
- Any BENEFIT or PERQUISITE
- to a Resident
- ARISING FROM BUSINESS OR EXERCISE OF PROFESSION BY SUCH RESIDENT.

The rate of TDS shall be 10% of the value or aggregate value of such benefit or perquisite. Rate shall be 20% if deductee fails to furnish his PAN or if the deductee is a specified person as per section 206AB.

### II. NON-APPLICABILITY OF SECTION

The provisions of Section 194R shall not be attracted when:

- a. The **value/aggregate value of Benefit or Perquisite provided does not or is likely not to exceed ₹ 20,000.**  
**OR**
- b. The person **PROVIDING THE BENEFIT** is an **Individual/HUF** and its **total sales, gross receipts or turnover does not exceed ₹ 1 crore in case of business or ₹ 50 lakh in case of profession**, during the financial year immediately preceding the financial year in which such benefit or perquisite is provided.

The provisions of section 194R of the Act shall not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, **not carrying on business or profession**.

### **III. DEFINITION OF PERSON RESPONSIBLE FOR PAYING**

As per Explanation to Section 194R, the expression "**person responsible for providing**" means the **person providing such benefit or perquisite**, or in case of a company, the company itself including the principal officer thereof.

In the context, it would mean a person who has agreed to provide the benefit or perquisite and makes payment for the benefit/perquisite to a third party is liable under section 194R and not the third party who actually provides or delivers the benefit or perquisite after accepting payment from the person who agrees to provide it.

For example, a company agrees to arrange foreign tours for its dealers and distributors/agents who achieve specific targets, **it is the company that has to comply with section 194R**, not the tour operators/hotels/airlines who, after accepting payment from the Company, deliver the agreed/promised foreign tours to the dealers/distributors.

### **IV. TIME OF DEDUCTION**

Section 194R provides that **it should be ensured that tax has been deducted in respect of such benefit or perquisite "BEFORE PROVIDING such benefit or perquisite as the case may be, to such resident"**.

**Liability may be discharged by:**

- (a) **"payer"** by **grossing up** and paying tax out of his pocket;
- (b) **"payee"** by giving cash to the payer to meet TDS liability;
- (c) debiting TDS under section 194R to the account of the payee if it has a credit balance, so that amount will be paid net of TDS under section 194R whenever credit balance is paid to the payee
- (d) **"payee"** himself pays tax and give challan to the payer;

### **V. OTHER TAKEAWAYS**

#### **1. Applicability of section 194R to freebies given by pharma companies to doctor**

The Finance Act, 2022 has inserted Explanation 3 to section 37(1), which expressly states that expenditure incurred to provide perquisite, in whatever form to any person, irrespective of whether the recipient is engaged in any business or profession, where the acceptance of such benefit or perquisite is a violation of any rule, law or regulation, which governs the recipient, shall be deemed to have not been incurred for business or profession and accordingly, the deduction for the same shall not be available. Further, Explanation 3 also expressly states that the expenditure, whether constituting an offence as per the prevailing laws in India or outside India or prohibited by any law in force in India or outside India, shall not be eligible for deduction under section 37(1).

**Though the expenditure freebies or gifts given to the doctors are not deductible in the hands of the pharma companies, the value of benefits or perquisites shall be taxable in the hands of doctors.** The freebies received by the doctors would fall within the ambit of section 28(iv). Thus, with effect from 01-07-2022, the pharma companies will be liable to deduct tax if the value of any benefit or perquisite provided by them to a resident doctor exceeds ₹ 20,000 in any financial year.

2. The provisions of Section 194R are introduced w.e.f. 01.07.2022.

- (i) Since the threshold of ₹ 20,000 is with respect to the financial year, calculation of value or aggregate of value of the benefit or perquisite triggering deduction under section 194R of the Act shall be counted from 1st April, 2022. Hence, if the value or aggregate value of the benefit or perquisite provided or likely to be provided to a resident exceeds ₹ 20,000 during the financial year 2022-23 (including the period up to 30th June, 2022), the provision of section 194R shall apply **on any benefit or perquisite provided on or after 1st July 2022.**
- (ii) The benefit or perquisite which has been provided on or before 30th June 2022, would not be subjected to tax deduction under section 194R of the Act.

**Example:**

XYZ Ltd. is a pharma company engaged in the business of manufacturing of medicines. During the F.Y. 2022-23, it provided free samples of its medicines to doctors, out of which amounts of samples provided to 3 doctors A, B and C are given below:

<b>Doctor</b>	<b>Period</b>	<b>Amount (₹)</b>	<b>TDS to be deducted</b>
A	01.04.2022 – 30.06.2022	10,000	No
	01.07.2022 – 30.09.2022	10,000	No
	01.10.2022 – 31.03.2023	20,000	Yes, on 30,000 @ 10% i.e., 3,000
B	01.04.2022 – 30.06.2022	25,000	No
	01.07.2022 – 30.11.2022	50,000	Yes, on 50,000 @ 10% i.e., 5,000
	01.12.2022 – 31.03.2023	10,000	Yes, on 10,000 @ 10% i.e., 1,000
C	01.04.2022 – 30.06.2022	10,000	No
	01.07.2022 – 31.10.2022	15,000	Yes, on 15,000 @ 10% i.e., 1,500
	01.11.2022 – 31.03.2023	19,000	Yes, on 19,000 @ 10% i.e. 1,900

### **CBDT CLARIFICATIONS**

1. There is no requirement for the person providing benefits or perquisites to check whether the amount is taxable in the hands of the recipient or not.
2. Section 194R of the Act clearly brings in its scope the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.
3. It is **clarified that no tax is required to be deducted under section 194R of the Act on sales discount, cash discount and rebates allowed to customers.**

4. The following are some of the examples of benefits/perquisites on which **tax is required to be deducted** under section 194R of the Act (the list is not exhaustive):
- When a person gives incentives (other than discount, rebate) in the form of cash or kind such as car, TV, computers, gold coin, mobile phone etc.
  - When a person sponsors a trip for the recipient and his/her relatives upon achieving certain targets
  - When a person provides free ticket for an event
  - When a person gives medicine samples free to medical practitioners.
5. The valuation of benefits or perquisites would be based on fair market value of the benefit or perquisite except in following cases: —
- (i) The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient. In that case the purchase price shall be the value for such benefit/perquisite.
  - (ii) The benefit/perquisite provider manufactures such items given as benefit/perquisite, then the price that it charges to its customers for such items shall be the value for such benefit/perquisite.
- It is further clarified that GST will not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R of the Act.**
6. If a social media influencer is given a product of a manufacturing company so that he can use that product and make audio/video to speak about that product in social media, then product given to such influencer will be a benefit or perquisite only if product is **not returned** by him to the manufacturing company.
7. If a client reimburses any out of pocket expenses to a service provider say, a consultant, then it will be a benefit or perquisite to the consultant since consultant will be claiming this expenditure in his accounts. If however, consultant obtains the invoice in name of client and client reimburses it and consultant has not claimed the said expenditure as a deduction from his income, then there is no benefit or perquisite.
8. The expenditure pertaining to dealer/business conference would not be considered as benefit/perquisite for the purposes of section 194R of the Act in a case where dealer/business conference is held with the prime object to educate dealers/customers about any of the following or similar aspects:
- (i) new product being launched
  - (ii) discussion as to how the product is better than others
  - (iii) obtaining orders from dealers/customers
  - (iv) teaching sales techniques to dealers/customers
  - (v) addressing queries of the dealers/customers

- (vi) reconciliation of accounts with dealers/customers

**Note:** It is clarified that

- (i) it is not necessary that all dealers are required to be invited in a dealer/business conference for the expenses to be not considered as benefit/perquisite for the purposes of tax deduction under section 194R of the Act.
- (ii) Expenditure on participants of dealer/business conference for days which are on account of over stay prior to the dates of conference or beyond the dates of such conference would be considered as benefit/perquisite for the purposes of section 194R of the Act. However, a day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as over stay.

**However, such conference must not be in the nature of incentives/benefits to SELECT DEALERS/CUSTOMERS who have achieved particular targets.**

**Further, in the following cases the expenditure would be considered as benefit or perquisite for the purposes of section 194R of the Act: —**

- (i) **Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer/business conference.**
- (ii) **Expenditure incurred for family members accompanying the person attending dealer/business conference.**
- (iii) **Expenditure on participants of dealer/business conference for days which are on account of prior stay or overstay beyond the dates of such conference.**

9. If a bank waives a loan, then bank shall not be required to deduct TDS under 194R. However, such waiver shall be taxable in hands of borrower.
10. It is clarified that the tax under section 194R of the Act is not required to be deducted on issuance of bonus or right shares by a company, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

### **SECTION 195A: INCOME PAYABLE NET OF TAX**

Where any amount is paid net of tax, the TDS has to be calculated by grossing up the amount, since the tax itself (borne by the payer) represents the income of the payee.

### **SECTION 196: NO TDS ON INTEREST OR DIVIDEND OR OTHER SUMS PAYABLE TO GOVERNMENT, RESERVE BANK OR CERTAIN CORPORATIONS**

**No TDS shall be deducted from any sum payable to:**

- (i) Government
- (ii) RBI
- (iii) Mutual Funds
- (iv) Corporation established under any Central Act whose income is exempt from tax.

## **SECTION 197: CERTIFICATE FOR NO/ LOWER DEDUCTION OF TDS**

Where the total income of the recipient of income is not liable to tax or is taxable at lower rates, then such recipient of income can make an application to A.O. to issue a certificate for no deduction/ lower deduction of TDS from his income. **HOWEVER, THIS CERTIFICATE CANNOT BE ISSUED FOR TDS UNDER SECTION 192A, 194B, 194BB, 194DA, 194-IA, 194-IB, 194-IC, 194N, 194P, 194Q, 194R or 194S.**

**In other words, application can be made under section 197 only with respect to section 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC, 194M, 194-O and 195.**

In such a case, the payer shall deduct income tax as per the rates specified in the certificate till such time the certificate is cancelled by A.O.

Certificate for the lower deduction under section 197 shall not be issued if the application does not contain the PAN of the applicant.

## **SECTION 197A: SELF DECLARATION FOR NON-DEDUCTION OF TDS**

**No TDS shall be deducted if the recipient of:**

- Amount of accumulated balance due to an employee from Recognised Provident Fund (**Section 192A**) and/ or
- Interest from securities (**Section 193**) and/ or
- Interest other than Interest on securities (**Section 194A**) and/ or
- Dividend (**Section 194**) and/ or
- Income in respect of units (**Section 194K**) and/ or
- Amount received in respect of Life Insurance Policy (**Section 194D**) and/ or
- Insurance Commission (**Section 194DA**) and/ or
- Rent (**Section 194-I**)

gives a declaration in Form 15G or in Form 15H (applicable for senior citizens) to the payer of income that the tax on his current year income shall be NIL.

Further, no TDS shall be deducted from any payment to any person for, or on behalf of, the New Pension System Trust under section 10(44).

**Note:**

1. **This declaration cannot be given by a company or firm. It can also not be given in respect of any other section.**
2. Declaration in Form 15H cannot be given by a person **OTHER THAN A SENIOR CITIZEN** if the aggregate of the incomes referred above exceeds the taxable limit even though the tax on his total income is NIL.

## **SECTION 206A: ELECTRONIC FILING OF STATEMENT OF TRANSACTIONS ON WHICH TAX HAS NOT BEEN DEDUCTED**

**Any banking company or co-operative bank responsible for paying to a resident any income not exceeding ₹ 40,000, by way of interest, shall prepare such**

statement in prescribed form and deliver the said statement to the prescribed income-tax authority within prescribed time.

## **Penalty in Case of Non-compliance of Section 206A**

If a person fails to furnish the statement under section 206A within the time prescribed, then he shall pay a penalty of ₹ 100 for each day during which the default continuous.

### **SECTION 206AA: TAX DEDUCTION AT HIGHER RATE FOR FAILURE TO FURNISH PAN**

- (1) Any person entitled to receive any sum or income or amount, on which tax is deductible, **shall furnish his PAN** to the person responsible for deducting such tax (hereafter referred to as deductor), **failing which tax shall be deducted at the higher of the following rates, namely:**
  - (i) at the rate specified in the relevant provision of this Act; or
  - (ii) at the rate or rates in force; or
  - (iii) at the rate of 20%. (**5% tax is required to be deducted in case of section 194-O and 194Q instead of 20%**)
- (2) **Declaration under section 197A shall not be valid** unless the person furnishes his PAN in such declaration.
- (3) In case any declaration becomes invalid under sub-section (2), the deductor shall deduct TDS in accordance with the provisions of sub-section (1).
- (4) **No certificate under section 197 shall be granted** unless the application made under that section contains the PAN of the applicant.
- (5) The deductee shall furnish his PAN to the deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.
- (6) Where the PAN provided to the deductor is **invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his PAN to the deductor** and the provisions of sub-section (1) shall apply accordingly.
- (7) **The provisions of this section shall not apply to a non-resident, or to a foreign company, in respect of—**
  - (i) **payment of interest on long-term bonds as referred to in section 194LC;** and
  - (ii) **any payment received from category I or Category II Alternate Investment Fund (AIF) located in any International Financial Services Centre (IFSC) provided:**
    - (a) **Non-resident / foreign company does not earn any income in India except income from AIF and**
    - (b) **Such AIF has appropriately deducted and deposited TDS as per provisions of section 194LBB.**

## **RELAXATION FROM DEDUCTION OF TAX UNDER SECTION 206AA**

In the case of a non-resident or a foreign company and not having PAN, the provisions of section 206AA shall not apply in respect of payments in the nature of interest, dividend, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the following details to the deductor:

- (i) name, e-mail id, contact number;
- (ii) address in the country of which the deductee is a resident;
- (iii) a certificate of his being resident in any country from the Government of that country if the law of that country provides for issuance of such certificate;
- (iv) Tax Identification Number of the deductee in the country of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country of which he claims to be a resident.

## **SECTION 206CC: REQUIREMENT TO FURNISH PAN BY COLLECTEE**

- (1) Notwithstanding anything contained in any other provisions of this Act, **any person paying any sum or amount, on which tax is collectible at source** (herein referred to as collectee) **shall furnish his PAN to the person responsible for collecting such tax** (herein referred to as collector), failing which tax shall be collected at the higher of the following rates, namely: —
  - (i) at twice the rate specified in the relevant provision of this Act; or
  - (ii) at the rate of 5%.

**Note: The rate shall be 1% instead of 5% in case of a buyer referred to in section 206C(1H).**

- (2) **No declaration** for non-collection of TCS in case of manufacture of goods shall be valid unless the person furnishes his PAN in such declaration.
- (3) In case any declaration becomes invalid under sub-section (2), the collector shall collect the tax at source in accordance with the provisions of sub-section (1).
- (4) **No certificate for lower collection or no-collection shall be granted** unless the application made under that section contains the PAN of the applicant.
- (5) **Where the PAN provided to the collector is invalid or does not belong to the collectee**, it shall be deemed that the collectee has not furnished his PAN to the collector and the provisions of sub-section (1) shall apply accordingly.
- (6) **The provisions of this section shall not apply to a non-resident who does not have permanent establishment in India.**

**SECTION 206AB: TDS FOR NON-FILERS OF INCOME TAX RETURNS**

**SECTION 206CCA: TCS FOR NON-FILERS OF INCOME TAX RETURNS**

♦ ANALYSIS OF PROVISIONS OF SECTION 206AB AND SECTION 206CCA ♦

1. The provisions of section 206AB are attracted where tax is required to be deducted at source under Chapter of TDS except under sections 192, 192A, 194B, 194BB, 194LBC **194-IA, 194-IB, 194M** or 194N on any sum paid/credited to a specified person.

(Sections in bold Added by Finance Act, 2022)

The provisions of section 206CCA are attracted where tax is required to be collected at source under the Chapter of TCS on any sum received by a person from a specified person.

2. The rate of tax, where provisions of section 206AB are attracted shall be higher of following:

- twice the rate specified in relevant provision of Act.
- twice the rate or rates in force
- at the rate of 5%

The rate of tax, where provisions of section 206CCA are attracted shall be higher of following:

- twice the rate specified in relevant provision of Act
- at the rate of 5%

3. A person for the purpose of section 206AB or 206CCA is a specified person in respect of previous year (say, 31.03.2023) if:

- he has not filed the return of income for BOTH the previous years immediately preceding the financial year (in our case 31.03.2023) for which due-date for filing the return of income under section 139(1) has expired (i.e., 31.03.2021).

Note:

Due-date for filing of return of income under section 139(1) for financial year 31.03.2022 would be not expired as on 01.04.2022, i.e., when the functionality prepares the list of defaulters.

AND

- the aggregate of TDS AND TCS in his case is ₹ 50,000 or more in each of those two the previous year (i.e., in our case P.Y. 31.03.2021).

(Amended by Finance Act, 2022)

However, specified person shall not be a non-resident who does not have a permanent-establishment in India.

To illustrate, suppose, tax is to be deducted during financial year 2022-23 in case of Mr. X who is resident in India, whether he would be treated as specified person under section 206AB or 206CCA in different situations is analysed as under:

<b>Filed ROI for A.Y. 2021-22?</b>	<b>Total TCS &amp; TCS in respect of A.Y. 2021-22 was more than ₹ 50,000?</b>	<b>Whether Mr. X will be treated as specified person?</b>	<b>Reason</b>
Yes	Yes	No	ROI filed
No	Yes	Yes	ROI not filed
Yes	No	No	ROI filled and TDS/TCS < ₹ 50,000
Yes	No	No	ROI filled and TDS/TCS < ₹ 50,000
No	No	No	TDS/TCS < ₹ 50,000

### **TIME LIMITS FOR FURNISHING QUARTERLY RETURNS OF TDS/TCS**

**The Quarterly returns of TDS and TCS have to be filed by following due date:**

<b>S. No.</b>	<b>Date of ending of the quarter of the financial year</b>	<b>Due date for TDS</b>	<b>Due date for TCS</b>
1.	30 <sup>th</sup> June	31 <sup>st</sup> July of the financial year	15 <sup>th</sup> July of the financial year
2.	30 <sup>th</sup> September	31 <sup>st</sup> October of the financial year	15 <sup>th</sup> October of the financial year
3.	31 <sup>st</sup> December	31 <sup>st</sup> January of the financial year	15 <sup>th</sup> January of the financial year
4.	31 <sup>st</sup> March	31 <sup>st</sup> May of the financial year immediately following the financial year in which deduction is made	15 <sup>th</sup> May of the financial year immediately following the financial year in which deduction is made

W.r.t. sum deducted under section 194-IA, 194-IB, 194M or 194S, a challan-cum-statement in Form No. 26QB, 26QC, 26QD or 26QE respectively is required to be furnished within a period of 30 days from the end of month in which deduction is made.

### **TIME LIMITS FOR PAYMENT OF TAX**

Tax deducted at source is required to be paid to the credit of the Central Government within the time given below-

<b>Different Situation</b>		<b>Time limit for deposit of tax</b>	
<b>When payer is the Government or when payment is made on behalf of the Government.</b>	TDS is deposited without Challan	<b>Same day</b>	
	TDS is deposited with Challan	On or before <b>7 days</b> from the end of the month in which— i) the deduction is made; or ii) income-tax is due under section 192(1A).	
When tax is deducted by a	Where the income or amount is credited or paid in the	On or before <b>30<sup>th</sup> April</b> .	

<b>person other than Government</b>	month of March In any other case	On or before <b>7 days</b> from the end of the month in which— i) the deduction is made; or ii) income-tax is due under section 192(1A).
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Notwithstanding the above time limits, any sum deducted under section 194-IA, 194-IB, 194M or 194S 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, 26QC, 26QD or 26QE respectively.

## TIME LIMIT FOR ISSUE OF TDS CERTIFICATE

**The TDS Certificates should be furnished by following due date:**

<b>Particulars</b>	<b>TDS on Salary</b>	<b>TDS on Non-Salary</b>
<b>Form</b>	Form 16	Form 16A
<b>Periodicity</b>	Annual	Quarterly
<b>Due Date upto which TDS Certificate should be issued</b>	15 <sup>th</sup> June of the following relevant Financial Year	15 Days from the due date of furnishing of TDS return i.e., 15 <sup>th</sup> Aug., 15 <sup>th</sup> Nov., 15 <sup>th</sup> Feb., and 15 <sup>th</sup> June

**Note 1:** For TDS under section 194-IA, 194-IB, 194M and 194S Form No. 16B, 16C, 16D and 16E have to be issued respectively within 15 days from the due date of furnishing the challan-cum-statement.

**Note 2:** If a person fails to furnish the TDS certificate to payee within the prescribed time, then there is a penalty of ₹ 100 **500** per day per certificate not furnished, for every day during which the failure continues. However, such penalty shall not exceed the amount of TDS in each certificate not furnished. [Section 272A]

(Amended by Finance Act, 2022)

## SECTION 201: CONSEQUENCES OF FAILURE TO DEDUCT OR PAY TDS

### SECTION 201(1): FAILURE TO DEDUCT OR FAILURE TO PAY TDS

(1) **If any deductor does not deduct the whole or any part of the tax or after deducting fails to pay the whole or any part of the tax**, then, he shall be deemed to be an assessee in default in respect of the tax not so deducted or not so paid. Consequently he shall be liable to pay interest under section 220 and penalty under section 221 for being an assessee in default.

**Provided** that any person, **who fails to deduct the whole or any part of the tax** in accordance with the provisions of this Chapter on the **sum paid to a resident or non-resident** or on the sum credited to the account of a resident or non-resident shall not be deemed to be an assessee in default in respect of such tax if such resident or non-resident—

- (i) has furnished his return of income under section 139;

- (ii) has taken into account such sum for computing income in such return of income; and
- (iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from a chartered accountant in such form as may be prescribed.

**Notes:**

- Section 201(1) shall not apply if there is a delay in deduction or delay in payment of TDS.
- Interest under section 201(1A) shall not be levied where section 201(1) applies.

**SECTION 201(1A): LATE DEDUCTION OF TDS OR LATE PAYMENT OF TDS**

(1A) If any person, does not deduct the whole or any part of the tax within the time prescribed or after deducting fails to pay the tax within the time prescribed, he 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 1½ % 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,

and such interest shall be paid before furnishing the quarterly return of TDS.

**Provided** that in case any person, fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or non-resident or on the sum credited to the account of a resident or non-resident but is not deemed to be an assessee in default under the first proviso of sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident or non-resident.

**Provided** that where an order is made by the Assessing Officer for the default under sub-section (1), the interest shall be paid by the person in accordance with such order.

**(Proviso Added by Finance Act, 2022)**

- (2) Where the tax has not been paid after it is deducted, the amount of the tax together with the amount of simple interest thereon shall be a charge upon all the assets of the deductor.
- (3) Order under section 201(1) for interest and penalty shall be passed within 7 years from the end of the Financial Year in which payment is made or credit is given OR 2 YEARS FROM THE END OF THE FINANCIAL YEAR IN WHICH THE CORRECTION STATEMENT IS FILED. WHICHEVER IS LATER.
- (4) However, no time-limits have been prescribed for passing an order under section 201(1) where—

- a) the deductor has **deducted but not deposited** the TDS, as this would be a case of defalcation of government dues,
- b) **the employer has failed to pay the tax wholly or partly, under sub-section (1A) of section 192**, as the employee would not have paid tax on such perquisites,
- c) **the deductee is a non-resident** as it may not be administratively possible to recover the tax from the non-resident.

### **RECENT CBDT CIRCULAR: GUIDELINES FOR WAIVER OF INTEREST CHARGED UNDER SECTION 201(1A)(i) IN SPECIFIED CASES**

Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under section 201(1A)(i) in the following specified class of cases:

- (i) Where failure to deduct TDS within the time specified is on account of seizure of books of accounts and other documents necessary for deducting TDS during the course of proceedings for search and seizure under section 132 of the Act;
- (ii) Where any sum paid or payable was not liable for deduction of TDS in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he did not deduct TDS in relation to such sum, and subsequently, in consequence of any retrospective amendment of law or a decision of the Supreme Court of India, tax was held to be deductible.
- (iii) Where default in deduction of tax under section 195 takes place in respect of payment made to a Non-Resident or foreign company who is resident of a country with which India has a DTAA and the said default took place because of a dispute in rate of TDS or otherwise and the said dispute
  - has been referred to Competent Authority under DTAA and
  - dispute has been settled by Mutual Agreement Procedure.

Even if the interest under section 201(1A)(i) has already been paid by the deductor, the same can be considered for waiver, subject to the conditions above and a refund may be given to the deductor, if waiver is ordered.

### **PENALTY IN RESPECT OF QUARTERLY RETURN OF TDS / TCS**

- 1) **Section 234E: Fee for default in furnishing quarterly returns of TDS / TCS:**
  - a. Where a person fails to deliver the quarterly returns of TDS / TCS within the time prescribed, then he shall be liable to pay a **fees of ₹200 for every day during which the failure continues. This is in addition to the penalty under section 271H.**
  - b. However, such fees shall not exceed the amount of TDS/ TCS deductible / collectible in the quarterly return.
  - c. The fees under section 234E shall be paid before furnishing the quarterly returns of TDS/ TCS.

- d. Fee under this section is **mandatory and cannot be waived**, except in cases where application is made to the CBDT stating sufficient and appropriate cause for the default.
- 2) **Section 271H: Penalty for incorrect information or failure to furnish statements, etc.**
- This section levies a penalty for **delay in filing quarterly returns of TDS / TCS** or furnishing **incorrect information in the said returns**.
  - Section 271H provides that without effecting the provisions of section 234E, a person shall be liable to pay penalty if:-
    - he fails to deliver the quarterly returns of TDS / TCS within the time prescribed; or
    - he furnishes incorrect information in the quarterly returns of TDS / TCS.
  - The penalty shall be a minimum amount of ₹10,000 and it can extend upto ₹1,00,000.**
  - The above penalty is mandatory and cannot be waived.
  - This section however provides that notwithstanding the above, **no penalty shall be levied for delay in delivering the quarterly returns of TDS / TCS if such person proves that:-**
    - after paying the TDS/ TCS along with fees under section 234E and interest under section 201 to the credit of Central Government,
    - he has filed the quarterly returns before the **expiry of 1 year** from the time prescribed for filing the quarterly return.

Therefore, if quarterly returns of TDS / TCS which were to be filed on 31<sup>st</sup> July, 2023 are filed upto 31<sup>st</sup> July, 2024 and assessee has paid TDS / TCS and fees under section 234E and interest under section 201, then there shall be no penalty under section 271H for delay in furnishing of quarterly return.

### **SECTION 205: BAR AGAINST DIRECT DEMAND ON ASSESSSEE**

**Where tax is deductible at the source under the foregoing provisions of this Chapter, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.**

### **TAX COLLECTION AT SOURCE**

If shall be noted that the rates under section 206CC and 206CCA, for violation of conditions mentioned therein, are same. Furthermore, there are no exceptions w.r.t. any sub-section of section 206C from applicability of any of the provisions of section 206CC/ 206CCA.

#### **Section 206C(1)**

<b>TCS on sale of Alcoholic Liquor, Forest Produce,</b>	<b>Person responsible for collecting tax – Every seller Collectee - Every buyer (refer Note)</b> <b>Time of Collection –</b> At the time of debit to the account of the buyer or receipt of amount from the buyer, whichever is earlier <b>Rate of TCS –</b> Sum equal to the following percentage of the purchase
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<b>Minerals &amp; Scrap</b>	price:	
	<b>Nature of goods</b>	
	(i)	Alcoholic liquor for human consumption
	(ii)	Tendu leaves
	(iii)	Timber obtained under a forest lease
	(iv)	Timber obtained by any mode other than under a forest lease
	(v)	Any other forest produce not being timber or tendu leaves
	(vi)	Scrap
	(vii)	Minerals being coal or Lignite or iron ore

Rate shall be 5% (10% in case of Tendu Leaves) if collectee does not furnish PAN, or is a specified person as per section 206CCA.

**Note: Buyer does not include:**

- (i) Public sector company
- (ii) Central Govt., State Govt.
- (iii) Embassy, High Commission, Consulate or trade representative of a foreign state and a club.
- (iv) **A buyer** who buys the above goods for **his personal consumption**.

### **Section 206C(1A)**

<b>Provisions of 206C(1) not to apply</b>	<b>Provisions of TCS are not applicable</b> where the resident buyer furnishes to the person responsible for collecting tax, a declaration in the prescribed manner to the effect that the <b>goods referred to above are to be utilized for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power</b> and not for trading purposes.
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### **Section 206C(1B)**

<b>Furnishing Declaration</b>	Person responsible for collecting tax shall deliver one copy of such declaration to the CCIT/ CIT on or before the 7 <sup>th</sup> day of the month next following the month in which the declaration is furnished to him.
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### **Section 206C(1C)**

<b>TCS on Granting Rights in Parking Lots, Toll Plaza, Mine &amp; Quarry</b>	<b>Person responsible for collecting tax</b> – Every person, who grants a lease or a licence or enters into a contract or otherwise transfers <ul style="list-style-type: none"> <li>• any right or interest in any parking lot or toll plaza or mine or quarry</li> <li>• to another person, <b>other than</b> a public-sector company (“Licencee or Lessee”)</li> <li>• for the use of such parking lot or toll plaza or mine or quarry for the purposes of business</li> </ul> <b>Collectee</b> - Licencee or Lessee <b>Time of Collection</b> – At the time of debit to the account of the Licencee or Lessee, or at the time of receipt of amount from Licencee
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	<p>or Lessee whichever is earlier</p> <p><b>Rate of TCS – 2% of such amount (5%, if collectee not furnishes PAN and/ or is a specified person as per section 206CCA)</b></p>
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### **Section 206C(1F)**

<b>TCS Sale of Motor Vehicles</b>	<p><b>Person responsible for collecting tax –</b> Every seller receiving consideration for <b>sale of a motor vehicle of the value exceeding ₹10,00,000,</b></p> <p><b>Collectee –</b> Every buyer (refer Note)</p> <p><b>Time of Collection –</b> At the time of receipt of amount</p> <p><b>Rate of TCS –</b> 1% of the sale consideration (<b>5%, if collectee not furnishes PAN and/ or is a specified person as per section 206CCA</b>)</p> <p><b>Note: Buyer does not include:</b></p> <ul style="list-style-type: none"> <li>(i) public sector company engaged in the business of carrying passengers</li> <li>(ii) Central Govt., State Govt.</li> <li>(iii) embassy, High Commission, Consulate or trade representative of a foreign state,</li> <li>(iv) local authority defined in Explanation to section 10(20).</li> </ul> <p><b>Note: No TCS under section 206C(1F) where the manufacturer of motor vehicles sells motor vehicles to dealers/ distributors.</b></p>
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**Note: In Section 206C(1)/ (1C)/ (1F), “Seller” means:**

- Central Government
- State Government
- Any local authority or corporation or authority established by or under a Central, State or Provincial Act
- Any company or firm or co-operative society and
- An individual or an HUF whose total sales or gross receipts from business or profession exceeded ₹ 1 crore/ ₹ 50 lakhs respectively in the preceding financial year.

### **SECTION 206C(1G) ADDED BY FINANCE ACT, 2020**

<b>TCS ON REMITTANCE UNDER LIBERALISED FOREIGN REMITTANCE SCHEMES</b>			
<b>S. No.</b>	<b>Purpose of Remittance</b>	<b>Rate of TCS to be collected by Authorised Dealer</b>	<b>Threshold Limit</b>
1.	<p><b>Purchase of Overseas tour program package:</b></p> <p>Assessee purchases foreign tour package from travel agent abroad and remits him money in foreign exchange</p>	<p>5% of amount remitted (10% if PAN not given)</p>	<p>Any Amount</p>

2.	<b>Pursuing Foreign Education Abroad and money remitted abroad out of loan obtained from any Financial Institution</b>	0.5% of the amount in excess of ₹ 7,00,000 remitted during the financial year (5% if PAN not given)	No TCS if remittance during the financial year is less than ₹ 7,00,000
3.	<b>Pursuing foreign Education Abroad and money remitted abroad</b>  Remittance not out of loan obtained from financial institution	5% of amount in excess of ₹ 7,00,000 remitted during the financial year (10% if PAN not given)	No TCS if remittance during the financial year is less than ₹ 7,00,000
4.	Any other remittance abroad under LFRS	5% of amount in excess of ₹ 7,00,000 remitted during the financial year (10% if PAN not given)	No TCS if remittance during the financial year is less than ₹ 7,00,000

**Note 1:** **Buyer** - In the context, a **buyer** would be an **individual** purchasing foreign currency, for remittance, towards specified/permitted purposes under LFRS.

Broadly stated LFRS permits remittances by **resident individuals up to USD 2,50,000** for capital/current account transactions, like, opening a bank account, investments, gifts, tourism, expenses of children for studies or medical expenses and the like.

**Note 2:** **Seller** means the Authorised dealer remitting money abroad.

**Note 3:** Same rate, as in case of failure to furnish PAN shall be applicable if collectee is a specified person as per section 206CCA.

### **TCS ON OVERSEAS TOUR PROGRAM PACKAGE**

If buyer buys overseas tour program package from a seller, then seller will collect 5% TCS from buyer being 5% of overseas tour program package price.

**Note 1:** TCS will be 10% if buyer does not give PAN and/ or buyer is a specified person as per 206CCA.

**Note 2:** Buyer could be resident / non-resident. Buyer could be company / firm / individual / any form of organization.

**Note 3:** There is no threshold and even if package is for say ₹ 15,000, TCS needs to be collected.

**Note 4:** Seller need not necessarily be in the business of selling overseas tour program package.

**Note 5:** If a company buys overseas tour program and deducts TDS under section 194C, then no TCS shall be collected from the company.

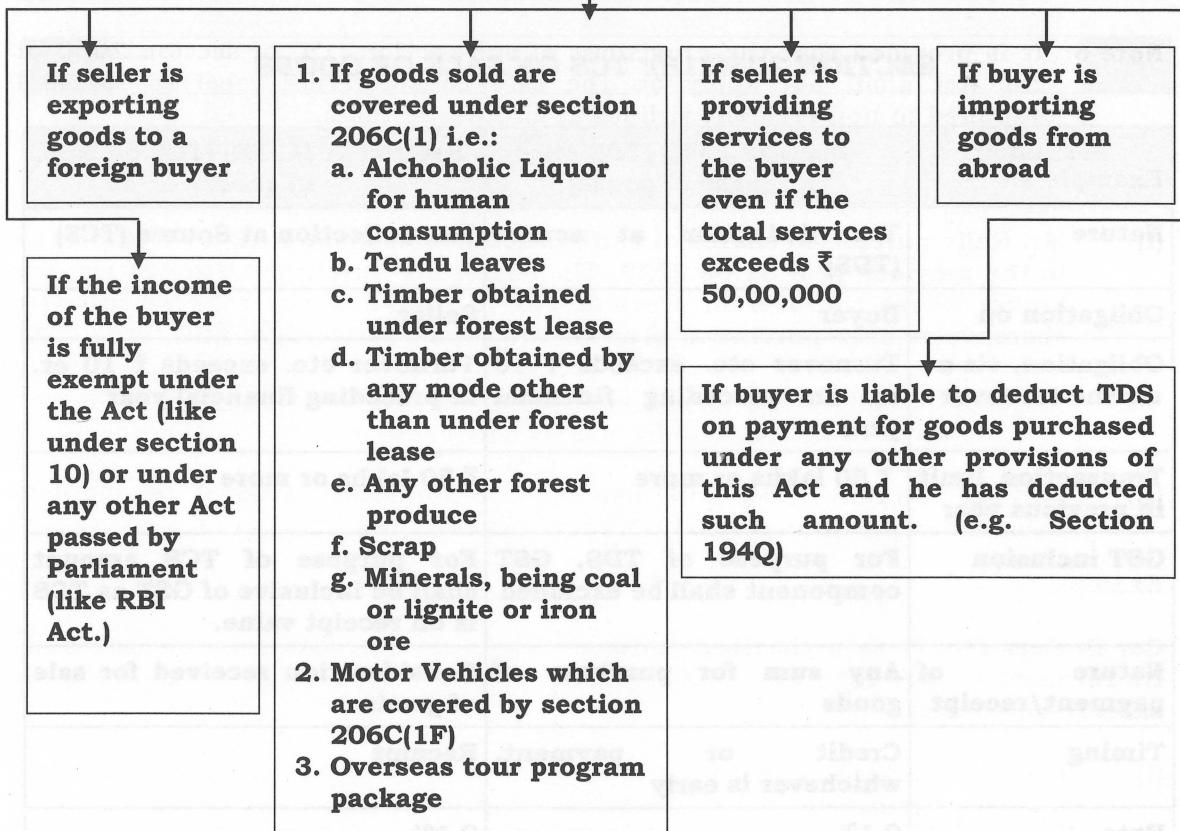
**Note 6:** Overseas Tour program package includes cost of air tickets, visa, hotel accommodation, city tours, meals, guides etc. if included in tour package.

## SECTION 194Q: TDS ON PURCHASE OF GOODS

## SECTION 206C(1H): TCS ON SALE OF GOODS

Particular	Section 194Q [TDS on purchase of goods]	Section 206C(1H) [TCS on sale of goods]
<b>Nature</b>	Tax deduction at source (TDS)	Tax Collection at Source (TCS)
<b>Obligation on</b>	Buyer	Seller
<b>Obligation, viz-a-viz the turnover</b>	Turnover etc. exceeds ₹ 10 cr. in preceding financial year	Turnover etc. exceeds ₹ 10 cr. in preceding financial year
<b>Transaction limit in previous year</b>	₹ 50 lakhs or more	₹ 50 lakhs or more
<b>GST inclusion</b>	For purpose of TDS, GST component shall be excluded	For purpose of TCS amount shall be inclusive of GST as TCS is on receipt value.
<b>Nature of payment/receipt</b>	Any sum for purchase of goods	Consideration received for sale of goods
<b>Timing</b>	Credit or payment, whichever is early	Receipt
<b>Rate</b>	0.1% In case deductee fails to furnish PAN and/or is a specified person as per section 206AB - 5%	0.1% In case collectee fails to furnish PAN - 1% In case collectee is a specified person as per section 206CCA - 5% In case of applicability of both of above - 5%
<b>Not applicable</b>	(i) If tax is deductible under any other provision  (ii) If tax is collectible under any other provision except section 206C(1H)	(i) if tax is deducted by the buyer under any other provisions  [E.g.: Buyer is liable as per section 194Q AND he has deducted such tax]
<b>Deductee/collectee</b>	Any person who is a resident i.e., seller	A person who purchases the goods but does not include Govt, etc., local authority or importer.

**NO TCS SHALL BE COLLECTED UNDER SECTION 206C(1H)**



**Note 1:** If seller sells to the buyer minerals OTHER THAN COAL, LIGNITE OR IRON ORE and total sales to buyer during the previous year exceeds ₹ 50,00,000, then seller needs to collect TCS from buyer @ 0.1% of amount in excess of ₹ 50,00,000.

**Note 2:** If buyer does not give his PAN, then seller shall collect TCS @ 1%.

**Note 3:** If Blackberry sells cloth of ₹ 60,00,000 to M/s XYZ in P.Y. 31.3.2023 and M/s XYZ stitches shirts as per the specification of Blackberry and it raises a consolidated bill of ₹ 80,00,000, then TDS shall be deducted under section 194C on ₹ 80,00,000.

Now even if sales of Blackberry exceeded ₹ 10 crores in P.Y. 31.3.2022, it is not required to collect TCS.

**Note 4:** It is clarified that the provisions of section 194Q of the Act shall not apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such non-resident in India. For this purpose, "permanent establishment" shall mean to include a fixed place of business through which the business of the enterprise is wholly or partly carries on.

**Note 5:** It is clarified that the provisions of section 194Q of the Act shall not apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax under the Act (like person exempt under

section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).

**Note 6:** It is provided that the provisions of sub-section (1H) of section 206C of the Act shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.

**Example 1:**

- (i) Mr. Rajiv purchased shares of various companies amounting to ₹ 100 lakhs in the previous year 31.03.2023. The shares are purchased through a stock broker whose turnover in previous year 31.03.2022 was ₹ 11 crores. The shares have been purchased over the Electronic Platform of NSE.
- Section 206C(1H) is not applicable and Stock-Broker or NSE is not required to collect TCS from Mr. Rajiv under section 206(1H).
- (ii) Further, section 194Q will also be not applicable even if Mr. Rajiv's turnover in previous year 31.03.2022 was more than ₹ 10 crores.

**Example 2:**

Car Dealers Ltd. is an authorised car dealer for Maruti Suzuki Ltd and BMW Ltd. Its turnover for previous year 31.03.2022 was ₹ 20 crores. It makes the following sales to customers.

- (i) BMW car to Karan Johar for ₹ 118 lakhs (₹ 100 lakhs plus ₹ 18 lakhs GST).
- (ii) 5 Maruti Cars of ₹ 5 lakhs each to Zepta Ltd. (₹ 5 lakhs plus ₹ 90,000 GST).
- (iii) 20 Maruti cars of ₹ 5 lakhs each to Pluto Ltd. (₹ 5 lakhs plus ₹ 90,000 GST).
- Pluto Ltd. returned 2 cars and made payment for 18 cars. (Assume Pluto Ltd. follows cash basis for income tax purposes)
- (iv) In (iii) above, suppose Pluto Ltd. had made payment for 20 cars and later on Car Dealers Ltd. refunded payment of 2 cars.

**Answer:**

- (i) Car Dealers Ltd. will collect TCS of 1% from Karan Johar under section 206C(1F) on ₹ 118 lakhs, Section 206C(1H) is not applicable.
- If Karan Johar's turnover for previous year 31.03.2022 was exceeding ₹ 10 crores, even then Karan Johar shall not be required to deduct TDS under section 194Q since 194Q(5) clarifies non-applicability of 194Q to a transaction to which tax is collectible under section 206C.
- (ii) No TCS under section 206C(1F) and section 206C(1H). No TDS under section 194Q.
- (iii) No TCS under section 206C(1F). TCS shall be collected under section 206C(1H) @ 0.1% of [(₹ 90 lakhs + ₹ 16.20 lakhs) - ₹ 50 lakhs].

However, if turnover of Pluto Ltd. for previous year 31.03.2022 exceeded ₹ 10 crores, it shall be liable to deduct TDS under section 194Q @ 0.1% of (₹ 90 lakhs - ₹ 50 lakhs). Consequently, section 206C(1H) shall not be applicable.

- (iv) No TCS under section 206(1F). TCS shall be collected under section 206C(1H) @ 0.1% of (₹ 200 lakhs + ₹ 18 lakhs) - ₹ 50 lakhs.

However, if turnover of Pluto Ltd. for previous year 31.03.2022 exceeded ₹ 10 crores, it shall be liable to deduct TDS under section 194Q @ 0.1% of (₹ 100 lakhs - ₹ 50 lakhs). Consequently, section 206C(1H) shall not be applicable.

#### Example 3:

**Car Dealers Ltd. sold a BMW car to Mahuri Dixit and bill was raised as under:**

Sale Value	₹ 200 lakhs
Less: Discount	₹ 20 lakhs
	₹ 180 lakhs
Add: 18% GST	₹ 32.40 lakhs
	<b>₹ 212.40 lakhs</b>

Now, Car Dealers shall collect TCS under section 206C(1F) @ 1% on ₹ 212.40 lakhs. Section 194Q and 206C(1H) shall not be applicable.

#### Example 4:

**BMW Ltd. and Maruti Suzuki Ltd. sell as follows to Car Dealers Ltd.**

- (i) 20 BMW cars @ ₹ 100 lakhs each plus 18% GST.
- (ii) 100 Maruti Cars @ ₹ 5 lakhs each plus 18% GST.

Section 206C(1F) shall not be applicable as per Board Circular No. 22/2016.

- (i) Car Dealers Ltd. shall deduct TDS @ 0.1% under section 194Q from payment to be made to BMW Ltd. on ₹ 2,000 - ₹ 50 lakhs.

However, if turnover of Car Dealers Ltd. was less than or equal to ₹ 10 crores in previous year 31.03.2022, BMW Ltd shall be liable to collect TCS @ 0.1% under section 206C(1H) from Car Dealers Ltd. on ₹ 2,360 lakhs - ₹ 50 lakhs.

- (ii) Car Dealers Ltd. shall deduct TDS @ 0.1% under section 194Q from payment to be made to Maruti Suzuki Ltd. on ₹ 500 lakhs - ₹ 50 lakhs.

However, if turnover of Car Dealers Ltd. was less than or equal to ₹ 10 crores in previous year 31.03.2022. Maruti Suzuki Ltd. shall be liable to collect TCS @ 0.1% under section 206C(1H) from Car Dealers Ltd. on ₹ 590 lakhs - ₹ 50 lakhs.

**APPLICABILITY OF SECTION 194-O, SECTION 194Q AND  
SECTION 206C(1H) WITH CBDT CLARIFICATIONS  
PREVIOUS YEAR 31.3.2023**

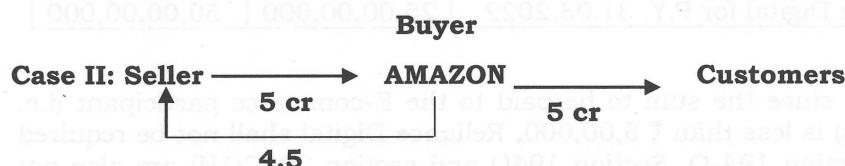
**NOTE:** Presume that turnover of Buyer & Seller in 31.3.2022 was 20 crores.



- Alcoholic Liquor etc. 206C(1)
- Mining, toll plaza, parking lot 206C(1C)
- Motor vehicles above 10 Lakhs 206C(1F)
- LRS, Foreign Tour package 206C(1G)

- Section 194-O will not apply since above are not sold through E-Commerce operator.
- Section 194Q shall not apply as per section 194Q(5)(b) which provides that section 194Q shall not apply to a transaction on which tax is collectible under provisions of section 206C except section 206C(1H).
- Section 206C(1H) shall not apply as per section 206C(1H) which provides that section 206C(1H) shall not apply in respect of goods covered in section 206C(1), section 206C(1F) or section 206C(1G).

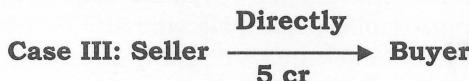
Therefore, seller will collect TCS from the buyer at the rates given in section 206C(1), 206C(1C), 206C(1F) and 206C(1G).



- Section 194-O shall apply and AMAZON to deduct 1% TDS on 5 cr.
- Section 194Q shall not apply to AMAZON or customers as per section 194-O(3) & Para 6.5(i) of CBDT clarification Section 194-O(3) provides that a transaction on which tax has been deducted by E-commerce operator shall not be liable to tax deduction under any other section, CBDT clarification in Para 6.5(i) also confirm this view.
- Section 194-O will prevail over section 194Q since tax rate under 194-O is higher. CBDT clarification in Para 6.5(iii) clarifies that if tax is deductible both under section 194-O and 194Q, then section 194-O shall prevail since TDS rate in section 194-O is higher. In this case, section 194Q shall not apply.
- Section 206C(1H) shall not apply. This is as per proviso to section 206C(1H) which states that section 206C(1H) shall not apply if buyer is liable to deduct tax under any other provisions of I.T. Act. Para 6.5(ii) of

**CBDT Circular clarifies that section 206C(1H) shall not apply where instead of the buyer, the E-Commerce operator has deducted the tax.**

- If seller collects TCS of AMAZON under section 206C(1H), then also E-Commerce operator AMAZON is liable to deduct TDS under section 194-O @1% on 5.00 crores. This is as per Para 6.5(iv) of CBDT Circular which provides that E-Commerce operator is required to deduct TDS under section 194-O even if the seller collects TCS of E-Commerce operator under section 206C(1H).



- 194Q will apply and not section 206C(1H).
- If 206C(1H) applied then 194Q shall not apply. This is as per Para 6.5(v) of CBDT Circular.

#### **Example 5:**

Analyse the TDS/TCS liability in following cases where M/s Ramesh Enterprises (Proprietorship) sells its products through Reliance Digital (on E-commerce operator) to M/s Tarun Enterprises (Proprietorship):

	<b>Particulars</b>	<b>Case 1</b>	<b>Case 2</b>
(a)	Sales value for P.Y. 31.03.2023	4,00,000	50,00,000
(b)	Turnover of M/s Tarun Enterprises for P.Y. 31.03.2022	20,00,00,000	10,00,00,000
(c)	Turnover of M/s Ramesh Enterprises for P.Y. 31.03.2022	30,00,00,000	20,00,00,000
(d)	Turnover of Reliance Digital for P.Y. 31.03.2022	25,00,00,000	50,00,00,000

#### **Case 1**

As per section 194-O(2), since the sum to be paid to the E-commerce participant (i.e. M/s Ramesh Enterprises) is less than ₹ 5,00,000, Reliance Digital shall not be required to deduct TDS under section 194-O. Section 194Q and section 206C(1H) are also not applicable.

#### **Case 2**

Reliance Digital shall be liable to deduct TDS @ 1% under section 194-O on amount to be paid to M/s Ramesh Enterprises i.e.,  $1\% \times 50,00,000 = ₹ 50,000$ .

Section 194Q shall not be applicable as turnover of M/s Tarun Enterprises does not exceed ₹ 10 crores. It may be noted that even if turnover of M/s Tarun Enterprises exceeded ₹ 10 crores, section 194Q would not have been applicable as Reliance Digital has deducted TDS. Section 206C(1H) shall also not be applicable as although buyer has not deducted TDS from payment made to seller but the E-commerce operator has deducted the tax.

#### **Example 6:**

Samsung India Ltd. sells 1,000 television sets at ₹ 50,000 each through Reliance Digital during previous year 31.03.2023. The television sets are sold to ABC Ltd. Turnover of both Samsung India Ltd. and ABC Ltd. for previous year 31.03.2022 exceeded ₹ 10 crores. Samsung India Ltd. collects TCS from ABC Ltd. @ 0.1% on ₹ 5,00,00,000.

Reliance Digital and ABC Ltd. contend that they are relieved from the liability to deduct/collect tax at source from the payment made to Samsung India Ltd. Advise.

**Answer:**

Conjoint reading of Section 194Q(5) and second proviso to section 206C(1H) indicates a primary liability of the buyer to deduct TDS under section 194Q where applicable. However, where the seller has collect tax on a transaction under section 206C(1H), the buyer shall no more be required to deduct tax under section 194Q.

However, an E-commerce operator is not absolved from his liability from deducting tax under section 194-O even if the E-commerce participant (seller) has collected the TCS on the transaction under section 206C(1H) due to the fact that rate of deduction under section 194-O is 1% which is greater than the rate for TCS under section 206C(1H) i.e., 0.1%.

Accordingly, where contention of ABC Ltd. is correct, Reliance Digital shall still be liable to deduct tax under section 194-O of the Act.

**ANALYSIS OF AMENDMENT IN PROVISIONS RELATING TO  
ASSESSSEE IN DEFAULT CONTAINED IN SECTION 206C BY  
FINANCE ACT, 2020**

As per the law contained in chapter of TDS, similar law is there for TCS if collector fails to collect TCS. If collector fails to collect TCS then such collector shall not be deemed to be an assessee in default if the buyer, licensee or lessee –

- (i) furnishes his return of income under section 139,
- (ii) takes into account the amount for computing income in such return of income, and
- (iii) pays the tax due on the income declared by him in such return of income, and
- (iv) such person furnishes a certificate to this effect from chartered accountant.

However, the collector is still liable to pay the interest upto the date of furnishing the return by the buyer, licensee or lessee.

These provisions were applicable to any person responsible for collecting tax as per section 206C, prior to amendment by Finance Act, 2020.

However, Finance Act, 2020 has restricted the relaxation in respect of the provisions of being assessee in default to the persons responsible for collecting tax as per 206C(1) and/or 206C(1C) only.

Therefore, where any person fails to collect tax as per Section 206C(1F) and/or 206C(1G) and/or 206C(1H) i.e.,

1. On sale of Motor Vehicle of the value exceeding ₹ 10 lakhs.
2. – By Authorised dealer making foreign remittance.

- On sale of Overseas Tour program package.

3. On sale of goods (Goods other than those covered under section 206C(1)/(1F) / (1G)) exceeding ₹ 50,00,000.

or after so collecting, fails to pay such tax to the credit of Central Government, he shall be deemed to be an assessee in default in respect of such tax irrespective of the fulfilment of the 4 conditions mentioned above.

### LATEST IN JUDICIARY

#### PRIYA BLUE INDUSTRIES (P) LTD (GUJ HIGH COURT)

Items of finished products from ship breaking activity which are usable as such would not fall within the ambit of the expression 'scrap' and therefore, no TCS is required to be collected on the same.

In this instant case, the assessee-company, engaged in ship breaking activity, sold old and used plates, wood etc. The assessee claimed that such items are usable as such, and are hence not 'scrap' to attract the provisions for collection of tax at source.

The Court held that the waste and scrap must be from manufacture or mechanical working of material which is definitely not usable as such because of breakage, cutting up, wear and other reasons. Since the assessee is engaged in ship breaking activity, these items/products are finished products obtained from such activity which are usable as such and hence, are not 'waste and scrap' though commercially known as scrap. The High Court held that any material which is usable as such would not fall within the ambit of the expression 'scrap' as defined in Explanation to section 206C and therefore, no TCS is required to be collected on the same.