

# Issues in TDS

## Introduction

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Even though many of us are familiar with tax filing, the process of TDS deduction is still confusing for many. When and where TDS is applicable, what is the section under which it is to be deducted and what rates. So, here we discuss TDS deductions with a focus on how and when it can be reduced to help you in everyday life.

## Sections

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### Section 192 – Salary

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- The provisions are applicable only if any payment of income chargeable under the head 'Salaries' is made and the *relation of the employer-employee at the time of payment is not an essential condition*. Under section 17(1), salary includes annuity or pension and, therefore, the payment made to a retired employee by way of pension is also covered under section 192. However, the amount paid by way of family pension to the dependents of the deceased employee are not covered under the expression of 'salary' and, therefore, there is no liability for TDS on payment of family pension.
- The TDS is required to be made on estimated income of the deductee under the head 'salaries'. The deductee is required to furnish particulars of his income from other employer/previous employer and also of the income under other heads. However, if no such particulars have been furnished by the deductee, then the deductor is not duty bound to take cognizance of other income of the deductee even if it is within the specific knowledge of the deductor.  
Accordingly, a deductor is not required to take into account some other payments made by himself, such as interest, rent, etc., to the concerning employee. Likewise, an employee is also not required to get tax deducted at source in respect of his other income.
- No Form has been prescribed for furnishing the particulars of other income by the employee.
- An employer is not required to investigate the sources of investments reported by the employees for claiming rebates and deductions. However, the employer is supposed to take reasonable care in obtaining the necessary documents in support of various claims for deductions.

### Section 194 – Dividends

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Since deemed dividend under section 2(22) (e) is not covered under section 115-O, the liability of a company will arise even in respect of deemed dividend.

### Section 194A – Interest other than interest on securities

- In the case of an individual, who is liable to make TDS, it has to be ensured that due TDS is made both in respect of borrowing made in the name of proprietorship concern as well as in the name of individual himself.
- TDS on interest is required to be made on the basis of payment or credit. If a deductor has more than one account in respect of one deductee and in one account, interest is credited and in the other, interest is debited, the liability for TDS is on the gross amount i.e. on the amount credited and not on the net amount of interest.
- The expression "interest" has been defined under clause (28A) of section 2 of the Act. According to it, interest means interest payable in any manner in respect of any money borrowed or debt incurred (including a deposit, claim or similar right or obligation) and includes any service fee or other charge in respect of the money borrowed or debt incurred or in respect of any credit facility which has not been utilized.
- The liability for TDS also arises in the case of financial lease or hire purchase transactions since the expression "interest" includes interest payable in any manner in respect to any money borrowed or debt incurred. The nomenclature of the transaction is not a decisive factor.
- In the chit fund transactions, there is no borrowing of money and no incurrence of any debt, therefore, dividend/discount distributed amongst the chit subscriber is not interest and thus cannot attract TDS under section 194A.
- In view of the above definition of the term "interest", commitment charges or loan processing charges shall also take character of the interest liable for TDS under section 194A. However, since the payment of interest to banks and financial institutions have been excluded from the ambit of TDS, therefore, payment of commitment charges and loan processing charges to the banks and financial institutions are exempted from TDS.

### Section 194C – Payments to contractors

- Contract includes both oral and written contracts.
- No distinction is now made on payment made to contractor or sub – contractor.
- In the case of a newly constituted partnership firm, which failed to make any TDS on contract payments, possibilities may be explored to give it the status of AOP and in such a case, there would not be any liability for TDS at least in the first year.
- TDS has to be made on the entire sum which includes service tax for the reason that the word used is 'any sum' and not 'any payment of income'.

- TDS under section 194C need not be made in relation to payments made for hiring or renting of equipments. Where a taxi is hired with a chauffeur provided by the contractor, then TDS on hire & charges would have to be made u/s 194C. However, in a situation where only a taxi is provided without any chauffeur or further obligation of the contractor to meet the cost of fuel or repairs/maintenance, it would be a case of renting of equipment liable for TDS under section 194-I.
- TDS has to be made even in a case where the payment is made for getting a vehicle repaired.
- TDS also has to be made on the charges paid to the depositories maintaining D-mat accounts.
- T.D.S. need not be made on Builder Developer Agreement.
- Annual Maintenance Contracts are also covered u/s. 194C.

### Section 194H - Commission or Brokerage

- T.D.S. doesn't have to be made on any commission or brokerage payable by BSNL or MTNL to its franchise.
- T.D.S. need not be made for any services in relation to any transaction relating to securities as defined under clause 2(h) of the Securities Contracts (Regulation) Act, 1956. In the definition, the derivatives have also been covered and therefore, the paper-writer is of the opinion that brokerage paid on derivatives of commodities is also not covered u/s. 194H.
- Discount granted on principal to principal basis such as discount allowed to Stamp Vendors is not covered u/s. 194H.
- T.D.S. is applicable on the amount retained by the travel agents - the differences of the value of tickets sold by them and value of tickets paid by them to the Airlines.

### Section 194I – Rent

- The limit of Rs. 1,80,000/- applies to every payee. In respect of payments to co-owners, the T.D.S. is to be made if the payment to each payee exceed Rs. 1,80,000/-.
- If the asset is held in the name of a deductee who is a partner of a firm or a karta of a Hindu Undivided family. But if it is assessable as the income of the firm or HUF or where the property is jointly owned by more than one person then the credit may be given to the person who is assessable in respect of such income. As per rule 37BA, the deductee should file a declaration with the deductor on a plain paper containing the all relevant details such as name, address, PAN of the person to whom the credit is to be given, payment or credit in relation to which the credit is to be given and reason for giving credit to that particular person. Thereafter, the deductor will issue the certificate in the name of the person in whose name; the credit is to be given as per the declaration. The deductor has to keep such declaration in his safe custody.

- The provisions apply only for use of land or building or furniture etc, and where there is no right given to use it, it will not be a rent under the definition given in the section 194 -I.
- T.D.S. is to be made on non-refundable deposit. However, on the refundable deposit, no liability for T.D.S. arises (Circular No. 718 dated 22-08-1995).
- Ware Housing Charges will be subject to deduction of tax u/s. 194 -I. (Circular No. 718 dated 22-08-1995).
- Payment made for hotel accommodation taken on regular basis will be in the nature of rent, subject to T.D.S. u/s. 194-I. (Circular No. 715 dated 08-08-1995).
- No T.D.S. to be made on service -tax component. (Circular No. 4/2008 dated 28-04-2008).

### Section 194J - Fees for Professional or Technical Services

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- T.D.S. is to be made inclusive of service -tax components. (Circular F. No.215/73/2007-ID (B) dated 30-06-2008).
- Payment made to a hospital for rendering medical services will attract T.D.S. u/s. 194J. (Circular No. 715 dated 08 -08-1995).
- Human interface is a must for making provisions of section 194J applicable [CIT vs. Bharti Cellular Ltd. 175 Taxman 573 (Del)].

### Section 195 – Payment to Non-Resident

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- Unless the payment made to non-resident is in the nature of income chargeable to tax, no liability for T.D.S. arises. [Transmission Corporation of AP Ltd. vs. CIT 239 ITR 587 & GE India Technology Centre (P) Ltd. vs. CIT 193 Taxman 234]
- The source of payment is not a relevant consideration. The payment made both in or outside India is covered.

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