



Detailed Analysis of Recent TDS and TCS Provisions

Speaker : Talluri Rajendra Prasad (RP)

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Agenda

- **Part A: Discussion on Sec 194IB, Sec 194M, 194Q, 194R, 194S, 206C**
- **Part B: Some Specific Issues**

Agenda

**Part A: Discussion on Sec 194-IB, Sec 194M, 194Q, 194R, 194S, 206C(1H);
206AB**

TDS U/S 194-IB: Payment of rent by certain individuals or Hindu undivided family:

Non Tax Audit (Ind / HUF) required to deduct TDS at 5% of the rent to the resident where the rent is Rs 50,001 or more per month or part of a month; TDS generally at the time of payment; Max TDS in No PAN cases of 206AA = Last month rent:

Sec 194-IB(1): Who is required to deduct TDS? Any person, being an individual or a Hindu undivided family (other than those referred to in the second proviso to section 194-I), responsible for paying to a resident any income by way of **rent exceeding fifty thousand rupees for a month or part of a month** during the previous year, shall deduct **an amount equal to five per cent** of such income as income-tax thereon.

TDS U/S 194-IB: Payment of rent by certain individuals or Hindu undivided family:

Non Tax Audit (Ind / HUF) required to deduct TDS at 5% of the rent to the resident where the rent is Rs 50,001 or more per month or part of a month; TDS generally at the time of payment; Max TDS in No PAN cases of 206AA = Last month rent:

Sec 194-IB(2): Time of deduction of TDS: The income-tax referred to in sub-section (1) shall be deducted on such income at the time of credit of rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier. **[i.e TDS is to be done generally at the time of payment; If the property is vacated, it shall be at the time of credit for the last month of the PY or last month of the tenancy]**

TDS U/S 194-IB: Payment of rent by certain individuals or Hindu undivided family:

Sec 194-IB(3): TAN requirements are not applicable to the deductor: The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

Sec 194-IB(4): Max TDS = Rent for the last month if PAN is not given: In a case where the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

Explanation.—For the purposes of this section, "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both. **[Rent is w.r.t Land / Building / Both]**

TDS U/S 194M: Payment of certain sums by certain individuals or Hindu undivided family: Ind / HUF {not required to deduct TDS U/S 194C/H/J} needs to deduct TDS at 5% for payment to the residents in the nature of commission, brokerage, professional services where they exceed Rs 50 lakhs in a year.

Sec 194M(1): Who is required to deduct TDS? Any person, being an individual or a Hindu undivided family (*other than those who are required to deduct income-tax as per the provisions of section 194C, section 194H or section 194J*) responsible for paying any sum to any resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract, by way of commission (not being insurance commission referred to in section 194D) or brokerage or by way of fees for professional services during the financial year, shall, at the time of credit of such sum or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to **five per cent** of such sum as income-tax thereon:

Provided that **no such deduction under this section shall be made** if such sum or, as the case may be, aggregate of such sums, credited or paid to a resident during a financial year **does not exceed fifty lakh rupees**.

TDS U/S 194M: Payment of certain sums by certain individuals or Hindu undivided family:

Sec 194M(2): TAN requirements are not applicable to the deductor? The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

Explanation.—For the purposes of this section,—

- (a) “Contract” shall have the meaning assigned to it in clause (iii) of the Explanation to section 194C;
- (b) “Commission or Brokerage” shall have the meaning assigned to it in clause (i) of the Explanation to section 194H;
- (c) “Professional services” shall have the meaning assigned to it in clause (a) of the Explanation to section 194J;
- (d) “Work” shall have the meaning assigned to it in clause (iv) of the Explanation to section 194C.

TDS U/S 194Q: Deduction of tax at source on payment of certain sum for purchase of goods. Buyer (having gross receipts exceeding Rs 10 Cr in the PPY) is to deduct TDS at 0.1% for purchase of goods from Resident Seller on the amount exceeding Rs 50 lakhs.

[Also Refer Circular 13/2021] [Securities traded through stock exchange is excluded]

Sec 194Q(1): Who is required to deduct TDS? Any person, being a **buyer** who is responsible for paying **any sum to any resident** (hereafter in this section referred to as the seller) **for purchase of any goods** of the value or aggregate of such value **exceeding fifty lakh rupees in any previous year**, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, deduct an amount **equal to 0.1 per cent of such sum exceeding fifty lakh rupees as income-tax.**

Explanation.—For the purposes of this sub-section, "**buyer**" means a person whose total sales, gross receipts or turnover from the business carried on by him **exceed ten crore rupees during the financial year immediately preceding the financial year** in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

TDS U/S 194Q: Deduction of tax at source on payment of certain sum for purchase of goods.

Sec 194Q(2): Crediting to Suspense Account

Sec 194Q(3): Guidelines by the Board with the approval of the Central Government

Sec 194Q(4): Guidelines to be tabled before the Parliament and binding on the department and the assessee

Sec 194Q(5): TDS U/S 194Q not required if TDS is required under any other section: The provisions of this section shall not apply to a transaction on which—

- **(a) Tax is deductible under any of the provisions of this Act; and**
- **(b) Tax is collectible under the provisions of section 206C other than a transaction to which 206C(1H) applies. {If transaction is of the nature specified U/S 206(1H), it is covered U/S 194Q. First we will examine the applicability Sec 194Q and then Sec 206(1H) in view of the relaxation given in Sec 206(IH).}**

TDS U/S 194R: Deduction of tax on benefit or perquisite in respect of business or profession: Person providing benefit / perquisite to a resident PGBP assessee is to deduct TDS at 10%. No TDS if aggregate benefit amount is up to Rs 20,000;

Sec 194R(1): Any person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, **arising from business or the exercise of a profession, by such resident,** shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite **at the rate of ten per cent** of the value or aggregate of value of such benefit or perquisite:

Provided that in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite shall, before releasing the benefit or perquisite, ensure that tax required to be deducted has been paid in respect of the benefit or perquisite:

TDS U/S 194R: Deduction of tax on benefit or perquisite in respect of business or profession:

Provided further that the provisions of this section shall not apply in case of a resident where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to such resident during the financial year does not exceed twenty thousand rupees: **[i.e These TDS Provisions are not applicable if the aggregate benefit does not exceed Rs 20,000]**

Provided also that the provisions of this section shall not apply to a person being an individual or a Hindu undivided family, whose total sales, gross receipts or turnover does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided by such person. **[i.e These TDS Provisions are not applicable if the 'Gross business receipts does not cross Rs 1 Cr / Gross Professional Receipts do not exceed Rs 50 Lakhs' in the PPY.]**

TDS U/S 194R: Deduction of tax on benefit or perquisite in respect of business or profession:

Sec 194R(2): Guidelines by the Board with the approval of the Central Government.

Sec 194R(3): Guidelines to be tabled before the Parliament and binding on the department and the assessee.

Explanation.—For the purposes of this section, 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.

TDS U/S 194S: Payment on transfer of virtual digital asset: Payer of the consideration towards transfer of VDS is to deduct TDS at 1%. No TDS if aggregate consideration by 'specified payers is not exceeding Rs 50,000' / 'Other Payers is not exceeding Rs 10,000'.

Sec 194S(1): Who is required to deduct TDS U/S 194S: Any person responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset, shall, at the time of credit of such sum to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax thereon:

Provided that in a case where the consideration for transfer of virtual digital asset is—

- (a) wholly in kind or in exchange of another virtual digital asset, where there is no part in cash; or
- (b) partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer,

the person responsible for paying such consideration shall, before releasing the consideration, ensure that tax required to be deducted has been paid in respect of such consideration for the transfer of virtual digital asset.

Sec 194S(2): TAN requirements and enhanced deduction provisions are not applicable if the buyers are specified persons. The provisions of sections 203A and 206AB shall not apply to a specified person.

TDS U/S 194S: Payment on transfer of virtual digital asset:

Sec 194S(3): No TDS by the small category of buyers i.e 'specified buyers / others' : Notwithstanding anything contained in sub-section (1), no tax shall be deducted in a case, where—

- (a) the consideration is payable **by a specified person** and the value or aggregate value of such consideration **does not exceed fifty thousand rupees during the financial year; or**
- (b) **the consideration is payable by any person other than a specified person** and the value or aggregate value of such consideration **does not exceed ten thousand rupees during the financial year.**

Sec 194S(4): TDS only U/S 194S but not U/S 194-O (i.e E-Commerce Operator) if covered under both the provisions.

Notwithstanding anything contained in section 194-O, in case of a transaction to which the provisions of the said section are also applicable along with the provisions of this section, then, tax shall be deducted under sub-section (1).

Sec 194S(5): Credit to suspense account. Where any sum referred to in sub-section (1) 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 sum, such credit of the sum shall be deemed to be the credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

TDS U/S 194S: Payment on transfer of virtual digital asset:

Sec 194S(6): Guidelines by the Board with the approval of the Central Government.

Sec 194S(7): Guidelines to be tabled before the Parliament and binding on the department and the assessee.

Explanation.—For the purposes of this section "**specified person**" means a person,—

- (a) being an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him **does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession**, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred;
- (b) being an individual or a Hindu undivided family, not having any income under the head "Profits and gains of business or profession".

TCS U/S 206C(1H): Seller (having gross receipts exceeding Rs 10 cr in the PPY) needs to collect TCS @ 0.1% of the consideration for sale of goods in excess of Rs 50 lakhs; [No PAN / Aadhar cases, it shall be @ 1% in stead of 0.1%]

Sec 206(1H): Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value **exceeding fifty lakh rupees in any previous year**, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, **a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax:**

Provided that if the buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words "five per cent", the words "one per cent" had been substituted:

Provided further that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount. [Hence, if TDS is done by the buyer say, U/S 194Q, then TDS U/S 206(1H) is not applicable.]

TCS U/S 206C(1H): Seller (having gross receipts exceeding Rs 10 cr in the PPY) needs to collect TCS @ 0.1% of the consideration for sale of goods in excess of Rs 50 lakhs; [No PAN / Aadhar cases, it shall be @ 1% in stead of 0.1%]

Explanation.—For the purposes of this sub-section,— "buyer" means a person who purchases any goods, but does not include,—

- (A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or
- (B) a local authority as defined in the Explanation to clause (20) of section 10; or
- (C) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein;
- (D) **"seller" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year** in which the sale of goods is carried out, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

TCS U/S 206AB: Special provision for deduction of tax at source for non-filers of income-tax return. TDS shall be done at the higher of {(i) Twice the rate specified in the relevant provision; (ii) Twice the rates in force; (iii) 5%}; No PAN cases, to apply 206AA also.

Sec 206AB(1): Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source under the provisions of Chapter XVIIB, other than section 192, 192A, 194B, 194BB, 194-IA, 194-IB, 194LBC, 194M or 194N on any sum or income or amount paid, or payable or credited, by a person to a specified person, the tax shall be deducted at the higher of the following rates, namely:—

- (A) at twice the rate specified in the relevant provision of the Act; or
- (B) at twice the rate or rates in force; or
- (C) at the rate of five per cent.

Sec 206AB(2): If the provisions of section 206AA is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA.

TCS U/S 206AB: Special provision for deduction of tax at source for non-filers of income-tax return. TDS shall be done at the higher of {(i) Twice the rate specified in the relevant provision; (ii) Twice the rates in force; (iii) 5%}; No PAN cases, to apply 206AA also.

Sec 206AB(3): For the purposes of this section "**specified person**" means a person who has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted, for which the time limit for furnishing the return of income under sub-section (1) of section 139 has expired and the aggregate of tax deducted at source and tax collected at source **in his case is rupees fifty thousand or more in the said previous year:**

Provided that the specified person shall not include a non-resident who does not have a permanent establishment in India.

Explanation.—For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.



Part B: Some Specific Issues

Circular 10/2022: Clarifications regarding Sec 206AB and Sec 206CCA: [Para 4 provided that for the FY 2022-23, the list would be based on the returns filed for FY 2020-21.]

Para 4: A list of specified persons is prepared as on the start of the financial year 2022-23, taking previous year 2020-21 as the relevant previous year. List contains names of the taxpayers who did not file return of income for the assessment year 2021-22 and have aggregate of TDS and TCS of fifty thousand rupees or more in the previous year 2020-21.

During the financial year 2022-23, no new names are added in the list of specified persons. This is a taxpayer friendly measure to reduce the burden on tax deductor and collector of checking PANs of non-specified person more than once during the financial year.

If any specified person files a valid return of income (filed & verified) for the assessment year 2021-22 during the financial year 2022-23, his name would be removed from the list of specified persons. This would be done on the date of filing of the valid return of income during the financial year 2022-23.

Circular 10/2022: Clarifications regarding Sec 206AB and Sec 206CCA: [Para 4 provided that for the FY 2022-23, the list would be based on the returns filed for FY 2020-21.]

If any specified person files a valid return of income (filed & verified) for the assessment year 2022-23, his name would be removed from the list of specified persons. This would be done on the due date for filing of the return of income for AY 2022-23 or on the date of actual filing of valid return (filed & verified), whichever is later.

If the aggregate of TDS and TCS, in the case of a specified person, in the previous year 2021-22 is less than fifty thousand rupees, his name would be removed from the list of specified persons. This would be done on the first due date under sub-section (1) of section 139 of the Act falling in the financial year 2022-23. For the financial year 2022-23 this due date is 31st July 2022.

Belated and revised TCS & TDS returns of the relevant financial year filed during the financial year 2022-23 would also be considered for removing persons from the list of specified persons on a regular basis.

Circular 12/2022: Guidelines regarding Sec 194R:

Question 1. Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable under clause (iv) of section 28 of the Act, before deducting tax under section 194R of the Act?

Answer: No [I personally doubt the validity of this guideline]

Question 2. Question 2. Is it necessary that the benefit or perquisite must be in kind for section 194R of the Act to operate?

Answer: No, it can be in cash also [I personally doubt the validity of this guideline as the wording of the section is not implying this.]

Question 3. Is there any requirement to deduct tax under section 194R of the Act, when the benefit or perquisite is in the form of capital asset?

Answer: As has been stated in response to question no 1. there is no requirement to check whether the perquisite or benefit is taxable in the hands of the recipient and the section under which it is taxable.

Circular 12/2022: Guidelines regarding Sec 194R:

Question 4: Whether sales discount, cash discount and rebates are benefit or perquisite?

Answer: Sales discounts, cash discount or rebates allowed to customers from the listed retail price represent lesser realization of the sale price itself. To that extent purchase price or customer is also reduced.

Logically these are also benefits though related to sales/purchase. Since TDS under section 194R of the Act is applicable on all forms of benefit/perquisite, tax is required to be deducted. However, it is seen that subjecting these to tax deduction would put seller to difficulty. **To remove such difficulty 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.**

Relaxation is not extended to the following types:

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.

Circular 12/2022: Guidelines regarding Sec 194R:

Question 5. How is the valuation of benefit/perquisite required to be carried out?

Answer: The valuation 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.

Question 7: Whether reimbursement of out of pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?

Relaxation from TDS is given w.r.t only one model. The circular provided relaxation only to the cases where the consultant is obtaining a bill, say, hotel bill in the name of Company, and he is paying at the first instance and later on claiming reimbursement from the company. The circular had not provided any relaxation to other forms of reimbursements. Hence, TDS is attracted where Company is directly booking the hotel accommodation to the consultants. Likewise, TDS is attracted where the consultant is booking the bills in his name and later on claiming reimbursements.

Circular 12/2022: Guidelines regarding Sec 194R:

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Relaxation from TDS is given w.r.t only one model. The circular provided relaxation only to the cases where the consultant is obtaining a bill, say, hotel bill in the name of Company, and he is paying at the first instance and later on claiming reimbursement from the company. The circular had not provided any relaxation to other forms of reimbursements. Hence, TDS is attracted where Company is directly booking the hotel accommodation to the consultants. Likewise, TDS is attracted where the consultant is booking the bills in his name and later on claiming reimbursements.

Circular 14/2022: Guidelines regarding Sec 194S:

Para 2: VDA 'A' is exchanged for VDA 'B': TDS is required from both ends.

In a situation where VDA "A" is being exchanged with another VDA "B", both the persons are buyer as well as seller. One is buyer for "A" and seller for "B" and another is buyer for "B" and seller for "A". Thus both need to pay tax with respect to transfer of VDA.

Para 3: Interplay between provision of section 194S and section 194Q: [If done U/S 194S, no need U/s 194Q]

Without going into the merit whether VDA is goods or not, it is clarified that once tax is deducted under section 194S of the Act, tax would not be required to be deducted under section 194Q of the Act..



Circular 13/2022: Various other Guidelines regarding Sec 194S:

Refer Circular 13/2022



Thank You

Rajendra Prasad Talluri (RP), TRP & CO
B.Com; CA; Grad CWA,
rpdynamic@gmail.com, +91-98495-79413.