

Recent Amendment – Budget 2019**A. TDS LIMITS FOR RENT AND BANK INTEREST:**

The following are the changes in TDS limits for rent and bank/post office interest (including interest on deposits):

| Nature of income | Limits applicable for TDS | | Rate of TDS |
|---|---------------------------|------------------------|-------------|
| | FY 2018-19(AY 2019-20) | FY 2019-20(AY 2020-21) | |
| 1. Interest paid by bank/post office | | | |
| Other than senior citizens | 10,000 p.a | 40,000 p.a | 10% |
| Senior citizens | 50,000 p.a | 50,000 p.a | 10% |

Note: This increase in threshold limit shall not be applicable to payers other than banking or co-operative society. The limit is Rs.5000/- for any other payers

| 2. Rent from immovable property | Limits applicable for TDS | | Rate of TDS |
|--|---------------------------|------------------------|-------------|
| | FY 2018-19(AY 2019-20) | FY 2019-20(AY 2020-21) | |
| Other than senior citizens | 1,80,000 p.a | 2,40,000 p.a | 10% |
| Senior citizens | 1,80,000 p.a | 2,40,000 p.a | 10% |

B. CBDT Circular on ‘Income Tax Deduction from Salary (i.e. TDS on Salary)’ u/s 192 of Income Tax Act, 1961 in respect of FY 2018-19 (AY 2019-20)

Income Tax Deptt./ CBDT has issued Circular No. 1/2019 dt. 1 Jan. 2019 containing instructions on the provisions/ TDS rates applicable in respect of salary payment u/s 192 during the Financial Year 2018-19 (Assessment Year 2019-20), including explanations on many other related issues/ provisions under the Income Tax Act/ Rules.

CBDT Circular 1/2019 Income Tax dt. 1 Jan. 2019

Corrigendum 1 dt. 18 Jan. 2019 to CBDT Circular 1/2019 Income Tax dt. 1 Jan. 2019

Corrigendum 2 dt. 8 Feb. 2019 to CBDT Circular 1/2019 Income Tax dt. 1 Jan. 2019

C. New form 24q and Form 16 – 16th April 2019

The CBDT has notified changes in Form 16 (TDS Certificate for Salary Income) and Form 24Q (TDS return in respect of salary).

The changes have been made to bring TDS certificate in sync with new ITR forms issued for the A.Y. 2019-20.

The changes are as follows :-

1. Clause-wise reporting of exempt allowances U/s 10
2. Deduction under Chapter VI-A.

In the existing Form 16 (Part B), the employer **had an option** to provide a description of the exempt allowance. Consequently, every organization had created different formats as per their requirements, which resulted in discarded formats of Part B of Form 16.

The new Form 16 {Part B} has removed this option to write-down the description of exempt allowances. Now the employers **have to mention** the amount of exempt allowance U/s 10 such as leave Travel allowance (LTA), pension, gratuity, leave encashment, transport allowance and house rent allowance, before earmarked fields.

Similar changes have been made in respect of deduction available under Chapter VI-A ie 80C, 80CCC, 80CCD, 80D, 80E, 80G, 80TTA.

PAN of landlord, if exemption is claimed under section 10(13A) house rent allowance - Permanent Account Number of landlord shall be mandatorily furnished where the aggregate rent paid during the previous year exceeds one lakh rupees.

These changes would ensure that organizations follow common structure of TDS certificates and employees find it convenient to file the tax return on the basis of TDS certificates. Further, it also gives a confirmation that the deductions and exemptions claimed by the employees in Income-tax return match with the information available in TDS certificate.

3. Standard Deduction under section 16(ia) -

The Finance Act, 2018 introduced the standard deduction of up to Rs. 40,000 for the salaried persons. The new Form 16 has accordingly been revised to incorporate the effect of this amendment.

4. Reporting of losses under the head house property
5. salary received from other employers -

If an employee has received salary from his ex-employer or other employer during the previous year and same has been reported to the current employer for TDS purposes, then separate reporting is required for such salary income in new Form 16. Another interesting point to note in the new format for Form 16 is that non-salary income which an employee could declare to the employer has been limited to income from house property and income from other sources. In the previous form, however, this column was open ended and the

employee could also declare capital gains income to his employer for deduction of taxes at source.

6. Furnishing of PAN of the lender in case of home loan -

In new Form 24Q, it is mandatory to furnish the PAN of the lender in case any deduction has been claimed in respect of housing loan taken from a person other than a Financial Institution or the Employer. Earlier, it was optional.

7. Rebate under section 87A, if applicable

Note : In Form 16 there is no column - Reported amount of tax deducted at source by other employer(s) or deductor(s) (income in respect of which included in computing total taxable income

The revised Form 16 format notified by the CBDT will come into effect from 12 May 2019.

TDS (24Q & 26Q) Due Dates for Payment

| Quarter | Due date for payment |
|-------------|---|
| 1st Quarter | 7 th of succeeding month |
| 2nd Quarter | 7 th of succeeding month |
| 3rd Quarter | 7 th of succeeding month |
| 4th Quarter | 7 th of succeeding month (Jan & Feb) 30 th April – for March |

TDS Return Due date wef 1st jun 2016

| Quarter | Form 24Q and 26Q | Form 27Q | Form 27EQ |
|---------------|-----------------------|-----------------------|-----------------------|
| April to June | 31 st July | 31 st July | 15 th July |
| July to Sep | 31 st Oct | 31 st Oct | 15 th Oct |
| Oct to Dec | 31 st Jan | 31 st Jan | 15 th Jan |
| Jan to Mar | 31 st May | 31 st May | 15 th May |

Due Dates in respect of TDS u/s 194IA

i) A challan-cum-statement in Form No.26QB is to be filed within 30 days from the end of the month in which the deduction is made

ii) TDS certificate in Form no.16B is to be issued to the payee within 15 days from due date of furnishing statement in Form no. 26QB

Due Dates in respect of TDS u/s 194IB

i) A challan-cum-statement in Form No.26QC is to be filed within 30 days from the end of the month in which the deduction is made

ii) TDS certificate in Form no.16C is to be issued to the payee within 15 days from due date of furnishing statement in Form no. 26QC

Relevant Income Tax Sections And Rules in case of default:

| Default/ Failure | Section | Nature of Demand | Quantum of demand or penalty |
|--|----------------|-------------------------|--|
| Failure to deduct tax at source or short deduction | 201(1) | Tax demand | Equal to tax amount deductible but not deducted |
| | 201(1A) | Interest | @ 1 % p.m. of tax deductible |
| | 271C | Penalty | Equal amount of tax deductible but not deducted |
| Failure to deposit tax at source OR Short deposit | 201(1) | Tax demand | Equal to tax amount not deposited / short deposit |
| | 201(1A) | Interest | @1.5% p.m. of tax not deducted /short deposit |
| | 276B | Prosecution | Rigorous imprisonment for a term for a minimum of 3 months which may extend to 7 years and with fine |
| Failure to apply for TAN No. u/s 203A | 272BB | Penalty | Rs. 10000 |
| Failure to furnish prescribed statements u/s 200(3) | 272A(2)(k) | Penalty | Rs. 100 every day during which the failure continues subject to maximum of TDS amount |
| Failure to file the TDS/TCS return on or before the due date prescribed in this regard | 234 E | Late filing Fees | Rs. 200 every day during which the failure continues subject to maximum of TDS amount |

| | | | |
|---|-----------|---------|---|
| Failure to file the TDS/TCS return on or before the due date prescribed in this regard. This section also covers cases of filing incorrect TDS/TCS return | 271H | Penalty | Minimum : Rs.10,000 Maximum: Rs.1,00,000 In case of delay filing - No Penalty if TDS/TCS return is filed before the expiry of a period of one year from the due date with late filing fees and interest |
| Failure to issue TDS certificate u/s 203 | 272(A)(g) | Penalty | Rs. 100 every day during which the failure continues subject to maximum of TDS amount. |
| Failure to furnish statement of perquisite or profit in lieu of salary u/s 192(2C) | 272(A)(i) | Penalty | Rs. 100 every day during which the failure continues subject to maximum of TDS amount |
| Failure to mention PAN of the deductee in the TDS statements and certificates | 272B | Penalty | Rs. 10000 |

Q.1 Payment to contractor is made throughout the year i.e., from the month of April, 2018 to March, 2019. No TDS is made and no TDS return is filed throughout the year. In the year end at the time of finalization of accounts the default came to the knowledge and TDS is deducted and deposited on 30th Apr, 2019. What is the best way?

Ans.

As Per Prevailing Practices:

| Month Of Transaction | Date Of Transaction | Date Of Deduction of TDS | Date of Deposit of TDS | Quarter Of TDS Return | Return Late / In Time | Consequences |
|----------------------|-------------------------------|-------------------------------|----------------------------|-----------------------|--------------------------------------|---|
| April, May & June | 30/04/18, 31/05/18 & 30/06/18 | 30/04/18, 31/05/18 & 30/06/18 | 30 th Apr, 2019 | 1 st | Late (after 30 th Apr 19) | a.Late Fee 200/- per day U/s. 234E, b. Int @ 1.5% u/s 201(1A) C. Prosecution u/s 276B |
| July, Aug & | 31/07/18, | 31/07/18, | 30 th Apr, | 2 nd | Late | a.Late Fee 200/- |

| | | | | | | |
|-------------------|-------------------------------------|--|-------------------------------|-----------------|--|--|
| Sept | 31/08/18 & 30/09/18 | 31/08/18 & 30/09/18 | 2019 | | (after 30 th Apr 19) | per day U/s. 234E, b. Int @ 1.5% u/s 201(1A) C. Prosecution u/s 276B |
| Oct, Nov & Dec | 31/10/18, 30/11/18 & 31/12/18 | 31/10/18, 30/11/18 & 31/12/18 | 30 th Apr, 2019 | 3 rd | Late (after 30 th Apr 19) | a.Late Fee 200/- per day U/s. 234E, b. Int @ 1.5% u/s 201(1A) C. Prosecution u/s 276B |
| Jan, Feb & Mar | 30/01/19, 28/02/19 & 31/03/19 | 30/01/19, 28/02/19 & 31/03/19 | 30 th Apr, 2019 | 4 th | In Time (If filed so) | a. Int @ 1.5% u/s 201(1A) b. Prosecution u/s 276B |

Some General Misconceptions / Practices Leading To Incorrect Filing Of TDS Returns And Correct View:

1 Misconception As To Date Of Deduction Of TDS:

Date of deduction of TDS and the date of transaction (i.e., the date of credit / payment to the payee), should always remain same in the TDS Return.

Reason Behind The Misconception As To The Date Of Deduction:

Because of fear of levy of penalty U/s. 271C. According to Section 271C, a penalty equal to the amount of TDS is leviable if there is any delay in deduction of TDS. If in such cases, actual later date of deduction is mentioned in TDS return, the above penalty may be leviable.

Adverse Consequences Of Mentioning Wrong Date Of Deduction:

Though by mentioning the date of transaction and the date of deduction as same (even when they are not same), one can save penalty **U/s. 271C** but at the same time there may be other more serious and adverse consequences of the same.

First of them is initiation of prosecution U/s. 276B for late deposit of TDS (Imprisonment up to 7 years with fine) for which no appeal is there and for which prosecution may be initiated.

Secondly, Levy of fee U/s. 234E (for which no reasonable cause etc. plea are available).

2 Misconception As To The Quarter Of TDS Return For Particular Transaction:

Quarter for the TDS return for any transaction is to be determined on the basis of the date of transaction.

However, as per the provisions of section 200(3) read with rule 31A, the TDS return is to be filed for the quarter based on the date of deduction of TDS and not based on the date of transaction. If the same is done, the late fee under Section 234E may be completely saved / minimized.

The present prevailing practice (under misconception) is to file TDS returns based on the transactions (i.e., payment / credit) entered in to a particular quarter. According to that in the above example, four different TDS returns are required to be filed for all the four quarters of the year. However, the language of Section 200(3) and Rule 31A do not contain the words such as “Quarterly **Statement Of Transactions On Which TDS Has Been Deducted**”. Therefore, the present prevailing practice may not be correct and in accordance with the law.

As Per My view:

Now, in such case, the TDS return is to be filed only for the quarter 4 mentioning (i) actual date of transaction (i.e., even the transactions of April, 2018 will be mentioned in the return for the quarter of January 2019 to March, 2019) and (ii) the actual date of deduction of TDS, say 31st March, 2019. In this case, there may not be any delay in filing of the TDS return (if filed so) and as such no late fee under Section 234E will be leviable.

| Month Of Transaction | Date Of Transaction | Date Of Deduction Of TDS | Date Of Deposit Of TDS | Quarter of TDS Return | Return Late / In Time | Consequences |
|----------------------|-------------------------------------|---------------------------------|-------------------------------|-----------------------|-----------------------------|---|
| April, May & June | 30/04/18, 31/05/18 & 30/06/18 | 31 st March, 2019 | 30 th Apr, 2019 | 4 th | In time (If filed so) | a.Int @1% u/s 201(1A) b. Penalty equal to Tax amount U/s. 271C (when no appeal / no reasonable cause) |
| July, Aug & Sept | 31/07/18, 31/08/18 & 30/09/18 | 31 st March, 2019 | 30 th Apr, 2019 | 4 th | In time (If filed so) | a.Int @1% u/s 201(1A) b. Penalty equal to Tax amount U/s. 271C (when no appeal / no reasonable cause) |
| Oct, Nov & Dec | 31/10/18, 30/11/18 & 31/12/18 | 31 st March, 2019 | 30 th Apr, 2019 | 4 th | In time (If filed so) | a.Int @1% u/s 201(1A) b. Penalty equal to Tax amount U/s. |

| | | | | | | |
|----------------|-------------------------------------|---------------------------------|-------------------------------|-----------------|-----------------------------|--|
| | | | | | | 271C (when no appeal / no reasonable cause) |
| Jan, Feb & Mar | 30/01/19, 28/02/19 & 31/03/19 | 31 st March, 2019 | 30 th Apr, 2019 | 4 th | In time (If filed so) | a.Int @1% u/s 201(1A) for jan & Feb b. Penalty equal to Tax amount U/s. 271C (when no appeal / no reasonable cause) |

Note : Technical / Software Problem and Solution: Many times the return preparation software shows error in generating the e file to be uploaded. However, if the error is ignored and the preparation of e file is kept continued, the generated e file (even though with error message) can be actually submitted.

Q.2 Payment to contractor is made throughout the year i.e., from the month of April, 2018 to March, 2019. No TDS is made and no TDS return is filed throughout the year. During the course of audit the default came to the knowledge and TDS is deducted and deposited on 31st Aug, 2019. What is the best way?

Ans In such case the actual date of deduction will be after the end of the financial year. In such case the most logical actual date of deduction will be 31st March, 2019. If any later date is attempted to be mentioned e.g., of August, 2019 the same will not be practicable as the Financial Year itself will be changed. The same may not be supported by the return preparation softwares as well as by the departmental / NSDL website. Further, due to the change of the year, the deductees may also not get credit for TDS in the correct assessment year. Further, the above treatment (i.e., year end date) is also logical as it is a well established practice that all the errors and omissions pertaining to the transactions during the year are corrected as at the end of the year. In such cases the position may be as under:

| Month Of Transaction | Date Of Transaction | Date Of Deduction of TDS | Date Of Deposit Of TDS | Quarter Of TDS Return | Return Late / In Time | Consequences |
|----------------------|-------------------------------------|---------------------------------|------------------------|-----------------------|-----------------------|--|
| April, May & June | 30/04/18, 31/05/18 & 30/06/18 | 31 st March, 2019 | 31 August, 19 | 4 th | Late | a.Int @1% u/s 201(1A) b. Penalty equal to Tax amount U/s. 271C (when no |

| | | | | | | |
|------------------|-------------------------------|------------------------------|---------------|-----------------|------|--|
| | | | | | | appeal / no reasonable cause) c. 234E for 4 th Quarter only |
| July, Aug & Sept | 31/07/18, 31/08/18 & 30/09/18 | 31 st March, 2019 | 31 August, 19 | 4 th | Late | a.Int @1% u/s 201(1A) b. Penalty equal to Tax amount U/s. 271C (when no appeal / no reasonable cause) c. 234E for 4 th Quarter only |
| Oct, Nov & Dec | 31/10/18, 30/11/18 & 31/12/18 | 31 st March, 2019 | 31 August, 19 | 4 th | Late | a.Int @1% u/s 201(1A) b. Penalty equal to Tax amount U/s. 271C (when no appeal / no reasonable cause) c. 234E for 4 th Quarter only |
| Jan, Feb & Mar | 30/01/19, 28/02/19 & 31/03/19 | 31 st March, 2019 | 31 August, 19 | 4 th | Late | a.Int @1% u/s 201(1A) b. Penalty equal to Tax amount U/s. 271C (when no appeal / no reasonable cause) c. 234E for 4 th Quarter only |

(Note: In such case, delay in deposit of TDS will appear on the face of the TDS return. However, in **probable prosecution proceedings u/s 276B** the deductor may take plea that actually there is no delay in deposit. Since it was not possible to submit TDS return by mentioning correct date of deduction, therefore, the year end date i.e., 31st March, 2019 has

been mentioned as date of deduction in TDS return. Screen shots of error messages shown by the return preparation softwares for later date may also be preserved as evidence.)

Q.3 In case entire Rent is paid to Representative of various co-owners of the property taken on lease, what will be TDS u/s 194I?

Ans.

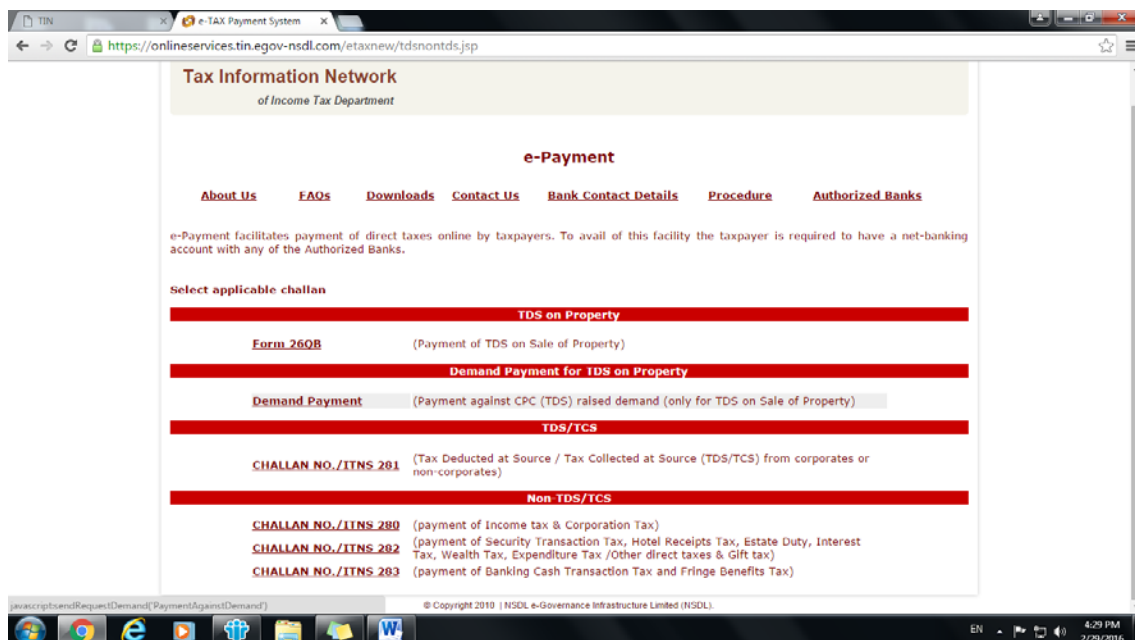
- IDS Infotech Ltd vs. DCIT (2017) 189 TTJ 606 (Chd. Trib.)

Q.4 Mr. Tenant (not under Tax audit) is making payment of rent of Rs. 1,10,000 per month to Mr. L1 & Mr. L2 who are co-owners of the property, where in rent paid to Mr. L1 is Rs. 75,000 and to Mr. L2 is Rs. 35,000. How much Tax to be deducted?

Ans.

As per the section 194IB, an individual or HUF whose books of account are not liable for audit u/s 44AB, paying rent to a resident exceeding Rs. 50,000 per month or part of the month for land or building, liable to deduct tax @ 5% at the time of credit of rent, for the last month of the previous year or last month of the tenancy in case 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 cheque or draft or any other mode, whichever is earlier.

Q. 5 What is the procedure for payment of demand raised against TDS on sale of property by CPC-TDS?



Tax Information Network
of Income Tax Department


Demand Payment for TDS on Property
Facility to make payment of demand raised by CPC-TDS against TDS on Sale of Property

PAN of Transferee/Buyer*

PAN of Transferor/Seller*

ACK No.*

Assessment Year*

 [click to refresh image](#)

Enter Text As Seen In Image (Case Sensitive)

Note:

- Fields marked with * are mandatory.
- Enter valid 10-digit Permanent Account Number (PAN) of the Transferor and Transferee
- Provide details as present in Form for TDS on property
- TIN is not responsible for any mismatch in the details provided by Transferee/Buyer in the Form and the actual transaction of the Transferee/Buyer.

Tax Information Network
of Income Tax Department

Demand Payment for TDS on Property
Facility to make payment against CPC (TDS) raised demand (only for TDS on Sale of Property)
Your e-Tax Acknowledgment Number is AR7190061 - Demand Payment

Communication/Intimation Reference No.

| Particulars | Demand as per Intimation | Demand being paid |
|---------------|-----------------------------------|-----------------------------------|
| Principal Tax | <input type="text" value="0"/> | <input type="text" value="0"/> |
| Interest | <input type="text"/> | <input type="text"/> |
| Penalty | <input type="text" value="0"/> | <input type="text" value="0"/> |
| Fee | <input type="text"/> | <input type="text"/> |
| Total | <input type="text" value="0.00"/> | <input type="text" value="0.00"/> |

Note:

- Provide details as per demand raised by CPC-TDS against TDS on Sale of Property.

-System will automatically calculate the total of all rows .It should be noted that the total amount in both the columns i.e” Demand as per intimation” and” Demand being paid” should be exactly same ,otherwise the system will not allow buyer/deductor to proceed further .

Q. 6 Whether Tax to be deducted on Payment gateway charges paid to a bank for swiping credit cards?

Ans. High Court-Delhi in PCIT vs. Make My Trip India Pvt Ltd - March 25, 2019 (Date of pronouncement)

Commission or brokerage - This happens when there is a middleman or an agent who interacts on behalf of one of the parties, helps the buyer/seller to meet, or participates in the negotiations or transactions resulting in the contract for buying and selling of goods. Thus, the requirement of an agent and principal relationship. The banking services cannot be covered and treated as services rendered by an agent for the principal during the course of buying or selling of goods as the banker does not render any service in the nature of agency. ” **(JDS Apparels 370 ITR 454 (Del) followed).**

Q.7 Sum paid for maintenance of medical equipments is liable for sec. 194C TDS or 194J TDS?

Ans

Commissioner of Income-tax (TDS)-2 v. Saifee Hospital – [2019] 104 taxmann.com 64 (Bombay)

IT: Where assessee-hospital made payments for services rendered towards maintenance of its medical equipments for proper and long functioning, it was required to deduction TDS under section 194C, and not under section 194J

Assessee purchased medical equipments from a vendor for which he also rendered services of maintenance. Assessee made payment to the vendor for the maintenance services and deducted TDS u/s 194C on the same. However, the department contended that the deduction should have been made u/s 194J since the services for which the payment was made were technical in nature.

Assessee made an appeal to the ITAT, which held that payments were made for services rendered in respect of medical equipments were only in nature of maintenance services provided to ensure that equipment function properly and would enable those equipments to provide services for a long time and, hence, same did not involve any technical service which would require TDS deduction under section 194J.

Further, revenue made an appeal to the High Court against the order of the ITAT. HC observed the order made by the ITAT with the findings that the service for which payment was made did not involve any technical service. The Court dismissed the appeal stating that the question didn't involve any question of law and hence, couldn't be entertained.

2nd opinion - Maintaining operation theatre and surgical equipments, RO system, CT scan machine, MRI machine, medical equipments and providing service of lift sterilisation and anti-termite treatment in a hospital, would amount to rendering technical and professional

services. Please refer **ITO (TDS) v. Accounts Officer, Govt. Medical College, Jammu***[2012] 22 taxmann.com 149 (Asr.)

Routine, normal maintenance contracts which includes supply of spares will be covered under section 194C. However, where technical services are rendered, the provision of section 194J will apply in regard to tax deduction at source. **Circular No. 715, dated 8-8-1995**

It would be appropriate to include testing and inspection charges within the purview of section 194C instead of under section 194J, depending upon the involvement of the human endeavor. In other words, it should not be claimed unconditionally that testing and inspection charges fall under section 194C only, as there may be testing or inspection of a material, etc., which requires the constant involvement of human beings and comparatively lesser usage of machines for providing the service, in which case it will be more appropriate to apply the provisions of section 194J rather than those of section 194C

Q.8 Payments to various artists participating in reality shows are liable for TDS under sec. 194C TDS or sec. 194J TDS

Ans.

[2019] I.T.A. No.403/Coch/2018 (Cochin – Trib.) Date of pronouncement 08/02/2019

IT : Where assessee made payments to various artists like singers, musicians etc who participated in reality shows hosted by it as guests or judges, tax was required to be deducted at source under section 194C while making payments in question.

Section 194C, read with section 194J of the Income-tax Act, 1961 – Deduction of tax at source – Contractors/sub-contractors, payments to (Payments to Artists etc.) – Assessment year 2010-11 – During relevant year, assessee made payments to various artists like singers, musicians, etc., who participated in reality shows hosted by it as guests or judges – Assessee deducted tax at source under section 194C while making said payments – Assessing Officer opined that payment were made to payees for rendering their professional services as artists and, thus, tax was liable to be deducted at source under section 194J – It was undisputed that assessee had paid remuneration to various persons in connection with reality shows and it was **not involved in production of any films** – Moreover, recipients of payments were not engaged by assessee in any of activities as enumerated under section 194J – Whether in view of aforesaid, impugned order passed by Assessing Officer was to be set aside
Malayalam Communications Ltd.

ACIT (LTU) Vs. M/s WTI Advance Technology Ltd. (ITAT Mumbai) - Date of Judgement/Order : 11/05/2018

ITAT Mumbai in case of ACIT v/s M/s WTI Advanced technology held that tax is to deducted u/s 194C for outsourcing of any service which do not require skilled staff.

Whether the TDS is deductible u/s 194C or 194J depend upon each and every case separately. Hence, each case has to be studied separately.

Q.9 How much TDS will be deducted in case of payment of Remuneration to company's director?

Ans

Q.10 Cheque towards payment of TDS was tendered on 04.07.2007 to the bank however the bank had delayed the remittance of the amount to the government account. Whether interest under section 201(1A) leviable?

Ans

Oil and Natural Gas Corporation Ltd. v. Deputy Commissioner of Income-tax - ITA Nos. 5394 to 5398/Mum/2017 - Date of Pronouncement: 30.11.2018

Q.11 Which challan should be used for paying pre deposit amount of 20% for filing appeal against TDS order.. challan 281 or 280?

Ans :

Q.12 Whether TDS is applicable to the component of GST on services?

Ans. The Government of India introduced GST wef 01.07.2017 by replacing/subsuming various indirect taxes. One amongst such indirect taxes is service tax. There were different views on TDS applicability on Service Tax component. CBDT, after considering the Rajasthan High Court judgment in the case of CIT (TDS) Jaipur v. Rajasthan Urban Infrastructure (Income-tax Appeal No.235, 222, 238 and 239/2011), clarified that no TDS is recoverable on service tax component vide Circular 1/2014 dated 13.01.2014. To align the same analogy, CBDT vide **Circular 23/2017 dated 19.07.2017** clarified that TDS is not recoverable on component of GST on services. However the above principle holds good only in respect of

- Agreement or contract, where the component of GST on services indicated separately and
- payments to **resident** service providers

Q.13 What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the **Income Tax Act, 1961**? Whether GST is applicable on TCS collected under Income Tax Act?

Earlier The Central Government issued Circular No. 76/50/2018-GST dated 31st December, 2018 clarifying, :

1. Section 15(2) of CGST Act specifies that the value of supply shall include “any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier.”

*2. It is clarified that as per the above provisions, taxable value for the purposes of **GST shall include the TCS amount collected under the provisions of the Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.***

Representation from Industry - It is evident from the section 206C that tax collected at source is merely an advance collection of Income Tax at the time of selling of certain types of goods. The buyer of goods is entitled to claim credit of the same at the time of Final **computation of Income Tax**.

Thus, tax collected at source is not a new levy at the time of selling of goods but it is a merely a mode of collection of Income tax at an advanced stage. Hence, it does not fall within ambit of section 15(2) of CGST Act 2017 which include only ‘levy of taxes, duties, cesses, fees under any law for the time being in force’ within its ambit.

Corrigendum to Circular No. 76/50/2018-GST Dated the **7th March, 2019**

No GST on TCS levied on goods, clarifies tax authority

A clarification in this regard was issued by the CBIC after representation from the industry and consultation from the Central Board of Direct Taxes (CBDT). The Central Board of Indirect Taxes and Customs (CBIC) has clarified that for the purpose of calculation of GST on a particular good, the tax collected at source (TCS) would not be included in the price of the good as the same is an interim levy. According to the clarification, 'TCS is not a tax on goods but an interim levy on the possible income arising from the sale of goods by the buyer and to be adjusted against the final income-tax liability of the buyer'.

Q.14 Whether TCS can be collected on amount inclusive of GST?

Ans. TCS is payable on the “amount payable by the buyer” which shall include the GST. As per section 206C (1) every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer. Hence, amount debited to the account of buyer or payment shall be received by seller inclusive of VAT/ excise/GST. TCS to be collected on amount inclusive of GST.

Q.15 Whether Firm is required to upload 15G/15H

Ans. As per the Income-tax Act, Every TDS deductor should allot a UIN (Unique identification number) to all the persons who submit a Form 15G/Form15H. A statement of Form 15G/Form15H must be filed by deductor on a quarterly basis. This statement has details of Form 15G and Form 15H submitted and incomes on which no TDS was deducted due to submission of these forms. TDS Deductor must retain these forms for 7 years.

Q.16 Interest on TDS is allowable expenditure?

Ans.

Dy. CIT v. Rungta Mines Ltd. (ITA No. 1531/Kol/2017)

Business expenditure–Interest on late deposit of TDS–Allowability

Facts:

Assessee claimed deduction of interest on late deposits of TDS liability. AO disallowed deduction.

Held:

TDS amount did not represent tax of assessee but it was tax of party, on whose behalf it was deducted and paid to the Government Exchequer. Thus, any delay in payment of TDS by assessee could not be linked to income tax of assessee and consequently, interest expenses claimed by assessee on account of delayed deposit of TDS liability was allowable under section 37(1).

TDS is deductible in case of Nuns, Sisters, Priests or Fathers, who also render their services as Teachers : High Court Madras

Union of India Vs The Society of Mary Immaculate (Madras High Court) - Date of Judgement/Order : 20/03/2019

Conclusion: Payment of salaries made to nuns, sisters, priests or fathers for rendering their services as Teachers in schools which receive Grant-in-aid from the State Government under the Grant-in-Aid Schemes and bound by the Canon Law were liable for tax deduction under section 192 as neither Income Tax Department nor State Government had anything to do with the religious character of the Institution, might be Teachers or Nuns or Missionaries and therefore, they could not take a stand for not making the tax deduction at source in view of the Canon Law.

NOTE / ADVISE :

- a. Not to ignore Notices from Department
- b. Check "Notices from Assessing Officer" option under "Communication" menu under your login in traces Portal
- c. If there is any technical error or any error / default are not getting resolved you can make "Request for Resolution" option under "Communication" menu under your login in traces Portal
- d. At the time of making online correction you should check personal information and update it if required. Name and PAN of authorised person in TDS statements should be match with name and PAN of authorised person in Traces Profile.
- e. In personal information – mobile number is mandatory, cannot use special character in any field
- f. You can change record from valid PAN to valid PAN only once.
- g. Now Nil return cannot be filed. So declaration to be filed online in this respect with reason.
- h. 197/195 certificate now generated through Traces. There is need to match Alphanumeric 10 digits certificate number, Period and Amount on certificate.

Certificate u/s.197 - Statutory provision of tax deduction at source at lower rate is "person specific" and not "sum specific" Kolkata ITAT in case of Twenty First Century Securities Ltd 163 ITD 270 Dt. 03.02.2017 after referring provision of Sec. 197(2) and Rule 28AA(2)concluded

- i. **To avoid notice:**
file TDS returns with Interest and late filing fees, if any.
Pay Interest upto date of correction



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