

Budget Provisions Relating to Amendments in TDS Provisions: An Overview and Analysis

The scope of the TDS has been proposed to be widened by inclusion of some payments made by Individuals and HUFs which are not liable or covered by Tax Audit provisions. The other noted fact that certain expenses which are incurred not for the purpose of the business are also proposed to be brought into the net of TDS deduction, which would help government to monitor such transactions. Two new sections 194M and 194N have been brought in specifying the rate of deduction in cases covered therein. In the Memorandum notes to the Finance Bill, it is stated that TDS on cash withdrawal has been introduced and to further discourage such cash transactions and to further discourage move towards less cash economy, it is proposed to insert a new section 194N in the Act to provide for levy of TDS at the rate of two per cent on cash payments in excess of one crore rupees in aggregate made during the year, by a banking company or cooperative bank or post office, to any person from an account maintained by the recipient. Read on...



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It is proposed to exempt payment made to certain recipients, such as the Government, banking company, cooperative society engaged in carrying on the business of banking, post office, banking correspondents and white label ATM operators, who are involved in the handling of substantial amounts

of cash as a part of their business operation, from the application of this provision. It is proposed to empower the Central Government to exempt other recipients, through a notification in the official Gazette in consultation with the Reserve Bank of India. This amendment will take effect from 1st September, 2019.

Section	New/Scope Expanded	Applicable to	Brief	Basic Exemption Limit	Effective Date
194M	New	Individuals or HUF not liable for tax audit	Deduct TDS @5% on payments made for services received for personal use from the contractors or professionals	₹ 50 Lacs per person per year	1 st September, 2019
194N	New	Banking Company	Deduct TDS@2% for cash withdrawals from Savings/ Current Accounts (Exceptions to certain companies)	₹ 1 Crore per year	1 st September, 2019

194IA	Expansion of Scope	All Person	Purchase consideration to include other payments to the Seller. Rate of TDS @1%	₹ 50 Lacs	1 st September, 2019
194DA	Modification	Insurance Company	TDS @5% to be deducted on Computed Income as against Policy Payment sum	₹ 1 Lac	1 st September, 2019

Provisions Relating to Deductions of Tax

New Provisions

Section 194M has been made applicable to Individuals and HUFs (not liable for tax audit) to deduct tax from sum payable to resident contractor or professionals. This will be effective from September 1, 2019.

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The current provisions of Section 194C and Section 194J, an individual or HUF, who are not liable to tax audit under Section 44AB, will be required to deduct tax under these provision, and they continue to be exempt from these provisions. Hence, no tax was required to be deducted by such persons from payment made to contractor or professional in the following cases:

- Payment made for services received for personal use;

- Payment made for services received for business or profession if payer is not subjected to tax audit.

By virtue of this exemption, the substantial amount of such payments made to such persons in respect of contractual work or for professional service were escaping the levy of TDS, which is the purpose of introduction of this Section.

Thus, a new Section 194M has been proposed to be inserted in the Act to deduct TDS @ 5% on the sum paid or credited in a year on account of contractual work or professional fees by an individual or a HUF, if aggregate of such sums exceeds ₹ 50 lakhs in a year. It is also stated that to reduce the tax compliance the payment, the TDS to be deposited without obtaining TAN by quoting PAN on the lines of Section 194(IA) of the Income Tax Act, 1961.

It is also proposed provisions of obtaining lower rate/NIL of deduction of tax Section 197 has been extended to this provision. Thus, payee can apply to the Assessing Officer to obtain such certificate in respect of sum paid or payable which are subject to TDS under Section 194M.

Section 194N proposes that Banks and Post Offices would deduct tax from cash withdrawals exceeding ₹ 1 crore

The main purpose of the Government behind this move is to discourage cash transactions and move towards digital economy. A step ahead in this area is to discourage cash transactions accordingly a new Section 194N is proposed to be inserted in the Income-tax Act, 1961 applicable from September 1, 2019. Accordingly, tax shall be deducted by a banking company or co-op. bank or post office at the rate of 2% from the amount withdrawn in cash from any account (saving or current account) if the amount of withdrawal exceeds Rs. 1 crore during the year. The exemption is provided to Central or State Government, Banks, Co-op. Banks, Post Office, Banking correspondents, White label ATM operators and Other persons notified by the Govt. in consultation with the RBI.

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Expansion of Scope of the Existing Provisions

Section 194DA TDS from Payment in respect of Life Insurance Policy (Amendment effective September 1, 2019)

Presently, any payments made by the Insurance Company in respect of life insurance policy to a resident person are subject to TDS @ of 1% under section 194DA. The tax is deducted under this provision at the time of payment, provided such payments exceed ₹ 1 lakh. TDS is also required to be deducted if amount payable under an insurance policy is exempt from tax under section 10(10D) or the sum is received on the occasion of death of the insured person. There is no mechanism provided under Section 194DA for computation of taxable income in such payments. There are various types of policies issued by the Insurance Company and the Insurer has various options to receive the payments either at the time of surrender, maturity etc. The income or losses arising on its transfer is chargeable to tax under the head 'Capital Gains' in case of Unit Linked Policy or are exempt under Section 10(10D) of the Income Tax Act, 1961. The present provisions require deduction of tax on whole sum, whereas the tax is required to be deducted only on the income part which is liable to tax. The anomaly in the said provisions is sought to be modified and accordingly the Finance Bill has proposed an amendment to Section 194DA now stating that the deductor has to deduct tax only on the income component comprised

in the insurance pay-out. This amendment has been proposed to enable the Department to reconcile the taxable income reported in the Return of Income filed by the assessee. The TDS rate is proposed to be increased to 5% of such taxable computed income component as against 1% as per the present provision. At present there is no mechanism for computation of income under such cases, but the method of computation of income in such cases needs to be specified separately for surrender of Insurance policy, maturity of policy or otherwise.

Section 194(IA) Deduction of TDS for Purchase of Immovable Property of ₹ 50 Lacs or more at any time. [Amendment to take effect from September 1, 2019]

The present provisions of Section 194-IA, states that any person (buyer) who is responsible for making payment of sales consideration in respect of purchasing an immovable property of ₹ 50 Lacs or more shall deduct tax therefrom.

Presently, the term 'consideration' for immovable property has not been defined for the purposes of deduction of TDS under this section. It should be noted that any transaction for purchase of immovable property, besides the purchase consideration, the buyer also makes incidental charges through Agreement or otherwise. Accordingly, an *Explanation* has been proposed to be inserted in Section -194IA to provide that the term 'consideration for immovable property' to include

all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to purchase/transfer of the immovable property.

As a result of this amendment, the purchaser would now have to deduct TDS on all such payments. Other conditions for compliance remain the same.

Procedural Changes for Filings and Applications

Setting Facility for filing of online application to obtain certificate for lower or nil rate of TDS in case of sum paid to non-resident [Proposed Effective date November 1, 2019]

The provisions of the Section 195 require every payer (either resident or non-resident) who is responsible for deduction of tax at source under this provision from payment of any sum which is chargeable to tax. The tax is to be deducted under this provision only if income of non-resident is taxable in India. Such non-resident recipients whose receipts are taxable in India but the person responsible for making the payment believes that the entire sum shall not be taxable but only a portion thereof shall be taxable in India, he has the option to make an application to the Assessing Officer to determine the appropriate proportion of such sum so chargeable and determine the tax that is required to be deducted on that proportion of the sum which is liable for tax. Accordingly the tax payer has to approach the Assessing Officer and make an

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application to issue an order under section 195(2O).

The Government has introduced Online Application facility for obtaining Section 195 certificates for the facility of the Tax payers as a part of ease of doing business. However, the said facility is now proposed to be expanded to the payments made to Non-Residents, which was introduced in the last Finance Act, which will reduce the administration and help in monitoring such payments. It is proposed to expand this facility under the provisions of Section 195(2) to allow for prescribing the form and manner of application to the Assessing Officer and also for the manner of determination of appropriate portion of sum chargeable to tax by the Assessing Officer. CBDT shall prescribe the form and electronic process through which the payer can file an application to obtain the certificate for lower or nil rate of TDS. Similar amendment is

also proposed to be made for Section 195(7).

Quarterly return by banks to report interest payment

[Effective Applicability from September 1, 2019]

Section 206A of the Act requires furnishing of statement in respect of payment of certain income by way of interest to residents where no tax has been deducted at source, by the banking Company. At present the banking company, etc. are required to prepare and file quarterly returns to report such interest other than interest on securities, paid or payable to a resident person on which tax is not deductible, each quarter in the prescribed Form No. 26QAA within one month from the end of each quarter in line with the regular filing of TDS Returns. At present these returns are required to be delivered on floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media to the prescribed Income-tax authority or to the person authorised by such authority. It is proposed in the Finance Bill that such statement can be filed in electronic mode as well. It is also proposed that such statement can be corrected, rectified for any mistake or to add, delete or update the information so furnished. Accordingly, the TRACES portal for submission of such returns needs to be updated.

Sections 201 in case of payments to non-residents

[Effective Applicability September 1, 2019]

As per the present provisions of Section 201, any resident person, responsible for deduction of tax at source, fails to deduct the whole or any part of the tax or after deduction fails to deposit the same to the credit of the Central Government, shall be deemed to be an assessee-in-default.

As per the amendment in Finance Act, 2012, he is not to be treated as an assessee-in-default if payment is made to a resident person, who has paid tax on such income and has included such income in the return submitted under Section 139 and has discharged the tax liability applicable on such income, provided the payer obtains a certificate to this effect from a Chartered Accountant in the prescribed Form No. 26A and submit it electronically. This benefit which is now available only to a resident person is now proposed to be extended to the non-resident person also. The same consequential amendment has been made in the provision for computation of interest. Accordingly, the deductor (earlier resident and now included non-resident) if he has failed to deduct the tax from the amount paid or payable to payee, if he is not deemed to be assessee-in-default, then he shall continue to be liable to pay the interest from the date on which tax was required to be deducted to the date of furnishing of return of income by the payee. ■