CA MAYANK TRIVEDI CLASSES

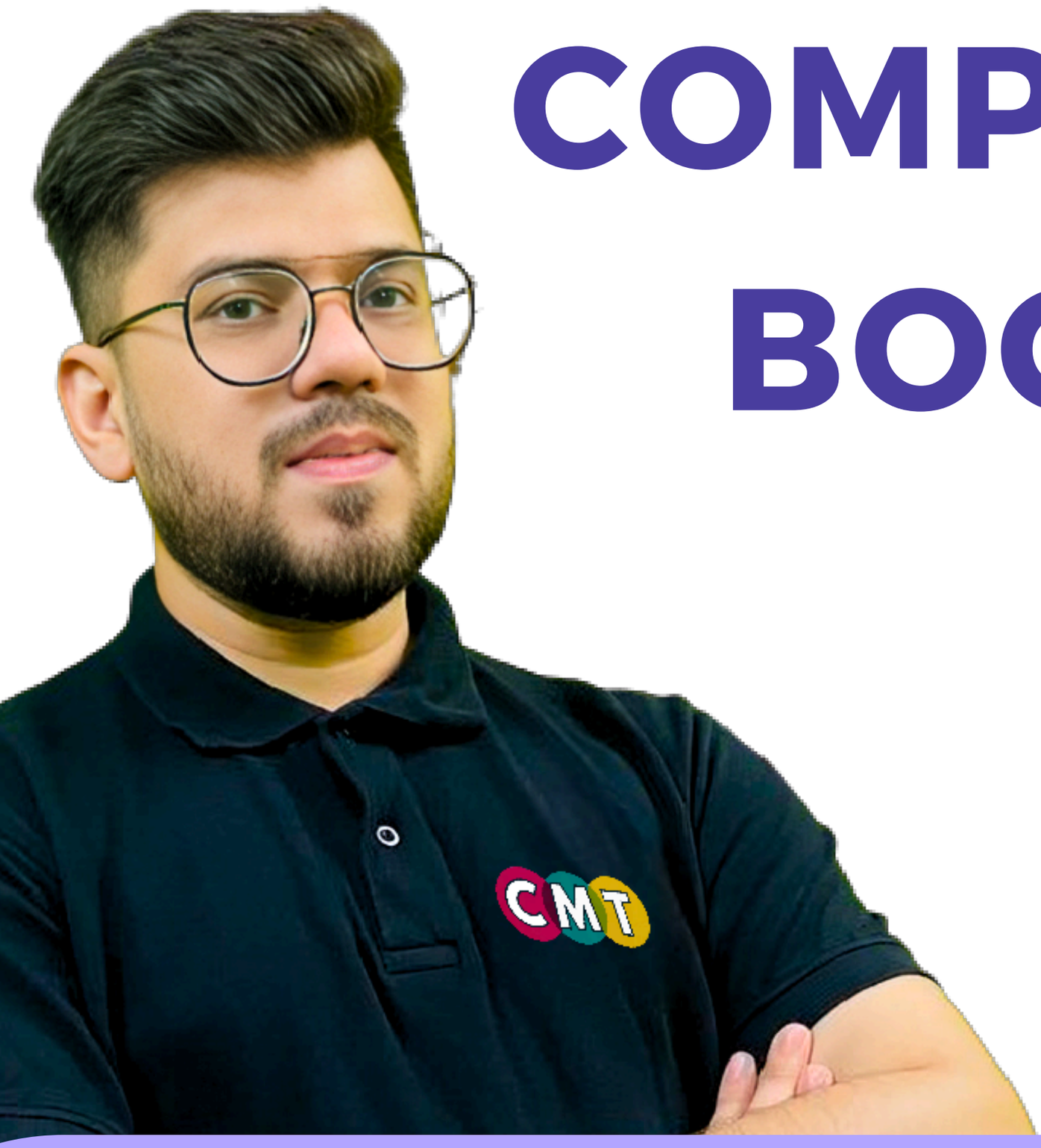
CMT CLASSES

CA/CMA FINAL

DIRECT TAX

MAY/JUNE 2025

TDS & TCS



COMPILER BOOK

CA MAYANK TRIVEDI

CHAPTER 1 – TDS & TCS

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194-B & 194-BB

Question No. 1.

Mr. Govind won the first prize in a lottery ticket and the prize was a Maruti car worth ₹ 5 lacs. What is the procedure to be adopted before handing over the Maruti Car to Mr. Govind?

Answer: -

- Section 194B provides that the person responsible for paying to any person, any income by way of winnings from any lottery or crossword puzzle, card game or any other game of any sort and the amount of winning exceeds ₹ 10,000, tax shall be deducted at source @30%.

- However, in case where the winning is wholly in kind, the person responsible for paying the prize shall before releasing the winning, ensure that the tax has been paid in respect of such winning.
- The Karnataka High Court in the case of CIT v. Hindustan Lever Ltd. (2014) 361 ITR 1 has held that where the winnings are wholly in kind, the responsibility cast under section 194B is to ensure that the tax is paid by the winner of the prize before the prize is released in his favour.
- In this regard, the CBDT Circular No.763 dated 18/2/1998 clarifies that the person responsible for paying the winnings shall, before releasing such winnings, ensure that the tax is paid by the winner. He can do so, for example, by collecting from the winner a sum equal to the tax deductible at source on the winnings in kind, before releasing the winnings.
- For this purpose, the value of the winnings in kind shall be taken as the cost incurred by the payer in acquiring the said winnings in kind.
- Therefore, in this case since the entire winning is in kind, it must be ensured that the sum equal to the tax deductible at source (i.e., ₹ 1,50,000, being @ 30% of ₹ 5 lacs) is paid by Mr. Govind, before the car is released in his favour.
- This can be done by collecting ₹ 1,50,000 from Mr. Govind before releasing the Maruti car to him and remitting the said sum to the Government account or verifying the tax payment by the winner and thereafter releasing the prize.

Question No. 2.

(1) X is a bookmaker and Mr. Y is a punter. On 22-01-20XX, B has won ₹ 50,000 in Horse Race 1 and suffered a loss of ₹20,000 in Horse Race 2 (NOV 2018)

(2) Mr. Manas is a distributor of lottery tickets. He won ₹ 6,00,000 as prize money on unsold lottery tickets. It was offered as business income. The Assessing Officer wants to tax the same as lottery winning at the rate prescribed under Section 115BB. Is he justified? (May 2015)

Answer: -

(1) Any person, being a bookmaker, who is responsible for paying to any person any income exceeding ₹ 10,000 by way of winnings from horse races is liable to deduct tax@30% at the time of payment as per section 194BB. In a case where the book-maker credits such winnings and debits the losses to the individual account of the punter, tax would be deducted on the winnings before set- off of losses. Thereafter, the net amount, i.e., the winnings after deduction of tax and losses, would be paid to the individual.

Thus, in the present case, Mr. X is liable to deduct tax of ₹ 15,000 (₹ 50,000 x 30%) from winnings of ₹ 50,000. The net amount payable to Mr. B would be ₹ 15,000 (i.e., ₹ 50,000 – ₹ 20,000, being loss – ₹ 15,000, being TDS).

(2) In a similar case in CIT v. Manjoo & Co, [2011] 335 ITR 527 (Ker.), the High Court held that, there was no business activity involved in claiming the prize money as the entire lot of tickets ceased to be stock-in-trade on the date of draw as after the draw, those tickets are unsaleable and of no value.

No effort, physical or intellectual (as required in business activity) is involved in participation of the lottery draw. Hence, the receipt of prize money is not in capacity of lottery distributor but as holder of ticket and therefore, is assessable as "winnings from lotteries" chargeable to tax under specific provisions contained in Section 115BB at special rates. In this case, the Assessing Officer's intention to tax the lottery income at the rate prescribed u/s 115BB is, therefore, justified.

194-D & 194-G

Question No. 3.

"Profit Commission" of ₹ 1 lakh paid on 10.6.20XX by a re-insurance company to the insurer company after the expiry of the term of insurance and where there was no claim during the treaty

Answer: -

- Section 194D requires deduction of tax at source@5% from insurance commission, where the commission exceeds ₹15,000. Reinsurance is different from insurance since there is no direct contractual relationship between the person insured and the re-insurer.
- In order to attract section 194D, the commission or any other payment covered under the section should be a remuneration or reward for soliciting or procuring the insurance business. The insurance companies do not procure business for the reinsurance company nor does the reinsurer pay commission or other payment for soliciting the business from the insurance companies. Therefore, section 194D has no application.
- Hence, when profit commission is paid by a reinsurance company to an insurance company, after the expiry of the term of insurance, in respect of cases where there is no claim during the operation of the reinsurance treaty, tax deduction under section 194D is not attracted

194-H

Question No. 4.

Purchase commission paid to one agent ₹ 25,000 on 13.11.20XX towards purchases made during the year (SM)

Answer: -

Tax @ 2% has to be deducted under section 194H in respect of purchase commission of ₹ 25,000 to an agent for purchases made during the year, since the same exceeds the threshold limit of ₹ 15,000 for non-deduction of tax at source thereunder.

Question No. 5.

Mr. Ganesh, an individual carrying on retail business with turnover of ₹ 2.5 crores in the P.Y.2023-24

i. Contract Payment for repair of residential house - ₹ 5 lakhs

ii. Payment of commission to Mr. Vallish for business purposes - ₹ 80,000

Answer: -

(i) No, TDS u/s 194C is not attracted since the payment is for personal purpose and TDS u/s 194M is not attracted as aggregate of contract payment to the payee in the P.Y.20XX-XX does not exceed ₹ 50 lakh

(ii) Yes, u/s 194H, since the payment exceeds ₹ 15,000, and Mr. Ganesh's turnover exceeds ₹ 1 crore in the P.Y.2023-24

Question No. 6.

M/s.LMN Travels is a Travel Agent engaged in sale of air tickets of AirGo and AirJet Airlines. It earns standard commission@5% as well as supplementary commission. AirGo and AirJet have deducted tax at source under section 194H on the standard commission, which is a fixed percentage designated by the International Air Transport Association (IATA). However, they have

not deducted tax on the supplementary commission, which is the additional amount LMN Travels charges over and above the net fare quoted by AirGo and AirJet and retained by LMN Travels as its own income.

The details of the amounts at which the tickets were sold are transmitted by LMN Travels to an organization known as the Billing and Settlement Plan ("BSP") which functions under the aegis of the IATA. This auxiliary amount charged on top of the net fare was portrayed on the BSP as a "supplementary commission" in the hands of LMN Travels. The contract between LMN Travels and the airlines stated that "all monies" received by LMN Travels were held as the property of the air carrier until they were recorded on the billing and settlement plan and properly gauged.

AirGo and AirJet contended that tax is not deductible on supplementary commission which LMN Travels retains out of the sale proceeds of the air tickets, since there is no agency relationship between the airlines and LMN Travels and that the supplementary commission is not within the control of the airlines. Discuss the correctness of the above contention. (RTP, NOV 2023)

Answer: -

- The issue under consideration in this case is whether TDS under section 194H is attracted in respect of both standard and supplementary commission paid by AirGo and AirJet Airlines to LMN Travels. This issue came up before the Supreme Court in Singapore Airlines Ltd / KLM Royal Dutch Airlines v. CIT / British Airways Plc v. CIT (TDS) (2022) 49 ITR 203.
- The Supreme Court observed that section 194H does not distinguish between direct and indirect payments. Both standard commission and supplementary commission fall within the meaning of "commission" under clause (i) of the Explanation thereto.
- Section 194H is to be read with section 182 of the Contract Act, 1872. If a relationship between two parties as culled out from their intentions as manifested in the terms of the contract between them indicates the existence of a principal-agent relationship as defined under section 182 of the Contract Act, the definition of "commission" under section 194H stands attracted and the requirement to deduct tax at source arises.
- The Apex Court noted that there was no transfer in terms of the title in the tickets and they remained the property of the airline company throughout the transaction. Every action taken by the travel agents is on behalf of the air carriers and the services they provide is with express prior authorization. Accordingly, the Apex Court concluded that the contract is one of agency that does not distinguish in terms of stages of the transaction involved in selling flight tickets. The accretion of the supplementary commission to the travel agents was an accessory to the actual principal-agent relationship. Notwithstanding the lack of control over the actual fare, the contract definitively stated that "all monies" received by the agent were held as the property of the air carrier until they were recorded on the billing and settlement plan and properly gauged. The billing and settlement plan also demarcated "supplementary commission" under a separate heading.
- Hence, once the IATA made the payment of the accumulated amounts shown on the billing and settlement plan, it would be feasible for the assessees, being the airlines to deduct tax at source on this additional income earned by the agent.
- Applying the rationale of the Supreme Court ruling to the case on hand, the contention of AirGo and AirJet is not correct and they are required to deduct tax at source under section 194H on both the standard commission and supplementary commission paid to LMN Travels.

194-I & 194-IB

Question No. 7.

Wings Ltd. has paid amount of ₹ 15 lacs during the year ended 31-3-20XX to Airports Authority of India towards landing and parking charges. (SM) (JAN 21)

Answer: -

- TDS on landing and parking charges: The landing and parking charges which are fixed by the Airports Authority of India are not merely for the "use of the land". These charges are also for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport [Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)]. Thus, tax is not deductible under section 194I which provides deduction of tax for payment in the nature of rent.
- Hence, tax is deductible @2% under section 194C by the airline company, Wings Ltd., on payment of ₹ 15 lacs made towards landing and parking charges to the Airports Authority of India for the previous year 20XX-XX.

Question No. 8.

(a) Rent of ₹ 60,000 per month deposited by Mr. Shrikanth, software employee on 1st of every month in advance in the account of Mr. Ashok, who does not provide his PAN. The house was taken on rent with effect from 01-07-20XX and he vacated the house on 28-02-20XX. (Nov. 2018-OS)

(b) Would there be any change in TDS, if Mr. Ashok furnished his PAN to the tenant?

Answer: -

(a) Since Mr. Shrikanth pays rent exceeding ₹ 50,000 per month in the F.Y. 20XX-XX, he is liable to deduct tax at source @ 2% under section 194-IB on such rent for F.Y. 20XX-XX. However, since Mr. Ashok does not provide his PAN to Mr. Shrikanth, tax would be deductible @ 20%, instead of 2%. Tax has to be deducted from rent payable for the last month of the P.Y. 20XX-XX. However, since he vacated the premises in February, 2024, tax has to be deducted from rent paid on 1-2-20XX for the month of February, 2024. Tax of ₹ 96,000 [₹ 60,000 x 20% x 8] has to be deducted but the same has to be restricted to ₹ 60,000, being rent for February, 20XX.

(b) If Mr. Ashok furnished his PAN to Shrikanth, tax would be deductible @2%. Tax of ₹ 9,600 [₹ 60,000 x 2% x 8] has to be deducted from rent paid on 1-2-20XX for the month of February, 20XX.

Question No. 9.

Ramesh gave a building on sub-lease to Mac Ltd. with effect from 1-7-20XX on a rent of ₹ 25,000 per month. The Company also took on hire machinery from Ramesh with effect from 1-11-20XX on hire charges of ₹ 20,000 per month. The rent of building and hire charges of machinery for the year 20XX-XX were credited by the Company to the account of Ramesh in its books of account on 31-03-20XX. (May 2016) (SM) (MAY 2017)

Answer: -

As per Section 194-I, rent includes rent paid for building under any lease, sub-lease, tenancy or any other agreement; and hire charges paid for machinery taken on hire is also covered in the scope of the said section. Aggregate amount of rent paid to Ramesh shall be taken to check the limit of ₹ 2,40,000, here, total amount payable to Ramesh = ₹ 25,000 x 9 + ₹ 20,000 x 5 = ₹ 3,25,000.

Accordingly, TDS liability shall be computed as follows –

Particulars	Amount (₹)	Rate of TDS	TDS (₹)
Building Rent	2,25,000	10%	22,500
Hire Charges of Machinery	1,00,000	2%	2,000
Total TDS liability			24,500

192

Question No. 10.

Ravi Kumar aged 67 years derived ₹ 6,50,000 as salary from his employer, XYZ Ltd. for the year ended 31-03-20XX. The following details are provided by him to the employer. Ravi Kumar declared that he has exercised option to shift out of default regime of section 115BAC.:

(Nov. 2016)

Particulars	**₹**
Loss from self-occupied house property at Mumbai	**2,00,000**
Net loss from let-out property	**2,00,000**
Net loss from business activity	**1,00,000**
Interest income from bank	**3,60,000**

Answer: -

XYZ Ltd. is required to deduct tax at source at the time of payment of income under the head "salaries" after considering the information furnished by Ravi Kumar for the financial year 20XX-XX in respect of income under any other head of income but not loss, except loss from house property subject to maximum of ₹ 2,00,000.

Therefore, XYZ Ltd. is not required to take into account the loss of ₹ 1,00,000 from business activity for determining the TDS liability

Particulars		₹
Salary		6,50,000
Less: Standard deduction u/s 16(ia)		50,000
Income under the head salaries		6,00,000
Less: Loss from house property		
Loss from self-occupied house at Mumbai	2,00,000	
Loss from let out property [Loss from house property is to be restricted to ₹ 2,00,000 to be set-off from Income under the head salaries and balance loss of ₹ 2,00,000 shall be carried forward.]	2,00,000	2,00,000
		4,00,000
Add: Interest income from Bank		3,60,000
Gross Total Income		**7,60,000**
Less: Deduction u/s 80TTB (It is assumed that at least ₹ 50,000 out of interest income represents interest from deposits in bank account)		50,000
Total Income		**7,10,000**
Tax on Total Income including HEC (Basic exemption limit is ₹ 3,00,000)		54,080
TDS liability		**54,080**

Question No. 11.

LL Limited paid leave travel facility to its employees and considered exemption under section 10(5), based on the self-declaration furnished by the employees. The Assessing Officer held that the company as an employer ought to have verified the genuineness of the claim of exemption by obtaining from them, the proof of actual expenditure incurred by availing leave travel facility. Accordingly, the Assessing Officer treated the assessee company as assessee in default. Decide the correctness of action.

Answer: -

- Section 192 casts liability on the employer to deduct tax at source from the salary paid to its employees. In this case, the employer has paid leave travel concession / facility to its employees and the said concession / facility would be eligible for exemption subject to the conditions laid down in section 10(5) read with Rule 2B of the Income-tax Rules, 1962. Section 192(2D) casts responsibility on the person responsible for paying any income chargeable under the head 'Salaries' to obtain from the assessee, the evidence or proof or particulars of prescribed claims under the provisions of the Act in the prescribed form and manner for the purposes of –

  (1) estimating income of the assesses; or

  (2) computing tax deductible under section 192(1).

- Rule 26C of the Income-tax Rules, 1962 mandates a salaried assessee claiming, inter alia, leave travel concession or assistance to furnish evidence of expenditure incurred in relation thereto to the person responsible for making such for payment under section 192(1), for the purpose of estimating his income for computing the tax deductible under section 192.
- Thus, the action of the Assessing Officer is correct in law.

Question No. 12.

EL Ltd., a foreign company, pays outside India, salary to its employee, Mr. Raghavan, a foreign national and a non-resident, for services rendered in India.

Answer: -

- Section 195 requires deduction of tax at source by any person responsible for making payment to a non-resident, any interest or any other sum chargeable under the provisions of the Income-tax Act, 1961 (other than income chargeable under the head "Salaries").
- Section 192(1) requires "any person" responsible for paying income under the head "Salaries" to deduct tax at source. Therefore, even if the payer is a foreign company, section 192 would be applicable.
- TDS provisions under section 192 are attracted, if the salary payable to a non-resident is chargeable to tax in India. Under section 9(1)(ii), income which falls under the head "Salaries" shall be deemed to accrue or arise in India, if it is earned in India. Salary payable for service rendered in India shall be regarded as income earned in India.
- Therefore, salary paid to Mr. Raghavan, a non-resident, attracts tax liability in India, as he has rendered services in India and the salary is attributable to such services. Therefore, the foreign company, EL Limited, is liable to deduct tax at source under section 192 from the salary of Mr. Raghavan.

Question No. 13.

MNO Ltd., the employer, credited salary due for the financial year 20XX-XX amounting to ₹ 3,40,000 to the account of Q, an employee, in its books of account on 31.3.20XX. Q has not furnished any information about his income/loss from any other head or proof of investments/ payments qualifying for deduction under section 80C (SM)

Answer: -

- Section 192 requires deduction of tax from salary at the time of payment. Thus, the employer is not required to deduct tax at source when salary has not been paid but is merely credited to the account of the employee in its books of account. MNO Ltd. therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee Q which is not paid.
- If salary has been paid during the year to Q, then, MNO Ltd has to obtain from Q, the evidence/proof/particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in such form and manner as may be prescribed.
- If Q has not furnished any information about his income/loss under any other head or proof of investments/expenditure qualifying for deduction under section 80C, then, the employer has to deduct tax without considering any claim for any expenditure or set-off of losses or deduction under section 80C.

Question No. 14.

An employee of the Central Government receives arrears of salary for the earlier 3 years. He enquires whether he is liable for deduction of tax on the entire amount during the current year (SM)

Answer: -

- As per section 192, tax is deductible at source by any person who is responsible for paying any income chargeable under the head 'Salaries'. However, as per sub-section (2A) of that section, the employee will be entitled to relief u/s 89 and consequently he will be required to furnish to the person responsible for making the payment, such particulars in the prescribed form (i.e., Form No.10E).
- The person responsible for making the payment shall compute the relief and take into account the same while deducting tax at source from salary

Question No. 15.

A television company pays ₹ 80,000 to a cameraman for shooting of a documentary film. (SM)

Answer: -

- If the cameraman is an employee of the T.V. Company, the provisions of section 192 will apply.
- However, if he is a professional, TDS provisions under section 194-J will apply. Tax at 10% will have to be deducted at the time of credit of ₹ 80,000 or on its payment, whichever is earlier.

Question No. 16.

Mr. Ramesh is employed in Raghu Ltd. as senior executive. He availed leave travel assistance (LTA) of ₹ 60,000 in January 20XX. He did not produce any evidence for expenditure incurred. His salary income (computed) before allowing exemption for LTA is ₹ 12,50,000. Mr. Ramesh claimed interest on moneys borrowed for acquisition of his residential house of ₹ 96,000 but did

not produce the name, address and PAN of the lender. As employer, how will you treat the claim of exemption of LTA and deduction of housing loan interest claimed by Mr. Ramesh?

Answer: -

- As per Rule 26C of the Income-tax Rules, 1962, Mr. Ramesh, a salaried assessee, is required to furnish to his employer, Raghu Ltd.,
  - the evidence of expenditure for claiming exemption in respect of LTA, and
  - the name, address and permanent account number of the lender for claiming deduction of interest under the head "Income from house property".
- If he fails to do so, Raghu Ltd. need not consider exemption in respect of LTA and loss from house property on account of provision of interest deduction, while computing tax to be deducted at source from salary income.
- Accordingly, tax has to be deducted at source under section 192 on ₹ 12,50,000, being salary income (computed) without considering LTA exemption and loss from house property

Question No. 17.

Pinewood Hotels and Resorts Limited is engage in business of owning, operating and managing hotels. The tips are paid by the guests by way of charge to the credit cards in the bills. The company disburses the same to the employees at periodic intervals. Explain with the reasons whether the company is responsible for deducting tax at source from disbursement of tips to its employees. (Nov. 2012) (Nov. 2017)

Answer: -

- The facts of the case are similar to the case of ITC Ltd. v. CIT (TDS) [2016] 384 ITR 14 (SC).
- The court held that Tips for hotel employees which are included and paid by credit card by the customer to the account of the employer who then disburses the same to his employees do not form part of the 'salary' of the employees but are voluntary payments by customers and therefore, not liable for tax deduction at source u/s 192 of the Income-tax Act, 1961.
- Therefore, the company is not liable to deduct tax at source from such payments under section 192.

Question No. 18.

M/s. TQ Inc., a foreign company, seconded some employees to its collaborator M/s. Tekwel Ltd., an Indian company, for working on a turnkey project for setting up a pharmaceutical factory. These employees worked with M/s. Tekwel Ltd., throughout the P.Y. 20XX-XX. The employees were in receipt of salary from M/s. Tekwel Ltd. They were also in receipt of special allowance directly from M/s. TQ Inc. in foreign currency outside India. M/s. Tekwel Ltd. deducted tax under section 192, on the component of salary paid by it, without taking into account the special allowance paid abroad by M/s. TQ Inc. in foreign currency to these employees.

For this reason, the Revenue authorities treated M/s. Tekwel Ltd. as an 'assessee in - default 1 u/s 201 for non-deduction of tax at source on the "special allowance" component of salary paid by M/s. TQ Inc. u/s 192. Is such treatment by the Revenue Authorities and the consequent levy of interest and penalty justified? (May 2014) (Nov. 2020)

Answer: -

- Section 9(1)(ii) provides that any income which falls under the head "Salaries" is deemed to accrue or arise in India, if it is earned in India. The Explanation thereto further clarifies that income payable for services rendered in India shall be regarded as income earned in India.

- Section 192(1) requires the person responsible for paying any income chargeable under the head "Salaries" to deduct income-tax, at the time of payment, at the average rate of income-tax computed on the basis of the rates in force for the financial year on the amount payable.
- Since the TDS provisions relating to payment of income chargeable under the head -Salaries- form an integrated code along with the charging and computation provisions under the Act, section 192(1) has to be read with section 9(1)(ii) and Ute Explanation thereto. Therefore, if any payment under the head "Salary" falls within section 9(1)(ii), then TDS provisions under section 192 gets attracted.
- Consequently, the Indian tax deductor-assessee is duty bound to deduct, from the portion of salary paid by it, tax at source under section 192(1) on the entire salary paid to the employee, including special allowance paid abroad to the employee by the foreign company. It was so held in CIT v. Eli Lilly & Co. (India) P. Ltd. [2009]312 ITR 225 (SC).
- In this case, all the employees are resident in India, since they have worked with the Indian collaborator throughout the previous year 20XX-XX. If the tax due on special allowance received from the foreign company is paid by the recipient-employees, then, the Indian collaborator would not be treated as an assessee-in-default u/s 201(1), if these resident-employees have furnished a return of income u/s 139 on or before the due date of filing return of income, disclosing such income, and have also furnished a certificate to this effect from an accountant in the prescribed form.
- However, interest u/s 201 (1A) @ 1% per month or part of month shall be payable by the Indian collaborator from the date on which such tax was deductible to the date of furnishing of return by such resident employee.
- In cases where the tax has not been paid by the recipient employee, the Assessing Officer can proceed u/s 201 to recover the shortfall in payment of tax and interest thereon u/s 201(1A) from M/s. Tekwel Ltd.
- However, no penalty 273B. u/s 271C would be attracted, if the Indian company was under the genuine and bona fide belief that it was not under any obligation to deduct tax at source from the special allowance paid by the foreign company. This is provided for u/s 273B.

192-A

Question No. 19.

Mr. Sharma is an employee of M/s. ABC Ltd. since 01-04-2022. He has resigned on 31-03-20XX and has withdrawn the amount of ₹ 50,000/-being the balance in his EPF account. (May 2016) (JULY 2021)

Answer: -

- According to Section 192A of the Income-tax Act, 1961, the trustees of the Employees' Provident Fund Scheme. 1952, or any person authorised under the scheme to make payment of accumulated balance due to employees, shall in a case where the accumulated balance due to an employee participating in a recognised provident fund is includible in his total income owing to the provisions of rule 8 of Part A of the Fourth Schedule not being applicable, shall be liable to deduct tax at source @ 10% at the time of making payment where the amount of such payment or, as the case may be, the aggregate amount of such payment to the payee is ₹ 50,000 or more.
- Since the employee has rendered services for less then 5 years and has withdrawn ₹ 50,000 from his EPF account, hence tax will be deducted at source @ 10% i.e. ₹ 5,000.

194-A

Question No. 20.

M/s. Jiva & Co., a partnership firm, pays a sum of ₹ 43,000 as interest on loan borrowed from an Indian branch of a foreign bank. (NOV 2018)

Answer: -

Section 194A requires deduction of tax on any income by way of interest, other than interest on securities, credited or paid to a resident, at the rates in force. However, it specifically excludes from its scope, income credited or paid to any banking company to which the Banking Regulation Act, 1949 applies. An Indian branch of a foreign bank, transacting the business of banking in India, is a banking company to which the Banking Regulation Act, 1949 applies. Therefore, interest payment to such bank will not attract tax deduction under section 194A.

Consequently, no tax is required to be deducted at source under section 194A on interest of ₹ 43,000 paid by M/s. Jiva & Co., a partnership firm, on loan borrowed from an Indian branch of a foreign bank.

Question No. 21.

Examine the TDS implications under section 194A in the cases mentioned hereunder –

(i) On 1.10.20XX, Mr. Harish, aged 40 years, made a six-month fixed deposit of ₹ 10 lakh @9% p.a. with ABC Co-operative Bank. The fixed deposit matures on 31.3.20XX.

(ii) On 1.6.20XX, Mr. Ganesh, aged 45 years, made three nine-month fixed deposits of ₹ 3 lakh each carrying interest@9% with Dwarka Branch, Janakpuri Branch and Rohini Branch of XYZ Bank, a bank which has adopted CBS. The fixed deposits mature on 28.2.20XX.

(iii) On 1.4.20XX, Mr. Rajesh, aged 35 years, started a 1-year recurring deposit of ₹ 80,000 per month@8% p.a. with PQR Bank. The recurring deposit matures on 31.3.20XX.

Answer: -

(i) ABC Co-operative Bank has to deduct tax at source@10% on the interest of ₹ 45,000 (9% × ₹ 10 lakh × ½) under section 194A. The tax deductible at source under section 194A from such interest is, therefore, ₹ 4,500.

(ii) XYZ Bank has to deduct tax at source@10% under section 194A, since the aggregate interest on fixed deposit with the three branches of the bank is ₹ 60,750 [₹ 3,00,000 × 3 × 9% × 9/12], which exceeds the threshold limit of ₹ 40,000. Since XYZ Bank has adopted CBS, the aggregate interest credited/paid by all branches has to be considered. Since the aggregate interest of ₹ 60,750 exceeds the threshold limit of ₹ 40,000, tax has to be deducted@10% under section 194A.

(iii) Tax has to be deducted under section 194A by PQR Bank on the interest of ₹ 41,600 falling due on recurring deposit on 31.3.20XX to Mr. Rajesh, since – (1) "recurring deposit" is included in the definition of "time deposit"; and (2) such interest exceeds the threshold limit of ₹ 40,000

Question No. 22.

Registrar General of Hon'ble High Court of Delhi has made a fixed deposit of ₹ 100 lakhs with a nationalised bank out of money deposited by litigants on directions of the Court. Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of High Court? (EXAM – NOV, 23) (MAY 2019)

ANSWER: -

- The expression "payee" u/s 194A would mean the recipient of income whose account is maintained by the person paying interest. The Registrar General is neither recipient of the amount credited to his account nor to interest accruing thereon.

- Therefore, he cannot be considered as a 'payee' for the purposes of section 194A. In the absence of a payee, the machinery provisions for deduction of tax to his credit are ineffective. The interest on FDRs made in the name of Registrar General of the Court would, thus, not be subjected to TDS under section 194A.

194-DA

Question No. 23.

(i) Mr. X, a resident, is due to receive ₹ 4.50 lakhs on 31.3.20XX, towards maturity proceeds of LIC policy taken on 1.4.2021, for which the sum assured is ₹ 4 lakhs and the annual premium is ₹ 1,10,000.

(ii) Mr. Y, a resident, is due to receive ₹ 3.25 lakhs on 31.3.20XX on LIC policy taken on 31.3.2012, for which the sum assured is ₹ 3 lakhs and the annual premium is ₹ 35,000.

(iii) Mr. Z, a resident, is due to receive ₹ 95,000 on 1.8.20XX towards maturity proceeds of LIC policy taken on 1.8.2014 for which the sum assured is ₹ 90,000 and the annual premium is ₹ 12,000.

Answer: -

(i) Since the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, the maturity proceeds of ₹ 4.50 lakhs due on 31.3.20XX are not exempt under section 10(10D) in the hands of Mr. X. Therefore, tax is required to be deducted @2% under section 194DA on the amount of income comprised therein i.e., on ₹ 1,20,000 (₹ 4,50,000, being maturity proceeds - ₹ 3,30,000, being the entire amount of insurance premium paid).

(ii) Since the annual premium is less than 20% of sum assured in respect of a policy taken before 1.4.2012, the sum of ₹ 3.25 lakhs due to Mr. Y would be exempt under section 10(10D) in his hands. Hence, no tax is required to be deducted at source under section 194DA on such sum payable to Mr. Y.

(iii) Even though the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, and consequently, the maturity proceeds of ₹ 95,000 due on 1.8.20XX would not be exempt under section 10(10D) in the hands of Mr. Z, the tax deduction provisions under section 194DA are not attracted since the maturity proceeds are less than ₹ 1 lakh.

194-IA

Question No. 24.

Param Construction Ltd. sells a flat to Mr. Mani for ₹ 48 lakhs on 15-01-20XX. The agreement to sell provides that in addition, Mr. Mani has to pay maintenance charges (of ₹ 5,000 per month) for 24 months in advance ₹ 2,00,000 for car parking to be used exclusively by him and ₹ 1,00,000 for club membership fees to Param Construction Ltd. before the flat is registered in the name of Mr. Mani. The flat is registered on 30-03-20XX.

Answer: -

- Section 194-IA requires deduction of tax @ 1% by every transferee responsible for paying any sum as consideration or Stamp duty value of property, whichever is higher, for transfer of immovable property (land, other than agricultural land, or building or part of building) to a resident transferor.
- Tax is not required to be deducted at source where both the stamp duty value and the total amount of consideration for the transfer of immovable property is less than ₹ 50 lakhs. Consideration for transfer of any immovable property includes, inter alia, club membership fee, car parking fee, maintenance fee, which are incidental to transfer of the immovable property.

- In the present case, since the consideration for transfer of flat by Mr. Mani to Param Construction Ltd. is ₹ 52,20,000 (₹ 48 lakhs + ₹ 1,20,000, being ₹ 5,000 x 24 + ₹ 2 lakhs + ₹ 1 lakh) which is not less than ₹ 50 lakhs, Mr. Mani is required to deduct tax @ 1% on ₹ 52,20,000. Tax deductible by Mr. Mani would be ₹ 52,200.

Question No. 25.

Ms. Roshni sold her house property at Delhi to Ms. Shalini for a consideration of ₹ 60 lakhs on 1.8.20XX. She has purchased the house property on 1.4.20XX for ₹ 36 lakhs. The Stamp duty value of the property on the date of sale i.e., 1.8.20XX is ₹ 82 lakhs. Determine the TDS implications in the hands of Ms. Shalini as per the Income-tax Act, 1961, assuming both Roshni and Shalini are resident individuals. (PAST PAPER MAY 23)

Answer: -

- In the case of transfer of any immovable property and the transferor is a resident, where the consideration or the stamp duty value, whichever is higher, exceeds ₹ 50 lakhs, tax is deductible at source @1%.
- As per section 194-IA, Ms. Shalini, being a resident transferee paying ₹ 60 lakhs to Ms. Roshni, a resident transferor, as consideration for transfer of house property at Delhi, is required to deducted tax at source @1% on ₹ 82 lakhs, being the higher of Stamp duty value of ₹ 82 lakhs or consideration of ₹ 60 lakhs.
- Therefore, tax to be deducted = ₹ 82,00,000 x 1% = ₹ 82,000.

Question No. 26.

Mr. Mandeep Singh, a manufacturer of textile goods, had a turnover of ₹ 12 crores during Financial year 2023-24 and is covered under provisions of section 44AB of Income-tax Act for compulsory audit of Books of Accounts. He purchased a residential house in January 20XX for his personal use for ₹ 5 crores from Mr. Amit and paid a commission@12% of the value of the house to Mr. Pankaj for effecting the deal. The house is not used for business purposes by Mr. Mandeep Singh. (EXAM – NOV, 23)

ANSWER: -

- Section 194-IA is attracted where the consideration for transfer of immovable property and the stamp duty value of such property, are both, is ₹ 50,00,000 or more.
- As per section 194-IA, Mr. Mandeep Singh paying ₹ 5 crores to Mr. Amit, as consideration for transfer of house property, is required to deducted tax at source @1% of consideration or the stamp duty value, whichever is higher. The tax deduction under section 194-IA would be ₹ 5,00,000, being 1% of ₹ 5 crores.
- Since Mr. Mandeep Singh's turnover for the P.Y. 2023-24 exceeded ₹ 1 crore and payment of commission i.e., ₹ 60,00,000 (12% of ₹ 5 crores) exceeds ₹ 15,000, Mr. Mandeep Singh is required to deduct tax under section 194H @2% from commission payment to Mr. Pankaj.
- The tax deduction under section 194H would be ₹ 1,20,000, being 2% of ₹ 60 lakhs.

194-LA

Question No. 27.

₹ 3,00,000 paid on 30-09-20XX as consideration to Mr. B, a resident in India, on account of compulsory acquisition of his residential building acquired for laying railway tracks. (Nov. 2016)

Answer: -

- Under section 194LA, tax has to be deducted @ 10% on any sum paid to a resident in respect of compensation on account of compulsory acquisition of any immovable property (other than agricultural land), where the amount of payment or aggregate amount of such payments during the financial year exceeds ₹ 2,50,000.
- Thus, in the present case, tax is deductible @ 10% on ₹ 3,00,000, being the amount paid to Mr. B, a resident in India, on account of compulsory acquisition of residential building for laying railway tracks i.e ₹ 30,000

194-J

Question No. 28.

Siddharth Hospitals Pvt. Ltd., has recently been accorded recognition by several insurance companies to admit and treat patients on cashless hospitalization basis. Payment to the assessee hospital will be made by Third Party Administrators (TPA) who will process the claims of the patients admitted and make payments to the various hospitals including the assessee. All TPAs are corporate entities. The assessee wants to know whether the TPAs are bound to deduct tax at source under section 194J or under section 194C? (SM)

Answer: -

- This issue has been clarified by the CBDT Circular No.8/2009 dated 24.11.2009. As per provisions of section 194J(1), any person, who is responsible for paying to a resident any sum by way of fees for professional services, shall, at the time of credit of such sum 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, deduct an amount equal to 10% of such sum as TDS.
- Further, as per clause (a) of Explanation to section 194J "professional services" includes services rendered by a person in the course of carrying on medical profession. The services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable on payments made by TPAs to hospitals etc. Further, for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital.
- Therefore, TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including Cashless Schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.
- In view of the above, all such transactions between TPAs and hospitals would fall within the ambit of provisions of section 194J.

Question No. 29.

(1) BCD Ltd. credited ₹ 28,000 towards fees for professional services and ₹ 27,000 towards fees for technical services to the account of HG in its books of account on 6.10.20XX. The total sum of ₹ 55,000 was paid by cheque to HG on 18.12.20XX. (SM)

(2) XYZ Ltd. makes a payment of ₹ 28,000 to Mr. Ganesh on 2.8.20XX towards fees for professional services and another payment of ₹ 25,000 to him on the same date towards fees for technical services. Discuss whether TDS provisions under section 194J are attracted.

(3) East Bengal Club, a renowned football club, has engaged Raghu, a resident in India, as its coach at a remuneration of ₹ 6 lacs per annum. The club wants to know from you whether it is liable to deduct tax at source from such remuneration.

(4) Payment of ₹ 5 lakh made by JCP & Co. to Pingu Events Co. Ltd. for organizing a debate competition on the subject "Preservation of Rural Heritage of Rajasthan". (SM)

(5) Payment of ₹ 5 lacs made to Mr. Phelps who is an athlete by a manufacturer of a swim wear for brand ambassador. (May 2016)

(6) A nationalized bank receiving professional services from a registered society made provisions on 31-03-20XX of an amount of ₹ 25 lacs against the service charges bills to be received. (SM) (May 2016)

Answer: -

(1) The limit of ₹ 30,000 for non-deduction of tax under section 194J would apply separately for fees for professional services and fees for technical services. This means that if a person has rendered services falling under both the categories, tax need not be deducted if the fee for each category does not exceed ₹ 30,000 even though the aggregate of the amounts credited to the account of such person or paid to him for both the categories of services exceed ₹ 30,000. Therefore, BCD Ltd. is not required to deduct tax at source in respect of the fees either at the time of credit or at the time of payment.

(2) TDS provisions under section 194J would not get attracted, since the limit of ₹ 30,000 is applicable for fees for professional services and fees for technical services, separately. It is assumed that there is no other payment to Mr. Ganesh towards fees for professional services and fees for technical services during the P.Y.20XX-XX

(3) Section 194J requires deduction of tax at source @10% from the amount credited or paid by way of fees for professional services, where such amount or aggregate of such amounts credited or paid to a person exceeds ₹30,000 in a financial year. As per Explanation (a) to section 194J, professional services include services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purposes of section 194J.

Accordingly, the CBDT has, vide Notification No.88 dated 21.8.2008, in exercise of the powers conferred by clause (a) of the Explanation to section 194J notified the services rendered by coaches and trainers in relation to sports activities as professional services for the purposes of section 194J. Therefore, the club is liable to deduct tax at source under section 194J from the remuneration payable to the Coach, Raghu.

(4) The services of Event Managers in relation to sports activities alone have been notified by the CBDT as "professional services" for the purpose of section 194J. In this case, payment of ₹ 5 lakh was made to an event management company for organization of a debate competition. Hence, the provisions of section 194J are not attracted.

However, TDS provisions under section 194C relating to contract payments would be attracted and consequently, tax has to be deducted @ 2% under section 194C. The tax deductible under section 194C would be ₹ 10,000, being 2% of ₹ 5 lakh.

(5) Any person responsible for paying to a non-resident sportsman (including an athlete), who is not a citizen of India of income shall be liable to deduct tax at source @20% (plus HEC @ 4%) on payment of ₹ 5,00,000 for advertising services under Section 194E of the Act. In case, if Mr. Phelps is resident tax will be deducted at source under section 194J @ 10% on payment of ₹ 5,00,000.

(6) The nationalized bank receiving professional services from a registered society is liable to deduct tax at source @ 10% on provisions made on 31-03-20XX against the service charges bills to be received. Tax is deducted at source at the time of credit of such income 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. Where any such sum 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 crediting shall

be deemed to be credit of such sum to the account of the payee and the TDS provisions shall apply accordingly.

Question No. 30.

A sum of ₹ 60,000 was paid to Mr. Dastur, an advocate, on 1st July, 20XX towards fees for his professional services without deducting tax at source. Later on, a further sum of ₹ 70,000 was due to him on 28th February, 20XX from which tax of ₹ 13,000 was deducted at source. The tax so deducted was deposited on 25th June, 2025. Compute interest payable by the deductor under section 201(1A).

Answer: -

In this case, tax is deductible@10% under section 194J in respect of fees for professional services. Since there has been a delay in deduction and deposit of tax, interest under section 201(1A) is attracted.

As per the provisions of section 201(1A), if a person who is liable to deduct tax at source fails to deduct tax at source or after deducting such tax, fails to pay the tax as required by the Act, then he is liable to pay interest as follows –

(i) 1% for every month or part of month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually deducted.

(ii) 1½% for every month or part of month on the amount of such tax from the date on which such tax was deducted to the date on which tax is actually paid.

Therefore, in the given case, interest under section 201(1A) would be computed as follows –

1% on tax deductible but not deducted i.e., 1% on ₹6,000 for 8 months – ₹ 480

1½% on tax deducted but not deposited i.e. 1½% on ₹13,000 for 4 months – ₹ 780

Total interest payable under section 201(1A) – ₹ 1260

Question No. 31.

M/s. Sunivesh Investors is engaged in the business of stock broking, depositories, mobilisation of deposits and marketing of public issues. It is a registered member of Bombay Stock Exchange. Every year it makes payment amounting to ₹ 10 lakhs, to the Stock Exchange by way of transaction charges in respect of fully automated online trading facility. This service is available to all members of the stock exchange in respect of every transaction that is entered into. Would it be liable for tax deduction under section 194J? (MAY 2019)

Answer: -

- Under section 194J, TDS is attracted in respect of, inter alia, fees for technical services. Technical services like managerial and consultancy services are in the nature of specialised services made available by the service provider to cater to the special needs of the customer user as may be felt necessary. It is the above feature that distinguishes or identifies a service provider from a facility offered
- However, the service provided by the BSE for which transaction charges are paid does not satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service. Therefore, the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.

- Accordingly, payment of transaction charges of ₹ 10 lakhs by M/s. Sunivesh Investors to BSE in respect of fully automated online trading facility would not be liable for tax deduction at source under section 194J.

Question No. 32.

(i) Mr. Shan an individual, whose turnover from the business carried on by him during the financial year immediately preceding the financial year exceed ₹ 100 lakh, paid fee to an architect of ₹ 50,000 for furnishing his residential house.

(ii) Mr. Soham purchased licensed copy of computer software from the software vendor (resident of India) along with all right to use it for ₹ 50,000 to be used for business purposes. (Nov. 2017)

Answer: -

(i) As per Section 194J, Fees paid to a resident for professional services is liable for TDS @10% where such fees exceed ₹ 30,000 during the financial year. An individual is liable to deduct tax at source if the turnover from the business exceeds ₹ 100 lakhs during the preceding financial year. However, the provisions are not attracted, if the fee is paid exclusively for personal purposes. Since the fee paid is for furnishing of his residential house, it is exclusively for personal purposes. Therefore, Mr. Shan is not required to deduct tax at source on the fees of ₹50,000 paid to an architect for furnishing his residential house.

(ii) Consideration for transfer of all or any right to use of computer software (including granting of a licence) would fall within the meaning of "royalty". Tax deduction at source @ 10% under section 194J would be attracted where the amount of royalty exceeds ₹ 30,000.

However, an individual is not required to deduct tax at source under section 194J on the sum paid by way of royalty, even if it exceeds ₹ 30,000. Therefore, Mr. Soham is not required to deduct tax at source on the amount of ₹ 50,000 paid towards purchase of licensed copy of computer software from the software vendor.

Question No. 33.

Mr. P provides technical consultancy to its various clients who deduct tax u/s 194-J of the Act. Mr. P applies for lower tax deduction certificate u/s 197 from the TDS officer in respect of his receipts from consultancy. During the previous year 20XX-XX, Mr. P was issued the lower tax deduction certificate allowing him to receive the consultancy payments after deduction of tax@1%. Mr. P forwarded this certificate to his client Mr. Q asking him to deduct tax@1% on the payments of ₹ 15 lakhs to be made to Mr. P.

Mr. Q has approached you to advise on the amount of tax to be deducted from the payment to be made to Mr. P. You gathered the information that Mr. P is not filing his ITRs for the last two Assessment years and TDS credit in his 26AS is more than ₹ 1 lakh in each last two years i.e. A.Y. 20XX-XX and 20XX-XX. What would be your advice to Mr. Q? (PAST PAPER, MAY 2023)

Answer: -

- As per section 194J, Mr. Q is required to deduct tax at source @2% on ₹ 15 lakhs in respect of payment for technical consultancy to Mr. P. However, since Mr. P has furnished lower tax deduction certificate issued under section 197 specifying lower rate of 1% to Mr. Q, tax would be deducted at such lower rate of 1%.
- However, as per section 206AB, since Mr. P has not furnished his return of income for A.Y.20XX-XX /A.Y.20XX-XX relevant to the P.Y. 20XX-XX/P.Y.20XX-XX, respectively, and the aggregate of TDS and

TCS in his case is ₹ 1 lakh in the said previous year, which is more than the threshold of ₹ 50,000, Mr. Q is required to deduct tax at source on payment of fees for technical consultancy to Mr. P, at higher of inter alia the following rates –

(i) at twice the rate prescribed in the relevant provisions of the Act i.e., 4% [being twice the rate of 2% applicable under section 194J] [Alternatively, since tax is deductible as per lower tax deduction certificate issued under section 197, rate of 2% may be mentioned in the answer];

(ii) at 5%

- Accordingly, Mr. Q is required to deduct tax at source @5% on ₹ 15 lakhs, being the amount paid as technical consultancy fees.

Note - The above answer is on the basis that receipts from technical consultancy represents fees for technical services attracting TDS@2%. It may be noted that "technical consultancy" is also covered under the definition of "Professional Services" under section 194J. The rate of TDS for Fees for professional services is 10%. If receipts from technical consultancy is treated as fees for professional services, the TDS rate applying section 206AB would be 20%, being the higher of 5% or twice the applicable rate of 10%. This is an alternate view possible since technical consultancy is also included in the definition of "Professional Serv ices" under section 194J.

194-C

Question No. 34.

(1) Max Limited pays ₹ 1,02,000 to Mini Limited, a resident contractor who, under the contract dated 15th October, 20XX, manufactures a product according to specification of Max Limited by using materials purchased from Max Limited. (SM)

(2) T, an individual whose total sales in business during the year ended 31.3.2024 was ₹ 2.20 crores, paid ₹ 9 lacs by cheque on 1.1.20XX to a contractor (an individual), for construction of his factory building. No amount was credited earlier to the account of the contractor in the books of T. (SM)

(3) By virtue of an agreement with a nationalized bank, a catering organization receives a sum of ₹ 50,000 per month towards supply of food, water, snacks etc. during office hours to the employees of the bank. (SM)

(4) ₹ 19,50,000 credited to the account of Digitech Studios (a partnership firm) on 31.03.20XX by BTV, Television channel, towards part consideration for shooting of Tele Episode for 10 weeks as per the storyline, contents and specifications of B-TV channel. (NOV 2018)

(5) Smt. Vijaya paid to Civil engineer of ₹ 5,00,000 for construction of residential house for self-use. (SM)

(6) Ranu Ltd., engaged in manufacturing of paper, pays ₹ 4,00,000 to the head of labour union to be distributed to various workmen as per the work done by them. The AO wants the assessee to deduct tax on such payment under section 194C. Is the action of AO tenable in law? (Nov. 2019-NS)

Answer: -

(1) The definition of "work" under section 194C includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. In the instant case, Mini Limited manufactures the product as per the specification given by Max Limited by using the raw materials purchased from Max Limited. Therefore, it falls within the definition of "work" under section 194C.

Consequently, tax is to be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. If the material component is not mentioned separately in the invoice, tax is to be deducted on the whole of the invoice value.

(2) An individual who's turnover in case of business exceeds Rs.1cr, in case of profession exceeds Rs.50 lacs during preceding PY is liable to deduct tax at source under section 194C for the financial year 20XX-XX in respect of the payment made to contractor exceeding ₹ 30,000 in a single contract and ₹ 1,00,000 in aggregate of contracts during the financial year.

Turnover of the individual T is ₹ 2.20 crores in the financial year 2023-24. Therefore, T is specified assesse.

As the payment during financial year 20XX-XX to the contractor has exceeded the limits prescribed in section 194C, tax has to be deducted under section 194C. The rate of tax deduction is 1% as the contractor is an individual.

(3) The definition of "work" under Explanation to section 194-C includes catering services and therefore, TDS provisions under section 194C are attracted in respect of payments to a caterer. As the payment exceeds ₹ 30,000, the nationalized bank is required to deduct tax at source at 2% on the payments made to catering organization under 194-C. If the catering organization is an individual or HUF, then the tax deduction shall be @1%.

(4) Shooting of Tele Episode for B-TV as per the storyline, contents and specifications of B-TV falls within the scope of "work" under section 194C. Since the amount credited exceeds the specified limit of ₹ 30,000, TDS@2% under section 194C is attracted on ₹ 19,50,000 credited to the account of Digitech Studios, a partnership firm. TDS liability would be ₹ 39,000 [being 2% of ₹19,50,000]

(5) Tax has to be deducted under section 194C in case of payment to resident contractors. The rate of tax is 1% if the payee is an individual or HUF and 2% in case of payees, other than individuals and HUFs.

However, as per section 194C(4), no individual or Hindu undivided family shall be liable to deduct income tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of the Hindu undivided family

In this case, since Smt. Vijaya, an individual, makes payment of ₹ 5 lakh to a civil engineer for construction of residential house for self-use, she is not liable to deduct tax at source under section 194C from such sum.

(6) According to Section 194C, any person responsible for paying any sum to a resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and contractee shall be liable to deduct tax at source@1% where payee is individual if the consideration for the contract exceeds ₹ 30,000.

Thus if the head of labour union is contractor, provisions of Section 194C of the Act is attracted if the said conditions are satisfied.

Question No. 35.

ABC Ltd. makes the following payments to Mr. X, a contractor, for contract work during the P.Y.20XX- XX–

₹ 20,000 on 1.5.20XX

₹ 25,000 on 1.8.20XX

₹ 28,000 on 1.12.20XX

On 1.3.20XX, a payment of ₹ 30,000 is due to Mr. X on account of a contract work. Discuss whether ABC Ltd. is liable to deduct tax at source under section 194C from payments made to Mr. X.

Answer: -

In this case, the individual contract payments made to Mr. X does not exceed ₹ 30,000. However, since the aggregate amount paid to Mr. X during the P.Y.20XX-XX exceeds ₹ 1,00,000 (on account of the last payment of ₹30,000, due on 1.3.20XX, taking the total from ₹ 73,000 to ₹ 1,03,000), the TDS provisions under section 194C would get attracted. Tax has to be deducted@1% on the entire amount of ₹ 1,03,000 from the last payment of ₹30,000 and the balance of ₹ 28,970 (i.e., ₹ 30,000 – ₹ 1,030) has to be paid to Mr. X.

Question No. 36.

Harathi Cements Ltd. purchased jute bags from Raj Kumar & Co. The latter has to supply the jute bags with the logo and address of the assessee, printed on it. From 01.09.20XX to 20.03.20XX, the value of jute bags supplied is ₹8,00,000, for which the invoice has been raised on 20.03.20XX. While effecting the payment for the same, is the assessee bound to deduct tax at source, assuming that the value of the printing component involved is ₹ 1,10,000. You are informed that the assessee has not sold any material to Raj Kumar & Co. and that the latter has to manufacture the jute bags in its plant using raw materials purchased by it from outsiders.

Answer: -

- As per the definition under section 194C, "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer. This is regardless of the quantum of expenditure incurred towards printing or processing comprised in the bill amount.
- The problem clearly states that Raj Kumar & Co. has to manufacture the jute bags using raw materials purchased from outsiders and that the assessee Bharathi Cements Ltd has not sold any material to them. Therefore, in this case, it is a contract of sale.
- Hence, the provisions of section 194C are not attracted and no liability to deduct tax at source would arise

Question No. 37.

Deer Co Ltd. engaged in the business of manufacture of furniture items on contract basis. It sub-contracted the production of cushion for the chairs to M/s Lion & Co., a sole proprietary concern. The sub-contractor M/s. Lion & Co. procured the raw materials for production of cushions, performed further labour works and supplied the same to Deer Co. Ltd. It raised its bill on Deer Co. Ltd., showing the cost of raw materials ₹ 4,00,000 and labour charges ₹1,50,000 separately. Explain briefly the tax deduction requirement in the hands of Deer Co. Ltd. (May 2019-NS)

Answer: -

- As per the definition under section 194C, "work" does 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 associate of such customer. This is regardless of the quantum of expenditure incurred towards processing comprised in the bill amount.
- The problem clearly states that M/s. Lion & Co. has manufactured cushions for chairs by procuring raw materials for production of cushions. Deer Company Ltd has not sold any material to them. Therefore, in this case, it is a contract of sale. Hence, the provisions of section 194C are not attracted and no liability to deduct tax at source would arise.

Question No. 38.

M/s. Avtar Limited entered in to an agreement for the warehousing of its products with ABC Warehousing and deducted tax at source as par the provision of section 194C out warehousing charges paid during the year ended on 31-03-20XX. The A.O. while completing the assessment for Assessment year 20XX-XX of Avtar a Limited, asked the company by treating the warehousing charges as rent, as defined in section 194-I and to make payment of difference amount of TDS with interest. It was submitting by the company that the recipient had already paid tax on the entire amount of warehousing charges and therefor, now the difference amount of TDS be not recovered. However, it was prepared to make the payment of due interest of deference amount TDS Examine critically the correctness of the action or the treatment given. (May 2017)

Answer: -

- The payer (including the principal officer of the company) who fails to deduct the whole or any part of the tax on the amount credited or payment made to a resident payee shall not be deemed to be an assessee in default in respect of such tax if such resident payee has included the warehouse charges in its return of income and paid tax thereon.
- However, Avtar Ltd. has to pay interest i.e., @1% p.m. or part of month, from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee i.e. ABC Warehousing.

Question No. 39.

Discuss the liability of TDS provisions in the following independent cases:

(i) X Ltd. is a producer of natural gas. During the year, it sold natural gas worth ₹ 20,50,000 to M/s. Hawa Co., a partnership firm. It also incurred ₹ 2,00,000 as freight for the transportation of gas. It raised the invoice and clearly bifurcated the value of gas as well as the transportation charges.

(ii) Beta Ltd, gave a contract to Alpha Ltd. for the supply of 2000 pens on which the logo of Beta Ltd. was printed. The raw materials were purchased by Alpha Ltd. from C Ltd., which is not related to Beta Ltd. The consideration paid for the pens was ₹ 1,50,000.

(iii) M/s. Taba Ltd. enters into a contract with Mr. Babu for the transportation of its products from its plant to warehouses. It pays a lump-sum amount of ₹ 2,50,000 to Mr. Babu for the year at the year end. Mr. Babu is engaged in the business of plying goods carriages on hire. Mr. Babu is not an assessee under Income-tax Act and thus did not provide PAN to Taba Ltd.
(May 2019-OS)

Answer: -

(i) TDS u/s 194C is attracted on any sum payable to a resident contractor for carrying out any work. Since X Ltd., the producer of natural gas sells as well as transports the gas to the purchaser, M/s. Hawa Co., a partnership firm, till the point of delivery, where the ownership of gas 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. Therefore, in such circumstances, TDS provisions under section 194C are not applicable on the component of Gas Transportation Charges payable by M/s. Hawa Co. to X Ltd. Consequently, there is no liability to deduct tax at source under section 194C in this case.

(ii) TDS u/s 194C is attracted on any sum payable to a resident contractor for carrying out any work. However, "work" 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 associate of such customer. In this case, since Alpha Ltd. has to supply pens to Beta Ltd. by using materials purchased from C Ltd., the contract for supply of pens is a 'contract for sale' and not a works contract. Consequently, there is no liability to deduct tax at source under section 194C in this case.

(iii) Tax is not required to be deducted at source under section 194C from the sum credited or paid to the account of a contractor, during the course of the business of plying, hiring or leasing goods carriages, if he furnishes his PAN to the deductor.

In this case, since Mr. Babu has not furnished his PAN to M/s. Taba Ltd., M/s. Taba Ltd. has to deduct tax at source @ 20% as per section 206AA on lumpsum payment of ₹ 2,50,000 to Mr. Babu, since the same exceeds the aggregate threshold of ₹ 1,00,000.

Question No. 40.

The assessee firm M/s. Karishma Transport Services entered into contract with a cement company for transporting cement to various places in India for a yearly contract exceeding 10 crores. As the assessee did not have transport vehicles of its own, it engaged the services of other transporters for the said purpose. The cement company effected payments to the assessee towards transportation charges after deduction of tax at source. In its return of income, the assessee showed the income arising out of the business of transport contracts. While making payment to truck operators or owners, the assessee had not deducted tax at source. The Assessing Officer has disallowed 30% of the expenditure for non-deduction of tax as it exceeded the threshold limit specified under the Income tax Act. Is the contention of Assessing Officer valid? (Dec. 2021)

Answer: -

- Section 194C requires deduction of tax at source in case of payments to resident contractors/sub-contractors, where the individual payment exceeds ₹ 30,000 or the aggregate payments to residents during the year exceed ₹ 1 lakh.

  Where the tax required to be deducted at source has not been deducted or after deduction, has not been paid within the stipulated time, then disallowance u/s 40(a)(ia) is attracted, at 30% of the expenditure in the form of payments made to the residents.
- The nature of the contract entered into by the assessee-firm, with the cement company makes it clear that it was the responsibility of the assessee-firm to transport the cement of the company; and how to accomplish this task of transportation was a matter exclusively within the domain of the assessee-firm.
- When any truck got engaged for the purpose of execution of the work undertaken by the assessee-firm and freight charges were payable to its operator or owner upon execution of the work, i.e., transportation of the goods, all the essentials of a contract existed; and the truck operator or owner became a sub-contractor.
- In this case, the assessee-firm was not acting as a facilitator or intermediary between the cement company and the truck operators or owners because those two parties had no privity of contract between them. The contract of the company for transportation of its goods was only with the assessee-firm and it was the assessee-firm who hired the services of the trucks. The payment made by the assessee-firm to such transporter was clearly a payment made to a sub-contractor.

- Therefore, section 194C was applicable and the assessee-firm was under obligation to deduct tax at source in relation to the payments made by it to the truck operators or owners for hiring the vehicles for the purpose of its business of transportation of goods, if the payment exceeded the individual threshold limit of ₹30,000/aggregate threshold limit of ₹ 1 lakh specified thereunder.
- The action of the Assessing Officer in disallowing 30% of the expenditure for non-deduction of tax as it exceeded the threshold limit, is correct.

Note: The facts given in the question are similar to the facts in Shree Choudhary Transport Co. v. ITO [2020] 426 ITR 289, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.

It may be noted that sect ion 194C provides that no tax is deductible at source where transport charges are made to a contractor/sub-contractor, who owns ten or less goods carriages at any time during the previous year 20XX-XX, and have furnished a declaration to this effect along with their PAN. If the transporters satisfy these conditions stipulated u/s 194C, the action of the Assessing Officer would be incorrect.

194-M & 194-N

Question No. 41.

M/s Kashdash (P) Ltd. an Indian company in the business of event management throughout India with draws ₹ 10 lakhs in cash on 7th day of each month during the financial year 20XX-XX from its current account with Union Bank, for local payments and for payment of wages and incentives to temporary employees engaged by it for different events. It did not made any single payment of ₹ 10,000 or more to any person in a day. Examine the liability for tax deduction at source in the present case.

Answer: -

- Section 194N provides that every person, including, inter alia, a banking company, who is responsible for paying, in cash, any sum or aggregate of sums exceeding ₹ 1 crore during the previous year to any person from one or more accounts maintained by such recipient-person with it, shall deduct tax at source @ 2% of sum exceeding ₹ 1 crore.
- In the present case, M/s. Kashdash (P) Ltd. an Indian company has withdrawn ₹ 10,00,000 in cash on 7th of each month from the current account with Union Bank, which is totaling to ₹ 1.20 crores in aggregate during the previous year 20XX-XX.
- Thus, Union Bank is required deducted tax at source of ₹ 40,000 [i.e., 2% of ₹ 20 lakhs, being the amount exceeding ₹ 1 crore).

Question No. 42.

On 31st December, 20XX, Mr. Nitin, a resident individual whose gross turnover was ₹ 97 lakhs during the preceding previous year, paid ₹ 65 lakhs to Mr. Basant, a resident individual, as contract payment for repairing his office building.

Answer: -

Since gross turnover was during the preceding previous year does not exceed ₹1 Cr, TDS provisions u/s 194C are not attracted in respect of payment made in the P.Y. 20XX-XX to Mr. Basant, a resident individual for repairing his office building. However, tax is required to be deducted at source @ 2% under section 194M, on the payment of ₹ 65,00,000 since such amount exceeds ₹ 50 lakhs.

194-O

Question No. 43.

Mr. Z, a resident individual, starts a new business on 01-11-20XX for sale of unique T-shirts. He obtained a valid PAN in his name and registers himself on ABC.com (a Singapore based website), an e-commerce operator, for sale of his products in India.

Mr. Z sold goods worth ₹ 60 lakhs through ABC.com upto 31-03-20XX. E-commerce operator credited the following payments from time to time payable to Mr. Z in its books of accounts.

31-12-20XX	**₹ 20 lakhs**
28-02-20XX	**₹ 15 lakhs**

Full and final payments have been released by ABC.com to Mr. Z on 31-03-20XX after deducting a commission of 10% on gross sale proceeds.

Mr. Z received ₹ 10,00,000 directly in his bank out of above ₹ 60 lakhs through Paytm wallet directly connected by ABC.com to the account of Mr. Z. Discuss the TDS provisions applicable on the above transactions along with the date and amount of tax deductible. (Dec. 2021)

Answer: -

- As per section 194-O, ABC.com, an e-commerce operator is required to deduct tax @ 0.1% on the gross amount of sale of goods (T-shirts, in the present case) of Mr. Z, a resident individual, an e-commerce participant, since such sale of goods is facilitated by ABC.com through its digital or electronic facility or platform.
- ABC.com is required to deduct tax at the time of credit of such sum or payment, whichever is earlier. Any payment received directly by Mr. Z for the sale of goods, facilitated by ABC.com, would be deemed to be amount credited or paid by ABC.com to Mr. Z.
- Accordingly, ABC.com is required to deduct tax of ₹ 2,000 (0.1% × ₹ 20,00,000) and ₹ 1,500 (0.1% × ₹ 15,00,000) on 31-12-20XX and on 28-02-20XX, respectively, being the dates on which such amounts were credited in books of account of ABC.com, since the date of credit is earlier than the date of payment in these two cases.
- ABC.com is also required to deduct tax of ₹ 1,000 (0.1% of ₹ 10,00,000 being the amount received by Mr. Z directly in his bank).
- On 31-3-20XX, ABC.com is also required to deduct tax of ₹ 1,500 (0.1% of ₹ 15,00,000), being the amount of full and final payment made on 31-3-20XX.

194-P

Question No. 44.

In respect of the following independent case scenarios, you are required to discuss the provisions related to tax deducted/collected at source and amount of tax deductible for the year ended 31st March 20XX.

(i) Mr. Rajat aged 79 years, a retired resident individual, maintains a savings bank account (S) and a fixed deposit account (F) with ABC Bank, Delhi. He provides the following details to ABC Bank in respect of financial year 20XX-XX:

Interest on (S)	**₹ 75,100**
Pension from employer (received in savings account (S)	**₹ 55,000 per month**
Interest from fixed deposit account (F)	**₹ 1,20,000**

He does not have any other income during the financial year 2023-24. Assume that Mr. Rajat opt out of default scheme.

Answer: -

(i) Mr. Rajat is a specified person as per section 194P as he is of age of 79 years, having pension income and only interest on fixed deposit with ABC Bank. His pension income is also received in savings bank with ABC Bank. As per section 194P, ABC Bank (specified bank) is required to deduct tax at source on the basis of rates in force on the total income of Mr. Rajat for A.Y. 20XX-XX, computed after giving effect to –

- deduction allowable under Chapter VI-A; and
- rebate allowable under section 87A

Particulars	₹	₹
Pension (₹ 55,000 x 12)	6,60,000	
Less: Standard deduction u/ s 16(ia)	50,000	6,10,000
Interest on fixed deposit	1,20,000	
Interest on Saving bank account	75,100	1,95,100
Gross Total Income		8,05,100
Deduction u/s 80TTB [Interest on fixed deposit and savings account, restricted to ₹50,000, since Mr. Rajat is a resident Indian of the age of 79 years]		50,000
Total Income		7,55,100
Tax to be deducted by the specified bank i.e., ABC Bank [20% x ₹ 2,55,100 (₹ 7,55,100 - ₹ 5,00,000) + ₹ 10,000 (being 5% of ₹ 2,00,000)] plus HEC @ 4%		63,461

194-Q

Question No. 45.

Mr. Gupta, a resident Indian, is in retail business and his turnover for F.Y.2022-23 was ₹ 12 crores. He regularly purchases goods from another resident, Mr. Agarwal, a wholesaler, and the aggregate payments during the F.Y.20XX-XX was ₹ 95 lakhs (₹ 20 lakh on 1.6.20XX, ₹ 25 lakh on 12.8.20XX, ₹ 22 lakh on 23.11.20XX and ₹ 28 lakh on 25.3.20XX).

Assume that the said amounts were credited to Mr. Agarwal's account in the books of Mr. Gupta on the same date. Mr. Agarwal's turnover for F.Y.2022- 23 was ₹ 15 crores.

(i) Based on the above facts, examine the TDS/TCS implications, if any, under the Income-tax Act, 1961.

(ii) Would your answer be different if Mr. Gupta's turnover for F.Y.2022-23 was ₹ 8 crores, all other facts remaining the same?

(iii) Would your answer to (1) and (2) change, if PAN has not been furnished by the buyer or seller, as required (RTP Nov-22)

Answer: -

1. Since Mr. Gupta's turnover for F.Y.2022-23 exceeds Rs.10 crores, and Aggregate payments made by him to Mr. Agarwal, a resident seller exceed Rs.50 lakhs, tax is to be deducted u/s 194Q on the payments made on 23.11.20XX and 25.3.20XX

Tax of ₹ 1,700 (i.e., 0.1% of ₹ 17 lakhs) has to be deducted u/s 194Q from the payment/credits of ₹ 22 lakh on 23.11.20XX

Tax of Rs.2,800 (i.e., 0.1% of ₹ 28 lakhs) has to be deducted u/s 194Q from the payment/credit of ₹ 28 lakhs on 25.3.20XX.

Note - In this case, since both section 194Q and 2O6C(1H). applies, tax has to be deducted u/s 194Q.

2. If Mr. Gupta's turnover for the F.Y.2022-23 was only Rs.8 crores, TDS provisions under section 194Q would not be attracted. However, TCS provisions under section 2O6C(1H) would be attracted in the hands of Mr. Agarwal since his turnover exceeds ₹ 10 crores in the F.Y.2022-23 and his receipts from Mr. Gupta exceed Rs.50 lakhs.

   Tax is to be collected u/s 2O6C(1H) since the aggregate receipts exceeded the threshold of Rs.50 lakhs

   Tax of Rs.1,700 (i.e., 0.1% of Rs.17 lakhs) has to be collected u/s 2O6C(1H) on 23.11.20XX (Rs.22 lakh - Rs.5 lakhs, being the balance unexhausted threshold limit). Tax of Rs.2,800 (i.e., 0.1% of Rs.28 lakhs) has to be collected u/s 2O6C(1H) on 25.3.2023.

3. In case (1), if PAN is not furnished by Mr. Agarwal to Mr. Gupta, then, Mr. Gupta has to deduct tax @5%, instead of 0.1%. Accordingly, tax of Rs.85,000 (i.e., 5% of ₹ 17 lakhs) and Rs.1,40,000 (5% of Rs.28 lakhs) has to be deducted by Mr. Gupta u/s 194Q on 23,11.20XX and 25.3.20XX, respectively

   In case (2), if PAN is not furnished by Mr. Gupta to Mr. Agarwal, then, Mr. Agarwal has to collect tax @ 1% instead of 0.1%. Accordingly, tax of ₹ 17,000 (i.e., 1% of Rs.17 lakhs) and Rs.28,000 (1% of Rs.28 lakhs) has to be collected by Mr. Agarwal u/s 2O6C(1H) on 23.11.20XX and 25.3.20XX, respectively

Question No. 46.

Delta Ltd., an Indian company, which was incorporated on 1.4.20XX purchases coal from Phi Ltd., another Indian company, for ₹ 75 lakhs during the P.Y.20XX-XX, to manufacture steel. Delta Ltd. furnishes a declaration that such coal is used to manufacture steel and not for trading. What are the TCS/TDS implications on such transaction, if Delta Ltd.'s turnover was ₹12 crores in the P.Y.20XX-XX; and Phi Ltd.'s annual turnover ranges between ₹ 16 crores and ₹18 crores in the last few years?

Would your answer change if Delta Ltd. was incorporated on 1.4.2023 and its turnover in the P.Y.2023-24 is ₹ 10 crores? (RTP, NOV 2023)

Answer: -

- As per section 206C(1A), since Delta Ltd., a resident buyer, has furnished a declaration that coal is used for manufacturing steel and not for trading, Phi Ltd. is not required to collect tax at source under section 206C(1). In case of goods covered under section 206C(1) but exempted under section 206C(1A), tax would not be collectible under section 206C(1H). However, section 194Q will apply in such cases covered under section 206C(1A) and the buyer would be liable to deduct tax under section 194Q, if the conditions specified therein are fulfilled.
- However, for the provisions of section 194Q to be attracted, a buyer is required to have total sales or gross receipts or turnover from the business carried on by it exceeding ₹ 10 crores during the financial year immediately preceding the financial year in which the purchase of goods is carried out. The CBDT has, vide Circular No. 13/2021, dated 30.6.2021, clarified that since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q shall not apply in the year of

incorporation. Since Delta Ltd. is incorporated in the P.Y. 20XX-XX, it would not qualify as a "buyer" for the purpose of section 194Q for the said previous year, inspite its turnover exceeding ₹ 10 crores in the current previous year.

- Thus, the transaction would neither attract TDS u/s 194Q nor TCS u/s 206C.
- The answer would not change even if Delta Ltd. was incorporated on 1.4.2023 and its turnover in the P.Y.2023-24 is ₹ 10 crores, since the said turnover does not exceed ₹ 10 crores.

TCS

Question No. 47. ***Sec 206C(1)***

A partnership firm making sales of timber in September 20XX which was procured and obtained under a forest lease. (MAY 2016) (SM)

Answer: -

- Partnership firm selling timber obtained under forest lease TCS 2.5%.
- As per section 206C(1), tax has to be collected at source @ 2.5% by the partnership firm, being a seller, 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, whichever is earlier.

Question No. 48. ***Sec 206C(1C)***

State Government of Telangana grants a lease of coal mine to M/s XYZ Co. Ltd. on 01-09-20XX and charged ₹ 10 crores for the lease. M/s XYZ Co. Ltd. sold coal for ₹ 1 crore to M/s AB (P) Ltd. during the previous year 20XX-XX. The turnover of M/s XYZ Co. and M/s AB (P) Ltd. for the financial year 2022-23 amounted to ₹ 5 crores and ₹ 6 crores, respectively. (May 2022) (MTP APRIL 24)

Answer: -

State Government is required to collect tax at source @ 2% u/s 2O6C(1C) on ₹ 10 crores, being the charges for lease of coal mine.

TCS = 2% x ₹ 10 crores = ₹ 20,00,000

M/s XYZ Co. Ltd. is required to collect tax at source @1% u/s 206C(l) on sale of coal to M/s AB (P) Ltd.

TCS = 1% of ₹ 1 crore = ₹ 1,00,000.

Question No. 49. ***Sec 206C(1)***

M/s. PMPC, a partnership firm, is engaged in the manufacture of cardboard carton boxes used in packaging industry. During the year it has sold cutting waste generated amounting to ₹ 30 lakhs to M/s. PAPC Ltd., a paper manufacturing company. It uses such cutting waste purchased as raw material for its production. Discuss the implication of this transaction with respect to the collected at source. (May 2019-NS)

Answer: -

- As per section 206C(l), a seller of, inter alia, scrap is required to collect tax @ 1% from the buyer. Scrap means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons.
- However, tax is not required to be collected at source if the resident buyer furnishes to the person responsible for collecting tax, a declaration in the prescribed form that such scrap is to be utilised for the purposes of, inter alia, manufacturing.

- Thus, no tax is required to be collected at source by M/s. PMPC, the seller, on sale of scrap to M/s. PAPC, if M/s. PAPC furnishes to M/s. PMPC, a declaration in the prescribed form that such scrap is to be utilised as raw material for production of paper.

Question No. 50. ***Sec 206C(1G)***

Mr. Ron took a loan of ₹ 10 lakhs from his employer, Thomas Private Limited, an Indian domestic manufacturing company for sponsoring studies of his son in Germany. Out of the said loan, he remitted ₹ 8,75,000 towards fees to the University in Germany for his son's education on 01.10.20XX. He also remitted to his son an amount of ₹ 4,75,000 for pursuing higher studies in Germany towards his out-of-pocket expenses on 20.02.20XX. Both the remittances were made through the same authorized dealer under the Liberalized Remittance Scheme of RBI. (EXAM – NOV, 23)

ANSWER: -

- Tax would be collectible at source under section 206C(1G) by the authorised dealer, who received an amount, under the Liberalised Remittance Scheme of the RBI, for overseas remittance from Mr. Ron at the rate of 5% of the sum exceeding ₹ 7 lakhs.
- Tax of ₹ 8,750 (5% of ₹ 1,75,000, being the sum exceeding ₹ 7 lakhs) would be collectible by the authorised dealer on 1.10.20XX on remittance of ₹ 8,75,000 for education of his son out of the loan from his employer. The concessional rate of TCS of 0.5% would not be applicable, since the amount of remittance is not out of a loan obtained from any financial institution as referred under section 80E.
- Tax of ₹ 23,750 (5% of ₹ 4,75,000) would be collectible by the authorised dealer on 20.2.20XX on remittances of ₹ 4,75,000 for education of his son for out-of-pocket expenses.

Question No. 51. ***Sec 206C(1)***

Tulsi Private Ltd., a company engaged in ship breaking activity, sold some old and used plates, wood etc., in respect of which it did not collect tax from the buyer. The company claimed that such items are usable as such. Hence, these are not 'scrap' to attract the provisions for collection of tax at source. The Assessing Officer treated such items in the nature of 'scrap' and raised a demand u/s 201(1) and interest u/s 2O1(1A).

It the action of the Assessing Officer in treating such items as 'scrap' tenable in law? Discuss. (Nov. 2018-NS)

Answer: -

- According to section 206C, every seller shall collect tax at source @ 1% in case of sale of scrap from the buyer at the time of debiting of the amount payable by the buyer to the account of the buyer; or receipt of such amount from the buyer in cash or by cheque or draft or any other mode, whichever is earlier.
- "Scrap" means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons.
- The facts of the case are similar to CIT v. Priya Blue Industries (P) Ltd. [2016] 381 ITR 210 (Guj). The Commissioner (Appeals) observed that the assessee was engaged in ship breaking activity and the products obtained from the activity were finished products which constituted sizable chunk of production done by the ship breakers. The Commissioner (Appeals) agreed with the assessee that such products though commercially known as 'scrap' were definitely not "waste and scrap". He

further agreed with the contention of the assessee that the items in question were usable as such and, therefore, do not fall within the definition of "scrap" as given in clause (b) of Exp. to section 206C(1). The Tribunal observed 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 concurred with the views of the Tribunal and held that any material which is usable as such would not fall within the ambit of the expression 'scrap' as defined in clause (b) of the Explanation to section 206C.
- Thus, in the present case there will be no liability on the buyer to collect tax at source. Thus, the action of the Assessing Officer in treating such items as 'scrap' is not tenable in law.

Question No. 52. ***Sec 206C(1C)***

KLS Ltd. gives a multilevel parking building in front of a shopping mall in Delhi to PQR Ltd. on a lease of 90 years. PQR Ltd. is liable to pay ₹ 3 crores as one time lease premium in addition to an annual lease rent of ₹ 26 lakhs. What will be the TDS/TCS liability in the hands of KLS Ltd. as well as in the hand of PQR Ltd.? What will be your answer if PQR Ltd. does not have PAN?

Answer: -

- Section 206C(1C) provides for collection of tax by every person who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest in any parking lot to another person (other than a public sector company) for the use of such parking lot for the purposes of business. The tax shall be collected as provided, from the licensee or lessee of any such licence, contract or lease of the specified nature, at the rate of 2%. Thus, KLS Ltd. has to collect tax at source on ₹ 3 crores and on annual lease of ₹ 26 lakhs @ 2%. As per Section 206C(1C), in case PQR Ltd. does not have PAN, tax is to be collected at source at the higher of the following rates –
  (a) at the twice the rate mentioned in the relevant section under Chapter XVII-BB; or
  (b) at the rate of 5%.
- Thus, in such case tax will be collected at source @ 5%.
- According to Section 194I, any person who is responsible for paying to a resident any income by way of rent shall deduct income tax at the rate of @ 10% in respect of rent for use of any land or building, including factory building, or land appurtenant to a building, including factory building or furniture or fixtures).
- However, vide Circular No. 35/ 2016 dated 13-10-2016, it has been clarified that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I of the Act. Therefore, no tax shall be deducted at source for one time lease premium amounting ₹ 3 crore.
- Thus, PQR Ltd. will be required to deduct tax at source @ 10% on annual lease premium of ₹ 26 lakhs = ₹ 2.6 lakhs.

Question No. 53. ***Sec 206C(1F)***

Raghav Motors Ltd., Ludhiana, is a dealer in cars of Ford and Maruti Cars and also runs a service station. The sale of cars of Raghav Motors Ltd. for F.Y. 2022-23 is ₹ 9.80 crores. The sale of spare parts and service station is ₹ 60 lakhs for F.Y. 2022-23.

M/s. Om Ltd., dealing in textile manufacturing, bought following cars from Raghav Motors Ltd. during F.Y. 20XX-XX for business purposes:

Model of Car	Date of Invoice	Value of Car in ₹ in Lakhs
Maruti	**14-07-20XX**	**37 lakhs**
Maruti	**12-08-20XX**	**19 lakhs**
Ford	**18-10-20XX**	**8 lakhs**
Maruti	**05-11-20XX**	**12 lakhs**

The payment against each invoice was made on the date of invoice itself.

You are required to calculate the amount of TCS applicable, if any, to be collected by Raghav Motors Ltd. as per the relevant provisions of section 206C. (Dec. 2021) (May 2018)

Answer: -

- As per section 2O6C(1F), Raghav Motors Ltd., a seller is required to collect tax at source @1% of the sale consideration received from M/s. Om Ltd., a buyer, on sale of motor vehicle of the value exceeding ₹ 10 lakhs. Accordingly, Raghav Motors Ltd. is required to collect tax at source u/s 2O6C(1F) on the following dates –

  ₹ 37,000 [1 % on ₹ 37,00,000] on 14-7-20XX

  ₹ 19,000 [1 % on ₹ 19,00,000] on 12-8-20XX

  ₹ 12,000 [1% on ₹ 12,00,000] on 5-11-20XX

  Total amount of TCS is ₹ 68,000.
- In all three cases mentioned above, the payment was received on the date of sale of Maruti cars, hence, the tax has to be collected on the respective dates of sale mentioned above.
- In respect of Ford car, the value of which is ₹ 8,00,000, tax is not required to be collected under section 2O6C(1F), since its value does not exceed ₹ 10,00,000.
- Further, as regards receipt of sale consideration of ₹ 8 lakh in respect of Ford car, there are two views as to whether TCS provisions under section 2O6C(1H) would be attracted.
- Since sale consideration of ₹ 8 lakh in respect of Ford car on 18-10-20XX is the only receipt of Raghav Motors Ltd. which is excluded from the purview of TCS u/s 2O6C(1F), and this receipt does not exceed the annual threshold of ₹ 50 lakhs, a view can be taken that no tax is required to be collected at source u/s 206C(1H).
- Alternative view in respect of TCS u/s 2O6C(1H)

  Since the receipt of sale consideration for all vehicles (including the sale consideration of Maruti cars in respect of which TCS u/s 2O6C(1F) is attracted) exceeds ₹ 50 lakhs during the previous year 20XX-XX and the total sales of Raghav Motors Ltd. from the business carried on by it exceed ₹ 10 crores (₹ 10.40 crores i.e., ₹ 9.80 crores + ₹ 0.60 crores) during the financial year 2022-23, a view can be taken that tax is to be collected at source @ 0.1% of ₹ 8 lakh u/s 2O6C(1H), amounting to ₹ 800, at the time of receipt of consideration i.e., on 18-10-20XX. In such case, TCS liability will be ₹ 68,000 + ₹ 800 = ₹ 68,800. *[206(1F) will Prevail over 206C(1H)]*

Question No. 54. ***Sec 206C(1F)***

Amin Co. (P) Ltd. is a dealer of motor cars manufactured by Zeet Ltd. Amin Co. (P) Ltd. paid through banking channel ₹ 110 lakhs to Zeet Ltd. for purchase of cars in January 2024. Of the total motor cars so purchased, 4 motor cars cost ₹ 11 lakhs each and 7 motor cars are for the balance amount. Decide whether any TDS/TCS provisions will apply. Will your answer be different if Amin Co. (P) Ltd. is not a dealer of motor cars and had acquired the same for the purpose of plying cars on hire? (May 2018)

Answer: -

- Every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ₹ 10 lakhs, shall collect tax from the buyer @ 1% of the sale consideration. However, this provision applies only in respect of transactions of retail sales and does not apply on sale of motor vehicles by manufacturers to dealers.
- Therefore, Zeet Ltd. (P) Ltd. is not required to collect tax at source from Amin Co. (P) Ltd. on receipt of consideration for sale of motor cars.
- However, if Amin Co. (P) Ltd. is not a dealer of motor cars but has acquired the same for the purpose of plying cars on hire, Zeet Ltd. is required to collect tax of ₹ 44,000 [₹ 11,00,000 x 4 x 1%] at source at the time of receipt of sale consideration.

Question No. 55. ***Sec 206C(1)***

During the previous year 20XX-XX, Mr. A purchased scrap of ₹ 55 lakhs from Mr. B for the purpose of his manufacturing unit. Mr. A also furnished a certificate to Mr. B that the scrap shall be utilized for manufacturing process carried on by Mr. A and shall not be used for trading purposes. Mr. A made the payment of ₹ 45 lakhs during F.Y 20XX-XX to Mr. B. Assume turnover of both Mr. A and Mr. B from the business carried on by them exceeds ₹ 10 crores in the financial year 2023-24. Comment upon TDS/ TCS implication in the above case. (MAY 2023)

Answer: -

- By virtue of section 206C(1A), Mr. B is not required to collect tax at source under section 206C(1), since Mr. A has furnished a certificate to Mr. B that the scrap purchased from him is for manufacturing process carried on by him and not for trading purposes.
- However, as clarified vide Circular no. 13/2021 dated 30.6.2021 and Circular No. 20/2021 dated 25.11.2021, TDS under section 194Q will be attracted in the hands of the buyer in such cases covered under section 206C(1A), if the conditions specified under section 194Q are fulfilled.
- In this case, tax is required to be deducted at source under section 194Q by the buyer, Mr. A, since his turnover in the immediately preceding financial year i.e., F.Y.2023-24 exceeds ₹ 10 crores and he has purchased goods of the value or aggregate of such value exceeding ₹ 50 lakhs in the F.Y.20XX-XX. TDS u/s 194Q would be 0.1% of the sum exceeding ₹ 50 lakhs and the same has to be deducted at the time of payment or credit of such sum to the account of resident seller, whichever is earlier.
- Therefore, in the present case, Mr. A is required to deduct tax at source @ 0.1% of ₹ 5,00,000, being the amount exceeding ₹ 50 lakhs (₹ 45,00,000, being the payment made plus ₹ 10 lakhs, being the amount credited to the account of Mr. B).

  Note: It may be noted that section 206C(1H) would not apply where section 194Q is applicable.

Question No. 56. ***Sec 206C(1F)***

Sigma Ltd., a car manufacturer, sold the following cars to the car dealers, Epsilon Ltd. and Omega Ltd., in the P.Y.2022-23-

Dealer	Particulars of cars sold	Value
Epsilon Ltd.	10 cars of the value ₹ 12 lakhs each	₹ 120 lakhs
Omega Ltd.	8 cars of the value of ₹ 10 lakhs each	₹ 80 lakhs

The turnover in the P.Y.20XX-XX of Sigma Ltd. is ₹ 12 crores; Epsilon Ltd. is ₹ 14 crores and Omega Ltd. is ₹ 9 crores. (RTP, NOV 2023)

Answer: -

- The first step is to examine the applicability of section 206C(1F). Section 206C(1F) requiring collection of tax at source@1% by the seller of motor car of value exceeding ₹ 10 lakhs does not, however, apply in case of sale by manufacturer to a dealer.
  Hence, the provisions of section 206C(1F) are not attracted in case of sale of cars by Sigma Ltd., a car manufacturer, to its dealers Epsilon Ltd. and Omega Ltd.
- The second step is to examine whether the provisions of section 194 Q would be attracted in the hands of the dealers, namely, Epsilon Ltd. and Omega Ltd. Since the turnover of Epsilon Ltd. in the P.Y.2022-23 exceeds ₹ 10 crore and the value of cars purchased from Sigma Ltd. in the P.Y.2022-23 exceeds ₹ 50 lakhs, Epsilon Ltd. has to deduct tax@0.1% of ₹ 70 lakhs (i.e., ₹ 120 lakhs – ₹ 50 lakhs), at the time of credit to the account of Sigma Ltd. or at the time of payment, whichever is earlier. However, Omega Ltd. is not required to deduct tax at source under section 194Q, since its turnover in the P.Y.2022-23 does not exceed ₹ 10 crores.
- The third step is to examine whether the provisions of section 206C(1H) would be attracted in the hands of Sigma Ltd. Sigma Ltd.'s turnover for P.Y.2022 -23 exceeds ₹ 10 crores and the value of cars sold to Epsilon Ltd. and Omega Ltd. exceed ₹ 50 lakhs each. Hence, it falls within the meaning of "seller" under section 206C(1H). Accordingly, in respect of sale of cars to Omega Ltd., Sigma Ltd. is required to collect tax@0.1% of ₹ 30 lakhs (i.e., ₹ 80 lakhs – ₹ 50 lakhs) at the time of receipt. However, no tax is to be collected by Sigma Ltd. from Epsilon Ltd., since the transaction has already been subject to TDS u/s 194Q in the hands of Epsilon Ltd.

MIXED

Question No. 57.

Syed & Co, a dealer in motor cycles conducted motor cycle race the occasion of its 25th year anniversary. The prize was given to first 3 winners by way of a luxury motor cycle which was worth ₹ 2 lakhs each. The assessee did not deduct tax at source on the prize given to the winners. The Assessing Officer treated the assessee as an assessee in default and passed order under Section 201(1) and 201(1A). The assesset seeks your advise on the validity of the order and other legal consequences. Advise. (May 2018)

Answer: -

- The person responsible for paying to any person any income by way of winnings rot lottery or crossword puzzle, card game and any other game of any sort in an amount exceeding ₹ 10,000 shall deduct tax at source @ 30%.
- However, where the winnings are wholly in kind, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.
  Where any person, who is required to deduct any sum in accordance with the provisions of this Act, does not deduct, or does not pay, or after so deducting fails to pay such tax, then, such person would be deemed to be an assessee in default.
- The facts of the case are similar to CIT v. Hindustan Lever Ltd. [2014] 361 ITR 0001 (Kar.). The Court observed the following:
- On a combined reading of the above provisions, it is possible to infer that, if any such person fails to "deduct" the whole or any part of the tax, or, after deducting, fails to pay the tax as required by or under the Act, then, such person shall/ without prejudice to any other consequences which he may incur, be deemed to be an assessee-in-default in respect of such tax.
- The provisions, however, do not cast any duty on any person to deduct tax at source where the winnings are wholly in kind. If the winnings are wholly in kind, as a matter of fact, there cannot be

any deduction of tax at source. The word "deduction" employed in this provision postulates a reduction or subtraction of an amount from a gross sum to be paid and payment of the net amount thereafter.

- Where the winnings are wholly in kind the question of deduction of any sum therefrom does not arise and in that eventuality, the only responsibility, as cast under the provisions of the Act, is to ensure that tax is paid by the winner of the prize before the prize or winnings is or are released in his favour.
- Thus, in the present case, order under sections 201(1) and 201(1A) passed treating the dealer as an assessee in default is not tenable in law. However, for this default, the dealer would be liable for penalty equal to the sum of tax deductible and prosecution by way of imprisonment and fine for failing to ensure that tax is paid by the winner of the prize before the winnings are released in his favour.

Question No. 58.

K Ltd., an event management company, organized a concert of international artists in India. In this connection, it engaged the services of an overseas agent Mr. X form USA, to bring artists to India. He contacted the artists and negotiated with them for performance in India, in term of the authority given by the company. He did not take part in event organized in India. The company made the payment of commission of ₹ 5 lakhs to the overseas agent, outside India. (May 2017)

Answer: -

Liability for tax deduction in certain cases —

An overseas agent of an Indian company operates in his own country and no part of his income accrues or arises in India. The commission paid to the non-resident agent for services rendered outside India and remitted directly to him outside India is, thus, not chargeable to tax in India. Since commission income for contacting and negotiating with international artists by Mr. X, a non-resident, who remains outside India is not subject to tax in India, consequently, there is no liability for deduction of tax at source.

Question No. 59. ***Sec 194***

Lumnous Pvt. Ltd., whose accumulated profits are ₹ 20 lakhs, wants to disburse a loan of ₹ 25 lakhs to Mrs. Nisha, a resident shareholder holding 20% of the equity shareholding in the company. Can the entire amount of loan be disbursed to the shareholder, keeping in mind the provisions of the Income-tax Act, 1961? The Finance Manager feels that this being a pure loan transaction, there is no bar for disbursing the entire amount. Is his view correct? (Nov. 2018-NS)

Answer: -

Section 2(22) (e) would be attracted if the loan is given by a company in which public are not substantially interested to a shareholder, being a person who is the beneficial owner of shares holding not less than 10%of voting power.

In the instant case, Lumnous Pvt. Ltd. is a company in which the public are not substantially interested. The company has accumulated profits of ₹ 20,00,000. The loan given by the company to Nisha, holding more than 10% of voting rights, was not in the course of its business. Therefore, Section 2(22)(e) comes into play and the sum of ₹ 20,00,000, representing the amount lent by the company to Nisha is regarded as deemed dividend. The company is liable to deduct tax at source under Section 194 @ 10% of the dividend paid.

Question No. 60.

(i) M/s. Mexil Ltd. is engaged in the business of manufacturing certain article or thing for which the raw material is imported from Russia. For the purpose of making payment to the supplier, the assessee entered into a bank guarantee with BDFH Bank, an Indian Bank against the payment of ₹ 1,10,000 as bank guarantee commission for the Financial Year 20XX-XX.

(ii) StudyKart, an online education provider and a trust registered under section 12AB of the Income tax Act, pays ₹98,000 during the Financial Year 20XX-XX, to Mr. Monty, a non-resident for providing web-based lectures. (JAN 21)

Answer: -

(i) No tax is deductible at source on the payment of inter alia bank guarantee commission made by a person to a bank. As per section 197A(1F), no deduction of tax shall be made from specified payments to notified bodies. Accordingly, the Central Government has notified that no deduction of tax shall be made from the specified payments, which include bank guarantee commission, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934, excluding a foreign bank.

Thus, M/s. Mexil Ltd. is not required to deduct tax at source on bank guarantee commission of ₹ 1,10,000 paid to BDFH Bank, an Indian bank, in the F.Y. 20XX-XX.

(ii) Any person responsible for paying any sum chargeable to tax to a non-corporate non-resident is liable to deduct tax at source at the rates in force.

Since Mr. Monty, a non-resident has provided web-based lectures from outside India, income arsing therefrom is not chargeable to tax in India as no income is deemed to accrue or arise in India. Thus, no tax is deductible at source on such payment to him.

Alternatively, it may be possible to take a view that income arising from web lectures may fall within the meaning of Fees for technical services. If this view is taken, such income would be deemed to accrue or arise in India, since the services are utlised in India, even though they are rendered from outside India. Therefore, such income would be chargeable to tax in India in the hands of Mr. Monty, a non-resident. Thus, StudyKart, a trust registered u/s 12AB, is required to deduct tax at source under section 195.

Therefore, tax deducted at source would be ₹ 3,25,000, being 5% of ₹ 65,00,000.

Question No. 61. ***Sec 194 LB***

A notified infrastructure debt fund eligible for exemption u/s 10(47) of the Income-tax Act, 1961 pays interest of ₹ 4.50 lakhs to a company incorporated in USA. The US company incurred expenditure of ₹ 15,000 for earning such interest. The fund also pays interest of ₹ 2.50 lakhs to Mr. R, who is a resident of a notified jurisdictional area. (July 2021)

Answer: -

- As per section 194LB, tax would be deductible @ 5% on gross interest paid/credited by a notified infrastructure debt fund, eligible for exemption u/s 10(47), to a non- corporate non-resident or foreign company.
- However, in case the notified infrastructure debt fund pays interest to a person who is a resident of a notified jurisdictional area, section 94A will apply. Accordingly, tax would be deductible @ 30% (plus HEC) under section 94A. Therefore, the tax deductible in respect of payment of interest of ₹ 4.50 lakhs to US company would be ₹23,400 (i.e., 5.20% of ₹ 4.50 lakhs).

- Tax deductible in respect of payment of interest of ₹ 2.50 lakhs to Mr. R, who is a resident of a notified jurisdictional area, would be ₹ 78,000, being 31.2% of ₹ 2,50,000.

Question No. 62. ***Sec 194-IC***

High and Tall Ltd., a real estate development company, entered into a Joint Development Agreement with Mr. John, a resident individual, whereby Mr. John would transfer a plot of land measuring 10 acres for a part consideration of ₹ 6 crores to be paid on the date of agreement, i.e., 1-6-20XX. High and Tall Ltd. has planned to develop a high-rise apartment complex on such land by 31-3-2025. Upon completion of the project, High and Tall Ltd. would transfer 6 flats in the apartment to Mr. John as final settlement. The FMV of the flats is estimated to be ₹ 1.20 crores each as on 31-3-2025. (MTP APRIL 24)

Answer: -

- Mr. John, a resident, is entering into an agreement with High and Tall Ltd., a real estate developer, to develop a high-rise apartment complex on his land in consideration of ₹ 6 crore and 6 flats in the apartment. This is a specified agreement under section 45(5A).
- As per section 194-IC, High and Tall Ltd. is required to deduct tax at source @ 10% on ₹ 6 crores, being the consideration paid other than consideration in kind, under a specified agreement to Mr. John.
- Tax is to be deducted at the time of credit of such sum or payment, whichever is earlier. Tax u/s 194-IC would be = ₹ 6 crore x 10% = ₹ 60 lakhs

Question No. 63.

BNG Ltd., a domestic company has deducted TDS of ₹ 28,451 during the Quarter 1 of F.Y. 20XX-XX. They had filed the TDS return for Quarter 1 on 15-09-20XX. The Income Tax Department had sent a notice of demand to the company, wherein a fee was levied under section 234E of the Income-tax Act, 1961 (Act) for ₹ 8,800. The Company paid the demand raised by the Department and also claimed such payment as business expenditure during the A.Y. 20XX-XX. Discuss whether the demand raised by the Department is correct, as per the provisions of the Act. Also, explain whether fee paid under section 234E can be claimed as deduction while computing the income under the head "Profits and gains of business or profession". (May 2018)

Answer: -

There are two issues in this case. The first issue is about the correctness of the demand of ₹ 8,800 raised by the Department [under section 234E for filing of TDS return for Quarter 1 of financial year 20XX-XX on 15-09-20XX].

The second issue is whether fee paid by BNG Ltd. under section 234E can be claimed as deduction while computing income under the head "Profits and gains of business or profession".

First Issue: Correctness of demand raised by the Department for fee of ₹ 8,800 under section 234E. The statement of tax deducted at source for Quarter 1 ended 30th June, 20XX has to be filed on or before 31st July, 20XX.

Where a person fails to deliver or cause to be delivered the statement of the deducted at source within the prescribed time, then, he shall be liable to pay, by way of fee, a sum of ₹ 200 for every day during which the failure continues subject to maximum of the amount of tax deductible as per provisions of Section 234E of the Act.

The late fees u/s 234E shall be computed as under:

Due date of filing TDS return for quarter ending 30-06-20XX	31-07-20XX
Actual date of filing TDS return	15-09-20XX
Period of delay in days	15-09-20XX
Period of delay in days	₹ 200
Total fees payable under section 234E [₹ 200 x 46]	₹ 9,200

Therefore, the demand of ₹ 8,800 raised by the Department is incorrect.

Second Issue: Allowability of deduction in respect of fee paid under section 234E while computing income under the head "Profits and gains of business or profession.

As per Section 37, any expenditure incurred wholly and exclusively for the purpose of business or profession is allowed as deduction.

This fee is not in the nature of a penalty. There is no specific prohibition in the Act for denying the deduction. The fee for delayed submission of the statement of TDS is also not in the nature of interest for delayed remittance of TDS. Hence, it is an allowable expenditure while computing the business income.

Question No. 64.

Payment of income on investments in the securities to the Foreign Institutional Investor.

(May 2016)

Answer: -

- As per Section 196D, tax has to be deducted at source @ 20.8% (20% plus HEC @ 4%) by any person who is responsible for paying to a Foreign Institutional Investor, any income by way of interest on securities at the time of credit of such income to the account of the payee or at the time of payment of such income, whichever is earlier.
- However, where an agreement referred to in section 90(1) or section 90A(l) applies to the payee and if the payee has furnished a certificate referred to in section 90(4) or section 90A(4), as the case may be, then, income-tax thereon shall be deducted @20% or at the rate or rates of income-tax provided in such agreement for such income, whichever is lower.
- Alternatively, if the said securities are assumed to be government securities, tax is deductible @ 5.20% (i.e., 5% plus HEC @ 4%) under section 194LD.

Question No. 65.

Examine and compute the liability for deduction of tax at source, if any, in the cases stated hereunder, for the financial year ended 31st March, 20XX:

(i) On 20.6.20XX, Mr. X, a resident, made three separate transactions for acquiring house property at Mumbai from Mr. Y for a consideration of ₹ 90 lakhs, an urban plot in Kolkata from Mr. C for a sum of ₹ 49,50,000 and rural agricultural land from Mr. D for a consideration of ₹ 60 lakhs. Stamp duty value of house property, plot and rural agricultural land is ₹ 95 lakhs, ₹ 48 lakhs and ₹ 65 lakhs.

(ii) On 17.11.20XX, a commission of ₹ 50,000 was retained by the consignee 'ABC Packaging Ltd.' and not remitted to the consignor 'XYZ Developers', while remitting the sale consideration.

(iii) Raj (aged 35 years) is working with AB Ltd. He is entitled to a salary of ₹ 85,000 per month w.e.f. 1.4.20XX. He has a house property which is self-occupied. He paid an interest of ₹ 1,95,000 on loan, during the previous year 20XX-XX. The loan was taken for construction of

house. He has notified his employer AB Ltd. that there will be a loss of ₹ 1,95,000 in respect of this house property for financial year ended 31.3.20XX. Raj declared that he has exercised option to shift out of default regime of section 115BAC.

(iv) Mr. Anand has been running a sole proprietary business with turnover of ₹ 202 lakhs for the A.Y.20XX-XX. He pays a monthly rent of ₹ 15,000 for the office premises to Mr. R, the owner of building. Besides, he also pays service charges of ₹ 6,000 per month to Mr. R towards the use of furniture, fixtures and vacant land appurtenant thereto. (SM) (MTP, MARCH 2023)

Answer: -

		Amount of TDS (₹)
(i)	Since the consideration and stamp duty value for transfer of house property at Mumbai both are not less than ₹ 50 lakhs, Mr. X, being the transferee, is required to deduct tax @1% under section 194-IA on ₹ 95 lakhs, being higher of stamp duty value and the amount of consideration for transfer of property, at the time of credit to the transferor account or payment, whichever is earlier.	95,000
	Mr. X is not required to deduct tax as source under section 194-IA from the consideration of ₹ 49,50,000 paid to Mr. C for transfer of urban plot, since the consideration and stamp duty value, both are less than ₹ 50 lakhs.	Nil
	Mr. X is also not required to deduct tax at source under section 194- IA for transfer of rural agricultural land, since the same is specifically excluded from the scope of immovable property for the purpose of tax deduction under section 194-IA.	Nil
	Note - Section 194-IA requires every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to deduct tax, at the rate of 1% of higher of consideration and stamp duty value, at the time of credit of such sum to the account of the resident transferor or at the time of payment of such consideration to the resident transferor, whichever is earlier. However, no tax is required to be deducted where the consideration for transfer of an immovable property and stamp duty value of such property, both are less than ₹ 50 lakhs.	
(ii)	Section 194H requires deduction of tax at source @ 2% from commission and brokerage payments to a resident. However, no tax is to be deducted at source where the amount of such payment does not exceed ₹ 15,000.	
	In the given case, 'ABC Packaging Ltd.', the consignee, has not remitted the commission of ₹ 50,000 to the consignor 'XYZ Developers' while remitting the sales consideration.	
	Since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission [Circular No.619]	
	Therefore, XYZ Developers has to deduct tax at source on ₹ 50,000 @ 2%.	1,000
(iii)	Section 192 provides that tax is required to be deducted on the payment made as salaries. Tax is to be deducted on the estimated income at the rates specified under section 115BAC(1A) or at the average of income tax computed on the basis of the rates in force for the financial year in which payment is made in case the employee submitted a declaration of opt out of the default regime under section 115BAC.	

	The employee may declare details of his other incomes (including loss under the head "Income from house property" but not any other loss) to his employer. In this case, since Mr. Raj has submitted a declaration of opt out of section 115BAC and also notified his employer AB Ltd. of loss from self-occupied house property, the employer has to take the same into consideration for deduction of tax at source. Therefore, AB Ltd. is required to deduct tax at source on the salary of ₹ 85,000 per month paid to Mr. Raj, in the following manner:		
	Income under the head salaries (₹ 85,000 x 12)	10,20,000	
	Less: Standard deduction under section 16(ia)	50,000	
		6,10,000	
	Income under the head "house property"	(1,95,000)	
	Gross total income	5,30,000	
	Less: Deduction under Chapter Vl-A	Nil	
	Total Income	7,75,000	
	Tax on ₹ 7,75,000	67,500	
	Add: Health and Education cess@4%	2,700	
	Tax to be deducted at source	70,200	70,200
(iv)	Where the payer is an individual or HUF whose total sales, gross receipts or turnover from the business carried on by him exceed ₹ 1 crore during the financial year immediately preceding financial year in which such rent was credited or paid, is liable to deduct tax at source. Since the turnover from business of Mr. Anand was ₹ 202 lakhs for the F.Y. 20XX-XX, he is liable to deduct tax at source under section 194-I in respect of rental payments during the financial year 20XX-XX. Accordingly, Mr. Anand is liable to deduct tax at source under section 194-I on the rental payments made. Section 194-I provides that rent includes any payment, by whatever name called, for the use of land or building together with furniture, fittings etc. Therefore, in the given case, apart from monthly rent of ₹ 15,000 p.m., service charge of ₹ 6,000 p.m. for use of furniture and fixtures would also attract TDS under section 194-I. Since the aggregate rental payments of ₹ 2,52,000 to Mr. R during the financial year 20XX-XX exceeds ₹ 2,40,000, Mr. Anand is liable to deduct tax at source @10% under section 194-I from rent paid to Mr. R.		25,200

Question No. 66.

Mr. Madhusudan is regular in deducting tax at source and depositing the same. In respect of the quarter ended 31st December, 20XX, a sum of ₹ 80,000 was deducted at source from the contractors. The statement of tax deducted at source under section 200 was filed on 23rd March, 20XX for the quarter ended 31.12.20XX.

(i) Is there any delay on the part of Mr. Madhusudan in filing the statement of TDS?

(ii) If the answer to (i) above is in the affirmative, how much amount can be levied on Mr. Madhusudan for such default under section 234E?

(iii) Is there any remedy available to him for reduction/waiver of the levy? (ICAI - SM)

ANSWER :-

(i) Yes, there has been a delay on the part of Mr. Madhusudan in filing the statement of TDS.

As per section 200(3) read with Rule 31 A, the statement of tax deducted at source for the quarter ended 31st December, 20XX has to be filed on or before 31 st January, 20XX. However, the same has been filed only on 23rd March, 20XX. Hence, there has been delay of 52 days on the part of Mr. Madhusudan in filing the statement of TDS.

(ii) As per section 234E of the Income-tax Act, 1961, where a person fails to file deliver or cause to be delivered the statement of tax deducted at source within the prescribed time, then, he shall be liable to pay, by way of fee, a sum of ₹ 200 for every day during which the failure continues.
The amount of fee shall not, however, exceed the amount of tax deductible.
In this case, since Mr. Madhusudhan has delayed filing the statement of TDS by 52 days, he would be liable to pay a fee of ₹ 10,400 (₹ 200 x 52 days) under section 234E. The said fee does not exceed the tax deductible (₹ 80,000, in this case).

(iii) Under section 119, the CBDT is empowered to issue general or special orders, whether by way of relaxation of any of the provisions of sections 139, 143, 144, 147 etc. or otherwise, in respect of any class of incomes or class of cases. The CBDT may issue such order(s) from time to time, if it considers expedient to do so, for the purpose of proper and efficient management of the work of assessment and collection of revenue. Section 234E is included in the list of sections in respect of which the CBDT is empowered to issue order for relaxation of the provisions of the Act.
Hence, the remedy available to Mr. Madhusudhan is that he can file an application to the CBDT under section 119 and seek waiver/reduction of the penalty levied/leviable under section 234E.

Question No. 67.

"Tax Recovery Officer, can recover the arrear demands from the assessee in default out of sale proceeds of the property attached after making a proclamation". How can such proclamation be made under the Act? Is there any time limit for sale of attached immovable property? Discuss. (ICAI - SM)

ANSWER :-

Manner of making a proclamation

Movable Property [Rules 38 & 39 of Schedule II to the Income-tax Act, 1961]

Where the Tax Recovery Officer orders sale of movable property, he should issue a proclamation in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

The proclamation should be made by beat of drum or other customary mode, -

(a) in the case of property attached by actual seizure –
  (i) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized; and
  (ii) at such other places as the Tax Recovery Officer may direct;

(b) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Tax Recovery Officer may direct.

A copy of the proclamation should also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

Immovable Property [Rule 54 of Schedule II to the Income-tax Act, 1961]

The Tax Recovery Officer shall make a proclamation for sale of immovable property at some place on or near such property by beat of drum or other customary mode. A copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

Where the Tax Recovery Officer directs, such proclamation shall also be published in the Official Gazette or in a local newspaper or in both, and the cost of such publication shall be deemed to be cost of the sale.

Where the property to be sold is divided into lots for the purpose of being sold separately, then it is not necessary to make a separate proclamation for each lot of property, unless in the opinion of the Tax Recovery Officer, proper notice of sale cannot otherwise be given.

Time limit for sale of attached immovable property [Rule 68B of Schedule II to the Income-tax Act, 19611

The sale of immovable property attached has to be made on or before the expiry of 7 years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached,

- has become conclusive under the provisions of section 245-1 (where order of settlement under section 245D(4) is deemed to be conclusive as to the matters stated therein) or
- has become final in terms of the provisions of Chapter XX (Appeals and Revision).

However, the CBDT may, for reasons to be recorded in writing, extend the aforesaid period for a further period not exceeding 3 years.