



THE COMPETITION ACT, 2002

Establishment of Competition Commission of India (Section 7)

The provisions relating to establishment of Competition Commission of India may be explained as follows:

1. Establishment by whom?

The 'Competition Commission of India' (hereafter referred to as the 'Commission') shall be established by the Central Government by issuing a notification in the Official Gazette. The Commission shall come into existence on such date as may be specified in such notification.

2. Offices of the Commission

The head office of the Commission shall be at such place as the Central Government may decide from time to time. The Commission may establish offices at other places in India.

3. Characteristics of the Commission

- The Commission shall be a body corporate having perpetual succession and a common seal.
- It shall have the power to acquire, hold and dispose of property, both movable and immovable.
- It shall have the power to contract and sue in its own name.
- The Commission may be sued in its own name.
- The Commission shall exercise its powers subject to the provisions of the Act.

Composition of Commission (Section 8)

The composition of Competition Commission of India may be explained as follows:

1. Chairperson and Members

The Commission shall consist of a Chairperson and not less than two and not more than 6 other Members to be appointed by the Central Government:

2. Qualifications and experience of the Chairperson and Members

The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than 15 years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.

3. Terms of employment

The Chairperson and other Members shall be whole-time Members.

Term of office and selection of Chairperson and other Members (Section 9, 10 and 15)

The provisions relating to the selection and term of office of Chairperson and Members of Competition Commission of India are contained under sections 9 and 10, as explained below:



1. Appointment by whom?

- (a) The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee
- (b) The Selection Committee shall consist of-
- the Chief Justice of India or his nominee - as the Chairperson of the Selection Committee
 - the Secretary in the Ministry of Corporate Affairs - as a Member of the Selection Committee
 - the Secretary in the Ministry of Law and Justice - as a Member of the Selection Committee
 - two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy - as Members of the Selection Committee.
- (c) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

2. Term of office

- (a) The Chairperson and every other Member shall hold their offices for a term of 5 years.
- (b) The Chairperson and every other Member shall be eligible for reappointment.
- (c) The Chairperson or any other member shall not hold office after he has attained the age of 65 years.

3. Filling of vacancies

A vacancy caused by the resignation, removal, death or otherwise of the Chairperson or any other Member shall be filled by making fresh appointments in accordance with the rules framed by the Central Government in this behalf.

4. Oath by Chairperson and Member

The Chairperson and every other Member shall make and subscribe to an oath of office and of secrecy. The rules may prescribe the form, the manner and the authority before which the oath of office and of secrecy shall be made.

5. Vacancies in the office of the Chairperson

In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the new Chairperson assumes his office.

6. Inability of the Chairperson to function

When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the Chairperson resumes the charge of his functions.



Note: Vacancy, etc., not to invalidate proceedings of Commission (Section 15)

No act or proceeding of the Commission shall be invalid merely by reason of-

- (a) any vacancy in the Commission; or
- (b) any defect in the constitution of the Commission; or
- (c) any defect in the appointment of a person acting as a Chairperson or as a Member; or
- (d) any irregularity in the procedure of the Commission *not affecting the merits of the case.*

Example:

For what term can a person aged 61 years be appointed or reappointed as a chairperson?

Hon'ble Justice Mr. Hari, a retired High Court Judge, attained the age of 61 years on 31st December, 2004. The Central Government appointed him as he Chairperson of the Competition Commission of India with effect from 1st January, 2005. You are required to state, with reference to the provisions of the Competition Act, 2002, the term for which he may be appointed as Chairperson of the Competition Commission of India. Whether he can be reappointed as such and till when he can remain as Chairperson of the Competition Commission of India?

Answer:

The provisions relating to the tenure of Chairperson of Competition Commission of India are contained under sections 9 and 10, as explained below.

- (a) The Chairperson and every other Member shall hold their offices for a term of 5 years.
- (b) The Chairperson and every other Member shall be eligible for reappointment.
- (c) The Chairperson or any other member shall not hold office after he has attained the age of 65 years.

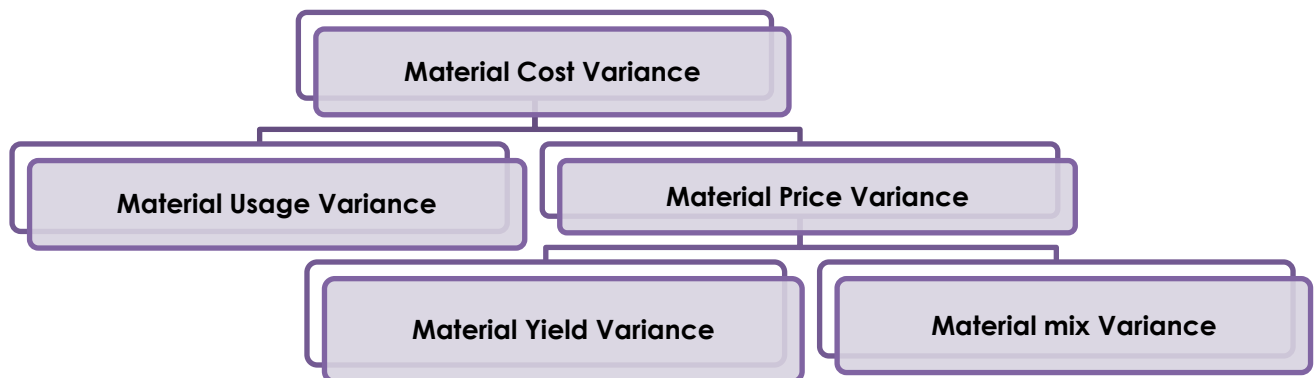
Keeping the above provisions in mind, the issues raised in the given problem are answered as follows:

- (a) Mr. Hari can be appointed as Chairperson since at the time of appointment he has not attained the age of 65 years.
- (b) On attainment of age of 65 years, Mr. Hari shall have to vacate the office of Chairperson, and he shall not be reappointed as Chairperson.



MATERIAL VARIANCES

Material Variances mainly arise due to the efficiency in the use of materials and/ or change in Actual Price and Standard Price of materials. These can be summarized as follows:



Terms useful for Computation of Material Variances

One must know the following terms before knowing how to compute Material Variances:

| | |
|--|--|
| 1. Standard Quantity for Actual Output | <p>(a) It represents the Quantity of Material which should have been consumed to produce Actual Output as per standard.</p> <p>(b) It is calculated as follows:</p> $= \frac{\text{Standard Quantity of Material}}{\text{Standard Output}} \times \text{Actual Output}$ <p>Or = Standard Quantity of Material required per unit of Output x Actual Output</p> |
| 2. Standard Cost of Standard Quantity for Actual Output | <p>(a) It represents the Standard Cost of Standard Quantity for Actual Output</p> <p>(b) It is calculated as follows:</p> $= \text{Standard Quantity of Material for Actual Output} \times \text{Standard Price}$ $= \text{SQ} \times \text{SP}$ |
| 3. Standard Cost of Actual Quantity for Actual Output | <p>(a) It represents the standard Cost of Actual Quantity for Actual Output.</p> <p>(b) It is calculated as follows:</p> $= \text{Actual Quantity of Material} \times \text{Standard Price}$ $= \text{AQ} \times \text{S P}$ |
| 4. Revised Quantity | <p>(a) It represents the Total Actual Quantity of all Materials in a Standard Material Mix Ratio.</p> <p>(b) It is calculated by dividing the Total Actual Quantity of all Materials in a Standard Mix Ratio as follows:</p> $= \frac{\text{Standard Quantity of one Material}}{\text{Total Standard Quantity of all Materials}} \times \text{Total Actual Quantity of all Materials}$ |
| 5. Standard Cost of Revised Quantity | <p>(a) It represents the Standard Cost of Revised Quantity.</p> <p>(b) It is calculated as follows:</p> |



| | |
|----------------------------------|---|
| | $= \text{Revised Quantity} \times \text{Standard Price}$ $= \text{RQ} \times \text{SP}$ |
| 6. Standard Yield | <p>(a) It represents the yield (i.e. Output) which should have been obtained from Actual Quantity of all Materials.</p> <p>(b) It is calculated as follows:</p> $= \frac{\text{Standard Output}}{\text{Total Standard Quantity of all Materials}} \times \text{Total Actual Quantity of all Materials}$ |
| 7. Average Standard Price | <p>(a) It represents Standard Material Cost per unit of Standard Output</p> <p>(b) It is calculated as follows:</p> $= \frac{\text{Standard Cost of Standard Quantity of all Materials for Actual Output}}{\text{Standard Output}}$ |

Direct Material Cost Variance (MCV)

Material Cost Variance is the difference between the standard cost of direct material specified for the output achieved and the actual cost of direct material consumed.

How to Calculate?

Material Cost Variance is calculated as follows:

MCV = Standard of cost of standard quantity of materials for actual output – Actual cost of actual quantity of materials consumed for actual output

Or = (Standard quantity for Actual Output x Standard Price) – (Actual Quantity x Actual Price)

Or = (SQ x SP) – (AQ x AP)

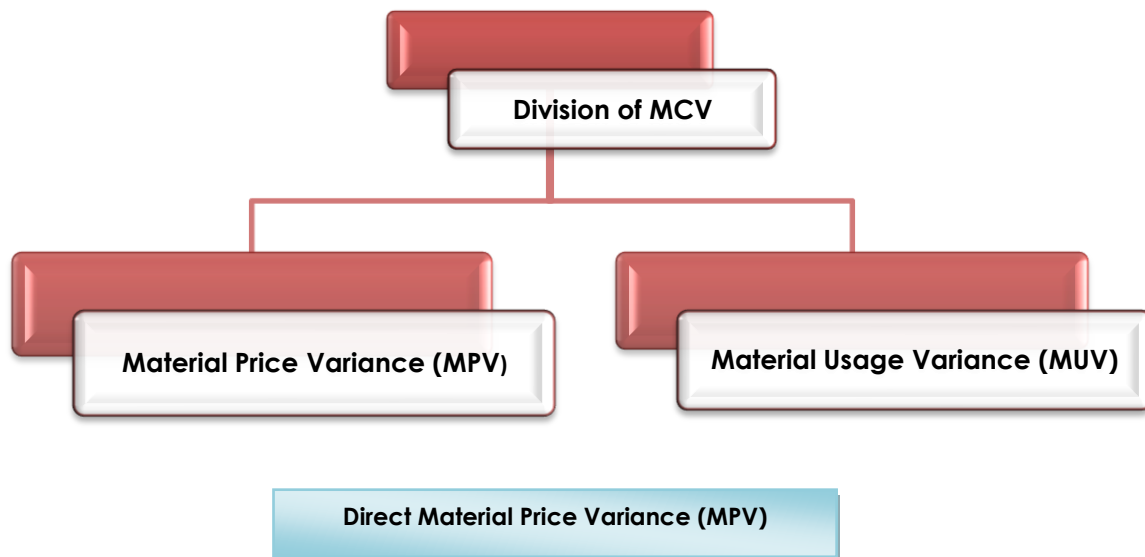
Nature

- **Favourable (F)** if the effect of the variance is to increase the profit (i.e. where actual cost is less than the standard cost.)
- **Adverse (A)** if the effect of the variance is to decrease the profit (i.e. where actual cost is more than the standard cost.)

Why arises?

MCV may arise due to:

- Change in price of material, or
- Change in quantity of material, or
- Change in price and quantity of material



Direct Material Price Variance is that portion of the material cost variance which is due to the difference between the standard price specified and the actual price paid.

How to Calculate?

Material Price Variance (MPV) is calculated as follows:

$$\text{MPV} = (\text{Standard Price} - \text{Actual Price}) \times \text{Actual Quantity}$$

$$\text{Or} = (\text{SP} - \text{AP}) \times \text{AQ}$$

Nature

- **Favourable (F)** if the effect of variance is to increase the profit (i.e. where $\text{AP} < \text{SP}$)
- **Adverse (A)** if the effect of variance is to decrease the profit (i.e. where $\text{AP} > \text{SP}$)

Why arises?

MPV may arise due to:

- Change in the market prices of materials.
- Change in the quantity of materials, thereby leading to lower/higher quantity discount.
- Not availing cash discounts, when standards set took into account such discounts
- Change in the delivery costs.
- Purchase of a substitute material on account of non-availability of the material specified.
- Off-season purchasing for certain seasonal products like jute, cotton etc.
- Change in the rates of excise duty, purchased tax etc.



Direct Material Usage Variance (MUV)

Direct Material Usage Variance is that portion of the material cost variance which is due to the difference between the standard quantity specified and the actual quantity consumed.

How to Calculate?

Material Usage Variance (MUV) is calculated as follows:

$MUV = (\text{Standard Quantity for Actual Output} - \text{Actual Quantity}) \times \text{Standard Price}$

Or = $(SQ - AQ) \times SP$

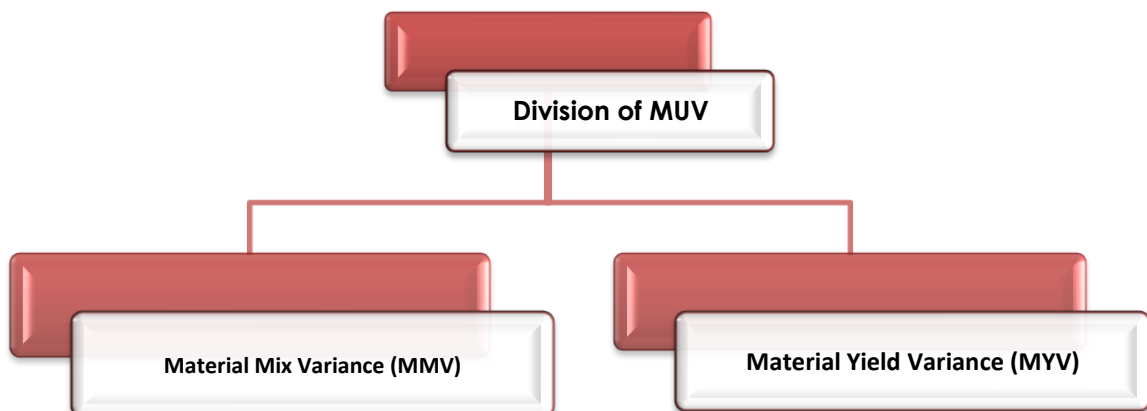
Nature

- **Favourable (F)** if the effect of variance is to increase the profit (i.e. where $AQ < SQ$)
- **Adverse (A)** if the effect of variance is to decrease the profit (i.e. where $AQ > SQ$)

Why arises?

MUV may arise due to:

- Use of non-standard materials.
- Use of non-standard material mixture.
- Use of substitute materials.
- Inefficiency in the use of material.
- Change in the equality of materials.
- Change in the design or specification of the product.
- Change in method of production
- Yield from materials in excess of or less than standard yield.
- Pilferage
- Defect in plant and machinery.





Direct Material Mix Variance (MMV)

Direct Material Mix Variance (MMV) is that portion of the material usage variance which is due to the difference between standard and actual composition of materials.

How to Calculate?

Material Mix Variance is calculated as follows:

MMV = Standard Cost of Revised Qty of Actual Material consumed – Standard Cost of Actual Qty of Material Consumed

Or = (RSQ x SP) – (AQ x SP)

Or = (RSQ – AQ) x SP

Nature

- **Favourable (F)** if the effect of the variance is to increase the profit (i.e. where AQ < RSQ)
- **Adverse (A)** if the effect of the variance is to decrease the profit (i.e. where AQ > RSQ)

Why arises?

- MMV arises only when the actual two or more materials are mixed in a ratio different from the standard material mix ratio. Change from standard mix may be due to the non-availability of one or more components of material mix.

Direct Material Yield Variance (MYV)

MYV is that portion of the material usage variance which is due to the difference between standard yield specified for actual quantity used and actual yield obtained. The standard yield is the output expected to be obtained from the actual usage of materials. MYV is an output variance which represents a gain or loss on output in terms of finished production.

How to Calculate?

Material Yield Variance (MYV) is calculated as follows:

MYV = (Actual Yield – Standard Yield) x Average Standard Output Price



Nature

- **Favourable (F)** if the effect of the variance is to increase the profit (i.e. where AY > SY)
- **Adverse (A)** if the effect of the variance is to decrease the profit (i.e. where AY < SY)

Why arises?

- MYV arises only when the actual loss as % of total actual input differs from the standard loss as % of total standard input.



S.V.Ltd. Manufacturers by mixing three raw materials. For every batch of 100Kg. of BXE, 125 Kg. of raw Materials are used. In April, 2015, 60 batches were prepared to produce an output of 5,600 Kg. of BXE. The standard and actual particulars for April, 2015 are as under:-

| RAW MATERIAL | MIX % | PRICE PER kg | MIX % | PRICE PER kg | QUANTITY OF RAW MATERIALS PURCHASED Kg |
|--------------|-------|--------------|-------|--------------|--|
| A | 50 | 20 | 60 | 21 | 5,000 |
| B | 30 | 10 | 20 | 8 | 2,000 |
| C | 20 | 5 | 20 | 6 | 1,200 |

Calculate Material Variances.

Answer:

| | Standard data | | | Actual data | | |
|------------------|---------------|------|--------|-------------|------|--------|
| | Kg. | Rate | Amount | Kg. | Rate | Amount |
| A | 3750 | 20 | 75000 | 4500 | 21 | 94500 |
| B | 2250 | 10 | 22500 | 1500 | 8 | 12000 |
| C | 1500 | 5 | 7500 | 1500 | 6 | 9000 |
| | 60x125=7500 | | 105000 | 7500 | | 115500 |
| (-)standard loss | 60x25=1500 | | | 1900 | | |
| | 6000 | | 105000 | 5600 | | 115500 |

DMCV = Standard cost for Actual output – Actual cost

$$\begin{aligned}
 &= \frac{1,05,000}{6,000} \times 5,600 - 1,15,500 \\
 &= 98,000 - 1,15,500 = 17,500(A)
 \end{aligned}$$



DMPV = Actual Qty. x (SR – AR)

$$A = 4,500 \times (20-21) = 4,500(A)$$

$$B = 1,500 \times (10 - 8) = 3,000 (F)$$

$$C = 1,500 \times (5 - 6) = \frac{1,500 (A)}{3,000 (A)}$$

DMUV = Standard Rate x (Std. qty. for actual output – Actual qty.)

$$A = 20 \times \left(\frac{3,750}{6,000} \times 5,600 - 4,500 \right) = 20,000 (A)$$

$$B = 20 \times \left(\frac{2,250}{6,000} \times 5,600 - 1,500 \right) = 6,000 (F)$$

$$C = 5 \times \left(\frac{1,500}{6,000} \times 5,600 - 1,500 \right) = \frac{500 (A)}{14,500 (A)}$$

DMMV = Standard Rate x (Revised Std. Qty. – Actual Qty.)

$$A = 20 \times (3,750 - 4,500) = 15,000 (A)$$

$$B = 10 \times (2,250 - 1,500) = 7,500 (F)$$

$$C = 5 \times (1,500 - 1,500) = \frac{-----}{7,500 (A)}$$

DMYV = SR x (Standard Qty. for actual output – Revised Std. Qty.)

$$A = 20 \times (3,500 - 3,750) = 5,000 (A)$$

$$B = 10 \times (2,100 - 2,250) = 1,500 (A)$$

$$C = 5 \times (1,400 - 1,500) = \frac{500 (A)}{7,000 (A)}$$



To produce 1,000 units of product X, the standard materials input is 1,200 units at a standard price of ₹6 per unit. The standard allows for rejects at the rate of 25% of input; it is estimated that one-third of total rejects can be reworked at an additional standard cost of ₹2 per unit. Scrapped units can be sold for Re. 0.50p each.

During the period just ended, 19,500 units of X were produced. 24,000 units of material were issued to production, at the cost of ₹6 per unit; 7,000 units were rejected on initial inspection and of these, 2,500 were reworked, at a cost of ₹5,100. The remainder were sold as scrap for Re.0.50 per unit.

Calculate the relevant variances.

Answer:

The standard cost of product X is as follows:



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| | | Units | Price (₹) | Cost (₹) |
|--|---------------------|--------|-----------|----------|
| Material | | 1,200 | 6 | 7,200 |
| Rejection | (25% of 1,200) | 300 | | |
| | | 900 | | |
| Reworked | (1/3 × 25% × 1,200) | 100 | 2 | 200 |
| | | 1,000 | | 7,400 |
| Scrapped proceeds from 200 units i.e. | (200 × 0.50) | | | (100) |
| Net processing cost | | 1,000 | | 7,300 |
| The standard yield for the process is 5/6 of input | | | | |
| Material cost variance is: | | | | |
| Material | | 24,000 | 6 | 1,44,000 |
| Rejection | | 7,000 | | |
| | | 17,000 | | |
| Reworked | | 2,500 | | 5,100 |
| | | 19,500 | | 1,49,100 |
| Less: Scraped proceeds (4,500 × Re. 0.50) | | | | (2,250) |
| Actual cost | | 19,500 | | 1,46,850 |

In this situation material cost variance is called "Quality cost variances" which comprise of material usage variance, scrap variance and rework cost variance.

| | | | |
|----------------|-------------------------|----------------|----------|
| M ₁ | Actual cost of material | | 1,46,850 |
| M ₂ | Actual material cost | (19,500 × 7.3) | 1,42,350 |

Material Quality variance = M₁ - M₂ = ₹1,46,850 - ₹1,42,350 = 4,500 (A)

For material usage variance

| | | |
|---|-----------------------|------------|
| (1) Actual quantity used at standard rate | 24,000 × ₹6 | ₹1,44,000 |
| (2) Standard quantity for output of 19,500 at standard rate | (19,500 × 6/5) × ₹6 | ₹1,40,400 |
| Material usage variance | ₹1,44,000 - ₹1,40,400 | ₹3,600 (A) |

For Scrap variance

| | | |
|---|------------------------|----------|
| (1) Actual Scrap at actual disposal value | 4,500 × Re. 0.50 | ₹2,250 |
| (2) Scrap value as per standard | 19,500 × (100 ÷ 1,000) | 1,950 |
| Scrap variance | ₹2,250 - ₹1,950 | ₹300 (F) |

For Rework cost variance

| | | |
|--------------------------|------------------------|------------|
| (1) Actual rework cost | | ₹5,100 |
| (2) Standard rework cost | 19,500 × (200 ÷ 1,000) | ₹3,900 |
| Rework cost variance | ₹5,100 - ₹3,900 | ₹1,200 (A) |

The three variances should total back to quality cost variance i.e.,

Quality Cost variance = Material usage variance + Scrap variance + Rework cost variance

$$= 3,600 (A) + 300 (F) + 1,200 (A) = 4,500 (A)$$



SUMMARY OF TDS AND ADVANCE TAX

1. SUMMARY OF TDS PROVISIONS – RESIDENTS

| Sec. | Nature of Payment | Person Responsible for TDS | Type of Payee | Rate of TDS | Exemption Limit |
|-------|--|---|--|-----------------------------------|--|
| 192 | Salary | All Persons who are Employers | Employee | As applicable to Individuals. | Basic Exemption applicable to Individuals (₹2,00,000 / ₹2,50,000 / ₹5,00,000) |
| 193 | Interest on Securities | All Persons | Any Resident in India | 10% | Exempted for certain listed securities u/s 193. (Debentures ₹2,500) |
| 194 | Dividend | Principal Officer of - (a) an Indian Co., or (b) Co. made declaration of dividend u/s2(22) with in India | Any Resident in India | 10% | TDS not required for- (a) Dividends u/s 115-0, (b) Dividends paid by cheque not exceeding ₹2,500 p.a. and (c) Dividends paid to LIC / GIC / Other Insurer. |
| 194A | Interest other than Interest on Securities | All Assessee except Indls and HUF who are not subject to audit u/s 44AB(a)/(b) during prior previous year | Any Resident in India | 10% | ₹10,000 if payment made by Banking Co, Co-Operative Society, Post Office ₹5,000 if payment made by any other person No TDS on Interest received or receivable by Business Trust |
| 194B | Winning from Lottery/ Crossword Puzzle | Any Person | All Persons | 30% | ₹ 10,000 |
| 194BB | Winning from Horse Races | Licensed Book Maker | Any Person | 30% | ₹ 5,000 |
| 194C | Payment to contractor / sub contractor | Specified Persons except Indls and HUF who are not subject to audit u/s 44AB(a)/(b) during previous year | Any Resident Contractor / Sub-Contractor for any work incl. supply of labour | Individual & HUF - 1% Others - 2% | No TDS for - (a) Value < ₹ 30,000 per Contract, or Aggregate less than ₹ 75,000 p.a. (b) Small Transporters (c) Personal use of Indl / HUF. |
| 194D | Insurance Commission | Insurance Companies | Any Resident in India (e.g. Insurance Agents) | 10% | ₹ 20,000 p.a. |



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| | | | | | |
|---------------|--|---|--|--|--|
| 194DA | Any Sum under Life Insurance Policy | Insurance Companies | Any Resident | 2% | (a) Upto ₹1,00,000. (b) No TDS, if such payment is exempted u/s 10(10D). |
| 194EE | Payments under National Savings Scheme | Post Office | Individuals | 20% | ₹2,500 p.a (or) Amount paid to Legal Heirs of Assessee. |
| 194F | Repurchase of 80CCB units | Mutual Fund or UTI | Any Person | 20% | - |
| 194G | Commission on Sale of Lottery Tickets | Stockist, Distributor, etc. of Lottery Ticket | Person stocking, purchasing or selling Lottery Tickets | 10% | ₹ 1,000 p.a. |
| 194H | Commission or Brokerage | Same as for Sec.194A | Any resident in India | 10% | ₹5,000 p.a. (or) Commission or Brokerage payable by BSNL/MTNL to their Public Call Office Franchisees. |
| 194 I | Rent | Same as for Sec.194A | Any person (Exempt for Govt./ Local Authorities) | P & M, Equipment - 2% Land & Bldg , Furn. / Ftngs- 10% | ₹1,80,000 p.a. |
| 194 IA | Transfer of Immovable Property other than Agri. Land | Any person being transferee | Resident transferor | 1% | ₹50,00,000 P.a. |
| 194J | Professional or Technical Fees | Same as for Sec.194A | Any resident in India | 10% | ₹30,000 p.a. for each item separately, and personal use of Individual/HUF |
| 194LA | Compensation / Enhanced Compensation on compulsory acquisition | Any person | Resident | 10% | ₹2,00,000 p.a. |
| 194LBA | Distributed Income referred u/s 115UA | Business Trust | Unit Holder of Business Trust | 10% for resident. 5% for nonresident or a Foreign Company | Nil |

Note: No TDS on Service Tax for Payments made to Residents: Where in terms of the agreement between the Payer and the Payee, the Service Tax Component comprised in the amount payable to a Resident is indicated



separately, Tax shall be deducted at source under Chapter XVII-B on the amount paid / payable without including such Service Tax Component.

2. SUMMARY OF TDS PROVISIONS – NON- RESIDENTS

Some highlights/points are given below - (Note : 196B, 196C, 196D also apply to Non- residents.)

| Sec. | Nature of Payment | Person Responsible for TDS | Type of Payee | TDS Rate |
|--------|--|-------------------------------------|--|-----------|
| 194E | Income u/s 115BB, Guarantee Amount, etc. | Any Person | Foreign Citizen, being NR Sportsman / Athlete (or) a NR Entertainer / Sports Association / Institution | 20% |
| 194LB | Interest | Infrastructure Debt Fund | Non-Resident | 5% |
| 194LBA | Interest | Business Trust | Unit Holder of a Business Trust | 5% |
| 194LC | Interest on Foreign Currency Loan | Indian Company, or a Business Trust | Non-Resident (other than Company), Foreign Company | 5% |
| 194LD | Interest on Rupee denominated Bond or Government Security | Any Person | Foreign Institutional Investor or Qualified Foreign Investor. | 5% |
| 195 | Any Interest (excluding 194LB/ 194LC / 194LD) and any sum chargeable to tax (excluding Salaries) | Any Person | Non-Resident (other than Company), Foreign Company | See below |

3. TIME OF DEDUCTION

| | |
|---|--|
| 192,194,194B, 194EF,194BB, 194LA,194F | TDS shall be deducted at the time of payment. |
| 193,194A,194C,194D, 194G, 194H, 194I, 194IA, 194J, 195, 196B, 196D, 194LB, 194LC, 194LD | TDS shall be deducted either at the time of payment or at time of credit whichever falls earlier. |

4. TIME OF REMITTANCE TO THE GOVERNMENT – SEC.200/Rule 30

Tax deducted by or on behalf of the Government:

| Situation | Time of deposit of TDS |
|---|--|
| Payment of tax without production of Income Tax Challan | On the same day when tax is deducted. |
| Payment of tax accompanied by an Income Tax Challan Tax deducted by other persons: | On or before 7 days from the end of the month in which the deduction is made or income tax is due u/s 192(1A) |
| Income or amount is credited or paid in the month of march | On or before the 30 th of April |
| In any other case | On or before 7 days from the end of the month, in which – <ul style="list-style-type: none"> • Deduction is made, or • Income tax is due u/s 192(1A) |



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The AO may in special cases, with the approval of JCIT, permit the payment of TDS on quarterly basis as under –

| | |
|----------------------------|--|
| Applicable Sections | 192, 194A, 194D, 194H |
| Payment Date | July 7 th , Oct. 7 th , January 7 th , April 30 th |

5. FORMS OF TDS CERTIFICATES - Sec.203

- Form 16 for Salary S.192 & Form 16A for all other Sections.
- To be issued from TRACES Website, by using Manual / Digital Signatures.
- **Time for Issue of TDS Certificates**

| Form No. | Periodicity | Time Limit |
|----------|-------------|--|
| 16 | Annual | By 31 st May of the Financial Year immediately following the financial year in which the income was paid and tax deducted. |
| 16A | Quarterly | Within 15 days from the due date for furnishing the Statement of TDS u/r 31A, i.e.30 th July, 30 th October, 30 th January and 30 th May. |
| 16B | | Within 15 days from the due date for furnishing Challan cum Statement in Form 26QB u/s 31A, i.e. within 7 days from date of deduction of Tax. [Notification No. 39/2013, dated 31.05.2013] |

6. SELF DECLARATION BY PAYEE FOR NON- DEDUCTION – Sec.197A

| | |
|---|--|
| <p>Self Declaration for non-deduction of tax by a person other than companies / firms - the Deductor shall forward a copy of the declaration to the CCIT / CIT within 7 days from the end of the month in which such declarations are furnished</p> | <ul style="list-style-type: none"> • For All Assesseees u/s 193, 194, 194A, 194EF, 194K – from 15G (in duplicate) • For senior Citizens (resident in India) – Form 15H (in duplicate) only |
|---|--|

7. LOWER RATE OF DEDUCTION/NO DEDUCTION CERTIFICATE – Sec. 197

| | |
|---|--|
| <p>For lower rate of deduction of tax or no deduction of tax, the Payee shall file an application and get a Certificate from the Assessing Officer and submit to the Payer. Certificate is valid only for the Assessment Years specified therein.</p> | <ul style="list-style-type: none"> • Sec.192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194I, 194J, 194K, 194LA: Application in Form 13, certificate in plain paper • Sec.195 – Application in form 15C or 15D, certificate in Plain paper |
|---|--|

8. QUARTERLY STATEMENT/RETURN AND DUE DATE

| Sec. | 192 | 193 to 196D | | 194-IA |
|----------------|------------|---|--|--|
| Form No | 24Q | 27Q For Non-Resident, not being a Company, or Foreign Company, or RNOR | 26Q For all other Deductees | 26QB For Resident Transferor (other than the person referred in Sec.194LA) |

| | | | |
|-------------|------------|--------------------|-----------------|
| Sec. | 192 | 193 to 196D | 194 - IA |
|-------------|------------|--------------------|-----------------|



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| Due date, if the Deductor is an office of Govt. | 31st July, 31st October, 31st January in respect of first three quarters of the financial year and on or before 15th May for the last quarter of the financial year. | Challan cum Statement in Form 26QB shall be furnished within 7 days from the date of deduction of TDS. [Notification 39/2013, dtd. 31.05.2013] |
| Due date, for other persons | 15th July, 15th October, 15th January in respect of first three quarters of the financial year and on or before 15th May for the last quarter of the financial year. | |
| Form 27A | The above forms shall be accompanied by declaration in Form 27A | |

9. DUTIES OF DEDUCTEEES w. r. † DECLARATION OF HIS PAN

| | |
|---|--|
| (a) Non- Furnish in of PAN by Deductee | TDS shall be highest of- (a) Rate in Act, (b) Rate in force (Finance Act), (c) 20%. |
| (b) Non- Furnishing of Self Declaration | If PAN not given in Form 15G/15H, TDS shall be made at rates in (a), and not at lower rates. |
| (c) Quoting of PAN | To be made in all correspondences and other documents between Deductor and Deductee |
| (d) Invalid PAN | TDS shall be as specified Point (a) above. |

10. ASSESSEE DEEMED TO BE IN DEFAULT - DEDUCTOR

| Non- - Deduction of TDS (or) | Non – payment of tax payable u/s 192(1A) (or) | Non- payment of TDS in whole or in part |
|---|---|---|
| No Order shall be passed deeming an Assessee as an Assessee in default for non-deduction of tax from a Resident after the expiry of - | | |
| (a) 2 years from end of the Financial Year in which the Statement u/s 200 is filed [statements in Form 24Q / 26Q] | | |
| (b) 6 years from end of the Financial Year in which the payment is made. | | |
| Exception: Above is not applicable for orders passed to give effect to any finding/direction in any Appeal/Revision. | | |
| Interest: Simple Interest at 1% p.m. or part thereof from the date on which tax is to be deducted to the date it is paid. | | |
| Penalty: Failure to deduct whole or part of the tax, shall be liable for penalty of ₹100 per day of default, upto 100% of tax not deducted. | | |
| Prosecution: Rigorous Imprisonment for minimum of 3 months and maximum of 7 years. | | |
| Person shall not be an Assessee in Default, if the Deductee has furnished his Return of Income u/s 139 after taking into account such sum for computing income and has paid tax on that income. The Person shall furnish a prescribed Certificate from an Accountant. Interest at 1% p.m. or part thereof from the date on which tax was deductible to the date of furnishing Return of Income by Deductee. | | |

11. TAX COLLECTED AT SOURCE

If purchase/Licencee/Lessee is resident (rate includes SC. Cess not Applicable)

| Nature of Goods/ Nature of Contract or Licence or Lease | All Assesseees | Non- Corp. Assessee | Corporate Assessee | |
|--|----------------------|-------------------------|--------------------------------------|---------------------------|
| Note: AC = Annual Collection | AC ≤ ₹1 Crore | AC > ₹1 Crore | AC > ₹1 Crore ≤ ₹10 Crores | AC > ₹10 Crores |



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|---|-----|------|-------|------|
| Alcoholic Liquor for Human consumption | 1.0 | 1.10 | 10.5 | 1.10 |
| Tendu Leaves | 5.0 | 5.50 | 5.25 | 5.50 |
| Timber obtained under a Forest Lease | 2.5 | 2.75 | 2.625 | 2.75 |
| Timber obtained by any mode other than a forest Lease | 2.5 | 2.75 | 2.625 | 2.75 |
| Any other forest Produce (not being Timber or Tendu Leaves) | 2.5 | 2.75 | 2.625 | 2.75 |
| Scrap | 1.0 | 1.10 | 1.05 | 1.10 |
| Minerals, being Coal or Lignite or Iron ore (applicable from 01.07.2012) | 1.0 | 1.10 | 1.05 | 1.10 |
| Parking Lot, Toll Plaza, Mining and Quarrying (applicable from 01.10.2004) | 2.0 | 2.20 | 2.10 | 2.20 |
| Sale of Bullion / Jewellery (W.e.f 01.06.2013 any coin or any other article weighing 10 gm or less) if sale consideration exceeds - (a) ₹2,00,000 for Bullion, and (b) ₹5,00,000 for Jewellery (w.e.f from 1.7.2012) | 1.0 | 1.10 | 1.05 | 1.10 |

Note: If Purchase/Licence/Leassee is Non – resident, then rate includes EC & SHEC to be added at 3% to above.

| | |
|--|--|
| Time of Collection | Earlier of debit in the books or Receipt from the Buyer. |
| Lower or No Collection of Tax at source | Self Declaration by the Buyer in Form 27C. |
| Other Compliances and Penal Consequences | Similar to TDS. |

Important case decisions

| Section 192 – TDS on salary | |
|-----------------------------|---|
| 1. | TDS on Retention Salary: TDS is to be deducted u/s 192 on Retention Salary provided by Foreign Company to its Employees who work in India for the Joint Venture in which such Foreign Company is also a Partner, as the Retention Salary is deemed to accrue or arise in India u/s 9(1). CIT vs Eli Lilly and Company (India) Pvt. Ltd 312 ITR 225 (SC) |
| 2. | Reimbursement of Salary: Where employees of an Overseas Entity render services for their Employer in India by working for a specified period for a Subsidiary or Associate Enterprise of their Employer, it will give rise to a service PE. Reimbursement of Salary to overseas Company attracts TDS u/s 195. [Centrica India Offshore Pvt. Ltd (AAR) (2012) 19 Taxman 214] |
| 3. | Duty of Employer: Employer is liable to deduct tax only with regard to the amount paid by the Employer. Employer is not liable to deduct tax at source from the Salary received from third party, unless declaration is filed by the Employee. CIT vs Woodward Governor India (P) Ltd 295 ITR 1 (Del.) |
| 4. | LTC - No need to collect evidence: Where the Employer gives LTC benefits to his Employees, Sec. 192 does not cast any obligation on the Employer to collect and examine supporting evidence to establish declaration given by individual employees for having availed the facility. [CIT vs Larsen & Toubro Ltd (2009) 313 ITR 1 (SC)] |
| 5. | Non-Deduction of TDS by Employer - 234B Interest Obligation on Employer: Where the Assessee's Income is chargeable under the head Salaries, person responsible for paying any Income chargeable under the head Salaries shall, at the time of paying, deduct tax at source and failure on his part entails an obligation to pay Interest u/s 234B in order to compensate loss incurred to revenue and upon that failure on the part of Employer to deduct the tax at source, Assessee only becomes liable to pay tax directly u/s 191, and does not become liable to pay Interest u/s 234B. DIT vs Maersk Co. Ltd (2011) (Uttarakhand - FB) |



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| Section 194A - TDS on Interest other than Interest on Securities | |
|---|---|
| 6. | No TDS on Exempt Interest: TDS obligation arises only if the tax is assessable in India. If the Interest is exempt under the Act, there was no question of TDS being deducted by the Assessee. Vijay Ship Breaking Corporation vs CIT (2009) 313 ITR 309 (SC) |
| 7. | No TDS on Bill Discounting Charges: In case of Bill Discounting, net payment made to the Supplier is in the nature of price paid for the bill. Such payment could not be technically held as including any interest, and therefore no TDS is required from such payment. [CIT vs Cargil Global Trading I.P Led (SC)] |
| 8. | TDS required - when credit made in books: Whenever interest is credited to the account of the Payee, the Payer has to deduct tax at source u/s 194A (1). Loan taken by the Directors in their individual capacities along with interest is routed through the Company, the Company is bound to deduct tax at source. [Century Building Industries (P) Ltd 293 ITR 194 (SC)] |
| 9. | Definition of Interest: Guaranteed Monthly Payment made by Financier to Investor and falling within definition of interest u/s 2(28) and is liable for TDS u/s 194A. Vishva Priya Services & Securities Ltd 179 CTR 334 (Mad) |
| 10. | Trust assessed as Individual: When a Trust is assessed as Individual u/s 161, it cannot be liable for deduction of tax u/s 194A. Arihant Trust 214 ITR 306 (Mad) |
| 194B - TDS on Lottery Winnings | |
| 11. | TDS on Prizes awarded based on chance to Investors under a Savings Scheme without taking any amount from them: The chance given to the Investor to win a prize was a free chance, and not a chance given in return for a price or contribution paid. The scheme was not a Lottery. No penalty could be imposed, once it was found that there had been no violation of law. But presently Prize in Kind is also liable for TDS. Deputy Director of Small Savings 266 ITR 27 (Mad) |
| 12. | Payment of Prize Money in Kind - Release such prize after payment of TDS in cash by the winner: In case winnings are wholly in kind or partly in cash and partly in kind, but the part in cash is not sufficient to meet the liability of TDS in respect of whole of the winnings, the person responsible for making the payment shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings. (Proviso to Sec.194B) . Hence, winner of the prize shall deposit the amount of tax on the value of Prize won in kind, and then claim the prize. The Person responsible for making payment cannot be deemed to be assessee in default u/s 201. [CIT vs Hindustan Lever Ltd (2014) 361 ITR 0001 (Kar.)] |
| 13. | Essentials of a Lottery: Essential elements that go to constitute a Lottery are - (a) a prize or some advantage in the nature of a prize, (b) distribution thereof by chance, and (c) consideration paid or promised for purchasing the chance. Kuri transactions and Prize Schemes thereunder, are not Lotteries to attract the provisions of Sec.194B. [H. Anraj v, Government of Tamil Nadu 61 STC 165 (SC)] |
| 194BB - TDS on Winnings from Horse Races | |
| 14. | The limit of ₹2,500 should be applied to each case of payment as is provided in Sec.194BB, and not the entire winnings made by a punter throughout a year. Royal Calcutta Turf Club 114 Taxman 82 (Mag.) |
| Section 194C - TDS on Payments to Contractors | |
| 15. | Contract for Work vs Contract for sale: Section 194C shall apply in respect of a contract for supply of any article or thing as per prescribed specifications only if it is a contract for work and not a contract for sale. C.No.13/2006 dated 13.12. 2006. |
| 16. | Sec.194C does not apply to sale. Hence, an independent establishment engaged in the business of supplying Packing Material to various customers, does so in the nature of trade and not execution of works contract. BDA Ltd (TDS) 281 ITR 99 (Bom) |
| 17. | Facilities or Amenities provided by Hotels: Facilities or amenities made available by a Hotel to its customer do not fall within the meaning of "work" u/s 194C, provision of TDS shall not be attracted. East India Hotels Ltd vs CBDT 320 ITR 0526 (Bom.) |



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| 18. | <p>Book Commission retained by Intermediary: An Assessee carrying on Commission Agency business, i.e. business of arranging transportation of goods through Lorries owned by other transporters. He has received amount from Clients, and passed on to the Lorry Owners/ Transporters after retaining his Book Commission. Held that Assessee has acted as Facilitator or Intermediary, and has no Privity of Contract with his Clients. Thus, Tax u/s 194C cannot be deducted on the Book Commission retained by him. [Hardarshan Singh (2013) 350 ITR 0427 (Delhi)]</p> |
| 194H - TDS on Commission | |
| 19. | <p>Stamp Vendors: Stamp Vendors are required to purchase the Stamp Papers on payment of price less the discount on Principal to Principal basis. There is no contract of agency at any point of time. Hence, 194H is not applicable. Ahmedabad Stamp Vendors Association vs UOI, 257 ITR 202</p> |
| 20. | <p>Buying and Selling of Stamp Papers by Licensed Stamp Vendors:</p> <ul style="list-style-type: none"> • When the Licensed Stamp Vendors take delivery of Stamp Papers on payment of Full Price less discount and they sell such Stamp Papers to retail customers, neither of the two activities (buying from the Government and selling to the customers) can be termed as the service in the course of buying or selling of goods). [Ahmedabad Stamp Vendors Association 124 Taxman 628 (Guj), Kerala Stamp Vendors Association Vs C&AG 282 ITR 7 (Ker)] • Discount given to Stamp Vendors for purchasing stamps in bulk quantity was in nature of cash discount in transaction of sale, and, therefore, Sec.194H has no application to that transaction. [CIT vs Ahmedabad Stamp Vendors Association 25 taxmann.com 201 (SC)] |
| 21. | <p>Commission on Sale of Sim Cards: Sale of Sim Cards and Recharge Coupons at discounted price to Distributors and the discount given is nothing but a Commission. So, liable for TDS u/s 194H. Vodafone Essar Limited vs ACIT</p> |
| 22. | <p>Principal vs Agent: If the agreement between the parties is not on Principal to Principal, but an agency agreement of sharing advertising charges, then provisions of Section 194H shall be attracted. CIT vs Director, Prasar Bharathi 325 ITR 205</p> |
| 23. | <p>TDS on Differential Price: Tax at source was not deductible on the difference between the Fixed Minimum Commercial Price and the Published Price, even though the amount earned by the Agent over and above fixed Minimum Commercial Price would be taxable as Income in his hands. CIT vs Qatar Airways (2011) 322 ITR 255 (Bom.)</p> |
| 24. | <p>Principal to Principal Relationship: The Concessionaire became the Owner of the milk and products on taking delivery of the same from the Assessee-Dairy. The relationship between the Assessee and the Concessionaire is a Principal to Principal relationship. Thus the difference between the Purchase Price (price paid to the Dairy) and the MRP is the concessionaire's income from business, and cannot be categorized as commission to attract the provisions of Sec. 194H. [CIT v. Mother Dairy India Ltd. (2013) 358 ITR 218 (Delhi)]</p> |
| Section 194-1 - TDS on Rent | |
| 25. | <p>TDS not deposited by Tenant: If tax is deducted by Tenant from the rent, and not deposited by him, Income Tax Department cannot recover the same from the Landlord. Anusuya Alva (Kar.) [2005] TIOL 154</p> |
| 26. | <p>Landing, Parking charges: Payments made for landing and parking charges would be deemed to be Rent, and liable for TDS u/s 194-1. [CIT vs Asiana Airlines (2009) 175 Taxman 177 (Del.)]</p> |
| 27. | <p>Contrary View: Landing and Parking Charges paid to Airport Authority is not Rent within the meaning of Section 194-1. Singapore Airlines Ltd (2012) 24 Taxmann 200 (Mad)</p> |
| 28. | <p>Payment of Warehousing Charges is liable for deduction u/s 194-1. [Hindustan Coca Cola Beverage P Ltd 293 ITR 226 (SC)]</p> |
| Section 194J - TDS on Fees for Professional and Technical Services | |
| 29. | <p>Scope of Sec.194J: The expression "Fees for Technical Services' u/s 194J would have reference to only technical service rendered by a human. It would not include any service provided by machines or robots. Hence, Interconnect Charges / Port Access Charges cannot be regarded as Fees for Technical Services, since there is no human interface. CIT vs Bharti Cellular Ltd 175 Taxman 573 (Del.)</p> |



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|---|---|
| 30. | TDS on Interconnection: Services rendered in relation to interconnection, port access did not involve any human interface and therefore services could not be regarded as Technical Services as contemplated u/s 194J [Hutchison Essar Telecom Limited 330 ITR 239 (SC)] |
| 31. | Fees for Technical Services: XYZ Ltd vs AAR (Del.) 2012 19 Taxmann 231: Payment for Inspection, Verification, Testing and Certification (IVTC) services are Fees for Technical Services. Carrying out tests and certifying that goods imported/exported conformed to certain specifications are Technical Services. Inspection and Survey of imported/exported cargo and certifying in relation to quality and price, laboratory testing, certification services for assuring quality, testing of samples, rendering technical assistance in preparation of project reports are Technical Services. |
| Section 194LA - TDS on Compensation on Compulsory Acquisition | |
| 32. | Compensation on Compulsory Acquisition: In case of compulsory acquisition of land, tax is deductible at source on compensation and interest on the date of payment. The liability to deduct tax at source u/s 194LA arises only on the date of payment even though the acquisition may have been made much before. [State of Kerala vs Mariamma 280 ITR 225 (Ker.)]. |
| Section 195 & Other Sections- TDS on Payments to Non-Residents | |
| 33. | Soliciting Exhibitors Outside India - Event in India - TDS u/s 195 Applicable: The Agent rendered services abroad and solicited Exhibitors there, the right of the agent to receive Commission arose in India, only when the Exhibitor participated in the show to be held in India and made full payment to the Applicant in India. Commission Income would therefore be taxable in India, and the Assessee was required to deduct tax at source u/s 195. [Rajiv Malhotra 284 ITR (AAR) 564] |
| 34. | Services Abroad, but Commission arises in India: Where Non-Resident Agents rendered services abroad by soliciting export orders, the right to receive commission arises in India when order is executed by Applicant in India. TDS u/s 195 shall apply. [SKF Boilers and Driers vs AAR 18 Taxmann 325 (Del.) 2012] |
| 35. | No TDS on Income earned before PE established in India: In a contract for fabrication, designing, hook-up and commissioning of platform in Bombay High, fabrication work was completed in Korea. PE was established in India after fabrication but before installation. Hence, profits relating to fabrication in Korea are not taxable in India but income relating to installation is taxable. [CIT vs Hyundai Heavy Industries Co. Ltd. 291 ITR (SC) 482] |
| 36. | Line production Service- TV Reality show: Line production service in for TV reality show like installing equipments, arranging sets, crew members, safety security and transportation service, fall within the purview of term "work" u/s 194C. Hence, payment made to non-resident for such services who doesn't have PE in India would not be taxable in India. [Endemol India (P.) Ltd (2014)(AAR)] |
| 37. | Payment made by Indian Subscribers to Non-Resident for providing passwords to access and use portal hosted from outside India are taxable in India and subject to TDS. [Cargo Community Network Pte Ltd. 289 ITR 355 (AAR)] |
| 38. | Consultancy Service - Used in India: The Non-Resident Company had rendered consultancy services in India. Consultancy Fees payable in respect of services utilized was not in connection with a business or profession carried on by the Applicant outside India for purposes of making or earning any income from sources outside India. Therefore, the Consultancy Fee would be income deemed to accrue in India for the Non-Resident Company and the Applicant had to deduct tax at source there from u/s 195. [Wallace Pharmaceuticals P Ltd 278 ITR (AAR) 97, South West Mining Ltd 278 ITR (AAR) 233] |
| 39. | Features of Business Connection: The essential features of business connection are real and intimate relationship must exist among the Non-Resident and the activities within India and such relationship must contribute directly or indirectly to the earning of income by Non-Resident in his business. [ABC Ltd 289 ITR 438 (AAR)] |
| 40. | Payment made for information accessed from Internet: Payment to a Foreign Company for electronic purchase of Business Information Reports (BIR) is not taxable in India either as — <ul style="list-style-type: none"> • Business Income, since there is no Permanent Establishment in India, or • Royalty, since the information provided in a BIR is accessible by any subscriber on payment of requisite price with regular I internet access. [ABC Ltd. 284 ITR (AAR)] |



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| 41. | Meaning of "Any Other Sum": The expression "any other sum chargeable under the provisions of this Act" in Sec. 195 (1) contemplates not only amounts, the whole of which are taxable, but it shall also cover the whole of such Gross Payments. TDS deduction shall be made on whole payment subject to Sec. 195(2) and 195(3). Headstart Business Solutions (P) Ltd 285 ITR 530 (AAR) |
| 42. | The services provided by the Non-Resident both within India and outside India in the form of advertising, marketing promotion, sales programme and special services for which payments were made by the Indian Company amounted to rendering managerial and consultancy services and therefore the requirement of the definition of 'Fees for Technical Services' were satisfied, and the amount received by the Non-Resident would be taxable in India. International Hotel Licensing Co. S.A.R.L. 288 ITR 534 (AAR) |
| 43. | Payments made by an Indian Company as Service Fee to Group Company overseas are subject to withholding tax u/s 195. Danfoss Industries P Ltd [2004] TIOL 5 (AAR) |
| 44. | W.e.f. 01.07.2009, Revised procedure for furnishing information for remittances to Non-Residents. C.No.4/2009 dt 29.06.2009 & C.No.9/2009 dt 30.11.2009. |
| 45. | Deduction u/s 194E or 195 for Non Resident Umpires: TDS u/s 194E is not deductible for Non Resident Match Referees and Umpires as they are not Sportsman or an Entertainer. They are Professionals, and payment made to them by a Non Resident is covered u/s 195 and not under 194-E. [Indcom vs CIT(TDS) 335 ITR 485 (Cal.)] |
| Assessee in Default | |
| 46. | No Double Recovery of Tax, but Deductor liable for interest: (a) No Demand u/s 201(1) should be enforced after the tax deductor has satisfied the office-in-charge of TDS that the taxes due have been paid by the deductee-assessee. However, this will not alter the liability to charge interest u/s 201(1A) till the date of payment of taxes by the Deductee or the liability for penalty u/s 271C. [Hindustan Coco Cola Beverage (P) Ltd vs CIT 293 ITR 226 (SC)]. (b) Where the tax has already been recovered from the Payee, it is not open to the Department to recover the same from the Deductor. However, in the above circumstances, payment of interest is mandatory for the period of delay caused by the omission by the Deductor. [Mahendra & Mahendra Ltd. 242 ITR 187 (SC)] |
| Tax Collected at Source | |
| 47. | Sec.206: License Fee paid to the Government for permitting the Licensee to carry on liquor business is not covered u/s 206C, and no liability to collect tax at source. Om Prakash and Co. 248 ITR 105 (SC) |
| 48. | Agricultural Produce cultivated by the Assessee in the forest does attract Sec.206C. AP Forest Corpn. 272 ITR 140 (All) |
| 49. | Survey: TDS Officers are having powers of survey. The authority receiving return of TDS to conduct survey and issue summons for production of books and documents was valid. Reckitt & Coleman of India Ltd. 251 ITR 306. |
| 50. | Sec.206C: Tax has to be collected at source on the Cost Price of Liquor excluding the amount paid towards Excise Duty. Harvansh and Sons v. Union of India 266 ITR 364(MP) |
| TDS at Lower Rate, TDS Procedures, etc. | |
| 51. | Certificate for Lower Rate - AO's Power to reject: If conditions for grant of a Certificate u/s 197 were duly fulfilled, it would be impermissible for AO to reject application for issuing a Certificate. It cannot be contended that no prejudice would be caused to Assessee since tax would be refunded later together with Interest. Larsen and Tubro Limited vs ACIT 2010 (Bom) |
| 52. | Sec.206AA not applicable to Persons whose Income is below Taxable Limit: It may not be necessary for such persons whose income is below the maximum amount not chargeable to income-tax to obtain PAN and in view of the specific provision of Sec.139A, Sec.206AA is not applicable to such persons. So, Banking and Financial Institutions shall not insist upon such persons to furnish PAN while filing declaration u/s 197A. However, Sec.206AA would continue to be applicable to persons whose Income is above the maximum amount not chargeable to income-tax. [Smt. A. Kowsalya Bai (2012) 346 ITR 156 (Kar.)] |



ADVANCE TAX, COLLECTION AND RECOVERY OF TAX

| Sec. | Description | Provisions |
|------|--|---|
| 207 | Advance tax Not Applicable | Resident Senior Citizen who does not have any income chargeable under the head PGBP. |
| 208 | Advance tax | Advance tax to be paid if it exceeds ₹10,000. |
| 220 | Time limit for tax payment | Dues to be paid in 30 days of service of Demand Notice. Time limit may be increased/ decreased. |
| 220 | Assessee deemed to be default | Assessee deemed to be in default, if tax not paid within due date. Exceptions: (a) Appeal made to CTT(Appeals)/ (b) Restrictions on remittance from foreign country, (c) Demand in dispute - Conflicting HC decisions, (d) Earlier decided in Assessee's favour. |
| 220 | Validity of Demand Notice | When Notice of Demand has been served upon an Assessee and any appeal or other proceeding, is filed or initiated, such demand shall be deemed to be valid till the disposal of the appeal by the Last Appellate Authority or disposal of the proceedings. |
| 220 | Period of Interest | The Assessee shall be liable to pay interest u/s 220(2) from the day immediately following the end of the period mentioned in the first Notice of Demand, referred to in Sec.220(1) and ending with the day on which the amount is paid. |
| 220 | Waiver of Interest | Waiver of Interest by CIT/CCIT if reasons are genuine & assessee has co-operated |
| 222 | Tax recovery certificate | Certificate of Recovery of Tax - drawn by Tax Recovery Officer mentioning the dues. |
| 222 | Special Mode of Recovery by TRO | Attachment of movable/immovable property/ detention in prison/Appointment of receiver for Assessee's Assets |
| 226 | Other Modes of recovery | Attachment of Salary, Garnishee Order, Recovery from Court's money, or Recovery by Distraint and Sale. |
| 281 | Alienation of Assets | Assets shall be transferred during pendency of proceedings. Exception: tax payable < ₹5,000 and value of Asset ≤ ₹10,000. |
| 281B | Provisional Attachment | During pendency of proceedings, Assets can be attached by the AO with permission of CCrr/PCCIT/CIT/PCrr/ DGrT/PDGIT/DIT /PDIT for an aggregate period not exceeding 2 years or 60 days after the date of order of assessment or reassessment, whichever is later. Time period to exclude the period during which assessment proceedings are stayed by Court's injunction. [Not Applicable w.e.f 01.10.2014] |



SAFEGUARD DUTY (SGD) — A CLASSIFICATION OF CUSTOMS DUTIES

Safeguard duty (u/s 8B of the Customs Act) can be imposed if the Central Government on enquiry finds that the imports in increased quantity -

- have caused serious injury (an injury causing significant overall impairment in the position of a domestic industry) to domestic industry or,
- is threatening to cause serious injury (a clear and imminent danger of serious injury) to domestic industry. It can be imposed irrespective of origin of imported goods.

Power to levy SGD —

- Central Government can impose Safeguard Duty (SGD) on that article, by Notification in Official Gazette,
- Every Notification shall be laid before each House of Parliament.
- SGD shall be in addition to any other duty imposed under this Act, or under any other law for the time being in force.

Period of imposition: The safeguard duty shall, unless it is revoked earlier, be in force till the expiry of 4 years from the date of its imposition. However, the Central Government can extend the period of imposition but total period of imposition (including extension) cannot be beyond 10 years from the date of its imposition, if Central Government is of the opinion that-

- domestic industry has taken measures to adjust to such injury or threat thereof, &
- it is necessary that SGD should continue to be imposed.

Safeguard duty cannot be imposed on articles originating from developing countries: In case of articles originating from a developing country (i.e. a country notified by the Government of India for purpose of levy of such duty), this duty cannot be imposed under following circumstances,-

- If the imports of such article from developing country does not exceed 3% of the total imports of that article into India.
- Where the article is originating from more than one developing countries (each with less than three percent import share), then the aggregate of imports from all such countries taken together does not exceed nine percent of the total imports of that article into India.

Imposition of Provisional Safeguard Duty: Section 8B(2) enables the Central Government to impose a provisional safeguard duty in appropriate cases, pending the determination of the issues as to whether the import of the concerned article to India would cause or threaten to cause serious injury to the domestic industry. The duty so collected, shall be refunded if, on a final determination, the Central Government is of the opinion that neither any injury has been caused to the domestic industry, nor there is any such threat to cause serious injury.

The Provisional safeguard duty cannot remain in force for more than 200 days from the date when it was first imposed.

Non Imposition of Safeguard Duty: The safeguard duty shall not apply to articles imported by a 100% export-oriented undertaking or a unit in a special economic zone unless,—



- (a) specifically made applicable in such notifications or such impositions, as the case may be; or
- (b) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area and in such cases safeguard duty shall be levied on that portion of the article so cleared or so used as was livable when it was imported into India. [Amended by Finance (No. 2) Act, 2014 w. e. f. 06-08-2014].

Specific Safeguard Duty (SSGD) (u/s 8C) — If Central Government conducting such enquiry as it deems fit, is satisfied that any article is imported in to India from People's Republic of China -

- (a) in such increased quantities, and
- (b) so as to cause or threatening to cause, market disruption to domestic industry.

Exemptions from levy of SSGD —

- (a) Based on Notification:** Central Government may, by Notification, exempt such quantity of any article, when imported from any country or territory to India, from payment of whole or part of SSGD.
- (b) Based on location:** SSGD shall not apply to articles imported by 100% EOU or a unit in FTZ or SEZ, unless specifically made applicable in the Notification.

Earlier SSGD could be extended to 10 years if the article was imported into India from the People's Republic of China in increased quantities. Now the words "in increased quantities" have been removed. Hence, it can be concluded that for extension of SGD, the articles need not be imported in increased quantities. The extension can be done irrespective of the fact that the domestic industry has made adjustment towards the market disruption.

Differences between Safeguard Duty and Specific Safeguard Duty:

| Nature of Differences | Safeguard Duty | Specific Safeguard Duty |
|-----------------------|---|--|
| Origin country | Any country other than developing country (if import share > 3%, such exception is not available for developing country also) | People's Republic of China |
| Cause | Serious injury to domestic industry | Market disruption to domestic industry |



CALCULATION OF EARNINGS PER SHARE AT THE TIME OF AND AFTER RIGHT ISSUE (AS – 20)

Rights Issues

Right Issue

- Right issues are made at a price lower than fair value of share.
- A right issue usually includes a bonus element.
- Since, right issue includes a bonus element, the number of equity shares to be used in calculating basic Earning per Shares for all periods prior to right issue is the number of equity shares outstanding prior to the issue multiplied by right factor which is calculated as under :

$$\text{Right Factor} = \frac{\text{Fair value per share immediately prior to right issue}}{\text{Theoretical ex-right fair value per share}}$$

Theoretical Ex-right fair value:

$$= \frac{\text{Aggregate fair value of share immediately prior to the exercise of the rights} + \text{Proceeds from exercise of the rights}}{\text{Number of shares outstanding immediately after the right issue}}$$

Example:

On 01.01.2014 Vichitra Ltd. had 5,00,000 shares outstanding. On 01.03.2014, it issued one new share for each five shares outstanding at ₹15. Fair value of one equity share immediately before the right issue was ₹21. Net profit for the year 2013 was ₹22,00,000 and for 2014 ₹30,00,000. Calculate the basic Earnings per Share (EPS) for 2014 restated EPS for 2013.

Answer:

Computation of theoretical ex-rights fair value per share



$$\frac{\text{Fair value of all outstanding shares immediately prior to exercise of rights} + \text{Total amount received from exercise of right}}{\text{Number of shares outstanding prior to exercise} + \text{Number of shares issued in the exercise}} = \frac{(\text{₹ } 21 \times 500000 \text{ shares}) + (\text{₹ } 15 \times 100000 \text{ shares})}{(500000 + 100000 \text{ shares})} = \text{₹ } 20.00$$

Theoretical ex-right value per share = ₹ 20.00

Computation of adjustment factor

$$\frac{\text{Fair value per share prior to exercise of rights ₹ } 21.00}{\text{Theoretical ex-rights value per share ₹ } 20.00} = 1.06$$

Computation of earnings per share

EPS for the year 2013 as originally reported: ₹22,00,000/5,00,000 shares ₹ 4.40

EPS for the year 2013 restated for rights Issue: ₹22,00,000/(5,00,000 shares × 1.05) ₹ 4.20

Basic EPS for the year 2014 including effects of Rights issue

$$\frac{\text{₹ } 30,00,000}{(5,00,000 \times 1.05 \times 2 / 12) + (6,00,000 \times 10 / 12)} = \text{₹ } 5.11$$

TREATMENT OF RESEARCH AND DEVELOPMENT EXPENDITURE (AS – 26)

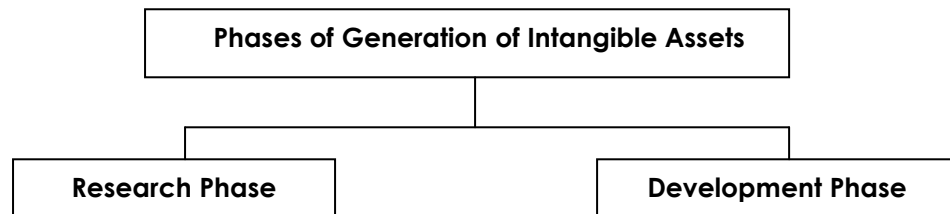


Research and Development Expenditure:

- Before, the issue of this Standard AS-26, there was separate accounting standard AS-8 on Research & Development Expense, which has been deleted.
- The main issue in accounting is whether to capitalize or expense the research and development (R&D) cost as they are incurred.



- During the process of research and development, intangible assets are generated, whether to recognize these assets or not, if yes, at what cost/amount? the cost of intangible assets generated due to research and development.



Research Phase - Research is the activity which is aimed at inventing or creating a new product, method or system.

Development Phase - Development is the activity which converts the result of the research into a marketable product.

Accounting treatment —

- **Research Cost:**
 - As per AS – 26 Research Cost be expensed as and when it is incurred;
 - It research cannot be capitalized;
 - The intangible asset arising from research should not be recorded as an asset;
 - the research cost of internal project shall be **treated as an expense** in financial statement.
- **Development Expenses:**
 - The development expenses, cost of internal project also to be expensed as incurred unless they meet asset recognition criteria,
 - before recognizing these costs as an asset the following points should be checked:
 - Technical feasibility of the product
 - Availability of product for use or sale
 - Identification of cost incurred
 - Probability of external market or
 - The realistic expectation that there will be sufficient future revenues to cover cost.
 - If development expenses to generate intangible, meets asset recognition criteria and other criteria as listed above, the intangible assets generated from development expenses are capitalized
 - What will be the amount at which these intangible assets are recognized? As per this Standard intangible asset shall be recognized at **cost**.