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CERTIFICATE COURSE ON TDS

Today's Content – TDS u/s 194LB, 194LBA(1), 194LBB, 194LBC, 194LD, 194LC,

I. Section 194LB of the Income Tax Act, 1961

Introduction

Section 194LB of the Income Tax Act, 1961, deals with the deduction of tax at source on income by way of interest from an infrastructure debt fund. This section mandates that any person who makes a payment of interest to a non-resident (not a company) or a foreign company on behalf of an infrastructure debt fund, as per Section 10(47), is required to deduct tax at source at the rate of 5%.

Applicability of Section 194LB

Section 194LB of the Income Tax Act, 1961, is applicable to any person who makes payment of interest to a non-resident (not a company) or a foreign company on behalf of an infrastructure debt fund.

What is an Infrastructural Debt Fund?

According to Section 10(47) of the Income Tax Act, 1961, an organization or trust that has been established with the intention of investing in the infrastructure sector, referred to as an “infrastructure debt fund” will not be included in the total income.

Section 10(47) of the Income Tax Act provides an exemption for any income of an infrastructure debt fund (IDF). This exemption is a significant incentive for investments in infrastructure projects in India, which are crucial for the country's economic development. The provision specifies that the IDF must be set up in accordance with the prescribed

guidelines and must be notified by the Central Government in the Official Gazette to qualify for the exemption.

Applicability of Provisions of SEBI

The provisions of this section are applicable to all infrastructure debt funds that are registered under the Securities and Exchange Board of India (SEBI) Regulations, 2011. These regulations provide for the registration and regulation of infrastructure debt funds in India.

Rate of TDS under Section 194LB

Under Section 194LB, the deduction of TDS shall be at the rate of 5%, including cess and surcharge. It is important to note that there is **no prescribed threshold limit under Section 194LB**.

Non-Applicability of Section 197

The provision of Section 197 will not be applicable to the deduction of tax at source under Section 194LB for interest on infrastructure debt funds. Section 197 deals with lower rates of TDS and thus, it will not be applicable to payments made on infrastructure debt funds.

Time of deducting TDS on Joint Development Agreement under Section 194IC of the Income Tax Act, 1961

TDS is required to be deducted in case of payment made to the when-

Such sum is credited of such sum to the account of the payee; or

Payment is made to the payee in cash or by way of issue of cheque/ draft/ any other mode

whichever event takes place earlier.

Impact of Section 194LB

Section 194LB of the Income Tax Act, 1961 has a significant impact on taxpayers. The non-resident or foreign company receiving the interest payment from the infrastructure debt

fund will be subject to TDS at the rate of 5%. This means that the net amount received will be lower than the gross amount of interest payable.

For example, if an infrastructure debt fund pays interest of INR 1,00,000 to a non-resident or foreign company, the TDS applicable under Section 194LB will be Rs. 5,000. The net amount payable to the non-resident or foreign company will be INR 95,000. The TDS deducted will be remitted to the government. Such credit will be available to the non-resident or foreign company against their final tax liability.

Example of TDS under Section 194LB

To understand the concept of TDS under Section 194LB, let's take an example:

ABC Ltd. is an infrastructure debt fund in India. It pays interest of Rs. 10,00,000 to a non-resident individual. ABC Ltd. shall deduct TDS of 5% on the interest paid to the non-resident individual. Therefore, the TDS amount will be Rs. 50,000 (5% of Rs. 10,00,000).

In cases where the non-resident individual is a resident of a country with which India has a Double Taxation Avoidance Agreement (DTAA), the rate of TDS may be lower than 5%. For instance, if the DTAA between India and the non-resident individual's country provides for a lower rate of TDS on interest income, say 3%, then the TDS amount will be Rs. 30,000 (3% of Rs. 10,00,000).

Conclusion

Section 194LB of the Income Tax Act, 1961, is applicable to the payment of interest by an infrastructure debt fund to a non-resident or foreign company. Any person responsible for making such a payment must deduct TDS at the rate of 5%. The deduction of TDS is applicable to the interest paid.

II. Section 194LBA

The Indian Income Tax Act's Section 194LBA addresses the TDS (Tax Deducted at Source) on specific income received from business trust entities:-

- **Applicability:** Income given to unit holders by a business trust is covered by Section 194LBA. Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs) are common types of business trusts.
- **Income Type:** Dividends mentioned in Section 115UA are the source of income liable to TDS under Section 194LBA.
- **TDS Rate:** In accordance with Section 194LBA, the business trust's income distribution to unit holders is subject to a 10% TDS rate.
- **Timing of TDS:** TDS must be withheld when income is credited to the payee's account or when payment is made, whichever comes first.

Exemptions: If the unit bearer is a non-resident or if certain requirements are satisfied, there may be lower TDS rates or particular exemptions available under applicable Double Taxation Avoidance Agreements (DTAA).

What are REITs and InvITs?

REITs are companies that own, operate, or finance income-producing real estate across a range of property sectors. They allow individual investors to earn a share of the income generated through commercial real estate ownership without having to buy, manage, or finance any properties directly. In India, REITs were introduced in 2014, and since then, they have gained traction among investors seeking exposure to real estate.

InvITs on the other hand, are similar investment vehicles focused on infrastructure projects. They allow investors to invest in a diversified portfolio of infrastructure assets, such as toll roads, power plants, and pipelines. InvITs were introduced in India in 2016 to attract long-term capital for infrastructure development.

Benefits of REITs

- **Accessibility** - REITs democratize real estate investment by allowing individuals to invest with relatively low capital. With a minimum investment often in the range of ₹10,000 to ₹15,000, anyone can participate in the real estate market.
- **Liquidity** - Unlike traditional real estate, which can take time to sell, REITs are traded on stock exchanges, offering liquidity to investors. This means investors can buy or sell their units at market prices, providing flexibility in managing their investments.
- **Regular income** - REITs are required to distribute at least 90% of their taxable income to unit holders as dividends. This can provide a steady income stream, making them attractive for income-focused investors.
- **Diversification** - Investing in a REIT allows individuals to gain exposure to a diversified portfolio of properties, reducing the risk associated with investing in a single property. This diversification can lead to more stable returns.
- **Professional management** - REITs are managed by experienced professionals who oversee property acquisitions, management, and financing. This expertise can lead to better decision-making and potentially higher returns for investors.

Benefits of InvITs

- **Stable returns** - InvITs typically invest in income-generating infrastructure projects, offering stable and predictable returns. This is particularly appealing in a volatile market, providing investors with a reliable income source.
- **Long term investment horizon** - Infrastructure projects often have long gestation periods but yield returns over time. InvITs attract long-term investors looking for capital appreciation and income.
- **Tax efficiency** - InvITs are structured to be tax-efficient, allowing investors to benefit from reduced tax rates on dividends. This can enhance overall returns compared to traditional investments.

- **Low correlation with equity markets** - Infrastructure investments typically have low correlation with the stock market. This means that during market downturns, InvITs can act as a stabilising factor in an investor's portfolio.
- **Support for national development** - By investing in InvITs, individuals contribute to the development of critical infrastructure projects in the country, aligning their financial goals with national growth.

Differences Between REITs and InvITs

Although REITs (Real Estate Investment Trusts) and InvITs (Infrastructure Investment Trusts) share similarities as investment trusts, there are key distinctions that investors should consider:

- **Structure** - Both REITs and InvITs pool investor funds and have a trustee, sponsor, and manager. However, REITs focus on completed and income-generating real estate, requiring at least 80% of their assets to be in such properties, with a maximum of 20% in under-construction projects or related securities. InvITs invest in infrastructure projects like roads and power plants, also mandating 80% investment in completed, revenue-generating assets.
- **Risks** - REITs offer a diversified portfolio of properties, making them generally less risky compared to direct real estate investments. On the other hand, InvITs focus on infrastructure projects that can be exposed to a range of operational and regulatory challenges, which makes them inherently riskier investments.
- **Minimum Investment** - Previously, the minimum subscription amount for REITs was ₹50,000 and for InvITs, it was ₹1 lakh. However, this threshold has now been significantly lowered to ₹10,000 to ₹15,000 for both investment vehicles.
- **Liquidity** - REITs primarily focus on acquiring properties that yield consistent income, such as rental revenue. In contrast, InvITs target assets that generate cash flows through usage fees, tolls, or tariffs.
- **Governance** - REITs are regulated by the SEBI (Real Estate Investment Trusts) Regulations of 2014, while InvITs fall under the purview of the SEBI (Infrastructure Investment Trusts) Regulations, also established in 2014.

Conclusion

REITs and InvITs represent a transformative approach to investing in real estate and infrastructure in India. They offer numerous benefits, including accessibility, liquidity, stable returns, and professional management, making them attractive options for both retail and institutional investors.

As India continues to grow and urbanize, these investment vehicles will play a crucial role in mobilizing capital for essential sectors, ultimately contributing to the nation's economic development. For investors looking to diversify their portfolios while supporting India's infrastructure and real estate sectors, REITs and InvITs present a promising opportunity.

The government has carefully constructed the requirements to prevent any instances of double taxation, even if the taxation of business trusts may appear complicated. According to a business trust's tax laws, unit holders are excused from paying taxes on income that is taxed in the business trust's hands. On the other hand, unit holders are nonetheless subject to taxes on all income that is exempt in the hands of the business trust.

A detailed understanding of Section 194LBA is required to keep track of TDS on income from business trusts.

III. Section - 194LBB

Section 194LBB of the Income Tax Act, 1961 specifies that if any income is distributed to unit holders in respect of units of an investment fund and which is not taxable under the head of “Profits and Gains from Business or Profession”, they are to be taxed at a specified rate. Under this section, tax will be deducted irrespective of the residential status of the person receiving such income.

Who is liable to TDS under Section 194LBB?

As per Section 194LBB, the following parties are required to deduct TDS at the time of payment

anyone in charge of paying out income from Investment Fund units;

unit holders, irrespective of their residential status

Rate of TDS under Section 194LBB of Income Tax Act

1. Resident

TDS is required to be deducted at the rate of 10%. Surcharge or Health and Education Cess will not be added to these rates.

2. Non-Resident or foreign company

The rate at which tax will be deducted shall be as under, where the payee is a non-resident (not being a foreign company) or a foreign company: –

In respect of income in the nature of dividend, @ 20%;

At the rates in force, in case of Other Income;

No TDS if income is exempt in the hands of the recipient.

In addition, the applicable Surcharge and Health and Education Cess will be added to the tax rate.

Timing of Deduction of TDS under Section 194LBB

As per Section 194LBB, tax must be deducted at the time of payment or credit of income to the account of the payee, whichever is earlier.

Exemption from TDS under Section 194LBB of Income Tax Act

No TDS will be deducted from payment to the Government, the RBI, a mutual fund, or a corporation set up under the Act since such income is exempt from tax in their hands..

IV. Section 194LBC of Income Tax Act, 1961

What is Section 194LBC of the Income Tax Act, 1961?

Any person required to pay any income on any investment made by a resident or non-resident in a securitization trust is required by this section to deduct TDS at the moment the investor's account is credited with the income or at the time the investor is paid, whichever occurs first.

Applicability of Section 194(1) LBC

The terms of section 194LBC(1) is applicable where such income is payable to a resident investor for an investment in a securitization trust.

What is the rate of TDS?

The TDS rate under Section 194LBC (1) is as follows:

TDS rate of 25% – In case the payee is an individual or Hindu Undivided Family (HUF)

TDS rate of 30% – In case the payee is a person other than individual or HUF

Applicability of Section 194LBC (2)

The terms of section 194LBC(2) is applicable where such income is payable to a:

Non-resident investor (except a company), or

Foreign Company

For an investment in a securitization trust.

Rate of TDS under Section 194LBC(2)

In such a case, the rate of TDS will be the rates in force at that point of time, i.e.:

TDS at the rate of 30% – In case of Non-resident investor (not a company)

TDS at the rate of 35% – In case of Foreign Company

Who is an investor under Section 194LBC?

An investor is a person who holds:

Securitized debt instrument or, Securities or security receipt issued by the securitization trust

Time of deducting TDS under Section 194LBC of the Income Tax Act, 1961

TDS is required to be deducted at the time –

Such sum is credited of such sum to the account of the payee; or

Payment is made to the payee in cash or by way of issue of cheque/ draft/ any other mode

Whichever event takes place earlier.

Deemed application of provisions of TDS under Section 194LBC

Where the amount is credited to the Suspense Account or any other account in the books of the person who is liable to make payment to the deductee, it will be deemed to have been credited to the account of the payee and the provisions for deduction of TDS under these provisions will apply.

Deducting Lower Tax Rate

As per Section 197, if the Assessing Officer is satisfied, it can issue a lower TDS Certificate at a lower TDS rate for the income paid to resident or non-resident investor for securitization trust.

Conclusion

Section 194LBC provides for rate of TDS in case of income payable to a resident or a non-resident investor in the securitization trust.

V. Section 194LC of Income Tax Act, 1961

Introduction

Section 194LC of the Income Tax Act, 1961 is a provision that was introduced by the Finance Act, 2012. Its purpose is to promote foreign investment in India by providing favorable tax treatment on interest income earned by non-resident investors on their investments in Indian companies.

Eligibility Criteria under Section 194LC

Where income by way of interest is paid to a non-resident (not a company or foreign company) paid by a specified company or business trust, the person responsible for making the payment will deduct TDS. To be eligible for benefits under Section 194LC, non-resident investors must meet certain criteria.

The term “non-resident” includes a person who is not a resident in India, as well as a foreign company that does not have a permanent establishment in India. Eligible instruments and transactions include rupee-denominated bonds, foreign currency bonds, and loans. However, investments made **before July 1, 2012, and after 1st July 2023**, are not eligible for benefits under this provision.

Tax Treatment under Section 194LC

The rate of TDS on interest income earned by non-resident under this provision will be as follows:

1. TDS at the rate of 5% – in general cases.
2. TDS at the rate of 4% – Money borrowed from a source outside India by issue of long-term bond or rupee denominated bond on or after the 1st April 2020 but before the 1st July 2023, that is listed on a recognized stock exchange located in any International Financial Services Centre (IFSC)
3. TDS at the rate of 9% – Money borrowed from a source outside India by issuance of long-term bond or rupee denominated bond on or after the 1st July, 2023, that is listed on a recognized stock exchange located in any IFSC
4. TDS at the rate of 20% in case of interest paid by specified company under a loan agreement, if PAN is not given.

Additionally, non-residents are to add surcharge and education cess on the interest income earned through eligible instruments and transactions.

Time of deducting TDS under Section 194LC of the Income Tax Act, 1961

TDS is required to be deducted when-

- Such sum is credited of such sum to the account of payee; or
- Payment is made to the payee in cash or by way of issue of cheque/ draft/ any other mode

Whichever event takes place earlier.

Benefits of Section 194LC

The impact of Section 194LC on foreign investment in India has been significant. It has helped to attract foreign investment in a range of sectors, including infrastructure, renewable energy, and manufacturing. However, some challenges remain, including compliance with applicable laws and potential penalties for non-compliance.

Conclusion

In conclusion, Section 194LC of the Income Tax Act, 1961, is critical for promoting foreign investment in India. However, challenges remain, including compliance with applicable laws and potential penalties for non-compliance.

VI. Section 194LD of the Income Tax Act

Introduction to Section 194LD of Income Tax Act

Section 194LD of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) provides for deduction of TDS on interest payable on investments in Rupee Denominated Bonds of Indian companies or Government Securities made by Foreign Institutional Investors or Qualified Foreign Investors.

Who is liable to deduct TDS under Section 194LD

Taxes will be deducted if the beneficiary is one of the following: –

- Foreign Institutional Investor (as amended from time to time). For the purpose of this Section, “Foreign Institutional Investor” shall have the meaning assigned to it in clause (a) of the Explanation to Section 115AD of the Act. In terms of Section 115AD, the FII concept has been substituted with SEBI (Foreign Portfolio Investors) Regulations, 2019; or
- Qualified Foreign Investor.

Which income is liable to TDS under 194LD?

The following interest is subject to withholding tax by the person responsible for its payment:

Investment in Rupee Denominated Bond of an Indian Company;

- Interest due between 01-06-2013 and 01-07-2023;
- Interest on the Government Security Investment Payable from June 1, 2013, through July 1, 2023;
- Interest accruing on the investment in municipal debt securities from January 4, 2020, through July 1, 2023.

Rate of TDS under Section 194LD of Income Tax Act

TDS is required to be deducted at the rate of 5%. Surcharge or Health and Education Cess will be added to these rates. If the deductee doesn’t provide his PAN to the deductor, tax will be deducted under Section 206AA at the rate of 20%.

If the deductee has not filed their tax return for the specified period, the tax will be deducted at the rate prescribed by Section 206AB. However, Section 206AB doesn’t apply to a non-resident who doesn’t have a Permanent Establishment (PE) in India.

If both Section 206AA and Section 206AB apply, tax will be withheld at higher of the two rates prescribed under Section 206AA and Section 206AB.

Timing for Deduction under Section 194LD

As per Section 194LD of the Act, tax must be deducted at the time of payment or credited of income, whichever is earlier.

