

# **TAX DEDUXTION AT SOURCE – UNDER I T ACT**

**By**

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**Section – 194C**

**Section – 194D**

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**Deduction of Tax at Source –  
Section 194C –  
On payment to Contractor and Sub Contractor**

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## **Deduction of Tax at Source – Section 194C – On payment to Contractor and Sub Contractor**

Tax has to be deducted at source under section 194C by 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 the –

- (i) the Central Government or any State Government; or
- (ii) any local authority; or
- (iii) any statutory corporation; or
- (iv) any company; or
- (v) any co-operative society; or
- (vi) any statutory authority dealing with housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages or for both; or
- (vii) any society registered under the Societies Registration Act, 1860; or

- (viii) any trust; or
- (ix) any university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under the UGC Act, 1956; or
- (x) any firm; or
- (xi) any Government of a foreign State or foreign enterprise or any association or body established outside India; or
- (xii) any person, being an individual, HUF, AOP or BOI, who has total sales, gross receipts or turnover from the business or profession carried on by him exceeding ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor.

## **Deduction of Tax at Source – Section 194C – On payment to Contractor and Sub Contractor**

### ***Time of deduction***

Tax has to be deducted at the time of payment of such sum or at the time of credit of such sum to the account of the contractor, whichever is earlier.

Where any such sum is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and the tax has to be deducted at source. The account to which such sum is credited may be called "Suspense account" or by any other name.

However, no tax has to be deducted at source in respect of payments made by individuals/HUF to a contractor exclusively for personal purposes.

### ***Definition of work***

Work includes –

- (a) advertising;
- (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;
- (c) carriage of goods or passengers by any mode of transport other than by railways;
- (d) catering;
- (e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, being a person related to the customer in such manner as defined u/s 40A(2)(b), (i.e., the customer would be in the place of assessee; and the associate would be the related person(s) mentioned in that section).

## ***Important points – Applicability of Section 194C***

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- ❑ (i) The deduction of income-tax will be made from sums paid for carrying out any work or for supplying labour for carrying out any work. In other words, the section will apply only in relation to ‘works contracts’ and ‘labour contracts’ and will not cover contracts for sale of goods.
- ❑ (ii) Contracts for rendering professional services by lawyers, physicians, surgeons, engineers, accountants, architects, consultants etc., cannot be regarded as contracts for carrying out any “work” and, accordingly, no deduction of income-tax is to be made from payments relating to such contracts under this section. Separate provisions for fees for professional services have been made under section 194J.
- ❑ (iii) The deduction of income-tax must be made at the time of credit of the sum to the account of the contractor, 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.



## Deduction of Tax at Source – Section 194C – On payment to Contractor and Sub Contractor

### Rate of TDS

The rate of TDS under section 194C on payments to contractors would be **1%**, where the payee is an individual or HUF and **2%** in respect of other payees. The same rates of TDS would apply for both contractors and sub-contractors.

The applicable rates of TDS under section 194C are as follows –

Payee	TDS rate
Individual HUF contractor/sub-contractor	1%
Other than individual/HUF contractor/ sub-contractor	2%
Contractor in transport business (if PAN is furnished)	Nil
Sub-contractor in transport business (if PAN is furnished)	Nil

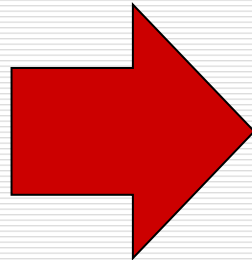
### Threshold limit for deduction of tax at source under section 194C

No deduction will be required to be made if the consideration for the contract does not exceed **₹ 30,000**. However, to prevent the practice of composite contracts being split up into contracts valued at less than **₹ 30,000** to avoid tax deduction, it has been provided that tax will be required to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds **₹ 30,000** in a single payment or **₹ 1,00,000** in the aggregate during a financial year.

Therefore, even if a single payment to a contractor does not exceed **₹ 30,000**, TDS provisions under section 194C would be attracted where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid to the contractor during the financial year exceeds **₹ 1,00,000**.

## Examples – Threshold Limit Applicability

□ *ABC Ltd. makes the following payments to Mr. X, a contractor, for contract work during the P.Y.2024-25– Rs. 20,000 on 1.5.2024, Rs.25,000 on 1.8.2024, Rs.28,000 on 1.12.2024. On 1.3.2025, 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.*



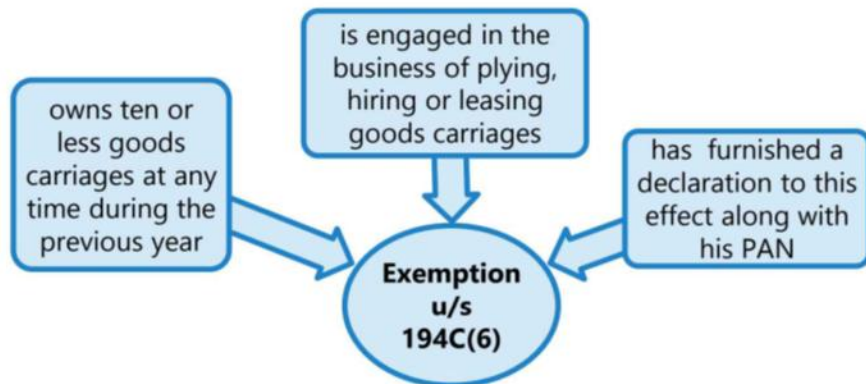
□ In this case, the individual contract payments made to Mr. X does not exceed Rs.30,000. However, since the aggregate amount paid to Mr. X during the P.Y. 2024-25 exceeds Rs.1,00,000 (on account of the last payment of `Rs.30,000, due on 1.3.2025, taking the total from Rs. 73,000 to ` 1,03,000), the TDS provisions under section 194C would get attracted. Tax has to be deducted@1% on the entire amount of Rs.1,03,000 from the last payment of Rs. 30,000 and the balance of Rs. 28,970 (i.e., Rs. 30,000 – Rs. 1,030) has to be paid to Mr. X.

## Deduction of Tax at Source – Section 194C – On payment to Contractor and Sub Contractor

### ***Non-applicability of TDS under section 194C***

No deduction is required to be made from the sum credited or paid or likely to be credited or paid during the previous year 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 order to convey the true intent of law, it has been clarified that this relaxation from the requirement to deduct tax at source shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to a contractor, who fulfills the following three conditions cumulatively -



### **Meaning of Goods carriage:**

Goods carriage means -

- (i) any motor vehicle constructed or adapted for use solely for the carriage of goods; or
- (ii) any motor vehicle not so constructed or adapted, when used for the carriage of goods.

The term "motor vehicle" does not include vehicles having less than four wheels and with engine capacity not exceeding 25cc as well as vehicles running on rails or vehicles adapted for use in a factory or in enclosed premises.



## **Deduction of Tax at Source – Section 194C – On payment to Contractor and Sub Contractor**

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- ❑ The relaxation under sub-section (6) of section 194C of the Act from non-deduction of tax shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to an contractor who is engaged in the business of transport i.e. plying, hiring or leasing goods carriage and who is eligible to compute income as per the provisions of section 44AE (i.e a person who is not owning more than 10 goods carriage at any time during the previous year) and who has also furnished a declaration to this effect along with his PAN.
- ❑ This is as per the amendment by Finance Act, 2015 w.e.f. 01.06.2015. (Prior to this amendment, the benefit of non-deduction of TDS is applicable to all the transporters irrespective of their size.)
- ❑ The capacity of goods carriages have been made irrelevant.
- ❑ The payer must furnish the details of payment to transporter in the quarterly statement of TDS to be filed with the income-tax department. [Sec. 194C(7).

## Declaration Under Section 194C (6)

To,  
Name of the Payer Address of the Payer

### **Declaration Under Section 194C (6) For Non-Deduction of TDS**

I,.....( Name of vehicles owner), Proprietor/ Partner/ Director of M/s ..... (Name of the company or firm and address of the company) (hereinafter "The Contractor") do hereby make the following declaration as required by sub section (6) of section 194C of the Income Tax, 1961 for receiving payments from the payer without deduction of tax deduction at source (TDS).

1. That name of party authorized to make this declaration in the capacity as proprietor/ partner/ Director.
2. That the contractor is engaged by the payer for hiring or leasing of goods carriage for its business.

3. That I have not own more than ten goods carriage vehicles as on date.
4. That if the number of goods carriages owned by the contractor exceeds ten at any time during the previous year, the contractor shall forthwith, in writing intimate the prater of this fact.
5. That the Income Tax Permanent account number (PAN) of the contractor is PAN of Payee .A self-attested photocopy of the same is furnished to the payer along with this declaration.

Place:

Dated:

Sign: (Name of Declarant)

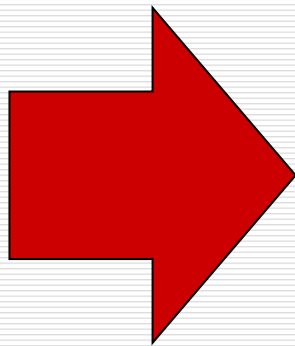
### **Verification**

I \_\_\_\_\_do hereby verify that the contents of paragraphs one to five above are true to my own knowledge and belief and no part of it is false and noting material has been concealed in it. Place: Dated: Sign:

(Name of Declarant)

## Payment u/s 19C – impact in Computation of Business Income – Section 40A(3)

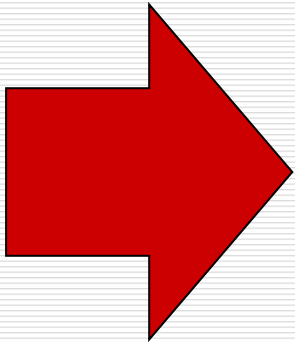
*Certain concessions are granted to transport operators in the context of cash payments u/s 40A(3) and deduction of tax at source u/s 194-C.*



- ❑ Section 40A(3) provides for disallowance of expenditure incurred in respect of which payment or aggregate of payments made to a person in a day exceeds Rs.10,000, and such payment or payments are made otherwise than by account payee cheque or account payee bank draft or use of electronic clearing system through bank account or through other prescribed electronic modes.
- ❑ However, in case of payment made to transport operators for plying, hiring or leasing goods carriages, the disallowance will be attracted only if the payment made to a person in a day exceeds Rs.35,000. Therefore, payment or aggregate of payments up to Rs.35,000 in a day can be made to a transport operator otherwise than by way of account payee cheque or account payee bank draft or use of electronic system through bank account or through other prescribed electronic modes, without attracting disallowance u/s 40A(3).

## Payment u/s 19C – impact in Computation of Business Income – Section 40A(3)

*Certain concessions are granted to transport operators in the context of cash payments u/s 40A(3) and deduction of tax at source u/s 194-C.*



- ❑ Under section 194C, tax had to be deducted in respect of payments made to contractors at the rate of 1%, in case the payment is made to individual or Hindu Undivided Family or at the rate of 2%, in any other case.
- ❑ However, no deduction is required to be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor, during the course of the business of plying, hiring or leasing goods carriages, if the following conditions are fulfilled:-
  - ❖ (1) He owns ten or less goods carriages at any time during the previous year.
  - ❖ (2) He is engaged in the business of plying, hiring or leasing goods carriages;
  - ❖ (3) He has furnished a declaration to this effect along with his PAN.

**Deduction of tax at source on payment of gas transportation charges  
by the purchaser of natural gas to the seller of gas  
[Circular No. 9/2012 dated 17.10.2012]**

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- ☐ In case the Owner/Seller of the natural gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership of gas to the purchaser 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 modes of transportation of gas by Owner/Seller will not alter the position.
  
- ☐ However, transportation charges paid to a third-party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and tax shall be deductible at source on such payment to the third party at the applicable rates. 194C. Therefore, in such circumstances, the provisions of Chapter XVII-B are not applicable to the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. Further, the use of different



**Applicability of TDS provisions on payments by broadcasters or Television Channels to production houses for production of content or programme for telecasting**  
***[Circular No. 04/2016, dated 29-2-2016]***

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- ☐ The issue under consideration is whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a 'work contract' liable for tax deduction at source under section 194C or a contract for 'professional or technical services' liable for tax deduction at source under section 194J.
- ☐ In this regard, the CBDT has clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between:
  - ❖ (i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster; and
  - ❖ (ii) a payment for acquisition of broadcasting/ telecasting rights of the content already produced by the production house.

**Applicability of TDS provisions on payments by broadcasters or Television Channels to production houses for production of content or programme for telecasting**  
***[Circular No. 04/2016, dated 29-2-2016]***

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- ☐ In the first situation where the content is produced as per the specifications provided by the broadcaster/ telecaster and the copyright of the content/programme also gets transferred to the telecaster/ broadcaster, such contract is covered by the definition of the term ‘work’ in section 194C and, therefore, subject to TDS under that section.
- ☐ However, in a case where the telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced by the production house, there is no contract for “carrying out any work”, as required in section 194C(1).
- ☐ Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act.

**TDS on GST component comprised in payments made to residents**  
**[Circular No. 23/2017 dated 19.07.2017]**

- Wherever in terms of the agreement or contract 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 on the amount paid or payable without including such service tax component.
- In order to harmonize the same treatment with the new system for taxation of services under the GST regime w.e.f. 01.07.2017, the CBDT has, vide this circular, clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component.
- GST shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax.
- Further, for the purposes of this Circular, any reference to “service tax” in an existing agreement or contract which was entered into prior to 01.07.2017 shall be treated as “GST on services” with respect to the period from 01.07.2017 onward till the expiry of such agreement or contract. *Note – The clarification given in the above circular applies to any amount paid or payable to a resident on which tax is deductible at source as per the provisions of Chapter XVII-B.*

***Applicability of TDS provisions on payments by the transporter to truck operators  
or owners for hiring the vehicles***

***[Shree Choudhary Transport Co. v ITO [2020] 426 ITR 0289(SC)]***

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- ☐ The assessee-firm entered into contract with a cement company for transporting cement to various places in India. 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 due 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 the truck operators or owners, the assessee had not deducted tax at source.
- ☐ The Supreme Court observed that the nature of the contract entered into by the assessee with the consignor company (cement company) makes it clear that it was the responsibility of the assessee to transport the goods (cement) of the company; and how to accomplish this task of transportation was a exclusively within the domain of the assessee.
- ☐ There is no privity of contract between the transporters and the consignor company (cement company). Hiring the services of the transporters for this purpose could have only been under a contract between the assessee and the transporters, irrespective of whether such a contract was reduced into writing or not.

***Applicability of TDS provisions on payments by the transporter to truck operators or owners for hiring the vehicles***

***[Shree Choudhary Transport Co. v ITO [2020] 426 ITR 0289(SC)]***

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- ☐ If a particular truck was not engaged, there existed no contract , but when any truck got engaged for the purpose of execution of the work undertaken by the assessee 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.
- ☐ The Supreme Court opined that the assessee was not acting as a facilitator or intermediary between the consignor 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 and it was the assessee who hired the services of the trucks. The payment made by the assessee to such transporter was clearly a payment made to a sub-contractor.
- ☐ The Supreme Court, thus, held that section 194C was applicable and the assessee 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.



## Deduction of Tax at Source – Section 194C – On payment to Contractor and Sub Contractor

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- ❑ In **ACIT vs. Mr. Mohammed Suhail, Kurnool** in **ITA No. 1536/Hyd/2014, order dated 13.02.2015**, it was specifically held that the provisions of section 194C(6) are independent of section 194C(7), and just because there is violation of provisions of section 194C(7), disallowance under section 40(a)(ia) does not arise if the assessee complies with the provisions of section 194C(6).
- ❑ **Soma Rani Ghosh vs DCIT ( ITA No. 1420 /KOL/ 2015), ITAT Kolkata** it was held that if the assessee complies with the provisions of Section 194C(6), no disallowance u/s 40(a)(ia) is permissible, even there is violation of the provisions of Section 194C(7). This is applicable even if aggregate payment in a FY exceeds Rs.1,00,000
- ❑ 194C(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.
- ❑ (7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.

## Deduction of Tax at Source – Section 194C – On payment to Contractor and Sub Contractor

### Important points

#### (i) Important points

- (i) The deduction of income-tax will be made from sums paid for carrying out any work or for supplying labour for carrying out any work. In other words, the section will apply only in relation to 'works contracts' and 'labour contracts' and will not cover contracts for sale of goods.
- (ii) Contracts for rendering professional services by lawyers, physicians, surgeons, engineers, accountants, architects, consultants etc., cannot be regarded as contracts for carrying out any "work" and, accordingly, no deduction of income-tax is to be made from payments relating to such contracts under this section. Separate provisions for fees for professional services have been made under section 194J.
- (iii) The deduction of income-tax must be made at the time of credit of the sum to the account of the contractor, 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.

- ❑ **Malayalam Communications Ltd vs. Income tax Officer (TDS) [2019] 175 ITD 433 (Cochin – Trib.):** Where assessee made payments to various artists like singers, musicians etc. who participated in reality shows hosted by it as guests or judges, tax was required to be deducted at source u/s 194C.
- b) **Principal Commissioner of Income-tax (TDS) vs. National Health & Education Society [2019] 103 taxmann.com 286 (Bom):** Where contract between assessee and Call Center operator was in nature of a 'works contract' and not of a technical or professional nature, payments towards call centre expenses would be covered u/s 194C and not u/s 194J

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❑ c) CIT (TDS) vs. Saifee Hospital [2019] 104 taxmann.com 64 (Bom):

❖ Where assessee-hospital made payments for services rendered towards maintenance of its medical equipments for proper and long functioning, it was required to deduction TDS u/s 194C not u/d 194J

❑ d) CIT vs Dabur India Ltd.[2006] 283 ITR 197 (Delhi):

❖ Purchase of printed packing material is a 'Contract of Sale' and not 'Works contract'. Thus, not liable for TDS u/s 194C.

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☐ Q11-Whether Service contract covered by S. 194C?

❖ A.10. Yes, Circular No. 681, dated 8-3-1994

☐ Q.11. Whether provisions of section 194C shall apply in respect of all contracts?

❖ A.11. Before a person can be called a contractor his status must have nexus in its characteristics as carrying out work for another person as a contractor in the ordinary sense and not merely carrying on activities of his own business or profession in the ordinary course by charging fees or remuneration. [All Gujarat Federation of Tax Consultants v CBDT (1995) 214 ITR 276 (Guj)].

☐ Q.12. Is there any circular that may help in differentiating between works contract and any other contract?

❖ A.12. Yes, Circular No.681, dated 8-3-1 1994 issued by CBDT elaborates upon various kinds of contracts that may fall within the definition of works contract and also specifies the nature of contract that shall fall out of the preview of section 194C.

☐ Q.13. Whether the provisions of section 194C are also applicable to non resident?

❖ A.13. No, the payments made to non resident contractor would come within the preview of section

195.

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- Q.15. Where the assessee entered into contract with transporter for transporting goods from plant to various destination, whether such contract shall attract TDS u/s 194C or 194I?
- ❖ A.15. (i) That to decide whether a contract is one for “transportation” or for “hiring”, the crucial thing is to see who is doing the transportation work. If the assessee takes the trucks and does the work of transportation himself, it would amount to hiring. However, if the services of the carrier were used and the payment was for actual transportation work, the contract is for transportation of goods and not an arrangement for hiring of vehicles, and as such provisions of section 194C shall apply.
- ❖ ITO v. Indian Oil Corporation (Del) (Trib), CIT (TDS) v. Swayam Shipping Services P. Ltd. (2011) 339 ITK 647 (Guj)].
- (ii) Payments made by assessee to transporters providing vehicles and driver to pick and drop employees is liable to TDS under section 194C and not section 194-I.
- ❖ Bharat Electronics Ltd. v. Dy. CIT (TDS), [2012] 50 SOT 172 (ITAT-Delhi)
- However in case of payments made by transport contractor for hiring tankers to use them in transport contract business is not liable to TDS under section 194C, in such case S. 194I shall apply.
- Bhail Bulk Carriers v. ITO [2012] 50 SOT 622 (ITAT-Mum.)



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❑ Q.14-Whether provisions of section 194C shall apply to franchise agreements?

❑ A.14. No, the provisions of section 194C shall not apply to franchise agreement as under the franchise arrangement, their consist mutual obligations and rights. Please refer **CIT v. Career Launcher India Ltd. (2012) 250 CTR 240 (Del)]**.

❑ Q.11. Whether provisions of section 194C shall apply in respect of all contracts?

❖ A.11. Before a person can be called a contractor his status must have nexus in its characteristics as carrying out work for another person as a contractor in the ordinary sense and not merely carrying on activities of his own business or profession in the ordinary course by charging fees or remuneration.

❖ **[All Gujarat Federation of Tax Consultants v CBDT (1995) 214 ITR 276 (Guj)]**.

❑ Q.13. Whether the provisions of section 194C are also applicable to non resident?

❖ A.13. No, the payments made to non resident contractor would come within the preview of section 195.

❑ Q.16. Whether provisions of S. 194C shall apply to subcontracting?

❖ A.16. Yes, where assessee contractor got work done through another party under his supervision and control, there existed relationship of 'contractor' and 'sub-contractor' requiring assessee to deduct tax at source under section 194C.

❖ **Ratan J Batliboi v. ACIT [2012] 24 taxmann.com 96 (ITAT-Mum.)**

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□ Q.20. Whether Contract for carrying goods and passengers by trailer, utility vans, water tanker, sumos, etc., is covered by section 194C or by section 194-I?

❖ A.20. Contract for carrying goods and passengers by trailer, utility vans, water tanker, sumos, etc., is covered by section 194C and not by section 194-I. CIT (TDS) v. Reliance Engineering Associates (P.) Ltd. [2012] 21 taxmann.com 539 (Guj.)

□ Q.21. Whether Production of motion films or cinematographic films would fall within meaning of expression 'work' as contemplated under section 194C?

❖ A.21. Yes, production of motion films or cinematographic films would fall within meaning of expression 'work' as contemplated under section 194C. Nitin M. Panchamiya v. ACIT\* [2012] 50 SOT 468 (ITAT- Mum.)

□ Q.22. Whether contract for supply of labour shall attract TDS u/s 194C?

□ A.22. Yes, payment made to Calcutta Dock Labour Board for supply of labor for assessee's business, attracted TDS provisions of section 194C. Dy. CIT v. Kamal Mukherjee & Co. (Shipping) (P.) Ltd.\* [2012] 51 SOT 73 (ITAT- Kol.), see also Associated Cement Co. Ltd. v. CIT (1979) 120 ITR 444 (Pat).

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□ Q.18. Whether the provisions of Section 194C shall also apply in a situation when assessee entered in to a separate contract for supply of goods and erection work?

❖ A.18. In a case where three separate agreements were entered into : one for supply of goods, second for erection works and third for civil engineering work, section 194C cannot be pressed into service to deduct tax at source on payment for supply of material merely because said agreement is a part of composite transaction. CIT v. Karnataka Power Transmission Corporation Ltd. [2012] 21 taxmann.com 473 (Kar.)

□ Q.19. Whether TDS u/s 194C deductible on erection and commissioning of plant even in case of composite contract?

❖ A.19. In case of common purchase order for supply of plant and for erection and commissioning of plant, the pre dominant object of the contract is the purchase of the plant and the erection and commissioning is only incidental. However. in the cases where two contracts are separable contracts TDS shall be deductible on the amount attributable to the erection and commissioning and not on the gross sum paid by the assessee.

❖ Senior Accounts Officer (O & M), Haryana Power Generation Corpn. Ltd. v. ITO (2006) 103 TTJ 584 (Del).

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□ Q.23. Whether sponsorship money paid shall attract TDS u/s 194C?

❖ A.23. Where assessee-management consultant was organizing conferences and sponsorship money was paid to it after conceptualization of conferences, it could not be said that assessee had undertaken to organize said conference at instance of sponsors and, hence, provisions of section 194C (2) could not be invoked. **Dr. Raju L Bhatia v. JCIT\*** [2012] 134 ITD 615 (ITAT-Mum.), however Circular: No. 715, dated 8-8-1995, provides for TDS u/s 194C on sponsorship.

□ Q.24. Whether payments made to finance companies in consideration of providing access to their customer database shall attract TDS u/s 194C?

❖ A.24. Where assessee entered into agreements with finance companies to provide access to their customer database, it was not a contract for service and, thus, assessee was not required to deduct tax at source while making payments to finance companies. **Dy. CIT v. Armour Consultants (P.) Ltd.\*** [2012] 50 SOT 140 (ITAT-Chennai)

□ Q.25. Whether provisions of section 194C shall apply to payment made to Security Guard?

❖ A.25. Yes, please refer **Glaxo Smith Kline Pharmaceuticals Ltd. v. ITO (TDS)** (2011) 48 SOT 643 (Pune)(Trib).

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- ☐ Q.28. What is the criteria to distinguish between works contract and contract for sale of goods?
- ☐ A.28. The question whether a particular contract is a contract for sale or works contract shall depend upon the facts and circumstances of each case.
- ☐ Please refer State of Gujarat v Variety Body Builders 38 STC 176 (SC) and Anamolu Seshagiri Rao & Co. v. State of Andhra Pradesh (1973) 32 STC 51 (AP), P.S.& Company v. State of Andhra Pradesh 56 STC 283, Sentinel Rolling Shutters & Engineering Co. (P) Ltd. v. CST (1978) 42 STC 409 (SC).

- ☐ Q.29. Whether a contract to improve customers goods will amount to works contract?
- ☐ A.29. Yes, please refer Shankar Vittal Motor Co. v. State of Mysore (1964) 15 STC 771 (Mys).
- ☐ Q.30. Whether provisions of section 1 94C shall apply to bottling contracts ?
- ☐ A.30. yes, please refer United Exercise v. CST 28 STC 16.
- ☐ Q.31. Whether provisions of section 194C shall apply to periodic repairing?
- ☐ A.31. yes, please refer Eastern Typewriter Service v. State of Andhra Pradesh (1978) 42 STC 18 (AP), also refer Circular: No. 715, dated 8-8-1 995.

□ **Q.33 Whether provision of section 194C shall apply on supply of printed labels by printer to assessee?**

□ **A.33. The supply of printed labels by the printer to the assessee amounted to sale and not a works contract and that the provisions of S. 194C were not attracted. Please refer CIT v. Dabur India Ltd. (2005) 198 CTR (Del) 375. BDA Ltd. v. ITO, (TDS)(2006) 281 ITR 999 (BOM), CIT v. Dabur India Ltd. (2006) 283 ITR 197 (Del) also refer Circular: No. 715, dated 8-8-1995.**

□ **Q.34. Whether provisions of section 194C shall apply to clearing and forwarding agent?**

□ **A.34. Payment made to clearing and forwarding agent is of the nature of payment made for carrying out any work. Please refer National Panasonic India Pvt. Ltd. v. DCIT (TDS) (205) 3 SOT 16 (Del). See also Glaxo Smith Kline Consumer Healthcare Ltd. v. ITO (2007) 12 sot 221 (Del Trib).**

□ **Q.35. What would be the scope of an advertising contract for the purpose of section 194C of the Act?**

□ **A.35. The term 'advertising' has not been defined in the Act. During the course of the consideration of the Finance Bill, 1995, the Finance Minister clarified on the Floor of the House that the amended provisions of tax deduction at source would apply when a client makes payment to an advertising agency and not when advertising agency makes payment to the media, which includes both print and electronic media. The deduction is required to be made at the rate of 1 per cent. It was further clarified that when an advertising agency makes payments to their models, artists, photographers, etc., the tax shall be deducted at the rate of 5 per cent as applicable to fees for professional and technical services under section 194J of the Act. Circular: No. 715, dated 8-8-1995.**



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☐ Q.36. At what rate is tax to be deducted if the advertising agencies give a consolidated bill including charges for art work and other related jobs as well as payments made by them to media?

☐ A.36. The deduction will have to be made u/s 194C at the rate of 1 per cent. The advertising agencies shall have to deduct tax at source at the rate of 5 per cent under section 194J while making payments to artists, actors, models, etc. If payments are made for production of programmes for the purpose of broadcasting and telecasting, these payments will be subjected to TDS @2 per cent. Even if the production of such programmes is for the purpose of preparing advertisement material, not for immediate advertising, the payment will be subject to TDS at the rate of 2 per cent. Circular: No. 715, dated 8-8-1995

☐ Q.37 Where the tax is required to be deducted at source on payments made directly to the print media/Doordarshan for release of advertisements?

☐ A.37. The payments made directly to print and electronic media would be covered under section 194C as these are in the nature of payments for purposes of advertising. Deduction will have to be made at the rate of 1 per cent. It may, however, be clarified that the payments made directly to Doordarshan may not be subjected to TDS as Doordarshan, being a Government agency, is not liable to income-tax. Circular: No. 715, dated 8-8-1995.

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□ **Q.38. Whether a contract for putting up a hoarding would be covered under section 194C or 194-I of the Act?**

❖ **A.38. The contract for putting up a hoarding is in the nature of advertising contract and provisions of section 194C would be applicable. It may, however, be clarified that if a person has taken a particular space on rent and thereafter sub lets the same fully or in part for putting up a hoarding, he would be liable to **TDS under section 194-I and not under section 1 94C of the Act**. Circular: No. 715, dated 8-8-1995. The provision of section 1 94C shall, however, apply when a plane or a bus or any other mode of transport is chartered by one of the entities mentioned in section 1 94C of the Act. As regards payments made to clearing and forwarding agent for carriage of goods, the same shall be subjected to tax deduction at source u/ssection 194C of the Act. Circular: No. 715, dated 8-8-**

□ **Q.39. Whether payment under a contract for carriage of goods or passengers by any mode of transport would include payment made to a travel agent for purchase of a ticket or payment made to a clearing and forwarding agent for carriage of goods?**

❖ **A.39. The payments made to a travel agent or an airline for purchase of a ticket for travel would not be subjected to tax deduction at source as the privity of the contract is between the individual passenger and the airline/travel agent, notwithstanding the fact that the payment is made by an entity mentioned in section 194C(1).**

❑ Q.40. Whether a travel agent/clearing and forwarding agent would be required to deduct tax at source from the sum payable by the agent to an airline or other carrier of goods or passengers?

❖ A.40. The travel agent, issuing tickets on behalf of the airlines for travel of individual passengers, **would not be required** to deduct tax at source as he acts on behalf of the airlines.

❖ The position of clearing and forwarding agents is different. They act as independent contractors. Any payment made to them would, hence, be liable for deduction of tax at source. They would **also be liable to deduct tax at source** while making payments to a carrier of goods, **Please refer CIT v Cargo Linkers (2008) 218 CTR 695 (Del), ACIT v Grandprix Fab.(P) Ltd. (2010) 34 DTR 248 (Del – Trib). Circular: No. 715, dated 8-8-1995.**

❑ Q.41. Whether section 194C would be attracted in respect of payments made to couriers for carrying documents, letters, etc.?

❖ A.41. The carriage of documents, letters, etc., is in the nature of carriage of goods and, therefore, provisions of section 194C would be attracted in respect of payments made to the couriers. Circular: No. 715, dated 8-8-1995.

❑ Q.42. In case of payments to transporters, can each GR be said to be a separate contract, even though payments for several GRs are made under one bill?

❖ A.42: Normally, each GR can be said to be a separate contract, if the goods are transported at one time. But if the goods are transported continuously in pursuance of a contract for a specific period or quantity, each GR will not be a separate contract and all GRs relating to that period or quantity will be aggregated for the purpose of the TDS. **Circular: No. 715, dated 8-8-1995.**

❑ Q.43. Whether there is any obligation to deduct tax at source out of payment of freight when the goods are received on “freight to pay” basis?

❑ Yes. The provisions of tax deduction at source are applicable irrespective of the actual payment. Circular: No. 715, dated 8-8-1995.

❑ Q.44. Whether a contract for catering would include serving food in a restaurant/sale of eatables?

❖ TDS is not required to be made when payment is made for serving food in a restaurant in the normal course of running of the restaurant/cafe. Circular: No. 715, dated 8-8-1995.

❑ Q.45. Whether payment to a recruitment agency can be covered by section 194C?

❖ Provisions of section 194C apply to a contract for carrying out any work including supply of labour for carrying out any work.

❖ Payments to recruitment agencies are in the nature of payments for services rendered. Accordingly, provisions of section 194C shall not apply. The payment will, however, be subject to TDS under section 194J of the Act. Circular: No. 715, dated 8-8-1995.

❑ Q.46. Whether section 194C would cover payments made by a company to a share registrar ?

❖ In view of answer to the earlier question, such payments will not be liable for tax deduction at source under section 194C. But these will be liable to tax deduction at source under section 194J. Circular: No. 715, dated 8-8-1995.

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- ☐ Q.47. Whether FD commission and brokerage can be covered under section 194C?
- ❖ No Circular: No. 715, dated 8-8-1995.
- ☐ Q.48. Whether section 194C would apply in respect of supply of printed material as per prescribed specifications?
- ❖ Yes. Circular: No. 715, dated 8-8-1995.
- ☐ Q.49. Whether tax is required to be deducted at source under section 194C or 194J on payment of commission to external parties for procuring orders for the company's product?
- ❖ Rendering of services for procurement of orders is not covered under the provisions of section 194C.
- ❖ However, rendering of such services may involve payment of fees for professional or technical services, in which case tax may be deductible under the provisions of section 194J. Circular: No. 715, dated 8-8-1995.

- ☐ Q.50. Whether advertisement contracts are covered under section 194C only to the extent of payment of commission to the person who arranges release of advertisement, etc., or whether deduction is to be made on the gross amount including bill of media?
- ❖ Tax is to be deducted at the rate of 1 per cent of the gross amount of the bill. Circular: No. 715, dated 8-8-1995.

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□ Q.51. Whether deduction of tax is required to be made under section 194C for sponsorship of debates, seminars and other functions held in colleges, schools and associations with a view to earn publicity through display of banners, etc., put up by the organisers?

❖ The agreement of sponsorship is, in essence, an agreement for carrying out a work of advertisement. Therefore, provisions of section 194C shall apply. Circular: No. 715, dated 8-8-1995.

□ Q.52. Whether deduction of tax is required to be made on payments for cost of advertisement issued in the souvenirs brought out by various organisations?

❖ Yes. Circular: No. 715, dated 8-8-1995.

□ Q.53. Whether a maintenance contract including supply of spares would be covered under section 194C or 194J of the Act?

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

❖ Q.54. Whether the deduction of tax at source under sections 194C and 194J has to be made out of the gross amount of the bill including reimbursements or excluding reimbursement for actual expenses ?

❖ Sections 194C and 194J refer to any sum paid. Obviously, reimbursements cannot be deducted out of the bill amount for the purpose of tax deduction at source. Circular: No. 715, dated 8-8-1995.



□ Q.55 Whether provisions of S. 194C shall apply to cooling charges paid to cold storage owners?

❖ Yes, the arrangement between the customer and cold storage owners are basically contractual in nature and hence the provisions of section 194C (instead of section 194-I) will be applicable to the amount paid as cooling charges by the customers of the cold storage. [Circular No. 1/2008, dated 10/01/2008].

□ Q.56 Whether provisions of S. 194C shall also apply to banks in relation to services rendered by it?

❖ The provisions of section 194C would not apply in relation to payments made to banks for discounting bills, collecting/receiving payments through cheques/drafts, opening and negotiating Letters of Credit and transactions in negotiable instruments. Circular : No. 681, dated 8-3-1994.

□ Q.57 Is it necessary to deduct tax at source from payment made to foreign shipping company?

❖ Sec. 172 is a self-contained Code for the levy and recovery of the tax, ship-wise and journey-wise, and requires filing of the return within a maximum time of thirty days from the date of departure of the ship. The provisions of sec. 172 are to apply, notwithstanding anything contained in the other provisions of the Act. Therefore, in such cases the provisions of Sec. 194C and 195 relating to tax deduction at source are not applicable. The recovery of tax is to be regulated for a voyage undertaken from port in India by a ship under the provisions of Sec. 172. Sec. 194C deals with works contracts, including carriage of goods and passengers by any mode of transport other than the Railways. This section applies to payments made by a person referred to in clauses (a) to (j) of sub-sec.(1) to any —resident||. It is clear from the section that the area of operation of TDS is confined to payment made to any —resident||. On the other hand, sec. 172 operates in the area of computation of profits from shipping business of non-residents. Thus, there is no overlapping in the areas of operation of these sections.

❑ **Q. 58 What would be the scope of an advertising contract for the purpose of Sec. 194C of the Act ?**

❖ The term 'advertising' has not been defined in the Act. During the course of the consideration of the Finance Bill, 1995, the Finance Minister clarified on the floor of the House that the amended provisions of TDS would apply when a client makes payment to an advertising agency and not when advertising agency makes payment to the media, which includes both print and electronic media. It was further clarified that when an advertising agency makes payment to their models, artists, photographers, etc., the tax shall be deducted at the rate of 10% as applicable to fees for professional & technical services u/s 194J. W.e.f. 1.10.2009 there is no separate rate for advertisement contract. The tax is required to be deducted as on other contract @1% where payee is individual or HUF and @2% in other cases.

❑ **Q. 59 Whether payments made to a hotel for rooms hired during the year would be in the nature of rent ?**

❖ Payment made by persons, other than individuals and HUFs for hotel accommodation taken on regular basis will be in the nature of rent subject to TDS under Sec. 194-I.

❑ **Q. 60 In case an individual enters into a contract with a hotel and later on same amount is reimbursed to individual by company, would it attract TDS ? In case employees of a company have themselves entered into a contract individually with a hotel and are directly making the payment to the hotel but, subsequently, claiming the same from company. In this case, the company would not be liable to deduct tax at source even where the total amount of reimbursement individually or collectively exceeds**

**Rs.**

**240,000.**

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☐ **Q. 90 Whether a contract for putting up a hoarding would be covered under section 194C or 194I of the Act?**

❖ The contract for putting up a hoarding is in the nature of an advertising contract and provisions of Sec. 194C would be applicable. It may, however, be clarified that if a person has taken a particular space on rent and thereafter sub-lets the same fully or in part for putting up a hoarding, he would be liable to TDS under Sec. 194-I and not under Sec. 194C of the Act.

☐ **Q. 91 Whether payment made to a travel agent for purchase of a ticket would fall under ambit of tax deduction?**

❖ The payments made to a travel agent or an airline for purchase of a ticket for travel would not be subjected to tax deduction at, source as the privity of the contract is between the individual passenger and the airline/travel agent, notwithstanding the fact that the payment is made by an entity mentioned in Sec. 194C(1).

☐ **Q. 92 Whether a travel agent would be required to deduct tax at source from the sum payable by the agent to an airline?**

❖ The travel agent issuing tickets on behalf of the airlines for travel of individual passengers would not be required to deduct tax at source as he acts on behalf of the airlines.

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- ☐ **Q. 105 Whether deduction of tax is required to be made on payments for cost of advertisement issued in the souvenirs brought out by various organizations?**
- ❖ **Deduction of tax is required to be made on payments for cost of advertisements issued in the souvenirs brought out by various organisations.**
- ☐ **Q. 106 Whether the services of a regular electrician on contract basis will fall in the ambit of technical services to attract the provisions of section 194J of the Act?**
- ❖ **The payments made to an electrician or to a contractor who provides the service of an electrician will be in the nature of payment made in pursuance of a contract for carrying out any work, Accordingly, provisions of Sec. 194C will apply in such cases.**

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- ❑ **Q. 115 Whether to fulfill the basic requirement of Sec.194C (2), sub-contractor has to carry out whole or any part of the work undertaken by the contractor?**
- ❖ **There should be not only a contract between a contractor or sub-contractor, but the said contract has to be for carrying out whole or part of the work undertaken by the contractor. The requirement of Sec. 194C (2) is that the sub-contractor should carry out the whole or any part of the work undertaken by the contractor.**
- ❑ **Q. 116 X a co-operative society was formed by the truck owners and it entered into contract with company for transportation. The company deducted TDS u/s. 194C(2). Whether the company was liable to deduct TDS on amount paid to truck-owners in terms of Sec. 194C(2) ?**
- ❖ **Sec. 194C(2) dictates that the deduction is required only in case of a sub-contract. The relationship between company and its members was not that of a contractor and a subcontractor. The society was nothing more than a conglomeration of truck operators themselves. There was no sub-contract.**

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- **Q. 117 Mr. X was engaged in transportation of goods for different companies. He was not the owner of any truck and used to hire the same at the time of dispatch. Whether transaction will fall under Sec. 194C?**
- ❖ **Mr. X used to negotiate each trip at the time of dispatch and, hence, each transaction was a fresh contract. In each transaction the amount did not exceed Rs.30,000/-, Mr. X was not liable to deduct TDS. In case transaction amount exceeded Rs. 30,000 the same would come under the purview of Sec. 194C. If Mr. X proves that there was no material to show that all trips for transporting goods were under a single contract and payment for each trip being less than Rs.30,000/-, provisions of Sec. 194C were not applicable.**



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## **TDS under Section 194D – Insurance Commission**

## Section 194D – TDS on Insurance Premium

### ☐ (1) *Applicability of TDS under section 194D*

- ❖ Section 194D casts responsibility on any person responsible for paying to a resident any income by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including the business relating to the continuance, renewal or revival of policies of insurance) to deduct tax at source.

### ☐ (2) *Rate of TDS*

- ❖ Such person is required to deduct income-tax at the rate of 5% in case of resident other than a domestic company and 10% in case of a domestic company.

### ☐ (3) *Time of deduction*

- ❖ The deduction is to be made at the time of the credit of the income to the account of the payee or at the time of making the payment (by whatever mode) to the payee, whichever is earlier.

### ☐ *Threshold limit*

- ❖ The tax under this section has to be deducted at source only if the amount of such income or the aggregate of the amounts of such income credited or paid during the financial year to the account of the payee exceeds Rs.15,000 [ earlier Rs.20,000/- ].

## TDS on Reinsurance

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- ❑ Reinsurance not covered by section 194D Reinsurance differs from insurance in a number of ways and the most important is that there is no contractual relationship between the Direct Insured and the Reinsurer. There are separate contracts involved—one between the Insured and the Insurer and another between the Insurer and the Reinsurer. Insurer has to pay all valid claims to the insured, irrespective of whether the insurer can recover the same from his reinsurer.
- ❑ When a Reinsurance company gets business from insurance company at premium less “Commission”, the “Commission” is not subject to TDS under section 194D, as it is not payable to an agent for procuring insurance business.
- ❑ Similarly, when “Profit Commission” is payable by an Reinsurance Company to an insurance company, after the expiry of the term of insurance, in respect of such cases where there is no claim during the operation of the reinsurance treaty, TDS under section 194D is not required.

## Exemptions Under Section 10 (10D)

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- ❖ Bonuses and other sums received under the LIC policy are excluded. Section 80DD (3) and 80DDA (3) exclude any money received. The maturity amount of a LIC policy is tax-exempt if it was acquired before April 1, 2012, and the premium paid exceeds 20% of the sum insured. If the premium for a policy purchased after April 1, 2012, exceeds 10% of the sum guaranteed, tax is not due. If LIC policies are obtained after April 2013 for disabled individuals as described by Section 80U or 80DDB, they are excluded from paying premiums that exceed 15% of the total sum covered. If the requirements are met, there is no upper limit on the tax exemption under Section 10 (10D).

[2021] 133 taxmann.com 367 (Bombay) image

HIGH COURT OF BOMBAY

Commissioner of Income-tax, TDS-2 v. SBI Life Insurance Company Ltd.\*

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| <p>□ No Sec. 194D TDS on exp. incurred in foreign travel of insurance agents if sum paid directly to services providers:<br/>HC</p> | <p>□ Section <u>194D</u> of the Income-tax Act, 1961 - Deduction of tax at source - Insurance premium (General) - Whether obligation to deduct is on person who is paying and deduction is to be made at time of making such payment –</p> <p>□ Held, yes - Assessee-company had incurred foreign travel expenses for its agents who were working for soliciting or procuring insurance business for it - Assessing Officer opined that foreign travel expenses incurred by assessee on its agents should be covered under section 194D - Since assessee did not deduct TDS from same, Assessing Officer treated assessee as an assessee in default - It was found that no amount had been paid to agents by assessee as reimbursement of expenses incurred by agents in foreign travel and assessee had made arrangement for foreign travel for all agents and paid expenses directly to services providers - Whether since no amount was paid to agents by assessee, obligation to deduct tax at source would not arise - Held, yes [Para 12] [In favour of assessee]</p> |  |
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# Q&A

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