

# TAX DEDUXTION AT SOURCE – UNDER I T ACT

**By**

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**Section – 194IC**

**Section – 194K**

**Section – 194 J**

**Section – 194LA**

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## **Payment under Specified Agreement – Section 194 IC**

# Payment under Specified Agreement – 194IC

## ***Applicability and Rate***

This section casts responsibility on any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under a specified agreement under section 45(5A), to deduct income-tax at the rate of **10%**.

## ***Time of deduction***

This deduction is to be made at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

**Specified Agreements - TDS @10%**

## ***Non-applicability of section 194-IA***

Since tax deduction at source for specified agreement under section 45(5A) is covered under section 194-IC, the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases.

# Payment under Specified Agreement

## Payment on transfer of certain immovable property other than agricultural land [Section 194-IA]

Every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to a resident transferer shall deduct tax, at the rate of **1%** of **such sum or the stamp duty value of such property, whichever is higher.**

**Transfer of  
Immovable property  
TDS @1%**

“Agricultural land”, for the purpose of this section, means rural agricultural land. In other words, transfer of urban agricultural land, will attract the provision of section 194-IA, if the consideration or the stamp duty value of such land is ₹ 50 lakhs or more.

# Payment under Specified Agreement

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## ***Meaning of specified agreement***

Specified agreement under section 45(5A):

- It means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both.
- The consideration, in this case, is a share, being land or building or both in such project; part of the consideration may also be in cash.



# Payment under Specified Agreement

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## ***Applicability and Rate***

This section casts responsibility on any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under a specified agreement under section 45(5A), to deduct income-tax at the rate of **10%**.

## ***Time of deduction***

This deduction is to be made at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

**Specified Agreements - TDS @10%**

# Payment under Specified Agreement

## ☐ What is meant by the Joint Development Agreement?

❖ Joint Development Agreement is an agreement between two people i.e. the owner of the land or building and another person who is given the permission to build a real estate project and in return, he or she must give a share to the owner or the payment in cash must be done.

## ❖ Under what circumstances TDS u/s 194IC is not deductible?

Tax deduction at source shall not be made in respect of that part of consideration which is in kind under the specified agreement.

## ☐ Which Form is used to file TDS return and payment under this section?

☐ TDS Return is filed through Form 26Q and payment is made through Challan No 281 and nature of payment as 4IC.

## ☐ What is the treatment of refundable security deposit given by developer to owner? Does that also suffer TDS?

☐ Refundable security deposit does not attract TDS (however if it is non-refundable it attracts TDS under Sec 194IC). It is clearly specified us 194 IC that tds is required to be deducted only in respect of consideration not of security.



## Payment under Specified Agreement – Section 194 IC

### ILLUSTRATION:

- ❑ X, owner of a piece of land enters into a JDA with Y who is a developer. X confers developmental rights to Y to construct apartments.
- ❑ Y agrees to pay consideration for those development rights in the following manner: 40% of built up area. ₹10,00,000.

### Tax Implication:

As per Sec.194-IC, Tax will be deducted only on the consideration paid in Cash. Hence, TDS (assuming PAN is available) = 10% of ₹10,00,000 = ₹10,000





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**Income in respect of Units – 194K**

# Income in respect of Units – 194K

## *Applicability and rate of tax*

Section 194K provides for deduction of tax at source **@10%** by any person responsible for paying to a resident any income in respect of –

- (i) units of a Mutual fund specified under section 10(23D)
- (ii) units from Administrator of the specified undertaking
- (iii) units from the specified company, being a company whose entire capital is subscribed by financial institutions or banks as notified by the Central Government

**Payment in respect of  
Units TDS @10%**

**20%  
increase  
in case  
No PAN**

# Income in respect of Units – 194K

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## *Time of deduction*

The deduction is to be made at the time of credit of such sum to the account of the payee or at the time of payment by any mode, whichever is earlier.

Where any income in respect of units of a mutual fund, Administrator of the specified undertaking or the specified company 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 tax has to be deducted at source. The account to which such income is credited may be called “Suspense account” or by any other name.

## Income in respect of Units – 194K

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### *Non-applicability of section 194K*

No tax is required to be deducted if -

- (i) the amount of such income or the aggregate of the amounts of such income credited or paid or likely to be credited or paid during a financial year does not exceed ₹ 5,000; or
- (ii) the income is of the nature of capital gains.

**Non-applicability**

☐ Does section 194K apply to non-residents?

- No, Tax on income from mutual funds earned by non-residents should be deducted as per section 195.
- Section 194K does not apply to non-residents.

## Income in respect of Units – 194K – No TDS

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- ❑ Declaration furnished in Form 15H / 15G by the payee not being a firm or company u/s 197A that tax in his estimated total income of the relevant PY will be nil
- ❑ Can take a nil TDS certificate or lower TDS certificate u/s 197 from the AO by making a request in Form No.13

## Income in respect of Units – 194K

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- ❑ What are the types of income earned from mutual funds?
- ❖ Capital gain arising from the redemption of mutual fund units
- ❖ Dividend Income
- ❑ What is the taxability and resulting applicability of section 194K on the above mentioned income?
- ❖ Capital gain arising from the redemption of mutual fund units – Taxable in the hands of the unitholder, long term capital gain is taxed at 10% in excess of 1 lakh, short term capital gain is taxed at 15% – However, TDS under section 194K is not applicable
- ❖ Dividend Income – Taxable in the hands of the unitholder after abolishment of DDT (Dividend Distribution Tax) – TDS under section 194K is applicable.
- ❖ Any other income from mutual fund – TDS under section 194K is applicable.



## **SECTION 194K OF THE INCOME-TAX ACT, 1961 - DEDUCTION OF TAX AT SOURCE - PAYMENT TO A RESIDENT ANY INCOME IN RESPECT OF UNITS OF A MUTUAL FUND - CBDT ISSUES CLARIFICATION ON APPLICABILITY OF TDS PROVISION ON MUTUAL FUND DIVIDEND**

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**PRESS RELEASE, DATED 4-2-2020**

- ❖ The Finance Bill, 2020 proposed to remove Dividend Distribution Tax (DDT) at the level of Company/ Mutual Fund and proposed to tax the same in the hands of share/unit holder. It was also proposed to levy TDS at the rate of 10% on the dividend/income paid by the Company/Mutual Fund to its share/unit holder if the amount of such dividend/income exceeds five thousand rupees in a financial year.
- ❖ Queries have been received to the effect that whether under the proposed section 194K, the Mutual Fund would be required to deduct TDS also on the capital gains arising on redemption of units. It is hereby clarified that under the proposed section, a Mutual Fund shall be required to deduct TDS @ 10% only on dividend payment and no tax shall be required to be deducted by the Mutual Fund on income which is in the nature of capital gains. Necessary clarification, if required, shall be proposed in the relevant provision of the law.

# Income in respect of Units – 194K

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## ❑ How Budget 2020 Changed the Taxation of Dividends for Mutual Fund Investors

- ❖ Previously, the income tax laws entailed a double taxation of dividends. Initially, companies were taxed when paying Asset Management Companies (AMCs) dividends. Subsequently, a second tax was levied when the AMCs distributed profits to the unitholders.
- ❖ Investors could reinvest their profits into the fund or receive dividend income. Opting for the latter would lead the AMC to once again pay the Dividend Distribution Tax (DDT) on the dividend distribution.
- ❖ However, the Budget of 2020 brought a significant change, abolishing the DDT. Currently, AMCs are only obligated to deduct TDS at 10% on the dividend distribution, provided the dividend payment per recipient exceeds Rs 5,000 within a fiscal year.

## Income in respect of Units – 194K

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- ❑ **Are there any exemptions or special cases under Section 194K for Mutual Funds?**
- ❖ **There are certain scenarios where TDS might be deducted at a different rate or not deducted at all, such as cases involving Non-Resident Indian (NRI) investors and specific provisions outlined in Section 195 of the Income Tax Act.**
- ❑ **Can investors claim TDS deducted under Section 194K for Mutual Funds as a tax credit?**
- ❖ **Yes, investors can claim TDS deducted under Section 194K as a tax credit while filing their income tax returns, thereby reducing their overall tax liability.**

# Income in respect of Units – 194K

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## ☐ Compliance Requirements under Section 194K

**The following are the compliance requirements under Section 194K:**

- 1. Filing of TDS return:** The person responsible for deducting TDS under Section 194K is required to file a TDS return in Form 26Q within the prescribed due date.
- 2. Issuance of TDS certificate:** The person responsible for deducting TDS under Section 194K is required to issue a TDS certificate to the unitholders in Form 16A within the prescribed due date.

## Income in respect of Units – 194K

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**□ Question 31: Whether TDS from income in respect of units is applicable to dividend or is it applicable to capital appreciation distributed at the time of repurchase/redemption of the units ?**

**□ Answer:** The provisions of section 194K regarding deduction of tax at source from income in respect of units are applicable to periodical distribution of income, which is in the nature of dividend. These provisions do not apply to capital gains arising at the time of repurchase or redemption of the units.

## **Payment of Compensation on Acquisition of some Immovable Property – Section 194LA**



# Payment of compensation on acquisition of certain immovable property [Section 194LA]

## ***Applicability***

Section 194LA provides for deduction of tax at source by a person responsible for paying to a resident any sum in the nature of –

- (i) compensation or the enhanced compensation or
- (ii) the consideration or the enhanced consideration

on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land).

Immovable property means any land (other than agricultural land) or any building or part of a building.

“Agricultural land” for the purpose of this section means any land situated in India including urban agricultural land.

**Compensation on  
compulsory acquisition  
-TDS @10%**

**20% - If No PAN**

## Payment of compensation on acquisition of certain immovable property [Section 194LA]

- ❑ **What do you mean by compulsory acquisition?**
- ❖ The government can acquire rights in any immovable property without the willing consent of its owner or occupant in the interest of the public.
- ❖ This process is referred to as compulsory acquisition where the government is obligated to compensate the owner of the immovable property for the acquisition. During the payment of such compensation/consideration, the government is required to withhold tax u/s 194LA.
- ❑ agricultural land means agricultural land in India, wherever situated [i.e., including land situate in any area referred to in section 2(14)(iii)(a)/(b)]
- ❑ Thus Agricultural land even if situated in urban area is excluded from the term immovable property.;

## Agricultural land

- ❑ FAQ'S ON SECTION 2(14) OF INCOME TAX ACT, 1961: Q.1 Whether land on which agricultural operations have actually been carried out may alone be termed as Agricultural Land or the land which is capable of being used for agriculture operations but no such operation were carried out at the time of transfer or two years or more prior to such transfer can also be termed as Agricultural Land? Ans. It is not requirement of Section 2(14)(iii) that there should be agricultural operations undertaken on the land at the time of transfer or immediately prior to transfer. But provisions of Section 10(37) & 54B requires that land being used in agricultural operations for a period of two years prior to date of transfer of land. This Section is applicable in case of Compulsory Acquisition of Agricultural Land by Government.
- ❑ Agricultural land in India, not being land situate— 1. in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand ; or 1. in any area within the distance, measured aerially,— 1. not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or 2. not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or Not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh. Explanation.—For the purposes of this sub-clause, “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

## Agricultural land

- ❑ Agricultural land in India, not being land situate in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand ; or
- ❑ 1. in any area within the distance, measured aerially,— 1. not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or
- ❑ 2. not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or Not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

- ❑ Explanation.—For the purposes of this sub-clause, “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;



## Payment of compensation on acquisition of certain immovable property [Section 194LA]

### ***Rate of TDS***

The amount of tax to be deducted is **10%** of such sum mentioned in (1) above.

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

The tax should be deducted at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

### ***Threshold limit***

No tax is required to be deducted where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed **₹ 2,50,000**.

**Threshold limit**

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

No tax is required to be deducted where payment is made in respect of any award or agreement which has been exempted from levy of income tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

## Cases where there is no need to deduct TDS under Section 194LA

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- ❑ TDS is not deductible under section 194LA in the following cases when –
  - ❖ The person is paying an amount to a 'non-resident' person.
  - ❖ Aggregate consideration during the Financial Year is less than INR 2,50,000.
  - ❖ Payment is in respect of any award/agreement which is exempt from income tax.
  - ❖ The payee has filed an application in Form No. 13 to the Assessing Officer and has obtained a certificate for No / lower deduction of tax.



# Payment of compensation on acquisition of certain immovable property [Section 194LA]

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## **Deduction of Tax at Source – Section 194J – Fees for Technical and Professional Services**

# Deduction of Tax at Source – Section 194J – Fees for Technical and Professional Services

## ***Applicability and Rate of TDS***

Every person other than an individual or a HUF, who is responsible for paying to a resident any sum by way of –

- (i) fees for professional services; or
- (ii) fees for technical services; or
- (iii) any remuneration or fees or commission, by whatever name called, other than those on which tax is deductible under section 192, to a director of a company; or
- (iv) royalty, or
- (v) non-compete fees referred to in section 28(va)

shall deduct tax at source at the rate of –

- (a) **2%** in case of fees for technical services (not being professional services) or royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films; and
- (b) **10%** in other cases.

However, in case of a payee, engaged only in the business of operation of call centre, the tax shall be deducted at source **@2%**

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# Fees for Technical and Professional Services – 194J

## Meaning of Professional Service

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### ***Meaning of "Professional services"***

"Professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the CBDT for the purposes of section 44AA or of this section.

Other professions notified for the purposes of section 44AA are as follows:

- (a) Profession of "authorised representatives";
- (b) Profession of "film artist";
- (c) Profession of "company secretary";
- (d) Profession of "information technology".

The CBDT has notified the services rendered by following persons in relation to the sports activities as Professional Services for the purpose of the section 194J:

- (a) Sports Persons,
- (b) Umpires and Referees,
- (c) Coaches and Trainers,
- (d) Team Physicians and Physiotherapists,
- (e) Event Managers,
- (f) Commentators,
- (g) Anchors and
- (h) Sports Columnists.

Accordingly, the requirement of TDS as per section 194J would apply to all the aforesaid professions. The term "profession", as such, is of a very wide import. However, the term has been defined in this section exhaustively. For the purposes of TDS, therefore, all other professions would be outside the

scope of section 194J. For example, this section will not apply to professions of teaching, sculpture, painting etc. unless they are notified.



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□ **Meaning of “non-compete fee” (referred in clause (va) of section 28)**  
Any sum (non-compete fee) referred to in clause (va) of section 28  
**Section 28(va):**

- Any sum, whether received or receivable (in cash or kind) under an agreement:
  - ❖ a. not carrying out any activity in relation to any business or profession or
  - ❖ b. not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services:
- **Provided that sub-clause (a) shall not apply to:**
  - ❖ i. any sum, whether received or receivable (in cash or kind) on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business or profession, which is chargeable under the head “Capital gains”
  - ❖ ii. any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations Environment Programme, in accordance with the terms of the agreement entered into with the Government of India.

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□ **A person carrying on the profession of an authorised representative or film artist. [Notification No. SO 17(E) dated 12-1-1977]**

□ **“Authorised representative”** means a person who represents any other person, on payment of any fee or remuneration, before any tribunal or authority constituted or appointed by or under any law for the time being in force, but does not include an employee of the person so represented or a person carrying on a legal profession or a person carrying on the profession of accountancy.

□ **“Film artist”** means any person engaged in his professional capacity in the production of a cinematograph film, whether produced by him or by any other person, as – (i) an actor ; (ii) a cameraman ; (iii) a director, including an assistant director ; (iv) a music director, including an assistant music director ; (v) an art director, including an assistant art director ; (vi) a dance director, including an assistant dance director ; (vii) an editor ; (viii) a singer ; (ix) a lyricist ; (x) a story writer ; (xi) a screen-play writer ; (xii) a dialogue writer; and (xiii) a dress designer.

## Fees for Technical and Professional Services – 194J

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### Meaning of “Fees for technical services”

*Explanation (b)* to section 194J provides that the term ‘fees for technical services’ shall have the same meaning as in *Explanation 2* to section 9(1)(vii). The term ‘fees for technical services’ as defined in *Explanation 2* to section 9(i)(vii) means any consideration (including any lump sum consideration) for rendering of any of the following services:

- (i) Managerial services;
- (ii) Technical services;
- (iii) Consultancy services;
- (iv) Provision of services of technical or other personnel.

It is expressly provided that the term ‘fees for technical services’ will not include following types of consideration:

- (i) Consideration for any construction, assembly, mining or like project, or
  - (ii) Consideration which is chargeable under the head ‘Salaries’.
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### ***Time of deduction***

The deduction is to be made at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

Where such sum is credited to any account, whether called suspense account or by any other name, in the books of accounts of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and tax has to be deducted accordingly.

### ***Threshold limit***

No tax deduction is required if the amount of fees or the aggregate of the amounts of fees credited or paid or likely to be credited or paid during a financial year does not exceed ₹ 30,000 in the case of fees for professional services, ₹ 30,000 in the case of fees for technical services, ₹ 30,000 in the case of royalty and ₹ 30,000 in the case of non-compete fees.

The limit of ₹ 30,000 under section 194J is applicable separately for fees for professional services, fees for technical services, royalty and non-compete fees referred to in section 28(va). It implies that if the payment to a person towards each of the above is less than ₹ 30,000, no tax is required to be deducted at source, even though the aggregate payment or credit exceeds ₹ 30,000. However, there is no such exemption limit for deduction of tax on any remuneration or fees or commission payable to director of a company.



## Summary of rates and threshold limit u/s 194J for deduction of tax at source

Nature of payment	TDS rate	Separate Limit
Fees for technical services (not being professional services)	2%	₹ 30,000
Fees for professional services	10%	₹ 30,000
Royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films	2%	₹ 30,000
Other royalty	10%	
Any remuneration or fees or commission, by whatever name called, other than those on which tax is deductible under section 192, to a director of a company	10%	Nil
Non-compete fees	10%	₹ 30,000
<b>Note</b> - In case of a payee, engaged only in the business of operation of call centre, the tax shall be deducted at source <b>@2%</b>		

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

### **Non-applicability**

- (i) An individual or a Hindu undivided family is not liable to deduct tax at source.

However, an individual or HUF, whose total sales, gross receipts or turnover from business or profession carried by him exceeds ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession in the financial year immediately preceding the financial year in which the **fees for professional services or fees for technical services** is credited or paid is required to deduct tax on such fees.

**Note** - *It may be noted that since this provision requires such individuals/HUFs to deduct tax at source only in respect of fees for professional services or fees for technical services, it can be inferred that individuals and HUFs are not required to deduct tax at source under section 194J on royalty and non-compete fees.*

- (ii) Further, an individual or Hindu Undivided family, shall not be liable to deduct income-tax on the sum payable by way of fees for professional services, in case such sum is credited or paid exclusively for personal purposes.



## Fees for Technical and Professional Services – 194J

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### ***TPAs liable to deduct tax under section 194J on payment to hospitals on behalf of insurance companies***

The CBDT has, through *Circular No.8/2009 dated 24.11.2009*, clarified that TPAs (Third Party Administrator's) who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc. This is because the services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable to payments made by TPAs to hospitals etc.

## Fees for Technical and Professional Services – 194J

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*In the case of CIT v. Kotak Securities Ltd (2016) 383 ITR 1 (SC) the Supreme Court dealt on whether transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source under section 194J.*

*It observed that technical services like managerial and consultancy service are in the nature of specialised services made available by the service provider to cater to the special needs of the customer-user as may be felt necessary. It is the above feature that would distinguish or identify a service provider from a facility offered*

*The Apex Court, accordingly, held that the service provided by the BSE for which transaction charges are paid failed to satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service.*

*Therefore, the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.*

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## Fees for Technical and Professional Services – 194J.

### ***Consideration for use or right to use of computer software is royalty within the meaning of section 9(1)(vi)***

As per section 9(1)(vi), any income payable by way of royalty in respect of any right, property or information is deemed to accrue or arise in India. The term "royalty" means consideration for transfer of all or any right in respect of certain rights, property or information.

As per *Explanation 4* to section 9(1)(vi), the consideration for use or right to use of computer software would be royalty. This *Explanation* clarifies that

- transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

Consequently, the provisions of tax deduction at source under section 194J would be attracted in respect of consideration for use or right to use computer software since the same falls within the definition of royalty as per the provisions of the Income-tax Act, 1961.

## Fees for Technical and Professional Services – 194J

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- ❑ Consideration for use or right to use computer software is royalty within the meaning of sec 9(1)(iv) and attract TDS u/s 194J.

**Note** - The Central Government has, vide *Notification No.21/2012 dated 13.6.2012*, effective from 1<sup>st</sup> July, 2012, exempted certain software payments from the applicability of tax deduction under section 194J. Accordingly, where payment is made by the transferee for acquisition of software from a resident-transferor, the provisions of section 194J would not be attracted if -

- (1) the software is acquired in a subsequent transfer without any modification by the transferor;
- (2) tax has been deducted either under section 194J or under section 195 on payment for any previous transfer of such software; and
- (3) the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.



## Fees for Technical and Professional Services – 194J

### Summary of rates and threshold limit under section 194J for deduction of tax at source

Nature of payment	TDS rate	Separate Limit
Fees for technical services (not being professional services)	2%	₹ 30,000
Fees for professional services	10%	₹ 30,000
Royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films	2%	₹ 30,000
Other royalty	10%	
Any remuneration or fees or commission, by whatever name called, other than those on which tax is deductible under section 192, to a director of a company	10%	Nil
Non-compete fees	10%	₹ 30,000

In case of a payee, engaged only in the business of operation of call centre, the tax shall be deducted at source **@2%**

### Non-applicability of TDS under section 194J

(i) An individual or a Hindu undivided family is not liable to deduct tax at source.

However, an individual or HUF, whose total sales, gross receipts or turnover from business or profession carried by him exceeds ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession in the financial year immediately preceding the financial year in which the **fees for professional services or fees for technical services** is credited or paid is required to deduct tax on such fees.

(ii) Further, an individual or Hindu Undivided Family, shall not be liable to deduct income-tax on the sum payable by way of fees for professional services, in case such sum is credited or paid exclusively for personal purposes.

## Fees for Technical and Professional Services – 194J

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- ❑ TUV Bayren (India) Ltd. dated 06.07.2012 in ITAT Mumbai In the said case, the Hon'ble Tribunal has defined the scope of the aforesaid terms in the following manner:
- ❑ Technical services require expertise in technology and providing the client such technical expertise. • Managerial services is used in the context of running and management of the business of the client. • Consultancy is to be understood as advisory services wherein necessary advice and consultation is given to its clients for the purpose of client's business.

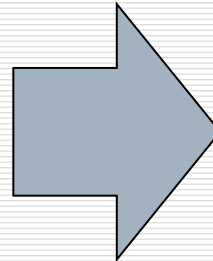


## Fees for Technical and Professional Services – 194J .

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### □ Reimbursement of expense –

- ❖ TDS not liable to be deducted on pure reimbursements when separate bill is raised. –
- ❖ If there is no income embedded in payment, the TDS provision would not apply as the TDS is only an alternative method of collection of taxes

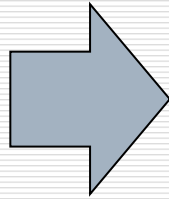


- Circular No. 715, dated 3-8-1995.(AY. 2008-09 to 2010-11)
- CIT v. Kalyani Steels Ltd. (2018) 254 Taxman 350/163 DTR 513/ (2019) 308 CTR 400 (Karn.)
- (HC) CIT v. Mukund Ltd (2018) 254 Taxman 350/163 DTR 513/(2019) 308 CTR 400 (Kan.)(HC)

## Fees for Technical and Professional Services – 194J ■

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- **Fins Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT – (2018)**  
**92 taxmann.com**  
**79 (Chen) –**



- Though the assessee had made provision for audit fees and claimed the same as a deduction, it contended that the provisions of section 194J would not apply to audit fees, as question of payment to auditor would arise only after signing of accounts which took place after year-end. Noting the provisions of section 194J, requiring deduction of tax at source either at time of credit of expenditure to account of payee or at time of payment whichever is earlier, the Tribunal held that since the assessee had made provision for audit fees to the account of the payee, provisions of section 194J were clearly attracted and non-deduction of tax at source would automatically invite disallowance u/s 40(a)(ia)

## Case Decisions – Section 194J

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□ When a Hospital engaged consulting doctors and provided them with consulting chambers. Fees collected from OPD patients to the consultants each day after deducting certain amount towards rent and secretarial assistance. Held that Neither 192 nor 194J applies [ACIT Vs. Indraprasth Medical Corpn. Ltd. (2010) 35 DTR 353(Del)]

□ Consultant doctors were employed in hospital in addition to resident doctors and who were providing service under contract. Tax is deductible U/s 194 J and not 192. [CIT (TDS) Vs. Apollo Hospitals Internationals Ltd. (2013) 359 ITR 78 (Guj)].

□ Stockist receiving commission on sale of drug of drug manufacturer is not liable for TDS under section 194 J [Piramal Health care Ltd Vs. ACIT (TDS) (2012) 21 Taxman.com 225 (Mum.)]

□ Payments made by News Paper company to News Paper agency is liable for TDS under Section 194 J [ACIT Vs. Ushoday Enterprises (p). Ltd. (2012) 23 Taxman.co, 258 HYD]

□ Airline companies making payment to International Airport Authority of India for Navigation Facilities – Held such payment attracts 194 J. Singapore Airlines Ltd. Vs. ITO (2006) 7 SOT 84 (Chennai).

**Circular :No. 715, dated 8-8-1995 provide guidance on various TDS matters including 194J. :**

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**❑ Question 1: What would be the scope of an advertising contract for the purpose of section 194C of the Act?**

**Answer:** 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 provide guidance on various TDS matters including 194J. :**

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**❑ Question 2: Whether the advertising agency would deduct tax at source out of payments made to the media ?**

**Answer: No.** The position has been clarified in the answer to question No. 1 above.

**❑ Question 3: 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 ?**

**Answer:** The deduction will have to be made under section 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%. 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%.

**Circular :No. 715, dated 8-8-1995 provide guidance on various TDS matters including 194J. :**

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**❑ Question 4: Where the tax is required to be deducted at source on payments made directly to the print media / Doordarshan for release of advertisements ?**

**Answer: 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.**

**❑ Question 5: Whether a contract for putting up a hoarding would be covered under section 194C or 194-I of the Act ?**

**Answer: 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 194C of the Act.**



**Circular :No. 715, dated 8-8-1995 provide guidance on various TDS matters including 194J. :**

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☐ Question 6: 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 ?

Answer: 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). The provision of section 194C 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 194C 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 under section 194C of the Act.

**Circular :No. 715, dated 8-8-1995 provide guidance on various TDS matters including 194J. :**

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☐ Question 7: 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 ?

Answer: 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.

☐ Question 8: Whether section 194C would be attracted in respect of payments made to couriers for carrying documents, letters, etc. ?

Answer: 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 provide guidance on various TDS matters including 194J. :**

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☐ Question 9: 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?

Answer: 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.

☐ Question 10: 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 ?

Answer: Yes. The provisions of tax deduction at source are applicable irrespective of the actual payment.

**Circular :No. 715, dated 8-8-1995 provide guidance on various TDS matters including 194J. :**

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☐ Question 11: Whether a contract for catering would include serving food in a restaurant/sale of eatables?

Answer: 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.

☐ **Question 12: Whether payment to a recruitment agency can be covered by section 194C ?**

**Answer: 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 provide guidance on various TDS matters including 194J. :**

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☐ **Question 13: Whether section 194C would cover payments made by a company to a share registrar ?**

☐ **Answer:** 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.

☐ **Question 14: Whether FD commission and brokerage can be covered under section 194C ?**  
Answer : No

☐ **Question 15: Whether section 194C would apply in respect of supply of printed material as per prescribed specifications ?**

Answer: Yes.

**Circular :No. 715, dated 8-8-1995 provide guidance on various TDS matters including 194J. :**

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**❑ Question 16: 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 ?**

**Answer:** 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.

**❑ Question 17: 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 ?**

**Answer:** 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 provide guidance on various TDS matters including 194J. :**

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☐ Question 18: 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 ?

Answer: The agreement of sponsorship is, in essence, an agreement for carrying out a work of advertisement. Therefore, provisions of section 194C shall apply.

☐ Question 19: Whether deduction of tax is required to be made on payments for cost of advertisement issued in the souvenirs brought out by various organisations ?

Answer: Yes.

☐ Question 20: Whether payments made to a hotel for rooms hired during the year would be of the nature of rent ?

Answer: Payments made by persons, other individuals and HUFs for hotel accommodation taken on regular basis will be in the nature of rent subject to TDS under section 194-I.

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**Circular :No. 715, dated 8-8-1995 provide guidance on various TDS matters including 194J. :**

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☐ Question 21: Whether the limit of Rs. 1,20,000 per annum would apply separately for each co-owner of a property ? Answer: Under section 194-I, the tax is deductible from payment by way of rent, if such payment of the payee during the year is likely to be Rs. 1,20,000 or more. If there are a number of payees, each having definite and ascertainable share in the property, the limit of Rs. 1,20,000 will apply to each of the payee/co-owner separately. The payers and payees are, however, advised not to enter into sham agreements to avoid TDS provisions.

☐ Question 22: Whether the rent paid should be enhanced for notional income in respect of deposit given to the landlord ? Answer: The tax is to be deducted from actual payment and there is no need of computing notional income in respect of a deposit given to the landlord. If the deposit is adjustable against future rent, the deposit is in the nature of advance rent subject to TDS.

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**Circular :No. 715, dated 8-8-1995 provide guidance on various TDS matters including 194J. :**

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☐ Question 23: Whether payments made by company taking premises on rent but styling the agreement as a business centre agreement would attract the provisions of section 194-I ? Answer: The tax is to be deducted from rent paid, by whatever name called, for hire of a property. The incidence of deduction of tax at source does not depend upon the nomenclature, but on the content of the agreement as mentioned in clause (i) of Explanation to section 194-I.

☐ Question 24: Whether in a case of a composite arrangement for user of premises and provision of manpower for which consideration is paid as a specified percentage of turnover, section 194-I of the Act would be attracted ? Answer: If the composite arrangement is in essence the agreement for taking premises on rent, the tax will be deducted under section 194-I from payments thereof.

☐ **Question 26: Whether payments made to a hospital for rendering medical services will attract deduction of tax at source under section 194J ?**

**Answer: Yes.**

**Circular :No. 715, dated 8-8-1995 provide guidance on various TDS matters including 194J. :**

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- ☐ Question 23: Whether payments made by company taking premises on rent but styling the agreement as a business centre agreement would attract the provisions of section 194-I ? Answer: The tax is to be deducted from rent paid, by whatever name called, for hire of a property. The incidence of deduction of tax at source does not depend upon the nomenclature, but on the content of the agreement as mentioned in clause (i) of Explanation to section 194-I.
- ☐ Question 24: Whether in a case of a composite arrangement for user of premises and provision of manpower for which consideration is paid as a specified percentage of turnover, section 194-I of the Act would be attracted ?
- ☐ Answer: If the composite arrangement is in essence the agreement for taking premises on rent, the tax will be deducted under section 194-I from payments thereof.

**Circular :No. 715, dated 8-8-1995 provide guidance on various TDS matters including 194J. :**

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- ☐ **Question 26: Whether payments made to a hospital for rendering medical services will attract deduction of tax at source under section 194J ? Answer: Yes.**
  - ☐ **Question 27: Whether commission received by the advertising agency from the media would require deduction of tax at source under section 194J of the Act ? Answer: Yes.**
  - ☐ **Question 28: 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? In case the services of the electrician are provided by a contractor, whether the provisions of section 194C or 194J would be applicable ?**
  - ☐ **Answer: 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 section 194C will apply in such cases.**

# Q&A

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