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Certificate Course on TDS



TDS under several sections

Interest payment on infrastructure bonds to Non-Resident Indians	194LB
Distribution of certain income by a business trust to its unit holders	194LBA(1)
Interest payment on rupee-denominated bonds, municipal debt security, and government securities	194LD
Income in respect of units of investment fund	194LBB
Income distributed by a specified entity to its unit holders	194LBC
Income by way of Interest from Indian Company or Business trust	194LC
Income by way of interest on certain bonds and Government securities.	194LD

Section 194LB: TDS on Income by way of interest from infrastructure debt fund

Where any income by way of interest is payable to a non-resident, not being a company, or to a foreign company, by an infrastructure debt fund referred to in clause (47) of section-10, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.

Conditions under which the provisions of section 194LB of the Income Tax Act, 1961 attracts

If the following conditions are satisfied, then, the payer would be liable to deduct TDS –

The interest income is paid by an infrastructure debt fund referred to in section 10 (47); &

The interest income is paid to a non-resident (not being a company) or to a foreign company.

- **Time of deduction of TDS** – When the above listed conditions are satisfied, and the person is liable to deduct TDS under section 194LB, in that case, the TDS is to be deducted either at the time of credit of income to the account of the recipient or at the time of payment in cash or draft or cheque or any other mode, whichever is earlier.
- **Rate of TDS deduction** – TDS is deductible at the rate of 5%. HEC is to be added to the base rate of 4%. Further, if the surcharge gets applicable, then, the same should also be added.

Other important points

- **Threshold Limit - No threshold limit under this section.**
- **LDC – Lower Deduction Certificate under Section 197 is not applicable**
- **Year of introduction – Finance Act 2011**

Infrastructure Debt Fund u/s 10(47)

- An **Infrastructure Debt Fund (IDF)** is a specialized financial vehicle established to facilitate the flow of long-term debt into infrastructure projects. Under **Section 10(47) of the Income Tax Act, 1961**, certain income earned by these funds is exempt from taxation, provided they meet specific criteria and adhere to regulatory guidelines.
- IDFs are designed to channel investments from domestic and foreign sources into the infrastructure sector, particularly in the form of long-term debt.

Section 194LBA: TDS on Certain Income from units of Business Trust

- Section 194LBA of the Income Tax Act, 1961, deals with the **tax deduction at source (TDS)** on certain income distributed by a business trust (such as Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs)) to its unit holders.
- The section was introduced to ensure that income distributed by business trusts is appropriately taxed at the time of distribution.

REITs and InvITs

- **REITs** (Real Estate Investment Trusts) and **InvITs** (Infrastructure Investment Trusts) are both types of business trusts in India that allow investors to invest in real estate and infrastructure projects, respectively, without having to own the assets directly.

REITs (Real Estate Investment Trusts)

- **Purpose:** REITs are designed to allow investors to invest in income-generating real estate properties. These properties can include commercial buildings, shopping malls, office spaces, hotels, etc.
- **Structure:** REITs pool money from multiple investors to purchase, manage, and operate real estate assets. The income generated from these properties (such as rent) is distributed to the unit holders.
- **Regulation:** REITs in India are regulated by the Securities and Exchange Board of India (SEBI) under the SEBI (Real Estate Investment Trusts) Regulations, 2014.

InvITs (Infrastructure Investment Trusts)

- **Purpose:** InvITs are designed to allow investors to invest in infrastructure projects like roads, highways, power transmission assets, renewable energy projects, etc.
- **Structure:** Similar to REITs, InvITs pool funds from multiple investors to invest in infrastructure assets. The income generated from these assets (such as tolls, tariffs) is distributed to the unit holders.
- **Regulation:** InvITs are regulated by SEBI under the SEBI (Infrastructure Investment Trusts) Regulations, 2014.

Detailed Provision of Section 194LBA

Section 194LBA applies to:

- **Business Trusts:** These include REITs and InvITs that are registered under the SEBI (Real Estate Investment Trusts) Regulations, 2014, or SEBI (Infrastructure Investment Trusts) Regulations, 2014.
- **Unit Holders:** Investors who hold units in these business trusts.

Types of Income Covered

- **Interest Income:** Interest received or receivable by the business trust from a Special Purpose Vehicle (SPV) where the SPV has borrowed funds.
- **Dividend Income:** Dividend received by the business trust from the SPV where the SPV is a domestic company.

TDS Rates and Conditions

Interest Income Distributed to Unit Holders:

Resident Unit Holders: TDS is deducted at the rate of 10%.

Non-Resident Unit Holders (including Foreign Companies): TDS is deducted at the rate of 5%.

Dividend Income Distributed to Unit Holders:

If the dividend income is exempt under Section 10(23FC) of the Income Tax Act, no TDS is required.

If the dividend income is not exempt (for example, due to changes in the tax laws where dividends are now taxable in the hands of shareholders), TDS is deducted as per the applicable rates under Section 115A for non-residents or as per the normal slab rates for residents.

Section 115UA

- Section 115UA facilitates the taxation of REITs and InvITs in a manner that allows income to be passed through to the unit holders without being taxed at the trust level (for specific income types). The provision ensures that income like interest, dividends, and capital gains are taxed in the hands of the investors, thus avoiding double taxation. The section provides a clear framework for the tax treatment of various income streams that a business trust may generate, ensuring transparency and fairness in the taxation process.

Section 10(23FC) & Section 10(23FCA)

- Section 10(23FC) exempts certain income (dividends and interest) received by a business trust from an SPV from being taxed at the trust level.
- Section 10(23FCA) extends this exemption to unit holders, ensuring that the income received by them from the business trust (which is already exempt under Section 10(23FC)) remains tax-free.

These provisions support the investment structure of REITs and InvITs by providing tax benefits that make these vehicles more attractive to investors and encourage the flow of capital into infrastructure and real estate sectors.

Section 194LBB : TDS on Income from units of Mutual Fund

- **Section 194LBB** of the Income Tax Act, 1961, deals with the tax deduction at source (TDS) on income distributed by an **Investment Fund** to its unit holders.
- The section is particularly relevant for Alternative Investment Funds (AIFs) set up under the SEBI (Alternative Investment Funds) Regulations, 2012.

Applicability

- **Investment Funds:** Section 194LBB applies to income distributed by Investment Funds, including **Alternative Investment Funds (AIFs)**, to their unit holders. AIFs can be categorized into three types:
 - **Category I AIFs:** Invest in startups, early-stage ventures, social ventures, SMEs, infrastructure, etc.
 - **Category II AIFs:** Includes private equity funds, debt funds, etc., that do not leverage or borrow other than to meet operational requirements.
 - **Category III AIFs:** Funds that employ diverse or complex trading strategies and may use leverage, including through investment in listed or unlisted derivatives.

Unit Holders: The section applies to all types of unit holders, whether resident or non-resident, who receive income distributed by the AIF.

TDS Rates and Conditions

- **For Resident Unit Holders:**The TDS is required to be deducted at the rate of 10% on the income distributed by the Investment Fund to the resident unit holders.
- **For Non-Resident Unit Holders** (including Foreign Companies):The TDS is required to be deducted at rates applicable to the type of income (as per relevant sections of the Income Tax Act or applicable Double Taxation Avoidance Agreements (DTAAs)).

Other Important Points

No Threshold Limit

- Unlike some other sections, Section 194LBB does not have a threshold limit for TDS deduction. TDS must be deducted on any amount of income distributed by the Investment Fund to the unit holders.

Exemptions

- No TDS is required to be deducted on income that is exempt under any other provision of the Income Tax Act, such as income exempt under Section 10(23FBB).

Section 194LBC : TDS on Income from Investment in Securitization Trust

Section 194LBC of the Income Tax Act, 1961, deals with the tax deduction at source (TDS) on income distributed by a **securitization trust** to its investors.

This section was introduced to ensure proper tax collection on income earned from securitization transactions, particularly in the context of India's financial markets.

Securitization Trust

A **securitization trust** is a legal entity that is created to facilitate the process of securitization. Securitization is a financial practice where various types of financial assets, such as loans, mortgages, credit card receivables, or other receivables, are pooled together, and securities are issued against these pooled assets. The cash flows generated from the underlying assets (like loan repayments) are used to pay interest and principal to the investors who hold the securities.

TDS Rates and Conditions

- **For Resident Investors:**
 - **Individual or HUF (Hindu Undivided Family):** TDS is required to be deducted at the rate of **25%** on the income distributed by the securitization trust to individual or HUF investors.
 - **Others (Companies, Firms, etc.):** TDS is deducted at the rate of **30%** on the income distributed to other resident investors.
- **For Non-Resident Investors (including Foreign Companies):**
 - TDS is required to be deducted at the rates applicable as per the relevant provisions of the Income Tax Act or as per the applicable Double Taxation Avoidance Agreements (DTAAs).

No Threshold Limit

- Section 194LBC does not have a threshold limit for TDS deduction, meaning TDS must be deducted on any amount of income distributed by the securitization trust to its investors.

Exemptions

- If the income is exempt under any other provision of the Income Tax Act, no TDS is required to be deducted under Section 194LBC.

Section 194LC & Section 194LD

- The taxability of interest income earned by non-residents (including interest on securities) is governed by Section 115A of the Income-tax Act, 1961 (the Act).
- Furthermore, Section 115AD of the Act specifically deals with the taxability of income earned on securities by Foreign Portfolio Investors (FPIs) or Foreign Institutional Investor (FIIs) or Qualified Foreign Investor (QFIs).
- In order to incentivize foreign borrowing, create jobs and stimulate the economy, a concessional rate of tax was introduced in Section 115A and Section 115AD. Corresponding changes for withholding taxes were brought in under Section 194LC and Section 194LD of the Act.

- Section 194LC of the Act provides for a concessional rate of Tax Deductible at Source (TDS) at the rate of 5% on certain interest income payable to nonresidents, including inter-alia interest on rupee-denominated bonds. Furthermore, the section specifically provides that the concessional rate of TDS shall apply only on interest arising out of moneys borrowed before 1 July 2023.
- Similarly, Section 194LD of the Act provides for a concessional rate of TDS at 5% when FIIs/FPIs earn interest income on rupee-denominated bonds of the Indian company and government securities. Furthermore, this section also specifically states that the concessional rate of 5% would be applicable only for the interest payable to the FIIs/FPIs before 1 July 2023.





THANK YOU!