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## **CERTIFICATE COURSE ON TDS**

### **Today's Content – TDS u/s 194I, 194IA and 194IB**

#### **I. Section 194I - TDS on Rent**

The provisions of Section 194-I define how one should deduct tax at source, i.e. [TDS](#) on rent. The said section is primarily for individuals earning income from rent or subletting their property. The rent received on a property is subject to TDS since it is an additional income earned by people in business, salaried people, etc.

#### **Budget 2025 update**

- TDS is not required to be deducted if the amount of rent paid is within Rs.6,00,000.
- Previously, this limit was Rs.2,40,000.

## What is Section 194I?

- The person (not being an Individual or [HUF](#)) who is responsible for paying of rent is liable to deduct tax at source.
- TDS threshold for deduction of tax on rent is Rs 2,40,000 for the FY 2024-25 (the threshold limit was Rs. 1,80,000 until FY 2018-19).
- **Also, individuals and/or HUFs who are subject to tax audit are under an obligation to deduct the tax at source.**
- TDS on rent is required to be deducted at source at the time of credit of 'income by way of rent' to the account of the payee or at the time of payment, thereof, in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

NOTE: *If Individuals and HUFs (other than those covered under audit) pay the landlord rent of INR 50,000 or more per month, they are liable to deduct TDS u/s [194IB](#).*

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## What is the Reason for the Introduction of TDS u/s 194I?

The Finance Act, 1994 inserted the Section 194I, regarding deduction of tax while paying rent. The government introduced the provision to cover the income by way of rent under tax deduction at source. In other countries as well, such income is subject to deduction of income tax at source (TDS).

### Conditions for TDS on Rent

- For TDS deduction, the PAN number of the landlord or the person receiving rent must be given to the payee. If it is not given, the TDS on rent is deducted at 20% under Section 206AA.

- The TDS on rent does not charge any Education Cess or Secondary and Higher Education Cess.

#### What is the Meaning of 'Rent' in Reference to Section 194I?

- 'Rent' means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any:
  - land or
  - Building (including factory building) or
  - Land appurtenant to a building (including factory building) or
  - Machinery or
  - Plant or
  - Equipment or
  - Furniture or
  - Fittings
- whether or not any or all of the above are owned by the payee, i.e. Sub-letting is also covered.
- If the landlord collects security or advance payment at the time of letting out a building to a tenant on the condition that the deposit will be refunded at the time of vacating the building, then such a receipt is not in the nature of income and, therefore, no tax is to be deducted at source u/s 194I.
- However, advance rent (not in the nature of refundable security deposit) paid is, subject to a tax deduction. Moreover, where any such rent is credited to 'suspense account' or to any other account shall also be liable to deduct tax at source.

#### What is the Rate of TDS?

Sr. No.	Nature of Payment	Rates of Tax Deduction
1	Rent of plant, equipment and machinery	2%
2	Rent of land, building, furniture or fitting	10%

#### What Payment is Covered u/s 194I?

- Income from letting out of factory building
  - Where a factory building is let out, the rent received generally is income from business in the hands of the lessor or the owner of the factory. Only in a few cases, it is income from property in the lessor's hands.
  - But such payment also, which is business income in the hands of the lessor and for which he will necessarily be paying advance tax and finally be returning the rental income, will be subject to tax deduction at source or TDS.
- Rent includes service charges

- Service charges payable to business centres are covered under the definition of rent, as they cover payments by whatever named called.
- TDS requirement where building and furniture, etc., let out by separate persons
  - In the case where a building is let out by one person and furniture and fixtures are let out by another person, then the payee is required to deduct tax under Sec. 194I from the rent paid/credited for the hire of the building and hire of the furniture
- TDS on rent payment when rent is not payable monthly
  - Sec. 194I does not mandate that the tax deduction should be made on a month-to-month basis.
  - Therefore, if the crediting of the rent is done on a quarterly basis, the deduction at the source will have to be made on a quarterly basis only. Where the rent is paid on a yearly basis, deduction also will have to be made once a year on the basis of the actual payment or credit.
- Charges regarding cold storage facility
  - In the case of cold storage where milk, ice cream, and vegetables, are stored, the payment may be styled as charges for use of plant and not for use of the building. Cold storage is a plant. However, since the arrangement between the customers and cold storage owners are basically contractual in nature, [194C](#) is applicable.
- Hall rent paid by an association for use of it
  - Since the association is assessed as an association of persons and not as an individual or HUF, the obligation of tax deduction will be there, provided payment for the use of the hall exceeds Rs 2,40,000 (earlier it was Rs.1,80,000).
- Payments to hotels for holding seminars including lunch
  - Where hotels do not charge only for use of premises but also charge for catering/meal only, the provisions of Sec. 194I would not apply. However, Sec.194C would apply for the catering part.

### **Who is Liable to Deduct TDS u/s 194I?**

- The person (not being an Individual or HUF) who pays rent to a resident is liable to deduct tax at source.
- Individuals or HUF who are liable for tax audit are responsible to deduct tax at source under Section 194I.
- The TDS needs to be deducted if the total rent amount of such income paid or likely to be paid during the financial year by the aforesaid person to the account of the payee exceeds Rs 2,40,000. The said limit was Rs 1,80,000 until FY 2018-19.
- In Budget 2017, a new section was introduced where the individual/HUF (not covered under tax audit) paying rent to a resident exceeding Rs 50,000 per month are also liable to deduct TDS @ 5%. This amendment will be effective from 1 June 2017. However, the TDS provisions for said purpose are covered under Section 194-IB.

## Illustration

ABC Pvt. Ltd. runs his business on a rented building, and monthly rent is Rs 25,000. The building owner is an individual Mr. Joy. As per Section 194-I, a company paying rent above Rs 2.4 lakh to any resident person should deduct tax at source at 10% on rent paid for land or building. Hence, tax should be deducted by ABC Pvt. Ltd. on rent paid to Mr Joy. In this example, ABC Pvt. Ltd. is paying rent which is the source of Income to Mr. Joy and hence, it is the duty of the ABC Pvt. Ltd. company to deduct TDS under Section 194-I on rent, if the total rent paid or payable during the financial year exceeds Rs 2.4 lakh, and deposit the same to the government on behalf of Mr Joy, So, the total of rent amount during the financial year in our example is  $12 \times \text{Rs } 25,000 = \text{Rs } 3,00,000$ . Hence, the rent it will attract TDS @ 10%.

The TDS should be deducted when the rent is paid or credited to the lessor's account monthly /quarterly yearly @ 10 %.

## No Deduction or Deduction at Lower Rate under Section 197

The payee can apply in Form 13 to the Assessing Officer for lower deduction or no deduction of tax at source. If the assessing officer is satisfied that this total income justifies no deduction of tax or deduction at a lower rate, the said tax officer may issue a certificate in Form 15AA to that effect directly to the payer.

## Under What Circumstances TDS u/s 194I is Not Deductible?

- Amount payable/paid not exceeding Rs 2,40,000 during the financial year: No tax is required to be deducted in case the amount of rent due or paid does not exceed Rs 2,40,000 during the financial year (earlier it was Rs1,80,000).
- Where tenant is individual or Hindu Undivided Family: Deduction is not required under Sec. 194I when the rent is due or paid by an Individual or HUF not carrying on a business which is audited under income tax law.
- Sharing or proceeds of film exhibition between a film distributor and a film exhibitor owning a cinema theatre: In case of a film exhibitor and film distributor contract, the share of the exhibitor is on account of composite services. The distributor does not take cinema building on lease or sub-lease or tenancy or under an agreement of similar nature. The payment made is not rental in nature.

## TDS on Advance Rent

When the advance rent is paid to the landlord, the payment is subject to a TDS deduction. Below are a few exceptions for TDS calculations on advance rent:

- When the advance rent crosses over to the next financial year, the TDS will be in proportion with earnings based on Form 16 issued for aggregate rent paid in advance.
- When an asset is transferred or sold to another individual, the TDS credit is not available until the transfer is credited to its new owner.
- When there is a cancellation of rental agreement after the payment of advance rent and deduction of TDS, the balance will be refunded to tenants. The landowner has to mention such cancellation in the ITR form submitted for TDS deduction.
- For payment besides salary, a TDS certificate has to be issued every quarter as Form 16A.

### **What is the Time Limit on Depositing TDS?**

- Where the payment is made by or on behalf of the Government- On the same day (without using any challan form)
- Where the payment is made in any other case than the Government- On or before 7 days from end of month in which deduction is made, where tax is paid accompanied by an Income tax challan
  - If the amount is credited or paid in the month of March- On or before April 30
  - In any other case- On or before 7 days from the end of the month in which the deduction is made.

### **Consequences of Non-Deduction/Non-Payment of TDS**

- TDS not deducted: Pay interest @ 1% per month from the date when tax is deductible till the date when tax is deducted.
- TDS deducted but not deposited: A taxpayer who has deducted tax but not deposited the same to the government is liable to pay interest @ 1.5% per month from the date when tax is deducted to the date of deposit of the TDS.

### **TDS on Rent by Individuals if Tax Audit is Not Applicable**

Particulars	Section 194-I	Section 194-IB
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Applicability	Rent paid by an <a href="#">individual/HUF</a> (only if tax audit was applicable in the preceding FY), or Rent paid by any other person	Rent paid by individual/HUF (tax audit not applicable in the preceding FY)
Limit	2,40,000 per annum	Rs 50,000 per month
Rate	2% of rent on plant and machinery 10% of rent on land, building or furniture	5% of land or building or both

## TDS on Rent Paid to NRI

If you [pay rent to NRI](#), then TDS at higher rate must be deducted. TDS must be deducted irrespective of the amount of rent paid to NRI as there is no limit on the rent payment. However, the NRI may obtain no or lower deduction certificate in case his income in India is less than the basic exemption limit.

## II. TDS from sum paid to buy an Immovable Property u/s 194IA

Section 194-IA provides that any person buying an immovable property (other than rural agricultural land) from a resident seller shall deduct tax at the rate of 1% from the sales consideration or the stamp duty value of such property, whichever is higher. The tax shall be deducted if the amount of sales consideration or stamp duty value is Rs. 50 lakhs or more.

### Deductor

Any person (buyer) who is responsible for making payment of sales consideration in respect of purchasing an immovable property (other than rural agriculture land) shall deduct tax under this provision. The tax is deducted at the time of payment or at the time of credit of consideration, whichever is earlier.

There is no requirement to apply or obtain Tax Deduction or Collection Account Number (TAN) for deducting tax under this section. Hence, a deductor can use his PAN in place of TAN.

### Deductee

The seller of immovable property shall be the deductee under this provision. However, the tax shall be required to be deducted under this section only if the seller is resident in India. If the seller is a non-resident in India, the tax shall be deducted under Section 195.

### **Rate of TDS and threshold limit**

The tax shall be deducted at the rate of 1% of sales consideration or stamp duty value, whichever is higher if the amount of consideration or the stamp duty value of the immovable property is Rs. 50 lakhs or more.

The rate shall not be further increased by Surcharge and Health & Education Cess. If the deductee does not furnish his PAN to the deductor, the tax shall be deducted at the rate of 20% under Section 206AA

Note: If there is more than one transferor or transferee in respect of any immovable property, then the consideration shall be the aggregate of the amounts paid or payable by all the transferees to the transferor or all the transferors for the transfer of such immovable property. (w.e.f. 01-10-2024)

### **Meaning of Sales Consideration**

Sale consideration shall include all charges which are incidental to the transfer of such immovable property, such as club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee, or any other charges of similar nature.

### **Meaning of Stamp Duty Value**

"Stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of the immovable property.

### **Exemption from TDS**

No tax is required to be deducted from any sum paid or payable to the following:

- a) The Government
- b) The Reserve Bank of India
- c) Corporation established by or under a Central Act which is, under any law for the time being in force, exempt from income tax on its income



d) Mutual Fund specified under Section 10(23D); or

e) Payment made to 'Air India Limited' for the transfer of immovable property to 'Air India Holding Limited' under a plan approved by the Central Government.

Further, if the immovable property is transferred by way of compulsory acquisition. The tax, in this case, shall be deducted under Section 194LA from the amount of compensation or enhanced compensation paid or payable on the compulsory acquisition of immovable property.

### **Deposit of TDS**

Tax deducted under this provision is required to be deposited to the credit of the Central Government through Form 26QB within 30 days from the last day of the month in which the tax was deducted.

### **Filing of TDS statement**

The person responsible for the deduction of tax at source under this provision is required to furnish a challan-cum-statement in Form 26QB electronically.

### **TDS Certificate**

The deductor shall issue a TDS certificate to the assessee in Form No. 16B within 15 days from the due date of furnishing of the TDS statement.

### **Consequences for failure to deduct or deposit tax**

Where any person responsible for deducting tax at source fails to deduct tax or after deducting fails to deposit the same, he shall be treated as assessee-in-default. In that case, interest under section 201 will be applicable.

If the deductor fails to deduct TDS, interest at the rate of 1% per month or part of the month shall be applicable, till such failure continues. Interest shall be calculated from the date when such tax was required to be deducted till the date such tax is actually deducted.

Further, if the deductor after having deducted the tax, fails to deposit the same to the credit of the Central Government, interest at the rate of 1.5% per month or part thereof shall be applicable till such failure continues. The interest computation shall commence from the

date on which the tax was deducted and end with the date when such tax was deposited to the government.

### **Penalty and Prosecution for not deducting or depositing TDS**

Failure to comply with the provisions of deduction of tax at source under this provision may result in penalties and prosecution as per the following provisions:

(a) If a person fails to deduct tax at source, he shall be liable for payment of penalty under Section 271C;

(b) If a person deducts tax but fails to deposit the same to the credit of the Central Government, he shall be liable for the penalty under Section 221 and prosecution under Section 276B.

However, no person shall be punishable under Section 276B if he proves that there was reasonable cause for the failure. Further, a person can also file an application for compounding of offence.

Where any person fails to furnish a TDS statement, section 234E shall be applicable, wherein the deductor is liable to pay fees at the rate of Rs. 200 per day during such default continues. However, such fees should not exceed the amount of TDS.

Moreover, he shall be liable for penalties under sections 271H of Rs. 10,000 which can be extended to Rs. 100,000, and 272A of Rs. 500 for every day during which failure continues.

### **Consequences for failure to issue TDS Certificates**

Where any person, responsible for issuing TDS Certificates, fails to issue such certificates, a penalty under section 272A shall be applicable of Rs. 500 for every day during which failure continues.

### **III. TDS on Rent by Certain Individual or HUF**

Section 194-IB provides that every Individual and HUF, whose turnover or gross receipt from business or profession doesn't exceed Rs. 1 crore in case of business and Rs. 50 lakhs in case of a profession in the immediately preceding financial year, shall deduct tax from the payment of rent for use of any land or building or both. The tax shall be deducted at the rate of 2% (5% till 30-09-2024) if the rent paid or payable exceeds Rs. 50,000 per month or part of the month.

#### **Deductor**

Every Individual or HUF shall be required to deduct tax at source under this provision if his gross receipts or turnover in the financial year immediately preceding the financial year, in which rent is paid or credited, does not exceed Rs. 1 crore in the case of business and Rs. 50 lakhs in case of a profession.

The tax shall be deducted under this provision even if the individual is not engaged in any business or profession and he is just earning salary or any other income.

Further, there is no requirement to apply or obtain Tax Deduction or Collection Account Number (TAN) for deducting tax under this section. Hence, a deductor can use his PAN in place of TAN.

Rent means any payment under any lease, sub-lease, tenancy, or any other agreement or arrangement for use of any land or building or both.

#### **Deductee**

Tax is required to be deducted only if the rent is paid or payable to a person who is resident in India. The tax shall be deducted under Section 195 if the sum is payable to a non-resident.

#### **Time of Deduction**

If tenancy subsists till the last month of the year

The tax shall be deducted at the time of payment or credit of rent to the account of the payee for the last month of the financial year, whichever happens earlier.

If the property is vacated during the year

If the property is vacated during the year, tax shall be deducted at the time of payment or credit of rent to the account of the payee for the last month of tenancy, whichever happens earlier.

### **Rate of TDS and threshold limit**

The tax shall be deducted at the rate of 2% (5% till 30-09-2024) if the amount of rent exceeds Rs. 50,000 for a month or part of the month during the financial year.

The rate shall not be further increased by Surcharge and Health & Education Cess. If the deductee does not furnish his PAN to the deductor, the tax shall be deducted at the rate of 20% under Section 206AA. In such a case, the amount of TDS cannot exceed the amount of rent payable for the last month of the year or the last month of the tenancy, as the case may be.

### **Exemption from TDS**

No tax is required to be deducted from any sum paid or payable to the following:

- a) The Government
- b) The Reserve Bank of India
- c) Corporation established by or under a Central Act which is, under any law for the time being in force, exempt from income tax on its income
- d) Mutual Fund specified under Section 10(23D); or

### **Deposit of TDS**

Tax deducted under this provision is required to be deposited to the credit of the Central Government through Form 26QC within 30 days from the last day of the month in which the tax was deducted.

### **Filing of TDS statement**

The person responsible for the deduction of tax at source under this provision is required to furnish a challan-cum-statement in Form 26QC electronically.

## **TDS Certificate**

The deductor shall issue a TDS certificate to the assessee in Form No. 16C within 15 days from the due date of furnishing of the TDS statement.

## **Consequences for failure to deduct or deposit tax**

Where any person responsible for deducting tax at source fails to deduct tax or after deducting fails to deposit the same, he shall be treated as assessee-in-default. In that case, interest under section 201 will be applicable.

If the deductor fails to deduct TDS, interest at the rate of 1% per month or part of the month shall be applicable, till such failure continues. Interest shall be calculated from the date when such tax was required to be deducted till the date such tax is actually deducted.

Further, if the deductor after having deducted the tax, fails to deposit the same to the credit of the Central Government, interest at the rate of 1.5% per month or part thereof shall be applicable till such failure continues. The interest computation shall commence from the date on which the tax was deducted and end with the date when such tax was deposited to the government.

## **Penalty and Prosecution**

Failure to comply with the provisions of deduction of tax at source under this provision may result in penalties and prosecution as per the following provisions:

(a) If a person fails to deduct tax at source, he shall be liable for payment of penalty under Section 271C;

(b) If a person deducts tax but fails to deposit the same to the credit of the Central Government, he shall be liable for the penalty under Section 221 and prosecution under Section 276B.

However, no person shall be punishable under Section 276B if he proves that there was reasonable cause for the failure. Further, a person can also file an application for compounding of offence.

## **Consequences for failure to furnish TDS Statement**

Where any person fails to furnish a TDS statement, section 234E shall be applicable, wherein the deductor is liable to pay fees at the rate of Rs. 200 per day during such default continues. However, such fees should not exceed the amount of TDS.

Moreover, he shall be liable for penalties under sections 271H of Rs. 10,000 which can be extended to Rs. 100,000, and 272A of Rs. 500 for every day during which failure continues.

### **Consequences for failure to issue TDS Certificates**

Where any person, responsible for issuing TDS Certificates, fails to issue such certificates, a penalty under section 272A shall be applicable of Rs. 500 for every day during which failure continues.

Discussion on any questions

