

SECTION 194I, IA, IB TDS

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194 - I - RENT

- ▶ Any person, not being an individual or a Hindu undivided family, who is responsible for paying to ²[a resident] any income by way of rent, 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 the issue of a cheque or draft or by any other mode, whichever is earlier, ³[deduct income-tax thereon at the rate of-
- ▶ ⁷[(a) two per cent. for the use of any machinery or plant or equipment; and
- ▶ (b) ten per cent. for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:]]
- ▶ ¹²[**Provided that** no deduction shall be made under this section, where the income by way of rent credited or paid for a month or part of a month by such person to the account of, or to, the payee, does not exceed fifty thousand rupees:]

- ▶ **[Provided further** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ¹¹[one crore rupees in case of business or fifty lakh rupees in case of profession] during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.]
- ▶ ⁹**[Provided also** that no deduction shall be made under this section where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in clause (23FCA) of section 10, owned directly by such business trust.]

- ▶ "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,-
- ▶ (a) land; or
- ▶ (b) building (including factory building); or
- ▶ (c) land appurtenant to a building (including factory building); or
- ▶ (d) machinery; or
- ▶ (e) plant; or
- ▶ (f) equipment; or
- ▶ (g) furniture; or
- ▶ (h) fittings,
- ▶ whether or not any or all of the above are owned by the payee;]

- ▶ *(ii)* where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.]

Applicability:

- ▶ Rent paid by Individuals and HUFs whose sales or turnover exceeds 1 crore or whose gross receipts exceed Rs. 50 lacs during the financial year immediately preceding the financial year in which such rent is liable to be paid.
- ▶ Rent paid by any other person.

▶ **Threshold Limit:**

Exceed Rs.50,000 per month or Rs. 6 lacs in Financial Year

▶ **Rate:**

- ▶ 2% of rent on plant and machinery
- ▶ 10% of rent on land, building or furniture

What is the Meaning of 'Rent' u/s 194I?

- ▶ 'Rent' means any payment made under any of the following kinds of arrangements:
 - ▶ Lease
 - ▶ Sub-lease
 - ▶ Tenancy
 - ▶ Any other agreement or arrangement.
- ▶ The agreement entered could be for the use of:
 - ▶ Land or
 - ▶ Building (including factory building) or
 - ▶ Land attached to a building (e.g., parking lot, garden, etc.,) or
 - ▶ Machinery or
 - ▶ Plant or
 - ▶ Equipment or
 - ▶ Furniture or
 - ▶ Fittings.

- ▶ No TDS needs to be deducted under this section for refundable security deposit paid as it is not in the nature of income to recipient.
- ▶ However, **advance rent** (not in the nature of refundable security deposit) paid, is **subject to tax deduction**.
- ▶ Moreover, any such rent is credited to ‘suspense account’ or to any other account shall also be liable to TDS.

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

- ▶ The TDS needs to be deducted if the total rent amount of such income paid or likely to be paid exceeds Rs 50,000 per month or Rs.6 lacs in the Financial year.
- ▶ If the individual and HUFs paying rent to a resident are not covered under section 194-I, they shall deduct TDS under section 194IB at 2%.

When TDS needs to be deducted u/s 194I?

- ▶ TDS on rent is required to be deducted at source at the earliest of:
- ▶ Credit of 'income by way of rent' to the account of the payee or
- ▶ At the time of payment.

TDS Rate Rent Paid to NRI

- ▶ If you pay rent to NRI, then TDS @30% + surcharge + 4% cess 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.

No Deduction or Deduction at Lower Rate under Section 197

- ▶ The payee can apply in **Form 13** to the Assessing Officer for a 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.

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 owner. 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.

TDS 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 to the owners of both building and furniture separately.

TDS 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 for 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

- ▶ Since an association of persons is a different kind of assessee and not an individual or HUF, the obligation of tax deduction will be there, provided payment for the use of the hall exceeds Rs 50,000 per month.

Payments to Hotels for Holding Seminars Including Lunch

- ▶ Where hotels do not charge only for use of premises but also charge for catering/meal, the provisions of Sec. 194I would not apply for the catering part.
- ▶ However, Sec.194C would apply for the catering part.

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 paid pertains to the next financial year, the TDS will be in proportion with earnings for the financial year.
- ▶ 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.

194-IA. Payment on transfer of certain immovable property other than agricultural land.-

- ▶ 1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or 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, deduct an amount equal to one per cent of such sum ³[or the stamp duty value of such property, whichever is higher,] as income-tax thereon.
- ▶ (2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an ⁴[immovable property and the stamp duty value of such property, are both,] less than fifty lakh rupees.
- ▶ ⁶[**Provided that** where 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 transfer of such immovable property.]

- ▶ 3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.
- ▶ *Explanation.*- For the purposes of this section,-
- ▶ (a) “agricultural land” means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;
- ▶ ²[(aa) “consideration for transfer of any immovable property” shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property;]
- ▶ (b) “immovable property” means any land (other than agricultural land) or any building or part of a building.]
- ▶ ⁵[(c) "stamp duty value" shall have the same meaning as assigned to it in clause (f) of the Explanation to clause (vii) of sub-section (2) of section 56.]

Requirements of Section 194IA

- ▶ When a buyer buys immovable property (i.e. a building or part of a building or any land other than agricultural land) costing more than Rs 50 lakhs, he has to deduct tax at source (TDS) when he pays the seller. This has been laid out in Section 194-IA of the Income Tax Act since 1st June 2013.
- ▶ The **buyer** has to deduct **TDS at 1%** of the total sale amount. Please note, the *buyer* is required to deduct TDS, not the *seller*
- ▶ TDS is required to be deducted only if total **purchase value is Rs 50 lakh or more**
- ▶ If the payment is made by instalments, then TDS has to be deducted **on each instalment** paid.

- ▶ ‘Consideration for immovable’ property shall include all charges like nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to the transfer of the immovable property. This is applicable for immovable property purchased on or after 1 September 2019.
- ▶ TDS is to be paid on the entire purchase value.
Example for TDS on Sale of Property, if you have bought a house at Rs 55lakh, you have to pay TDS on Rs 55 lakh and not on Rs 5 lakh (i.e. Rs 55 lakh - Rs 50 lakh). This is applicable even when there is more than 1 buyer or seller. Post the budget 2019 amendment to section 194-IA, in the above example, if on 1 September 2019, you have paid Rs 2 lakh towards parking fee, Rs 1 lakh for water facility fee and Rs 1 lakh for electricity fee, your sale consideration would be Rs 59 lakh (55+2+1+1). You will have to pay TDS on Rs 59 lakh @ 1%. Your TDS payable would be Rs 59,000.

- ▶ Buyer of the property need not obtain a TAN (Tax Deduction Account Number) for depositing TDS with the government. You can make the payment using your PAN.
- ▶ For the purpose of depositing TDS, buyer will have to obtain the PAN of the seller, else TDS must be deducted at 20%.
- ▶ TDS is deducted at the time of payment (including instalment payments) to the seller

What is Form 26QB?

- ▶ Form 26QB is the challan cum statement filed by the buyer of immovable property except agricultural land to the government providing details of the buyer, seller and the total value of sale consideration.
- ▶ The TDS on the immovable property has to be paid using [Form 26QB](#) within 30 days from the end of the month in which TDS was deducted.
- ▶ After depositing TDS through e-tax Payment option (Netbanking) or any of the authorised bank branches to the government, the buyer is required to furnish the TDS certificate in [form 16B](#) to the seller. This is available around 10-15 days after depositing the TDS. The buyer is required to obtain Form 16B and issues the form to the seller. You can check the procedure to generate and download Form 16B from TRACES (TDS Reconciliation Analysis and Correction Enabling System)

- ▶ PAN of the seller, as well as Purchaser, should be mandatorily furnished in an online form (Form 26QB) for furnishing information regarding the property transaction. Facility for furnishing information regarding the transaction of sale of immovable property and payment of TDS thereof is available on the website www.tin-nsdl.com

Penalty for Non-filing Form 26QB

- ▶ If the buyer doesn't furnish the form 26QB to the Income Tax department, the following penalties can be imposed on the buyer:
- ▶ A late fee of Rs 200 per day from the date exceeding the deadline date. The late fee must be submitted before filing the delayed Form 26QB.
- ▶ The amount of fee cannot be more than the total amount deducted.
- ▶ If the TDS is not deducted, the buyer has to pay interest of 1% per month or part of the month starting from the date till which TDS is supposed to be deducted to the date of TDS deducted.
- ▶ If the TDS is deducted, but not paid to the government, the buyer has to pay the interest of 1.5% per month or part of the month starting from the date on which TDS is deducted to the date of payment to the government.
- ▶ If the buyer does not submit Form 26QB or furnish incorrect details in Form 26QB, the penalty imposed on buyer can range from Rs 10,000 to Rs 1,00,000. This buyer doesn't have to pay this penalty if he has submitted Form 26QB within 1 month of the deadline or have deposited the TCS amount, interest and late fee with the government.

Consequences of Non-filing of Form 26QB to the Seller

- ▶ If the buyer doesn't file Form 26QB, the seller cannot claim TDS amount while filing his Income Tax Return as it will not reflect in Form 26AS. It may lead to paying tax again for the same amount by the seller. Also, while reporting capital gain for the financial year, the seller cannot claim the TDS credit and has to pay again to the Income Tax department.

Payment of rent by certain individuals or Hindu undivided family. - 194IB

- ▶ (1) Any person, being an individual or a Hindu undivided family (other than those referred to in the second proviso to section 194-I), responsible for paying to a resident any income by way of rent exceeding fifty thousand rupees for a month or part of a month during the previous year, shall deduct an amount equal to ⁴[two per cent.] of such income as income-tax thereon.
- ▶ (2) The income-tax referred to in sub-section (1) shall be deducted on such income at the time of credit of rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, 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.

- ▶ 3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.
- ▶ (4) In a case where the tax is required to be deducted as per the provisions of ²[section 206AA ³[****], such] deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.
- ▶ *Explanation.*-For the purposes of this section, “rent” means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.]

Who is responsible to deduct tax under section 194IB of Income Tax Act, 1961?

- ▶ Any person, being an individual or a Hindu undivided family (not covered under section 194I), responsible for paying to a resident any income by way of rent exceeding ₹ 50,000 for a month or part of a month during the previous year, shall deduct income-tax thereon at the rates in force. For the purposes of this section, “rent” means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.

TDS u/s 194IB is also required to be deducted by the person covered u/s 44AD and 44ADA whose turnover does not exceeds Rs. 1 Crore or Rs. 50 Lakhs, as the case maybe.

When to Deduct TDS on rent of property under Section 194IB?

- ▶ The income-tax referred above shall be deducted on such income at the time of credit of rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, 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.

Rate of TDS under Section 194IB

- ▶ Section 194-IB provides that tax at a rate of 5%(3.75% w.e.f. 14.05.2020 to 31.03.2021) should be deducted by the Tenant, Payer or Lessee at the time of making payment of rent to, Lesser, Landlord or Payee. The tax so deducted has to be deposited to the Government Account through online by any of the authorized bank branches. The provisions of section 203A relating to requirement of obtaining TAN No. shall not apply to a person required to deduct tax in accordance with the provisions of this section. In case, the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

- ▶ Challan-cum-statement in Form no. 26QC will have to be submitted.
- ▶ TDS certificate is to be issued in Form 16C by the person deducting tax within the specified due dates.
- ▶ TDS u/s 194IB is to be deducted only if payment is made to resident. In case rent is paid to non-resident owner, TDS u/s 194IB shall not be deducted.
- ▶ Tenant may be resident or non-resident. Both are liable to deduct TDS u/s 194IB.
- ▶ Rent paid by the tenant may be for residential or commercial purpose.
- ▶ TDS is to be deducted even if rent paid exceeds Rs.50,000 for only one month in a year. Example-Rent paid from April 2021 to January 2022 is Rs. 45,000 per month. Rent paid for February and March 2022 is Rs. 55,000 per month. TDS @ 5% is to be deducted on the whole amount i.e Rs. 5,60,000.

- ▶ Mr. Shan, a salaried employee, pays rent of Rs 62,000 per month to Mr. Rehan. Is he required to deduct Tax at source for the financial year 2020-21?

Mr. Shan pays rent exceeding Rs 50,000 per month in the financial year; therefore he is liable to deduct tax at source @5% of such rent. Thus, Rs 37200 ($\text{Rs } 62000 \times 5\% \times 12 \text{ months}$) has to be deducted from rent payable for March, 2021.

In above case if Mr. Shan vacated the premises on 30th November 2020, what will be his liability?

If Mr. Shan vacated the premises on 30th November 2020, then tax of Rs 24800 ($\text{Rs } 62000 \times 5\% \times 8 \text{ months}$) has to be deducted from the rent payable for November 2020.

In above case if Mr. Shan vacated the premises on 31st March 2021, but Mr. Rehan did not furnish his PAN, what will be his liability?

If Mr. Rehan does not provide his PAN to Mr. Shan then tax of ₹ 148800 ($\text{₹.}62000 \times 20\% \times 12 \text{ months}$) or rent of that month i.e. 62000 whichever is less has to be deducted from the rent payable for March, 2021.

- ▶ Turnover of Mr. Chaman in F.Y. 2019-20 was Rs. 1.25 crores. In the F.Y. 2020-21, turnover was Rs. 80 Lakhs. He has paid rent of Rs. 60,000/- per month. Whether TDS will be deducted u/s 194I(b) or 194IB?
- ▶ Answer: TDS u/s 194I(b) is to be deducted by an individual/HUF tenant, if his turnover/ gross receipts in the preceding F.Y. exceeds Rs. 1 crore. TDS is to be deducted at the rate of 10% if the rent paid during the year exceeds Rs. 2.40 Lakhs. TDS u/s 194IB is to be deducted by an individual/ HUF tenant, if his turnover/ gross receipts in the preceding F.Y. are below Rs. 1 crore (Rs. 50 Lakhs in case of professional). In the F.Y. 2020-21 TDS is to be deducted u/s 194I(b) as the turnover in the preceding Financial Year exceeds Rs. 1 crore. In the F.Y. 2021-22, TDS u/s 194IB is to be deducted as the turnover in the preceding F.Y. is less than Rs. 1 crore.