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Certificate Course on TDS



TDS under several sections

Payment Made Under Specified Agreement	194IC
Fees for Professional or Technical Services	194J
Income received from units of a mutual fund, such as dividends	194K
Payment of Compensation on Acquisition of Certain Immovable Property	194LA

Section 194-IC of the Income Tax Act, 1961

This section deals with the tax deduction at source (TDS) on payments made under a Joint Development Agreement (JDA). This section was introduced to ensure that tax is collected at the time of payment when a developer or builder makes payments to a landowner under such agreements.

Background Setting

Real Estate Sector in India:

- The real estate sector has historically been a significant contributor to India's economy. However, it has also been a sector prone to complex transactions, particularly those involving the transfer of immovable property through Joint Development Agreements (JDAs).
- In a typical JDA, a landowner allows a developer to develop land by constructing residential or commercial units. In return, the landowner either receives a share of the developed property or monetary consideration.

Taxation Challenges in JDAs:

- **Ambiguity in Taxation:** Prior to the introduction of Section 194-IC, there was significant ambiguity in the taxation of JDAs, especially concerning the point of taxation, the valuation of consideration received in kind, and the responsibility of tax payment.
- **Tax Evasion:** The real estate sector was notorious for tax evasion, partly due to the non-transparent nature of transactions and the difficulty in tracking the actual consideration received by the landowners.

Judicial Interventions:

- Several court cases highlighted the complexities in taxing JDAs. The courts had to interpret when the income accrued to the landowner, how it should be valued, and when the tax liability arose.
- In some cases, courts held that the taxability of the transaction should occur when the JDA was signed, while in other cases, it was held that tax liability should arise only when the landowner actually received the consideration.

Introduction of Section 194-IC:

1. Legislative Response:

- To address the challenges posed by JDAs and to streamline the taxation process, the Indian government introduced **Section 194-IC** in the Finance Act of **2017**. This was part of a broader effort to bring transparency and efficiency to the taxation of real estate transactions.
- The introduction of Section 194-IC was aimed at clarifying the tax treatment of JDAs by ensuring that tax was deducted at the source (TDS) on monetary consideration paid to landowners.

2. Evolution from Section 194-IA:

- Section 194-IA, introduced earlier, mandated TDS on the sale of immovable property where the consideration exceeded Rs. 50 lakhs. However, Section 194-IA did not specifically address the complexities of JDAs where consideration could be both in cash and in kind.
- Section 194-IC was introduced to specifically cover JDAs, ensuring that tax was deducted on the monetary consideration component, which was often the most significant part of such agreements.

1. Objective and Rationale:

- **Revenue Protection:** The primary objective was to safeguard the revenue by ensuring tax collection at the point of payment. This was crucial in a sector where underreporting and cash transactions were prevalent.
- **Simplicity and Clarity:** By introducing a straightforward mechanism for TDS, the government aimed to reduce disputes related to the timing and amount of tax payable in JDA transactions.
- **Enhancing Compliance:** Section 194-IC was also seen as a measure to improve compliance in the real estate sector, which had historically lagged in terms of transparency and tax adherence.

Key Provisions of Section 194-IC

1. Applicability:

- Section 194-IC applies to payments made by any person responsible for paying any sum by way of consideration (not being in kind) under a specified agreement, which is referred to as a Joint Development Agreement (JDA).
- The section covers payments made to individuals, Hindu Undivided Families (HUFs), companies, firms, or any other entity as specified under the JDA.

2. Joint Development Agreement (JDA):

- A Joint Development Agreement is a contract between the landowner and a developer where the landowner agrees to transfer a portion of the land in exchange for a share in the developed property or consideration in cash.
- The landowner typically receives either a portion of the constructed property or a monetary consideration, or a combination of both.

- **Rate of TDS:**

- The payer (developer or builder) is required to deduct TDS at the rate of **10%** on the monetary consideration paid to the landowner.

- **Timing of TDS Deduction:**

- TDS under Section 194-IC is required to be deducted at the time of credit of such sum to the account of the payee (landowner) or at the time of payment, whichever is earlier.

- **Nature of Payment Covered:**

- The section specifically applies to payments that are in the form of monetary consideration. If the consideration is wholly in kind, Section 194-IC may not apply. However, if the consideration is partly in kind and partly in cash, TDS would apply to the cash component.
- **Example:** If a developer agrees to give Rs. 50 lakhs to the landowner as consideration for the transfer of land under a JDA, the developer is required to deduct TDS of Rs. 5 lakhs (10% of Rs. 50 lakhs) under Section 194-IC.

- **No Threshold Limit:**

- Unlike some other sections of TDS, Section 194-IC does not provide any threshold limit. TDS must be deducted on any amount of consideration paid under the JDA.

- **Compliance Requirements:**

- The payer must deposit the TDS with the government within the prescribed time limit (usually by the 7th of the following month in which TDS is deducted).
- The payer must also issue a TDS certificate (Form 16B) to the landowner, indicating the amount of tax deducted and deposited.

- **Non-Applicability of Section 194-IA:**

- Section 194-IC is specifically applicable to JDAs, whereas Section 194-IA deals with TDS on the transfer of immovable property. Therefore, Section 194-IA does not apply to payments covered under Section 194-IC.

Practical Implications

- **Developers' Responsibilities:**

- Developers or builders entering into JDAs must ensure that they comply with TDS requirements under Section 194-IC. Failure to deduct TDS or deposit it within the prescribed time can result in penalties, interest, and disallowance of expenses under the Income Tax Act.

- **Impact on Landowners:**

- Landowners need to be aware that the monetary consideration they receive under a JDA is subject to TDS. They must ensure that they receive the TDS certificate (Form 16B) from the developer to claim the TDS credit while filing their income tax returns.

- **Joint Development Agreements:**

- Given that JDAs often involve both monetary and non-monetary consideration (e.g., a portion of constructed property), both parties must carefully structure the agreement and ensure compliance with Section 194-IC.

Section 194-J of the Income Tax Act, 1961

- **Section 194J** of the Income Tax Act, 1961, pertains to the deduction of tax at source (TDS) on certain types of professional and technical service fees, royalty, non-compete fees, and director's remuneration. This section plays a critical role in ensuring that tax is collected upfront on payments for specified services, thereby reducing the scope for tax evasion.

- **Applicability:**
- Section 194J applies to any person (referred to as the "deductor") responsible for paying certain specified sums to a resident, including:
 - Fees for professional services.
 - Fees for technical services.
 - Royalty.
 - Any sum referred to in Section 28(via) (non-compete fees).
 - Remuneration, fees, or commission to a director of a company, other than salary.
- This section covers payments made by individuals, Hindu Undivided Families (HUFs), companies, firms, and other entities, provided their turnover or gross receipts exceed the monetary limits specified under Section 44AB (tax audit provisions). However, individuals and HUFs not subject to tax audit under Section 44AB are generally not required to deduct TDS under Section 194J.

Nature of Payments Covered:

Professional Services:

"Professional services" include services rendered by professionals in various fields such as legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration, advertising, and other similar professions.

It also covers services provided by actors, musicians, sportsmen, and other performers, as well as by technical or managerial consultants.

Technical Services:

"Technical services" refer to any payment in consideration for rendering technical, managerial, or consultancy services, including the provision of services of technical or other personnel.

Royalty:

Payments considered as "royalty" under Section 194J include payments for the use or right to use intellectual property, such as patents, trademarks, copyrights, and similar rights.

Non-Compete Fees:

Non-compete fees, as referred to in Section 28(va), include any sum received or receivable in relation to not carrying out any activity or not sharing any know-how or trade secrets.

Director's Remuneration:

This covers any payment made to a director for services rendered as a director, excluding salary. This typically includes sitting fees, commission, or any other remuneration paid to directors.

Rate of TDS:

The rate of TDS under Section 194J varies depending on the nature of the payment:

- For Professional Services, Royalty, and Non-Compete Fees: The TDS rate is 10%.
- For Fees for Technical Services: The TDS rate is 2% (as reduced by the Finance Act, 2020).
- For Director's Remuneration (other than salary): The TDS rate is 10%.
- If the payee does not furnish their Permanent Account Number (PAN), TDS may be deducted at a higher rate of 20% under Section 206AA.

Threshold Limit:

- TDS under Section 194J is not required to be deducted if the total amount paid or credited to a resident in a financial year does not exceed Rs. 50,000 for each of the categories (professional fees, technical fees, royalty, non-compete fees).
- However, there is no such threshold for director's remuneration; TDS must be deducted on any amount paid.

Example 1: Payment to a Consultant:

A company pays Rs. 50,000 to a consultant for technical services. The company must deduct TDS at 2%, amounting to Rs. 1,000, and pay Rs. 49,000 to the consultant.

Example 2: Professional Fees Below Threshold:

If a company pays Rs. 25,000 to a lawyer for legal services during a financial year, no TDS is required to be deducted since the amount is below the Rs. 50,000 threshold.

Example 3: Director's Sitting Fees:

A company pays Rs. 1,00,000 as sitting fees to its directors. The company must deduct TDS at 10%, i.e., Rs. 10,000, and deposit the amount with the government.

Example 4: Payment Without PAN:

If the consultant in Example 1 does not provide their PAN, the company would deduct TDS at 20% instead of 2%, resulting in a deduction of Rs. 10,000.

Important Jurisprudence on Section 194J

- Section 194J of the Income Tax Act, 1961, has been the subject of various judicial interpretations over the years. Courts have provided clarity on several aspects of the section, particularly concerning the scope of "professional services," "technical services," and the applicability of TDS in different scenarios. Here are some important judicial precedents related to Section 194J:

GVK Industries Ltd. vs. ITO (2015)

Issue: Scope of the term "technical services" under Section 194J.

Court: **Supreme Court of India**

Summary: The Supreme Court held that the term "technical services" as used in Section 194J includes managerial and consultancy services. The Court clarified that for a service to be categorized as a "technical service," it is not necessary that it involves specialized knowledge or expertise in a particular technical field. Instead, services that involve the application of specialized knowledge, skills, or expertise, whether technical, managerial, or consultancy in nature, fall within the purview of "technical services."

Impact: This judgment broadened the scope of what constitutes "technical services" under Section 194J, making it clear that a wide range of services could be subject to TDS.

CIT vs. Kotak Securities Ltd. (2016)

Issue: Applicability of TDS under Section 194J on payments made for services rendered by stock exchanges.

Court: **Supreme Court of India**

Summary: The issue was whether payments made by Kotak Securities to stock exchanges for the use of their infrastructure amounted to "technical services" under Section 194J, thereby attracting TDS. The Supreme Court held that the services provided by the stock exchanges did not amount to "technical services" within the meaning of Section 194J. The Court reasoned that the stock exchanges merely provided access to their facilities and systems, and this did not involve any human intervention or specialized knowledge, which are essential attributes of technical services.

Impact: This judgment provided clarity on what constitutes technical services under Section 194J, particularly in relation to payments for automated services or facilities where there is no human involvement.

Section 194-K of the Income Tax Act, 1961

- Section 194K of the Income Tax Act, 1961, deals with the deduction of tax at source (TDS) on income from mutual funds and specified investment vehicles. It was reintroduced in the Finance Act, 2020, replacing an earlier version of the section that had been omitted in 2016. The purpose of this section is to ensure that tax is deducted at source on certain incomes earned from investments, primarily to bring about greater compliance and to streamline tax collection on investment income.

Applicability:

- Section 194K applies to any person (including individuals, Hindu Undivided Families (HUFs), firms, companies, etc.) responsible for paying income in respect of:
 - Units of a Mutual Fund specified under Section 10(23D).
 - Units from the Administrator of the Specified Undertaking.
 - Units from the Specified Company.
- The section is applicable when the income is in the form of dividend or any other income from units of mutual funds.

Nature of Income Covered:

The section covers two types of income:

1. **Dividend Income:** Income distributed by mutual funds to unit holders in the form of dividends.
 2. **Other Income:** Any other income arising from units of mutual funds, including income in the form of periodic payouts from investment vehicles.
- **Capital Gains Exclusion:** It is important to note that Section 194K does not apply to income in the form of capital gains (i.e., gains arising from the sale or redemption of units). Only dividend income and other incomes from units are covered.

- **. Rate of TDS:**

- The TDS rate under Section 194K is **10%** on the income paid in respect of units.
- If the payee does not furnish their Permanent Account Number (PAN), the TDS rate may be higher (typically 20% as per Section 206AA of the Income Tax Act).

- **4. Threshold Limit:**

- No TDS is required to be deducted under Section 194K if the aggregate amount of income (dividend and other income) paid to a unit holder in a financial year does not exceed **Rs. 10,000**.
- This means that if the total dividend or other income from mutual fund units paid to a unit holder during the financial year is Rs. 10,000 or less, no TDS needs to be deducted.

Section 194-LA of the Income Tax Act, 1961

- **Section 194LA** of the Income Tax Act, 1961, deals with the deduction of tax at source (TDS) on payments made as compensation for the compulsory acquisition of immovable property. This section ensures that tax is deducted before the payment of compensation to the person whose property has been acquired by the government or any other authority.

- **Applicability:**

- Section 194LA applies to any person responsible for paying compensation for the compulsory acquisition of immovable property. This could include the government, local authorities, or any other person or organization making such payments.
- The section covers compensation payments made to individuals, Hindu Undivided Families (HUFs), companies, firms, and other entities whose immovable property has been acquired.

- **. Threshold Limit:**

- Section 194LA provides a threshold limit for the application of TDS. TDS is required to be deducted only if the compensation or consideration for the compulsory acquisition exceeds **Rs. 5,00,000** during the financial year. If the compensation amount is less than Rs. 5,00,000, no TDS is required to be deducted under this section.

- **Nature of Payment Covered:**

- The section specifically deals with compensation for the compulsory acquisition of immovable property. Immovable property includes land, buildings, or any rights therein.
- It applies to both the principal amount of compensation and any Interest awarded on the compensation.

- **3. Rate of TDS:**

- TDS is required to be deducted at the rate of **10%** on the amount of compensation or consideration paid for the compulsory acquisition of immovable property.
- If the recipient does not provide their Permanent Account Number (PAN), the TDS rate may be higher (typically 20% as per Section 206AA of the Income Tax Act).

- **Exemptions and Exclusions:**

- **Agricultural Land:**

- One of the significant exemptions under Section 194LA is for agricultural land. No TDS is required to be deducted if the immovable property being acquired is agricultural land in India.
- Agricultural land, for this purpose, is defined as land that is not situated within the jurisdiction of a municipality or cantonment board with a population of not less than 10,000 or within certain distance limits from such municipal limits as specified in the Income Tax Act.

- **Payment in Kind:**

- If the compensation is paid in kind, Section 194LA does not apply since it only covers monetary payments.

