

**SEC 194 R, 194 S, 194 T**

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# 194R .

- (1) Any person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession, by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent. of the value or aggregate of value of such benefit or perquisite:
- Provided that in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite shall, before releasing the benefit or perquisite, ensure that tax required to be deducted has been paid in respect of the benefit or perquisite:

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- Provided further that the provisions of this section shall not apply in case of a resident where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to such resident during the financial year does not exceed twenty thousand rupees:
  - Provided also that the provisions of this section shall not apply to a person being an individual or a Hindu undivided family, whose total sales, gross receipts or turnover does not exceed 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 benefit or perquisite, as the case may be, is provided by such person.

# Sec 194R – TDS on benefit or perquisite in respect of business or profession

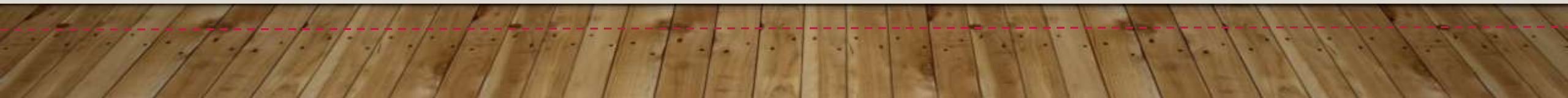
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- Extracts from the Memorandum

- As per **clause (iv) of section 28 of the Act**, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession **is to be charged as business income in the hands of the recipient** of such benefit or perquisite. **However, in many cases, such recipient does not report the receipt of benefits in their return of income, leading to furnishing of incorrect particulars of income.**

- Accordingly (consequently), in order to widen and deepen the tax base, it is proposed to insert a new section 194R to the Act...

- Extract of Finance Minister's Speech  
**Rationalizing TDS Provisions**

- It has been noticed that as a business promotion strategy, there is a **tendency on businesses to pass on benefits to their agents. Such benefits are taxable in the hands of the agents.** In order to **track such transactions**, I propose to provide for **tax deduction by the person giving benefits**, if the aggregate value of such benefits exceeds Rs. 20,000 during the financial year.....
  - Meaning of the term Benefit / Perquisite – not defined under the Act.
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## 28 (IV) –BENEFITS OR PERQUISITES

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- W.e.f. AY 2024-25
- Pre Amendment: the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession
- Expanded: to include cases where benefit or perquisite provided is in cash or in kind or partly in cash and partly in kind

# Sec 194R – TDS on benefit or perquisite in respect of business or

Nature of transaction	Any benefit or perquisite, whether convertible into money or not arising from business or the exercise of profession
Liability on	Person providing benefit or perquisite ( <b>Resident as well as Non Resident</b> ) In case of Company, company itself including Principal officer
TDS to be deducted in case of	A person <b>Resident in India</b>
TDS not to be deducted in case of	Recipient being <b>Individual or HUF</b> whose total sales, turnover or gross receipts <b>does not exceed Rs. 1 crore in case of business</b> and <b>does not exceed Rs. 50 lakhs in case of profession</b> during the FY.
Threshold Limit	Value or aggregate of value of benefit or perquisite exceeding Rs. 20,000/- during a financial year
Rate of TDS	10% on value of benefit or perquisite
Time of deductibility	Before providing Benefit or Perquisite.
Applicable from	1st July, 2022 (Threshold limit to be determined for FY 2022-23, though liability to deduct TDS only on benefit / perquisites on after 1 <sup>st</sup> July, 2022)
Lower TDS Application	No reference of Sec 194R in Sec 197 which means no application can be made for Lower or NIL TDS and TDS deduction to be undertaken mandatorily
Tax deduction in certain circumstance	Benefit / Perquisite in kind or partly in cash and partly in kind and cash is insufficient to deduct TDS, then service provider to ensure tax has been paid before providing the benefit / perquisite.

# Sec 194R – FAQs issued in Circular for removing difficulties

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- Guidelines issued in the form of **Circular no. 12/2022 dated 16<sup>th</sup> June, 2022** and **Circular no. 18/2022 dated 13<sup>th</sup> September, 2022** for removing difficulties
- **Power of a Circular**
- **Binding on Revenue authorities but not on the tax payer**
- Circulars are issued **to give more clarity of the statutory provisions but cannot go beyond them**
- Circulars **cannot expand** the scope of the statutory provisions
- Circulars **cannot go beyond** the law interpreted by High Court and Supreme Court
- Guidelines issued under Sec 194R can be **binding only to the extent they are removing difficulties**

# Sec 194R – FAQs issued in Circular for removing difficulties

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- **FAQ 1 – Whether necessary to check that the amount of benefit or perquisite is taxable under Sec 28(iv)**
- **As per FAQ** – No requirement to check taxability under Sec 28(iv), could be taxable under any other Section. Comparison to provisions of Sec 195 where the words used are “any sum chargeable to tax”. No such words used in Sec 194R
- Sec 4(2) of the Act provides that **in respect of income chargeable under sub-section (1) of section 4**, the income tax shall be deducted at source or paid in advance, where it is so deductible or payable under any provision of the Act.
- Section 190(1) of the Act provides for deduction of tax at source in respect of the income.
- TDS alternative to tax collection should be deducted only if income element present in the transaction
- FAQ 1 contrary to law where TDS to be deducted only on income element
- FAQ 1 completely contrary to intent as reflected in Memorandum and Finance Ministers Speech

# Sec 194R – FAQs issued in Circular for removing difficulties

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- **FAQ 2 – Whether benefit or Perquisite must be in kind**
- **As per FAQ** – Covers all the 3 scenarios – Benefit or Perquisite in cash, Benefit or Perquisite in kind, Benefit or Perquisite partly in cash or in kind
- The words used in Sec 194R – benefit or perquisite – whether convertible in money or not – implies benefit in kind (as interpreted by SC in Mahinda & Mahindra – 404 ITR I)
- The Circular cannot expand the scope of the Section beyond the law interpreted by the SC.
- **FAQ 3 – Whether benefit or Perquisite can be in the form of Capital Asset**
- **As per FAQ** – Covers benefit or perquisite in form of Capital Asset.
- As per various judicial pronouncements, benefit or perquisite in form of Capital Asset is taxable under Sec 28(iv).
- Depreciation on capital Asset – Yes provided the benefit / perquisite is offered as income by the recipient under the head Business – **clarified under FAQ 5 of Circular no 18/2022 dated 13<sup>th</sup> September, 2022**

# Sec 194R – FAQs issued in Circular for removing difficulties

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- **FAQ 4 – Whether sales discount, cash discount and rebates are benefit or perquisite?**

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- As per FAQ – No tax required to be deducted in case of sales discount, cash discount and rebates as they tantamount to reduction in purchase price of the recipient.
  - Amount saved is not the same as amount of income received in the pocket.
  - Benefit / Perquisite used by owner / director / relative even though not carrying business or profession, the TSD to be deducted in the hands of the recipient entity of such owner / director / relative
  - No relaxation for Free samples given – taxable as benefit or perquisite
  - Free samples from manufacturer to Dealer – TDS to be deducted, from Dealer to Customer – TDS to be deducted.
  - Free samples to doctors as employees of the Hospital – TDS to be deducted in the hands of the hospital. Hospital to in turn deduct TDS of doctors u/s. 192 and claim expenses. If doctors are consultant – same mechanism to be followed. Alternatively TDS can directly be deducted in the name of the doctors as consultant
  - Every scenarios to be seen on a case to case basis to determine TDS deductibility
  - Other taxable illustrations given – incentives in the form of cash or kind, sponsor trip of recipient or relative, fre ticket ti event
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# Sec 194R – FAQs issued in Circular for removing difficulties

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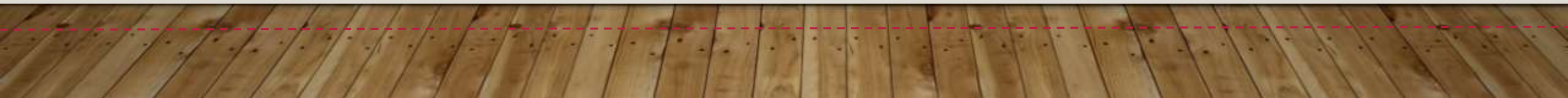
- **FAQ 5 – Valuation of benefit or perquisite?**  
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- **As per FAQ –**
- In case of benefit / perquisite purchased by the service provider – Purchase cost
- In case of benefit / perquisite manufactured – Price charged to customer
- GST not to be included in the value of benefit / perquisite
- **FAQ 6 – Benefit or perquisite for products given to social media influencer ?**
- As per FAQ – If product is to be returned by the social media influence, then no TDS liability. If product is retained then in the nature of benefit or perquisite
- Issues
- – Purchase of product by social media influencer at nominal price – whether benefit / perquisite
- – Product given in lieu of his services – whether benefit / perquisite

# Sec 194R – FAQs issued in Circular for removing difficulties

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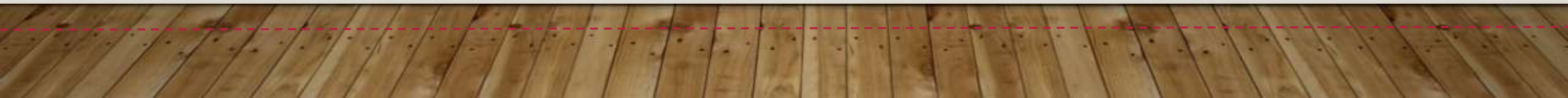
- **FAQ 7 – Reimbursement of out-of-pocket expenses - whether benefit or perquisite?**

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- As per FAQ – liability of the person carrying on business is met by or reimbursed by some other person, the same would be regarded as ‘benefit’ or ‘perquisite’ for the person who had the primary liability of incurrence
  - Expenses reimbursed by the client of the consultant would be regarded as benefit/perquisite liable for TDS, however no TDS if bill is in the name of the client, paid by consultant and reimbursed by the client to the consultant
  - Further clarification by Circular No. 18/2022 – Out of pocket expenses if part of the bill for services covered u/s. 194C and Sec 194J, TDS to be deducted in the respective section and not to be deducted u/s. 194R.
  - **FAQ 8 – Dealer conferences – whether benefit or perquisite?**
  - As per FAQ – If conferences are held with the primary object to educate dealers/customers product for launch of new product, sales technique, addressing queries etc. than such conference not in nature of benefit / perquisite
  - Expenses attributable to leisure trip, leisure component, for sponsoring family members or for prior stay or overstay liable for TDS – further clarification by circular no 18/2022 that day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as over stay
  - Further clarification by circular no 18/2022 - Expenses in the nature of benefit / perquisite not attributable to individual dealer as conference for a group of individuals, then option with the tax payer to not claim expenses. If opted no TDS to be deducted u/s. 194R and accordingly not considered shall not be considered as Assessee in default.
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# Sec 194R – FAQs issued in Circular for removing difficulties

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- **(Circular no. 18/2022) FAQ 1 – Relaxation to certain bank on loan settlement / loan waiver**  
**13**
  - Extra burden of deducting TDS in addition to bearing the haircut granted on loan settlement / loan waiver. Accordingly relaxation granted – Relaxation only for TDS deduction. However taxability in the hands of the recipient shall not be impacted.
  - Issue - Why restricted to select category of banks / financial institutions. Relaxation to be extended to entities where there is genuine hardship for realization of loans
  - **(Circular no. 18/2022) FAQ 7 – Issue of bonus shares / rights shares in which public are substantially interested - whether benefit or perquisite?**
  - Bonus shares issued to all the shareholders. No change in the ownership. No benefit to shareholders on account of issue of Bonus shares – therefore no benefit / perquisite
  - Right shares – offered to all shareholders and hence no benefit / perquisite to any specific shareholder – accordingly no TDS u/s. 194R.
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## 194 S - Payment on transfer of virtual digital asset.

(1) Any person responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset, shall, at the time of credit of such sum to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax thereon:

Provided that in a case where the consideration for transfer of virtual digital asset is--

(a) wholly in kind or in exchange of another virtual digital asset, where there is no part in cash; or

(b) partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer, the person responsible for paying such consideration shall, before releasing the consideration, ensure that tax required to be deducted has been paid in respect of such consideration for the transfer of virtual digital asset.

(2) The provisions of sections 203A and 206AB shall not apply to a specified person.

(3) Notwithstanding anything contained in sub-section (1), no tax shall be deducted in a case, where --

(a) the consideration is payable by a specified person and the value or aggregate value of such consideration does not exceed fifty thousand rupees during the financial year; or

(b) the consideration is payable by any person other than a specified person and the value or aggregate value of such consideration does not exceed ten thousand rupees during the financial year.

(4) Notwithstanding anything contained in section 194-0, in case of a transaction to which the provisions of the said section are also applicable along with the provisions of this section, then, tax shall be deducted under sub-section (1).

(5) Where any sum referred to in sub-section (1) 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 sum, such credit of the sum shall be deemed to be the credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

(6) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the prior approval of the Central Government, issue guidelines for the purposes of removing the difficulty.

(7) Every guideline issued by the Board under sub-section (6) shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person responsible for paying the consideration on transfer of such virtual digital asset.

Explanation.--For the purposes of this section “specified person” means a person,--

(a) being an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed 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 virtual digital asset is transferred;

(b) being an individual or a Hindu undivided family, not having any income under the head “Profits and gains of business or profession”.]

# Sec 194S – TDS on transfer of Virtual Digital Asset

Nature of transaction	Transfer of Virtual Digital Asset
Liability on	Person paying consideration for transfer of Virtual Digital Asset (Resident as well as Non Resident)
TDS to be deducted in case of	A person Resident in India
Threshold Limit	<p>a. Exceeding Rs. 50,000/- - Specified person – Individual or HUF with no business or profession income OR Individual or HUF turnover, gross receipts or sale in business not exceeding Rs. 1 crore or in profession not exceeding Rs. 50 lakhs</p> <p>b. Exceeding Rs. 10,000/- for persons other than specified person</p>
Rate of TDS	1% of consideration
Time of deductibility	At the time of credit or payment whichever is earlier
Tax deduction in certain circumstances	Transfer in kind or partly in cash and partly in kind and cash is insufficient to deduct TDS, then buyer to ensure tax has been paid before the transfer.
Applicable from	1st July, 2022 (Threshold limit to be determined for FY 2022-23, though liability to deduct TDS only on transfer on after 1 <sup>st</sup> July, 2022)
Lower TDS Application	No reference of Sec 194S in Sec 197 which means no application can be made for Lower or NIL TDS and TDS deduction to be undertaken mandatorily
Relaxation to specified persons	<p>a. Specified person not required to obtain TAN number</p> <p>b. Higher rate not applicable in case specified person has not filed returns of income in 2 of the immediately preceding previous year</p>

# Sec 194S – FAQs issued in Circular for removing difficulties

- Guidelines issued in the form of **Circular no. 13/2022** dated **22<sup>nd</sup> June, 2022** for removing difficulties
- FAQ 1 - TDS deduction in case transfer of VDA through exchange**

Seller	Buyer	Broker Involved	Transaction in cash or in kind?	Who will deduct tax?	Remarks
Any Person	Any Person	No	In cash	Exchange	-
Broker	Any Person	-	In cash	Exchange	-
Any Person	Any Person	Yes	In cash	Exchange and Broker	Only Broker will deduct if there is an agreement between the Broker and Exchange that the Broker will deduct the tax.
Exchange	Any Person	No	In cash	Exchange and Buyer	No tax will be deducted if the Exchange enters into an agreement with the buyer or broker that the Exchange would pay the tax on or before the due date for that quarter.

# Sec 194S – FAQs issued in Circular for removing difficulties

Seller	Buyer	Broker Involved	Transaction in cash or in kind?	Who will deduct tax?	Remarks
Any Person	Any Person	No	In kind	(a) Buyer and Seller; or	Buyer and seller will pay their respective taxes and share the evidence of payment with the other party.
				(b) Exchange	As an alternative, the Exchange can deduct from both the parties if there is a written agreement with both the parties.
Broker	Any Person	-	In kind	(a) Broker and Seller; or	Broker and seller will pay their respective taxes and share the evidence of payment with the other party.
				(b) Exchange	As an alternative, the Exchange can deduct from both the parties if there is a written agreement with both the parties.

# Sec 194S – FAQs issued in Circular for removing difficulties

Seller	Buyer	Broker Involved	Transaction in cash or in kind?	Who will deduct tax?	Remarks
Any Person	Any Person	Yes	In kind	(a) Buyer and Seller; or	Buyer and seller will pay their respective taxes and share the evidence of payment with the other party.
				(b) Exchange and Broker	As an alternative, the Exchange and Broker can deduct from both the parties if there is a written agreement with both the parties.
					However, only Broker will deduct if there is an agreement between the Broker and Exchange that the Broker will deduct the tax.
Exchange	Any Person	No	In kind	Exchange and Buyer	No tax will be deducted by the buyer if the Exchange enters into an agreement with the buyer that the Exchange would pay the tax on or before the due date for that quarter.

# Sec 194S – FAQs issued in Circular for removing difficulties

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- Sec 194Q (TDS on purchase of goods) shall not apply if TDS is deducted under Sec 194S.
- GST not to be included in the consideration amount while deducting TDS on transfer of VDAs
- Relaxation to payment gateways on payment of consideration for transfer of VDA
- Double deduction of TDS, once by the buyer under Sec 194S on the consideration amount and once by the payment gateway on the same consideration amount under Sec 194-O as transaction being undertaken on digital platform. Relaxation granted to payment gateways to not deduct TDS to avoid double deduction where buyer has deducted TDS, declaration to be procured by the payment gateway from the buyer that TDS has been deducted by him.

# SECTION 194T

## PAYMENTS TO PARTNERS OF FIRMS.

- (1) Any person, being a firm, responsible for paying any sum in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm, shall, at the time of credit of such sum to the account of the partner (including the capital account) or at the time of payment thereof, whichever is earlier shall, deduct income-tax thereon at the rate of ten per cent.
- (2) No deduction shall be made under sub-section (1) where such sum or the aggregate of such sums credited or paid or likely to be credited or paid to the partner of the firm does not exceed twenty thousand rupees during the financial year.

# SEC 194 T

- With effect from 1-4-2025
- Firm (LLP)
- nature of salary, remuneration, commission, bonus or interest
- to a partner of the firm (Minor, non working partner, non resident)
- twenty thousand rupees during the financial year.
- Payment / credit – earlier.

## ILLUSTRATION 4- 194T VS 40(B)

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A PARTNERSHIP FIRM HAVE A book PROFIT after interest on capital OF RS.20,00,000. THE FIRM PAID REMUNERATION OF RS.7,50,000 EACH TO WORKING PARTNER MR.DAS AND NON WORKING PARTNER MR.FLEMING. THE FIRM PAID INTEREST OF RS. 5,00,000 TO A PARTNER AMOUNTING TO 15% OF HIS CAPITAL. COMPUTE THE DISALLOWANCES IF TDS U/S 194T IS NOT DEDUCTED.

# ILLUSTRATION 4- SOLUTION

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## **-DISALLOWANCE U/S 40(A)(iA)**

$$=7,50,000+7,50,000+5,00,000=20,00,000*30\%=\mathbf{6,60,000}$$

## **-DISALLOWANCE U/S 40(B)**

TOTAL INTEREST PAID 15%=5,00,000

MAXIMUM INTEREST PAYABLE 12%=4,00,000

DISALLOWANCE=**1,00,000**

REMUNERATION PAID TO NON WORKING PARTNER=**750,000**

Excess remuneration to working partner = **1,20,000**

Total Disallowance u/s 40(b)=**8,70,000**

**-Double disallowance =8,70,000 + 6,60,000 ??????????????**