



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

*(Set up by an Act of Parliament)*

Pune Branch of WIRC of ICAI

Newsletter : December 2023



ICAI BHAWAN

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PUNE BRANCH OF WIRC OF ICAI



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## CHAIRMAN'S MESSAGE



**CA Rajesh Agrawal**

Chairman  
Pune Branch of WIRC of ICAI

**Dear Members & Students,**

Friends lets Gear Up together for having a wonderful action-packed month filled with many activities, National Conferences, CA Students' National Talent Search 2023, Regional Conference at Mumbai, many seminars and cherry on the cake National Conference for CA Students.

Very happy to share that during the GloPAC, the new CA India logo was also launched with the august hands of Hon'ble Chief Guest.

We have completed 3 days seminar on intricacies in Income Tax which was appreciated by large number of members.

We are hosting National Conference on Valuation and also Capital Market during this month.

The year 2023 is the first year in which one year CPE Block introduced by the committee and also it is now regulatory compliance. To complete these CPE requirements, we have organized various programmes on various topics including mandatory CPE programmes like Code of Ethics & Standards on Auditing during the month.

We also have a spate of seminars and sessions on various topics like workshop on "Advance Excel", AQMM, Accounting Standard for MSME, MDPF, Mergers and Acquisitions for MSME, Liquidity Management for MSME etc. The focus of the profession, I feel, is increasingly undergoing a fast pace of change towards technology and accordingly we have programs according to the changing trends and requirements. I belief that we all should update and ready ourselves for this changing scene. Various programs are being conducted to help the members for such updates.

We have successfully completed certification course on FAFD during this month and also in the process of getting approvals for other post qualification courses to be held at Pune.

WIRC Office Bearers of 2023-2024 are also visiting to Pune Branch on 22nd December, 2023 at Pune Branch. So, we have organized interactive meet with members & students with WIRC Office Bearers. Do attend this meet to solve your queries if any at Regional Level.

In this journey of India's transformation, the role and contributions of we Chartered Accountants stand as a crucial cornerstone in the nation's economic ascent. As custodians of financial integrity and architects of transparency, CAs play an instrumental role in fortifying the economic foundations of a future India. In this era where resilience, innovation, and self-sufficiency are paramount, the collaboration between New India's aspirations and the strategic guidance of CAs has become a guiding light, steering our nation towards a future where economic sovereignty is both a reality and a source of global influence. As we chart this transformative path, our contribution as professionals become inseparable from the narrative of India's self-reliant and globally resounding journey.

Do not forget to share your ideas, views and thoughts on any and every matter related to the branch. Assuring you that we shall definitely take cognizance of each and every email, message and verbal communication.

**Awaiting your email at [chairman@puneicai.org](mailto:chairman@puneicai.org) and/or message at my personal mobile number.**

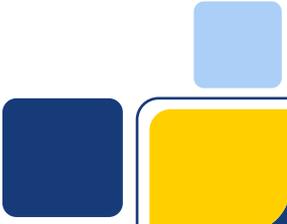
**Wishing you all a Merry Christmas and a Happy New Year 2024!**

With warm regards,  
**CA. Rajesh Agrawal**  
Chairman  
Pune Branch of WIRC of ICAI



# Seminar on Intricacies in Income Tax

01 to 03 December 2023





# Seminar on Professional Ethics

07 December 2023





# National Conference on "Valuation Standards"

09 & 10 December 2023





# Seminar on Audit Quality Maturity Model (AQMM)

14 December 2023





# Full Day Seminar on Internal Audit

17 December 2023





# Full Day Workshop on Advanced Excel & Automation in Excel

23 & 24 December 2023





# National Conference on "Capital Market"

30 & 31 December 2023





## Tax Deduction at Source and Non Residents

**Rahul Sharma**  
FCA, MBA(Fin.), LL.B., CAIIB

In Income Tax Act, 1961 we have different TDS provisions for residents payee and nonresident payees.

We have Income From Salaries (Sec 192), Premature withdrawal of PPF (Sec 192A), Winning from Lotteries (Sec 194B), Winning from Horse Race (Sec 194BB), NSS (Sec 194EE), Repurchase by MFs (Sec 194F), Lottery Commission (Sec 194G), Income from units of business trust (Sec 194LBA), Distribution of Rental Income to unit holders (Sec 194 LBA), Income from Units of Investment Fund (194LBB), Income of Investment in Securitization Fund (Sec 194LBC), Certain Payment by Individual/HUF (Sec 194M) and Payment of certain amount in cash (Sec 194N) which are applicable to **both Residents and Non Residents**.

On the other hand we have Interest on Securities (Sec 193), Dividends (Sec 194), Interest other than securities (Sec 194A), Contractors (Sec 194C), Insurance Commission (Sec 194D), Maturities of Life Insurance Policies (Sec 194DA), Commission Brokerages (Sec 194 H), Rent (Sec 194I), Transfer of certain Immovable Properties (Sec 194IA), Rent by Individual / HUF (Sec 194 IB), Payment by Joint Development Agreement to Individual /HUF (Sec 194IC), Professional or Technical Person or Call center or Directors (Sec 194J), Payment of Income of Mutual Funds (Sec 194K), Compensation on transfer of Immovable Property other than Agriculture Land (Sec 194 LA), Payment to Specified Senior Citizen (Sec 194 P) and Payment by buyer to seller (Sec 194Q) which are Applicable to **Residents Only**.

Similarly there are some TDS provisions are applicable to **Non Residents Only** – Payment of Interest by an Indian company to nonresident for Loan or Infra Bonds out side India (Sec 194 LC), Payment of Interest by an Indian company to nonresident for Rupee Bond or Listed Long term Bonds out side India (Sec 194 LC), Interest on certain bonds from Govt securities ( Sec 194LDA), Investment Income or Long Term Capital Gain or Short Term Capital Gain or Royalty or Technical service fee or Interest Income by Govt or **Other Income (Sec 195)**, Income paid by Mutual Funds (Sec 196A), Income from Units to Offshore Funds (Sec 196B), Income from Foreign Currency Bonds (Sec 196 C) and Payment of Income from Foreign Institutional Investor (Sec 196D).

This seems to be very clear that TDS has to be deducted on each and every of **Non Residents**, If any specific provision of deduction is contained then deduction has to be made according to that section and that specific rate shall be applicable on that portion of NRI income. If such is the case there is no complicity involved in the process of deduction and process of deduction shall be very simple.

Where person paying the income fees that whole of the payment not constitutes Income in the hands of Non Resident then an application can be made to Assessing Officer for TDS on Income component contained under that payment. Form 15C in case of Banking Company and For 15 D in case of any other person has to be filled.

**To be Eligible Person :** Person has to be regularly assessed and has furnished return for all assessment years for which return became due, not a assessee in default, not been subject to penalty under section 271 (1) (c), Lastly when he is carrying business other than banking he must have carrying business/profession for more than 5 yrs of and has fixed asset worth more than 50 lacs in India.

These provisions are unique for Non Residents since Section 197A not apply on Non residents as well. However section 197 applies to both residents and non residents (Person receiving income under 192 and 194 G can take benefit out of it).



## Reading of Bare Act and Rules : Section 195

.....  
(3) Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorizing him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

### [Application for certificate authorising receipt of interest and other sums without deduction of tax.

29B.(1) Any person entitled to receive any interest, or other sum, on which income-tax has to be deducted under sub-section (1) of section 195 may, if he fulfils the conditions specified in sub-rule (2), make an application for the grant of a certificate under sub-section (3) of section 195 authorising him to receive without deduction of tax under sub-section (1) of that section any such income as is specified hereinbelow, namely :

(1) where the person concerned is a [banking company or an insurer] which is neither an Indian company nor a company which has made the prescribed arrangements for the declaration and payment of dividends within India, and which carries on operations in India through a branch, any income by way of interest, not being [interest on securities (other than interest payable on securities referred to in proviso to section 193)], or any other sum, not being dividends;(ii) in the case of any other person who carries on a business or profession in India through a branch, any sum, not being interest or dividends, in so far as such interest or other sum is receivable by such branch on its own account and not on behalf of its head office or any branch situated outside India, or any other person.

(2) The conditions referred to in sub-rule (1) are the following, namely :

(i) the person concerned has been regularly assessed to income-tax in India and has furnished the returns of income for all assessment years for which such returns became due on or before the date on which the application under sub-rule (1) is made;  
(ii) he is not in default or deemed to be in default in respect of any tax (including advance tax and tax payable under section 140A), interest, penalty, fine, or any other sum payable under the Act  
(iii)[\*\*\*](iv)

where the person concerned is not a [banking company or an insurer] referred to in clause (i) of sub-rule (1)—(a) he has been carrying on business or profession in India continuously for a period of not less than five years immediately preceding the date of the application, and (b) the value of the fixed assets in India of such business or profession as shown in his books for the previous year which ended immediately before the date of the application or, where the accounts in respect of such previous year have not been made up before the said date, the previous year immediately preceding that year, exceeds fifty lakhs of rupees.

(3) The application under sub-rule (1) by a [banking company or an insurer] shall be in Form No. 15C and by any other person [referred to in clause (ii) of sub-rule (1)] shall be in Form No. 15D.

(4) The [Assessing Officer] may give a certificate authorising the person concerned to receive the income specified in clause (i) or clause (ii) of sub-rule (1), without deduction of tax under sub-section (1) of section 195, if he is satisfied that all the conditions laid down in sub-rule (2) are fulfilled and the issue of any such certificate will not be prejudicial to the interests of revenue.

(5) The certificate shall be valid for the financial year specified therein, unless it is cancelled by the [Assessing Officer] at any time before the expiry of the said financial year. An application for a fresh certificate may be made, if required, after the expiry of the period of validity of the earlier certificate, or within three months before the expiry thereof.

[Explanation.—for the purposes of this rule, "insurer" shall have the same meaning as assigned to it in sub-clause (d) of clause (9) of section 2 of the Insurance Act, 1939 (4 of 1938).]





### TDS Rate Chart for F.Y. 2021-22 (A.Y: 2022-23)

Section	Nature of payment	Threshold Limit Rs.	Applicable from 01/04/2021 to 31/03/2022	
			Resident	Non-resident *
			TDS Rate (%)	TDS Rate (%)
192	Salaries	-	Normal slab rate	Normal slab rate
192A	Premature withdrawal from EPF	50000	10	10
193	Interest on securities - 8% Savings (Taxable) Bonds, 2003 or 7.75% Savings (Taxable) Bonds, 2018 during the financial year	10000	10	-
193	Interest on securities - Interest on securities for money issued by or on behalf of any local authority/statutory corporation, listed debentures of a company(other than demat form), any other interest on securities	5000	10	-
194	Dividends	5000	10	-
194A	Interest (Banking co., co-operative society engaged in banking, post office)	40000	10	-
194A	Interest (Any other person)	5000	10	-
194B	Winning from lotteries	10000	30	30
194BB	Winning from Horse race	10000	30	30
194C	Contractor-Single transaction- Individual/HUF -Others	30000	1 2	- -
194C	Contractor-Single transaction- Individual/HUF -Others	100000	1 2	- -
194D	Insurance commission - Other than Company	15000	5	-



**\* TDS rate shall be increased by applicable surcharge and Health & Education Cess.**

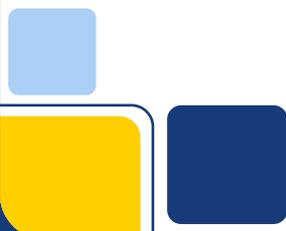
**Note:** As per section 206AA, In case of non-furnishing of PAN/Aadhaar by deductee, TDS will be charged at normal rate or 20% (5% in case of section 194-O), whichever is higher.

**Note:** As per new section 206AB, where tax is required to be deducted at source under the provisions of Chapter XVIIB, on any sum or income or amount paid, or payable or credited, other than sections 192, 192A, 194B, 194BB, 194LBC or 194N by a person to a specified person, the tax shall be deducted at the higher of the following rates.

1. Twice the rate specified in the relevant provision of the Act; or
2. Twice the rate or rates in force; or
3. The rate of five per cent.

**Note:** Provision of section 206AA (Non furnishing of PAN/Aadhaar) shall be override on the provision of section 206AB and then tax shall be deducted at higher of the two rates provided in section 206AA and in section 206AB.

[These change will be applicable from 1st July, 2021.]





## TDS on Rentals : Section 194 I, Section 194 IB and Section 194 IC

**Rahul Sharma**  
FCA, MBA(Fin.), LL.B., CAIIB

### Section 194 I:

Any person excluding Individual and HUF (However if they have 1 Cr. Turnover in case of Business and 50 Lacs in case of Profession, provision also applies to them) on payment of Rental Income of more than Rs. 2,40,000 to resident is required to deduct Tax at Source.

### Definition of Rent:

"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;

### Rate of Tax :

- (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:

To widen the coverage and bring in those individual or HUF who pay big amount of rent but are still not liable to audit, Section 194 IB was introduced in Budget 2017.

### Section 194 IB:

Any Individual or HUF not liable for TDS under Section 194 I on payment of rental income to a resident more than Rs. 50,000 per month is required to deduct tax at source on that payment.

Rate of Tax : Tax to be deducted at the rate of 5%

### Difference between Section 194 I and Section 194 IB

Particulars	Section 194 I	Section 194 IB
Person responsible for TDS	Any person (Including Individual and HUF whose turnover exceeds Rs. 1 Cr. In business and 50 lacs in profession)	Individual and HUF except on whom Section 194 I applies
Monetary Limit	Rs. 2,40,000 per annum	Rs. 50,000 per month
Applicable on which assets	Land, Building, Plant and Machinery, Equipments, Furniture or Fitting etc.	Land and Building
Tax rate	10% on Land, Building, Furniture and Fitting 2% on Plant and Machinery	5% on Land and Building
Time Limit of TDS	At the time of credit or payment whichever is earlier	At the time of credit for the rent of last month / last month of tenancy or at the time of payment whichever is earlier
Time Limit for payment of TDS	Within 7 days from end of the month in which deducted	30 days from end of the month in which tax deducted
TAN Required	Yes	No
Form to be filled	26Q	26QC



### **Section 194IC :**

Notwithstanding anything contained in section 194-IA, any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under the specific agreement, shall at the time of credit of such sum 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 an amount equal to ten per cent of such sum as income-tax thereon.

"specified agreement" means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash;

### **Some Issues :**

**1.** Section 194I provides that a person who is responsible for paying to any person any income by way of rent shall deduct income tax thereon at the rate prescribed therein. Explanation (i) to section 194 I defines rent to mean 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 together with furniture or fixtures. In case assessee has acquired a right to display advertisement on hoarding than that is different from rent for Land Building etc., There has to be a link between rent income and use of any Land, Building etc. It was pleaded in the case that circulars are not in any way binding on the appellate authorities and assessee, circulars are binding on Income tax Authorities. [ITO Vs Roshan Publicity Pvt. Ltd. (2005) 4 SOT 105 (Mum)]

The contract for putting up a hoarding is in the nature of advertising contract and provisions of section 194C would be applicable. It may, however, be clarified that if a person has taken a particular space on rent and thereafter sub lets the same fully or in part for putting up a hoarding, he would be liable to TDS under section 194-I and not under section 194C of the Act. [Circular No. 715, dated 08.08.1995]

**2.** Payments made by persons, other individuals and HUFs for hotel accommodation taken on regular basis will be in the nature of rent subject to TDS under section 194-I. [Circular 715 dated 08.08.1995]. However a difference has been established between rate agreement and accommodation on regular basis. To constitute accommodation on regular basis there has to be an obligation on the part of hotel provided a room from specified set of during the period of agreement [Circular 5/2002 dated 30.07.2002]

**3.** The tax is to be deducted from actual payment and there is no need of computing notional income in respect of a deposit given to the landlord. If the deposit is adjustable against future rent, the deposit is in the nature of advance rent subject to TDS. [Circular 715 dated 08.08.1995].

**4.** The tax is to be deducted from rent paid, by whatever name called, for hire of a property. The incidence of deduction of tax at source does not depend upon the nomenclature, but on the content of the agreement as mentioned in clause (i) of Explanation to section 194-I. [Circular 715 dated 08.08.1995]

**5.** Clarification regarding deduction of tax at source from payment of rent ( Circular 718 dated 22.08.1995)

Query No. 2 Whether tax is required to be deducted at source where a non-refundable deposit has been made by the tenant?

Answer In cases where the tenant makes a non-refundable deposit tax would have to be deducted at source as such deposit represents the consideration for the use of the land or the building, etc., and, therefore, partakes of the nature of rent as defined in section 194-I. If, however, the deposit is refundable, no tax would be deductible at source. It is further clarified that if the deposit carries interest, the tax to be deducted on the amount of interest will be governed by section 194A of the Income-tax Act.

Query No. 3 Whether the tax is to be deducted at source from warehousing charges?

Answer The term 'rent' as defined in Explanation (i) below section 194-I means any payment by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any building or land. Therefore, the warehousing charges will be subject to deduction of tax under section 194-I.

Query No. 4 On what amount the tax is to be deducted at source if the rentals include municipal tax, ground rent, etc. ?

Answer The basis of tax deduction at source under section 194-I is "income by way of rent". Rent has been defined, in the Explanation (i) of section 194-I, to mean any payment under any lease, tenancy, agreement, etc., for the use of any land or building. Thus, if the municipal taxes, ground rent, etc., are borne by the tenant, no tax will be deducted on such sum.

Query No. 5 Whether section 194-I is applicable to rent paid for the use of only a part or a portion of any land or building ?

Answer Yes, the definition of the term "any land" or "any building" would include a part or a portion of such land or building.

**6.** If the composite arrangement is in essence the agreement for taking premises on rent, the tax will be deducted under section 194-I from payments thereof. [Circular 715 dated 08.08.1995]





**7.** Representations have been received from the various quarters regarding applicability of the provisions of section 194-I of the Income-tax Act to the sharing of the proceedings of film between film distributor and a film exhibitor owning a cinema theatre. The matter has been examined by the Board and the Board are of the view that the provisions of section 194-I are not attracted to such payment because :

- (i) The exhibitor does not let out the cinema hall to the distributor;
  - (ii) Generally, the share of the exhibitor is on account of composite services; and
  - (iii) The distributor does not take cinema building on lease or sub-lease or tenancy or under any agreement of similar nature.
- [Circular 736 dated 13.02.1996]

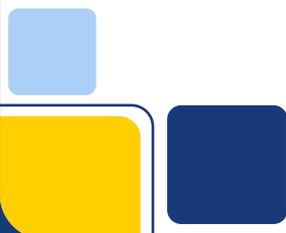
**8.** Assessee was paying rent to the holding company as reimbursement for last many years. This position had been accepted by the department all through and it has been never disputed even after insertion of section 194-I and amendment in section 40(a)(ia). There was no material change in the facts and law during the year under consideration. The holding company had also not debited the whole of rent to its books of account. It had only debited the rent which pertained to the part of the premises occupied by it. Therefore, there was no lessor and lessee relationship between the holding company and assessee where the provisions of section 194-I were attracted. Therefore, the addition made under section 40(a)(ia) was to be deleted.  
[ACIT Vs Result Services (P) Ltd. ]

**9.** Landing and Parking Charges paid by the assessee to airlines Airport Authority of India were rent within the meaning of Section 194 I Singapore Airlines Ltd Vs ITO (2006) 7SOT 84 (Chennai)

**10.** Storage tanks in question did not qualify either as land or as building within the meaning of Section 194I, what is attached to the land belongs to the land is a principle not applicable to India. Therefore, structure though erected on land, could not be regarded as part of the land. [Gulf Oil India Ltd Vs ITO (2000) 75 ITD 172 (mum)]

**11.** Rent paid to Co Owners separately will not partake the character of rent paid to AOP [CIT Vs Lally Motors (2009) 311 ITR 29 (P&H)]

**12.** A perusal of the above terms of the agreement clearly reveals that the agent not only stores the goods but also renders certain other professional services like inventory management on behalf of the appellant, packing the goods in required quantity according to the requirement of the stockist/dealers, follow up collection, maintain bank accounts of the sale proceeds. It cannot be said that the dominant purpose of the agreement is only warehousing. The agreement, terms of which we have set out above, cannot be said to be a composite arrangement which is in essence an agreement for taking premises on rent. The appellant does not have any interest whatsoever over the various places where his goods are stored. The agreement between the appellant and the agents cannot also be said to be a warehousing agreement. Section 194 I not Applies.  
[Eli Lilly & Co. (India) Ltd. Vs. DCIT (2006) TTJ 461 (Del.)]





## Pune Branch of WIRC of ICAI

Plot No. 08, Parshwanath Nagar, CST No. 333,  
Sr. No. 573, Munjeri, Opp. Kale Hospital,  
Near Mahavir Electronics, Bibwewadi, Pune 411037  
Tel : (020) 24212251 / 52 Email : admin@puneicai.org

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