**Roadmap for rationalising domestic withholding tax rates**

**Background**

With the addition of one or two new TDS provisions every year, there is now a wide variety of TDS provisions applicable to payments to residents with different rates and different thresholds which gives rise to unwarranted characterisation disputes and complexities.

The following aspects and difficulties may be noted about the current domestic TDS rate structure:

1. **Multiplicity of domestic TDS sections in the Income tax Act**

Currently, there are 31 sections dealing with different types of payments to residents where the TDS rates vary from 0.1% to 30%.

The details of various sections are given as **Annexure A.** A short summary is given below:

| **No of Sections** | **Particulars** | **TDS rate (%)** |
| --- | --- | --- |
| 2 | 192 (Salary)/ 194P (Senior Citizens Pension) | Normal Slab Rate/ rate in force |
| 1 | 194Q (Purchase of goods) | 0.1 |
| 4 | 194C (Contracts) / 194IA (Immovable property)/ 194O (E-commerce transactions)/ 194S(Crypto transactions) | 1 |
| 4 | 194C (Contracts) / 194I (Machinery rent)/ 194J (Fees for technical services)/ 194N (Cash withdrawals) | 2 |
| 7 | 194D (Insurance commission)/ 194DA(non-qualifying life insurance policy)/ 194G(Lottery commission)/ 194H (Commission/Brokerage)/ 194IB (Rent payment by individuals)/ 194M (Large payments by individuals)/ 194N (Cash withdrawals) | 5 |
| 13 | 192A (PF withdrawals)/ 193 (Interest on securities) / 194 (Dividends) / 194A (Interest other than on securities) / 194EE (NSS) / 194I(Immovable property rent)/ 194IC (Joint Development Agreements)/ 194J(Fees for professional services)/ 194K (Mutual fund dividends)/ 194LA (Compulsory acquisition of immovable property)/ 194LBA (REIT/InVIT income)/ 194LBB (AIF income)/ 194R (Business perquisites) | 10 |
| 1 | 194F[[1]](#footnote-1) (Repurchase of Mutual Funds) | 20 |
| 1 | 194LBC (Securitisation Trust income) | 25 |
| 3 | 194B (Lottery winnings)/ 194BB (Horse race winnings)/ 194LBC (Securitisation Trust income) | 30 |
| **36[[2]](#footnote-2)** | **Total** |  |

1. **Varying rates within single TDS section**

In some sections, there are varying rates of TDS depending upon status of payees / nature of payments. For example:

* + TDS rate u/s. 194C for individuals is 1% and 2% for others
  + TDS rate u/s. 194J for Fees for technical services is 2% and Fees for professional services is 10%.

1. **Different thresholds for different TDS provisions**

There are different thresholds for applicability of different TDS provisions which makes it very cumbersome to keep track and apply TDS. For instance, the TDS threshold for s.194C (Payments to contractors) is Rs. 30,000 for individual payment to a single person and Rs. 1 lakh in aggregate for entire financial year. On the other hand, in case of s.194J (Fees for professional and technical services), the threshold of Rs. 30,000 applies to entire financial year. For dividend payment by companies and mutual funds, the threshold limit under s.194 and 194K is Rs. 5000 in a financial year.

1. **Complexity gives rise to disputes**

The wide variety of TDS rates with different thresholds creates complexity and confusion for the taxpayers, increases compliance burden and gives rise to characterisation disputes. For instance, there is ambiguity on bright line test to distinguish between Fees for technical services (2%) vs. Fees for professional services (10%) – more particularly, where similar services are rendered by corporates and professional firms like technical consultancy or information technology.

1. **TDS/TCS on purchase/sale of goods increases compliance**

The Government’s intent to widen and deepen the tax base is well appreciated. However, the industry perceives compliance for TDS u/s 194Q @ 0.1% on purchase of goods and TCS u/s 206C(1H) @ 0.1% on sale of goods to be onerous. These provisions apply where the entities have turnover > Rs. 10 Cr in preceding financial year and current year’s transaction value for a single payee/payer exceeds Rs. 50 lakhs.

The entities with threshold limits of Rs. 10 Cr turnover and/or Rs. 50 lakhs transaction value are already within GST regime and relevant information is populated in AIS/Form 26AS from GST returns pursuant to automatic information sharing arrangement between CBDT and CBIC. Hence, TDS/TCS @ 0.1% merely leads to duplication of information and additional compliance burden for the industry.

1. **Working capital blockage for businesses**

The TDS rate at 10% and above results in blockage of working capital – more particularly, where the profitability is less than 20%.

So, if gross revenue is Rs. 100 and net profit is Rs. 20, the tax liability at 25.17% is Rs. 5. Hence, if the gross revenue is subject to TDS rate of 10% and above, it results in blockage of working capital.

The blockage of funds in TDS to be received back as refunds results in loss of business opportunities for the industry and increase in borrowing cost. Although the refund is received with 6% per annum interest, the blockage of funds with Government neither helps the Government (since it has to bear interest cost) nor helps the industry who can make better alternative use of the funds.

Illustratively, in case of professional services, the TDS rate of 10% as compared to TDS rate of 2% for fees for technical services assumes higher profit margin (30% to 40%) for professional services as compared to technical services.

1. **Additional cost for the government**

There is also avoidable cost involved for the Government in terms of interest u/s. 244A of 6% p.a.

The Parliamentary Standing Committee on Finance noted that for the year 2019-20, direct tax refunds of more than Rs 1.7 lakh crores were given during the year and the amount of interest burden on the same was about Rs 23,000 crores.

As per the government’s own estimates, 46% of total direct tax collection is from tax deducted at source. For the year 2021-22, the total tax collection from corporate income tax and personal income tax was about Rs 14 lakh crores[[3]](#footnote-3) out of which refunds were about Rs 1.9 lakh crores (i.e., 13.5% of total collections). Given this, the cost of refunds would be even higher. With introduction of one or two new TDS sections every year, this trend will only increase further.

This is corroborated by recent tweet by Hon’ble Finance Minister on 12 December 2022 that the income tax department has issued income tax refunds amounting to about Rs 2.15 lakh crore between April 1, 2022 and November 30,2022. This is about 66.92% higher than the refunds during the same period in preceding year. The net direct tax collections (i.e net of refunds) was Rs. 8.77 lakh crore till 30 Nov 2022. The higher refunds (almost 20% of gross tax collections) are again indicative of the higher interest burden for the government and higher blockage of working capital for the businesses due to high TDS rates

1. **Objective of collecting information is fulfilled with lower TDS**

All the TDS information is getting captured in Form 26AS/AIS of the deductees. Thus, it is easier for the Government to collect the balance taxes (after TDS/TCS) from the resident taxpayers in the form of advance tax/ self assessment tax payable by them.

**Suggestions**

**Given the above complexities that are also a fertile ground for litigation, the Government may consider laying down a roadmap for reducing the disparity in TDS rates/ do away with some of the TDS provisions (where information about the transaction is available through Form 26AS/ AIS/ GST returns) and provide for a simple TDS framework for domestic transactions.**

* Only two or three categories of TDS rates for clearly defined payments may be maintained, with a small “negative list” of payments which will not be liable to TDS. The negative list is for avoiding any ambiguity or litigation on whether or not they are liable to TDS.
* **Following categories of payments could be considered for TDS:**

|  |  |  |
| --- | --- | --- |
| Sr No | Nature of payment | TDS rate |
| 1 | Salary | Normal slab rates |
| 2 | Lotteries and horse race winnings | 30% |
| 3 | All other payments as per existing TDS provisions | 2%-5% |

* **Suggested “negative list” of payments** **not liable to TDS can be as follows**:

1. **Existing categories of TDS exempt payments**
   1. S.196 (Government, RBI, Statutory corporations exempt from tax, Mutual Fund)
   2. Entities exempted by issuing notifications u/s. 197A(1F) (AIFs, securitisation trusts, domestic software payments, banks, etc)
   3. Payments which are exempt from TDS based on furnishing of Form 15G/H by individuals/HUFs
   4. Entities whose entire incomes are unconditionally exempt and they do not have ROI filing obligation. Refer Circular No. 18/2017 (Local authorities, IRDA, CERC, ESIC, APMC, NPS, etc)
2. **New categories of TDS exempt payments suggested by CII**
   1. Banks and financial institutions
   2. Insurance companies
   3. Purchases from or payments to GST registered entities on which GST is paid.
   4. Agriculturists in respect of agricultural incomes
   5. SC/ST residing in North-Eastern States or residents of Ladakh, Leh, Sikkim, etc whose income sourced from such regions are exempt
   6. Payments to registered charities

* **Apply TDS on purchase / sale of goods only on non-GST registered cases**
* The provisions of sections TDS u/s 194Q on purchase of goods and TCS u/s 206C(1H) on sale of goods should be made applicable only to payees or payers who are not registered for GST.
* Alternatively, instead of TDS/TCS, the purchasers/sellers may be required to file Annual Information Returns.
* **The TDS thresholds may also be rationalised by increasing to aggregate threshold of Rs. 1 lakh per year wherever the existing threshold is less than Rs. 1 lakh.**

**The Chamber would like to emphasise that the above measure is a revenue neutral exercise which would considerably ease the compliance burden for taxpayers, avoid blockage of working capital for businesses, reduce interest cost for the Government and minimise litigation relating to TDS classification.**

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**Annexure**

**Rates for tax deduction at source**

[For Assessment year 2023-24]

| **S. No.** | **Section** | **Particulars** | **TDS rate (%)** |
| --- | --- | --- | --- |
| 1 | 192 | Payment of salary | Normal Slab Rate |
| 2 | 192A | Payment of accumulated balance of provident fund which is taxable in the hands of an employee. | 10 |
| 3 | 193 | Interest on securities |  |
| a) any debentures or securities for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act; | 10 |
| b) any debentures issued by a company where such debentures are listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder; | 10 |
| c) any security of the Central or State Government; [i.e. 8% Savings (Taxable) Bonds, 2003 and 7.75% Saving (Taxable) Bonds, 2018] | 10 |
| d) interest on any other security | 10 |
| 4 | 194 | Income by way of dividend | 10 |
| 5 | 194A | Income by way of interest other than "Interest on securities" | 10 |
| 6 | 194B | Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort | 30 |
| 7 | 194BB | Income by way of winnings from horse races | 30 |
| 8 | 194C | Payment to contractor/sub-contractor |  |
| a) HUF/Individuals | 1 |
| b) Others | 2 |
| 9 | 194D | Insurance commission | 5 |
| 10 | 194DA | Payment in respect of life insurance policy  w.e.f. 1/9/2019, the tax shall be deducted on the amount of income comprised in insurance pay-out | 5 |
| 11 | 194EE | Payment in respect of deposit under National Savings scheme | 10 |
| 12 | 194F | Payment on account of repurchase of unit by Mutual Fund or Unit Trust of India | 20 |
| 13 | 194G | Commission, etc., on sale of lottery tickets | 5 |
| 14 | 194H | Commission or brokerage | 5 |
| 15 | 194I | Rent |  |
| a) Plant & Machinery | 2 |
| b) Land or building or furniture or fitting | 10 |
| 16 | 194IA | Payment on transfer of certain immovable property other than agricultural land | 1 |
| 17 | 194IB | Payment of rent by individual or HUF not liable to tax audit | 5 |
| 18 | 194IC | Payment of monetary consideration under Joint Development Agreements | 10 |
| 19 | 194J | Fees for professional or technical services:  i)  sum paid or payable towards fees for technical services | 2 |
| ii)  sum paid or payable towards royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films; | 2 |
| iii)  Any other sum | 10 |
| **Note:** With effect from June 1, 2017 the rate of TDS would be 2% in case of payee engaged in business of operation of call center. |  |
| 20 | 194K | Income in respect of units payable to resident person | 10 |
| 21 | 194LA | Payment of compensation on acquisition of certain immovable property | 10 |
| 22 | 194LBA(1) | Business trust shall deduct tax while distributing, any interest received or receivable by it from a SPV or any income received from renting or leasing or letting out any real estate asset owned directly by it, to its unit holders. | 10 |
| 23 | 194LBB | Investment fund paying an income to a unit holder [other than income which is exempt under Section 10(23FBB)] | 10 |
| 24 | 194LBC | Income in respect of investment made in a securitisation trust (specified in *Explanation* of section 115TCA) | 25 in case of Individual or HUF 30 in case of other person |
| 25 | 194M | Payment of commission (not being insurance commission), brokerage, contractual fee, professional fee to a resident person by an Individual or a HUF who are not liable to deduct TDS under section 194C, 194H, or 194J.  Tax shall be deducted under **Section 194M** with effect from 1/09/2019 when aggregate of sum credited or paid during a financial year exceeds Rs. 50 lakh. | 5 |
| 26 | 194N | Cash withdrawal during the previous year from one or more account maintained by a person with a banking company, co-operative society engaged in business of banking or a post office:  i) in excess of Rs. 1 crore  ii) in excess of Rs. 20 lakhs\*  \* for those persons who have not filed return of income (ITR) for three previous years immediately preceding the previous year in which cash is withdrawn, and the due date for filing ITR under section 139(1) has expired. The deduction of tax under this situation shall be at the rate of:  a) 2% from the amount withdrawn in cash if the aggregate of the amount of withdrawal exceeds Rs. 20 lakhs during the previous year; or  b) 5% from the amount withdrawn in cash if the aggregate of the amount of withdrawal exceeds Rs. 1 crore during the previous year. | 2  2 / 5 |
| 27 | 194O | Payment or credit of amount by the e-commerce operator to e-commerce participant | 1 |
| 28 | 194P | Deduction of tax by specified bank in case of senior citizen having age of 75 or more | Tax on total income as per rate in force |
| 29 | 194Q | Payment for purchase of goods of the aggregate value exceeding Rs. 50 lakhs  Note: TDS is deductible on sum exceeding Rs. 50 lakhs | 0.1 |
| 30 | 194R | Deduction of tax in case any benefit or perquisite is provided and aggregate value of such benefit/perquisite exceeds Rs. 20,000  Note: Benefit or perquisite should be arising from business or the exercise of a profession by such resident. | 10 |
| 31 | 194S | Payment on transfer of Virtual Digital Asset  Note: No tax shall be deducted under this provision in the following circumstance:  • If the consideration is payable by any person (other than a specified person) and its aggregate value does not exceed Rs. 10,000 during the financial year.  • if the consideration is payable by a specified person and its aggregate value does not exceed Rs. 50,000 during the financial year.  Specified person means:  (a) An individual or a HUF, whose total sales, gross receipts or turnover does not exceed Rs. 1 crore in case of business or Rs. 50 lakhs in case of a profession, during the financial year immediately preceding the financial year in which virtual digital asset is transferred;  (b) An individual or a HUF who does not have any income under the head profits and gains of business or profession. | 1 |

1. This is currently redundant since the Equity Linked Savings Scheme notified u/s. 80CCB withdrawals whereof are liable to TDS u/s. 194F at 20% has expired on 31 March 1992 [↑](#footnote-ref-1)
2. While the total number of sections is 31, due to multiple rates within single section like s.194C, 194J, etc, the total number of payments covered are 36 in number [↑](#footnote-ref-2)
3. PIB Press Release dated 17 March 2022 [↑](#footnote-ref-3)