

From Sept 1, individuals must deduct TDS on payments to contractors, professionals: Know all about it



Sachin Vasudeva

Practising Chartered Accountant

From September 1, 2019, an individual or HUF paying any sum to a contractor or a professional or commission or brokerage more than Rs 50 lakh in a financial year would be required to deduct tax at source (TDS) at the time of credit of such sum or at the time of payment of such sum; whichever is earlier. The government vide Finance Act (No 2) 2019, recently introduced section 194M in the Income-tax Act, 1961 (the Act) making it mandatory for an individual or HUF to withhold taxes @ 5% on such payments. However, this section applies only to those individuals and HUFs whose accounts are not required to be audited for tax purposes. While this new requirement appears simple at first glance it does throw up certain situations which need clarification from the government.

Earlier, only individuals and HUFs who were mandatorily required to have their accounts audited as per the tax laws were required to deduct tax at source (TDS) on contractual, professional and commission or brokerage payments under section 194C, 194J and 194H of the Act respectively.

1. Who is required to deduct tax under this section

As specified above, this section applies only to a payer who is an individual or a HUF.

2. Who is the payee

The payee could be any person i.e. individual, company, firm etc. but who is a resident of India and who has rendered contractual services, professional services or services for which he is liable to be remunerated either in the form of commission or brokerage.

3. What is the threshold

The requirement to deduct tax would arise only when the payment exceeds Rs 50 lakh in a financial year.

4. What types of payments are covered

Payment of **any sum** for carrying out any 'work' (including supply of labour) under of any contract or as fees for professional services or payment of commission or brokerage.

'Work' has been defined in section 194C of the Act to mean payments for:

- a) Advertising
- b) Broadcasting and telecasting including production of programmes for such broadcasting or telecasting
- c) Carriage of goods and passengers by any mode other than railways
- d) Catering
- e) Manufacturing or supplying a product in accordance with requirement or specification of a customer using material purchased from such customer. However, it will not include material purchased from person other than customer.

The above list is not exhaustive and there could be other contractual payments which could get covered in this section. It is also important to note that the contract need not be in writing. Even a payment in pursuance of an oral contract would get covered provided it is in excess of the threshold as prescribed.

'Professional services' has been defined under section 194J of the Act and means:

Services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purposes of section 44AA or of this section are:

- Sports persons
- Umpires and referees
- Coaches and Trainers
- Team physician and physiotherapist
- Event managers
- Commentators
- Anchors
- Sports columnists

"Commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional

services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

The normal payments that would get hit or covered under this new section are:

- (i) Payment made in connection with a wedding to different vendors
- (ii) Payment to lawyers
- (iii) Payment for repair of a house
- (iv) Payment for construction of a house
- (v) Payment of commission or brokerage

It is common for landowners to enter into a collaboration agreement with a developer wherein there is no payment made by the landowner but in exchange of the landowner giving up a certain portion of the land, the landowner gets built up flats. *Here comes the unclear situation; can the value of the superstructure i.e. the flats fall under the expression 'any sum' as used in this section. In other words, does 'any sum' include 'payment in kind' so as to make the landowner liable to deduct tax at source on the value of the flat(s) that the builder gets as payment for building the landowner's flats*

Where there is no collaboration then the matter is straight forward. On the payment of money by the builder to the landowner for purchase of 25% of the land the builder will deduct TDS under section 194IA and upon payment by the landowner to the builder for construction of flats, TDS would be deducted by the landowner under this new section 194M.

*There are divergent views on what is the meaning of the term 'any sum'. For the purposes of section 195 of the Act (deduction of tax in case of payments to non-residents) the Supreme Court in the case of **Kanchanganga Sea Foods Ltd. v CIT (2010) 325 ITR 540** held that even payments made in kind are subject to TDS. The Hon'ble Supreme Court in the case of **H. Sri Rama Verma v/s CIT [1990] 187 ITR 308 (SC)** in the context of donations under section 80G of the Act held that term 'sum' refers to only amount paid in cash.*

*In the case of **Bruhat Bangalore MahanagarPalike v ITO, ITA No. 719 and 720 of 2014**, the Bangalore Tribunal in the context of section 194LA of the Act (where also the expression any sum is used) while distinguishing the decision of the Apex Court in Kanchanganga Sea Foods and relying on the decision of the Apex Court in the case of Sri Rama Verma held that the expression "any sum" means only when payment is made in monetary terms and that TDS is not applicable when payment is made in kind.*

Thus this issue is debatable and needs clarification from the Government.

5. Tax rate

The rate at which the tax has to be deducted is 5% unless the payee has obtained a lower withholding tax certificate from the department. If an individual or HUF whose accounts are audited then the rate of tax under section 194C is 2% and under 194J is 10%. In case of section 194H, the rate is the same in both cases.

6. Time for deposit

The general rule regarding the deposit of TDS would apply. As per Rule 30 of the Income-tax Rules 1962 (the Rules), tax deducted from payment made in the month of March has to be deposited by 30th April and in all other cases on or before seven days from the end of the month in which the deduction is made.

7. Whether TAN required

The payer (the individual/HUF who deducts tax at source and deposits it with the government) is not required to obtain a tax deduction account number (TAN). A challan would be prescribed for payment of tax under this section which would be linked to the PAN of the payer and payee.

8. How will the payee get the credit of the tax deducted

The challan by which the tax is deposited will have the PAN number of the payee. Once the tax is deposited, the tax will appear in Form 26AS of the payee which will enable the payee to claim credit of the tax deducted.

9. When is the tax required to be deducted

The section requires that tax has to be deducted at the time of credit of such sum or at the time of payment; whichever is earlier. Taxpayers whose accounts are not audited do not generally maintain books of accounts. Therefore, what would be the date of credit is the question? One view could be that the date of the bill could be the date of credit. The alternate and probably the better view is that as there are no books and therefore no date of credit and accordingly, the tax has to be deducted at the time of payment.

10. Penalty for non-compliance

Late deposit of tax would attract interest at the rate of 1% or 1.5% depending upon the reason for late deposit of tax. Further, it could also lead to prosecution in certain cases.