

BASICS

UPDATE

&

CRITICAL ISSUES

CA D R Venkatesh,
B.COM, LLB, FCA,

Flow of Discussion

- Basics
- Update - AY 2014-15, 2015-16 & 2016-17
 - Sections
 - Circulars / Notifications
 - Case Laws
- Critical Issues - Section wise

Basics

- Status of Deductor/Payer
- Any Person
 - Tax Payer
 - Agriculturist
 - Charitable/ Educational Institutions

Basics

□ Individual / HUF

- Whose total sales, gross receipts or turnover
- Exceed the monetary limits specified under clause (a) or clause (b) of Section 44AB
- During the financial year immediately preceding financial year

Basics

- Status of Recipient/Payee
 - Rate of Deduction
 - Government
 - Applicability of surcharge

Basics

- Residential status of Recipient/Payee
 - Resident
 - Non-resident

Basics

- Nature of expenditure
 - In the hands of the deductor - payment /
Debit may be towards
 - Capital Expenditure
 - Revenue Expenditure
 - Reimbursement of Expenses

Basics

- When to deduct

- Payment
- Credit

Basics

□ Rate of Deduction

■ Tax rate

- Under the respective sections
- Part II to First Schedule
- Part III to First Schedule - Salary
- Part II to First Schedule - u/s 195
- No Surcharge & No Education Cess

Basics

❑ When to Remit

- During the year payment (Other than March) - on or before 7 days from the end of the month in which deduction is made.
- Other cases - On or before 30th day of April where the income or amount is credited or paid in the month of March.

Returns

- Statements - Form 24Q
Form 26Q

Due Date	On or before
Quarter Ending 30.06	15 th July
Quarter Ending 30.09	15 th October
Quarter Ending 31.12	15 th January
Quarter Ending 31.03	15 th May

Certificates

- Form 16 - Salary
- Form 16A- Other Than Salary

Form for certificate	Due date
Form 16	By 31st May of the financial year immediately following the financial year in which income was deducted and tax was paid.
Form 16A	To be issued Every quarter and the due dates are 30th July, 30th Oct, 30th Jan and 30th May

UPDATES

- A.Y. 2014-15
- A.Y. 2015-16
- A.Y. 2016-17

FINANCE BILL 2015

Summary of the proposals in Finance Bill, 2015 in brief is as follows:

- Co-operative banks have to deduct TDS on interest paid on member deposits if such interest exceeds Rs.10,000/- w.e.f 01st June, 2015.
- Co-operative bank pays interest to other co-operative societies - No TDS to be deducted irrespective of the interest paid

Summary of the proposals in Finance Bill, 2015 in brief is as follows (Contd.):

- Earlier, the threshold limit of Rs.10,000/- was calculated each branch wise. Now, if the bank has core banking solution, the threshold limit will be calculated for the bank as a whole (Not branch wise).
- Earlier, time deposits/ term deposits did not include Recurring deposits. From 01.06.2015, Recurring deposits are also included in time deposits/term deposits and TDS is deductible if interest paid exceeds the threshold limit.

Summary of the proposals in Finance Bill, 2015 in brief is as follows (Contd.):

Deductor	Deductee	TDS
Co-operative Bank	Any Member	Yes
Co-operative Bank	Co-operative Society	No
Co-operative Bank	Co-operative Bank	Yes
Co-operative society	Any member/other co-operative society	No
Co-operative society	Co-operative Bank	No

Summary of the proposals in Finance Bill, 2015 in brief is as follows (Contd.):

- The Individuals/HUF's purchasing an immovable property from a non-resident will not be required to obtain TAN for deducting Tax under section 195.
- Facility of filing self declaration under section 197A will be available to recipients of proceeds of life insurance policy.

Section 194 IA - Payment on transfer of certain immovable property other than agricultural land

- ☐ Inserted by Finance Act, 2013, w.e.f 1st June, 2013
- ☐ Payment to a Resident
- ☐ Transfer of Immovable Property (other than Agricultural Land)
- ☐ Consideration should be Rs. 50 Lakhs or more
- ☐ TDS @ 1%
- ☐ Provisions of section 203A - (Tax Deduction and Collection Account Number) shall not apply to a person required to deduct tax in accordance with the provisions of this section.

ISSUES ON SECTION 194-IA

Issues - JDA

- ❑ Owner of the land gets 40% of constructed area in exchange of land.
- ❑ Whether developer has to deduct tax at source U/s. 194-IA - on 40% of the value of the constructed area?
- ❑ Whether Owner has to deduct tax at source U/s. 194-IA - on 60% of the value of the land surrendered?

Discuss...

Issues - JDA

- ❑ Developer has given security deposit of Rs. 100 Lakhs.
- ❑ Rs. 60 Lakhs is refundable
- ❑ Rs. 40 Lakhs is non-refundable

Discuss...

Issues

- Agreement executed to buy an apartment on 1st January, 2014.
- Consideration to be paid towards two parts.
 - Consideration for transfer of Undivided portion of land is Rs. 10 Lakhs.
 - Consideration for Construction of apartment Rs. 90 Lakhs.
- Whether TDS has to be deducted on
 - Rs. 100 Lakhs; or
 - Rs. 90 Lakhs; or
 - No TDS.

Discuss...

Issues

- Whether 194 -IA is applicable on Stock-in-trade (Apartments) sold by the developer?

- Mr. B purchased an immovable property from Mr. S for a consideration of Rs. 100 Lakhs. Mr. B paid an advance of Rs. 25 Lakhs on the date of executing the agreement on 1st May, 2013. The balance consideration of Rs. 75 Lakhs is paid by his bankers (housing loan) directly to Mr. S. Who has to deduct tax at source?

Section 40(a)(ia) - Amounts not deductible

- ❑ Finance (No.2) Act, 2004
- ❑ A.Y.2005-06 onwards

Section 40(a)(ia) - Amounts not deductible

Finance Act, 2008 w.r.e.f 01.04.2005

Has not been paid-

- (A) In a case where the tax was deductible and was so deducted during the last month of the previous year, on or before the due date specified in sec 139(1); or
- (B) In any other case, on or before the end of the previous year

Section 40(a)(ia) - Amounts not deductible

❑ Finance Act, 2010 w.e.f AY 2010-11

Has not been paid, -

- On or before the due date specified in sec 139(1)

Amendment by Finance Act, 2010 is retrospective effect from AY 2005-06

- As held in Kunubai Ramjibai v/s ITO (2010) 49 DTR 70 (Mumbai Trib.)
- This amendment is clarificatory in nature

Section 40(a)(ia) - Amounts not deductible

- Proviso inserted to Sec 40 (a)(ia) w.e.f. 1st April, 2013.
- Proviso - Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not to be deemed to be an assessee in default under the proviso to sub section (1) of section 201, then, for the purpose of this sub clause, it shall be deemed that the assessee has deducted and paid tax on such sum on the date of furnishing of the return of income by the resident payee referred to in the said proviso.

Section 201(1) - Consequences of failure to deduct or pay

- ❑ Insertion of Proviso to Sec 201 w.e.f 1st July, 2012
- ❑ Proviso to Sec 201(1)

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax, if such resident-

-
- (i) has furnished his return of income u/s 139
 - (ii) has taken into account such sum for computing income in such return of income, and
 - (iii) has paid the tax due on the income declared by him in such return of income.

And the person furnishes a certificate to this effect from an accountant in such form as may be prescribed - Form No.26A

❑ Provisio to Sec 201 (1A)

Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first provisio of sub section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.

40(a)(ia) w.e.f 01/04/2015

- “Thirty percent of any sum payable to a resident”, on which the tax is deductible at source under chapter XVII-B and such tax has not been deducted or after deduction has not been paid on or before the due date specified in sub section 1 of section 139

Issues

- ❑ Salary also covered under 40(a)(ia)
- ❑ Disallowed under 40(a)(ia) before 31st March, 2014-100%, but remitted after 31st March, 2014- allowable u/s 40(a)(ia) is only 30%.

Issues

- ❑ Audit fee of Rs.1,00,000/- disallowed u/s 40(a)(ia) for the AY 2014-15.
- ❑ TDS remitted during FY 2014-15.
- ❑ Whether to allow Rs. 1,00,000/- or Rs 30,000/- in the AY 2015-16?

Issues

- Payment to a non- resident continued to be disallowed 100% u/s 40(a)

Section 234E - Fee for default in furnishing Statements

W.e.f. 1st July, 2012

- ❑ Fee for default in furnishing Statements within prescribed time.
- ❑ In case of default, liable to pay fee of Rs. 200 for every day during the failure continues.
- ❑ Such fee shall not exceed the amount of tax deductible or collectible.

Section 271H - Penalty for failure to furnish Statements

W.e.f. 1st July, 2012.

- Penalty leviable in case of;
 - failure to deliver or cause to deliver a statement within time prescribed; or
 - Furnishing incorrect information in the statement.
- Penalty shall not be less than Rs. 10,000/- and can be extended to Rs. 1,00,000/-.
- Penalty not leviable if tax and interest has been paid before the expiry of one year from the time prescribed for delivering or causing to be delivered such statement.

Survey under TDS

- Sec 133A(2A) - w.e.f 1st October 2014
 - Impounding and retaining of books of accounts?
 - Inventory of any cash, stock?

- Sec 200A - Processing of statement of tax deducted at source - w.e.f 1st April 2010

-
- Sec 200(3) - w.e.f 1st October 2014
 - No order, at any time after expiry of 7 years from the end of the Financial year

CIRCULARS

Circular No.4/2008, dated 28th, April, 2008

- It has been clarified that,
TDS u/s. 194-I of Income-tax Act would be required to be made on the amount of rent paid / payable without including the Service tax

Circular F No. 275/73/2007IT(B) dated 30th June, 2008

- It has been clarified that,
TDS has to be deducted on the gross amount inclusive of service tax where the payment is being made U/s. 194J and Circular No. 4/2008 dated 28th April, 2008 cannot be extended to section 194J

Circular No.1/2014, dated 13th, January, 2014

□ It has been clarified that,

TDS has to be deducted on net amount (exclusive of service tax) where the payment is being made U/s. 194J provided that the amount of Service tax component and fees for professional or technical services to be shown separately

Circular No.1/2014, dated 13th, January, 2014

□ It has also been stated that

Board has decided that wherever in terms of the agreement / contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid / payable without including such service tax component.

Circular No. 10/DV/2013 dated 16.12.2013

□ It has been clarified that,

Provision of section 40(a)(ia) of the Act would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are paid at any time during the year.

-
- The Statutory provisions are amply clear and in the context of section 40(a)(ia) of the Act the term “payable” would include “amounts which are paid during the previous year”.

Circular No. 3/2015 dated 12.02.2015

- Clarification Regarding “Amounts Not Deductible” under section 40(a)(i)
- *Other sums chargeable under section 40(a)(i) with reference to withholding tax as per the provisions of section 195.*

CASE LAWS

Section 40(a)(ia) is attracted only to sums payable as on Balance Sheet date?

- Meriliyn Shipping and Transport V/s. Additional Commissioner of Income Tax (2012) 016 ITR (Trib) 0001 (ITAT) (Vishakapatnam) - In favor
- S S Warad V/s. Additional Commissioner of Income Tax (2012) 019 ITR (Trib) 0035 - Bangalore Bench - In favour
- Commissioner of Income-tax Kolkatta - XI V/s. Crescent Exports syndicate (Calcutta High Court) - against
- Commissioner of Income-tax - IV V/s. Sikandarkhan N Tunvar (Gujurat High Court) - against.
- CIT vs Vector Shipping Services (p) Ltd - Supreme Court - 357 ITR 642(All)(HC) - SLP dismissed - SLP No.8068/2014,dt. 02/07/2014

Teja Constructions V/s. Assistant Commissioner of Income Tax

(2010) 129 TTJ 0057

□ It is held that,

“The provisions of section 40(a)(ia) are applicable only to items covered by section 30 to section 38 and all the direct cost / expenditure covered by section 28 of the Act, are beyond the scope of disallowance under section 40(a)(ia) of the Act”.

M/s. S J Investment Agencies P. Ltd Vs. ACIT - 2(3), Mumbai Mumbai ITAT

□ It is held that

Amount disallowed by the Assessing Officer includes service tax, which should have not been disallowed.

ISSUES – SECTION WISE

Issues - u/s 201(1A)

- TDS deducted on 2nd March, 2015.
- TDS remitted on 8th May, 2015.
- Whether Interest U/s. 201(1A) has to be calculated for;
 - 1 month; or
 - 2 months; or
 - 3 months.

Discuss...

Rule 119A - Procedure to be followed in calculating interest

- interest is to be calculated on *annual basis*, the period for which such interest is to be calculated shall be rounded off to a whole month or months and for this purpose any fraction of a month shall be ignored;
- where the interest is to be calculated for *every month or part of a month* comprised in a period, any fraction of a month shall be deemed to be a full month and the interest shall be so calculated;
- the amount of tax, penalty or other sum in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and for this purpose any fraction of one hundred rupees shall be ignored.

Issues - u/s 201(1A)

M/s.ABC & Co. passed the following entries in the books of accounts.

Internal Audit fee A/c Dr Rs.1,00,000

To M/s. Smart Associates. Rs.1,00,000

(Being the internal audit fee payable for the month of March 2015.)

Issues - u/s 201(1A)

M/s.ABC & Co. passed the following entries in the books of accounts.

Internal Audit fee A/c	Dr	Rs.1,00,000
To M/s. Smart Associates A/c.		Rs.90,000
To TDS Payable A/c		Rs.10,000

(Being the internal audit fee payable for the month of March 2015 and TDS payable provided for.)

u/s 192 - Salary

- ☐ Income Chargeable under the head “salaries”
- ☐ Deduct at the time of payment
- ☐ Average Rate of Income Tax
- ☐ Chapter VI A Deductions

Issues - u/s 192 - Salary

- ☐ Declaration given by the employee but not invested in the securities specified u/s 80C before the end of the F.Y
- ☐ Other income declared by the employee
- ☐ Agricultural income declared by the employee
- ☐ Uneven deduction
- ☐ Adjustment of any excess or deficiency arising out of any previous deductions

u/s 194A - Interest Other Than Interest on Securities

☐ Threshold limit

- Rs. 10,000 where the payer is a Banking Company to which BR Act, 1949 Applies.
- Rs. 10,000 where the payer is a Co-operative Society engaged in carrying on the business of banking.
- Rs. 10,000, on any deposit with post office.
- Rs. 5,000 in any other case

☐ Rate of deduction:

- 10%

Issues - u/s 194A - Interest Other Than Interest on Securities

Section 194A(3)

The provisions of sec 194A(1) shall not apply -

‘(v) to such income credited or paid by a co-operative society to a member thereof or to any other co-operative society’

Specific Provisions

Sec 194A(3)(i)(b)

Sec 194A(3)(via)(b)

v/s

General Provisions

Sec 194A(3)(v)

Issues - u/s 194A - Interest

Decisions in favour of the Department

- ❑ **Bhagani Nivedita Sah. Bank Ltd. v/s ACIT**
(Pune ITAT) [87 ITD 569] dt 14.08.2002

- ❑ **Bailhongal Urban Co-operative Bank Ltd V/s. Joint Commissioner of Income Tax**
(Panaji Bench dt. 28th August, 2013)

- ❑ **The Marathwada Urban Bank Co-op Association Limited v/s The Union of India**
Writ Petition no 4935 of 2003 dated 21.04.2014

Decisions in favour of the Assessee

- ❑ Assistant Commissioner of Income Tax v/s Vishakapatnam Co-Operative Bank
dated 29th August 2011 - Vishakapatnam Bench
- ❑ Ozer Merchant Co-operative Bank v/s. Department of Income-tax
dated 30th October, 2013 - ITAT, Pune
- ❑ Circular No. 9/2002 dt 11.09.2002

Decisions in favour of the Assessee

- ❑ **Jalgaon District Central Co-operative Bank Ltd & Another v/s. UOI & Others**
(Bombay High Court) [265 ITR 423] dt. 5th September, 2003
- ❑ **Gujurat Urban Co-operative Bank Federation v/s. Union of India**
dated 12.06.2012
- ❑ **Bagalkot District Central Co-operative Bank v/s Joint Commissioner of Income Tax, Bijapur**
ITA No. 1572 dated 30.05.2014

Commissioner of Income Tax V/s. Vegetable Products Ltd.

[1973] 88 ITR 192 [SC]

It was held that,

“the rule of Judicial Precedence demands that the view favourable to the assessee must be adopted”

Issues - u/s 194A - Interest Other Than Interest on Securities

- Dr.X a practicing Doctor who is subject to Tax Audit u/s 44AB for the year ended 31.03.2014 having the following transactions during the financial year 2014 - 2015:
 - Constructed a house for self occupation & he is making payment to contractor Rs.10,00,000/-
 - Borrowed funds from friends Rs.10,00,000/- on which he wants to pay interest. Examine the applicability of TDS

Issues - u/s 194A - Interest Other Than Interest on Securities

- ☐ Non resident partner receives interest on capital whether to deduct TDS u/s 194A?
- ☐ The minor son of a partner deposits Rs.10 lakhs in the firm and receives interest of Rs. 1,20,000 whether to deduct TDS u/s 194A?

u/s 194C - Payment to Contractors

- ❑ Threshold limit - Rs.30,000/75,000
- ❑ Specified persons
- ❑ Contract
- ❑ Work
- ❑ Rate of deduction:
 - 1% - Deductee is Individual/HUF
 - 2% - Deductee is Other than Individual/HUF

Issues - u/s 194C - Payment to Contractors

□ u/s 194C (6)

No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his Permanent Account Number, to the person paying or crediting such sum.

Issues - u/s 194C - Payment to Contractors

- ❑ Payment made by a person who are in the business of plying, hiring or leasing goods carriages to contractors are exempt from the preview of TDS u/s 194C(6) if the contractors furnishes his PAN to the deductor.
- ❑ Payment made to a person who in the business of plying, hiring or leasing goods carriages are not exempted u/s 194C(6) and the provisions of section 194C(6) are applicable in these cases.

Issues - u/s 194C - Payment to Contractors

- ❑ Incentive paid to a Contractor
- ❑ Liquidated damages recovered from contractor

Issues - u/s 194C - Payment to Contractors

- ☐ Transport contract
- ☐ Vehicle hire charges

- Section 194C or Section 194I

Issues - u/s 194C - Payment to Contractors

- REHB society entered into contract with the developer M/s. D Pvt Ltd for purchase of sites on behalf of its members. As per the agreement, the developer shall acquire the land and shall develop the land into residential sites with various facilities and amenities for a consideration of Rs. 500 per sq. ft. Whether REHB Society is liable to deduct tax at source under Chapter XVII - B of Income-tax Act, 1961?

u/s 194H - Commission or Brokerage

- Threshold limit - Rs.5,000
- Rate of deduction - 10%

Issues - u/s 194H - Commission or Brokerage

- Commission Or Brokerage
 - Discount/Rebate/Incentive
 - Commission paid to partners on percentage of export sales

u/s 194I - Rent

- ❑ Threshold limit - Rs.1,80,000

- ❑ Rate of deduction:
 - 10% for use of any land/building
 - 2% for use of machinery plant/
equipment

- ❑ Rent

Issues - u/s 194I - Rent

□ Rent

- Advance Rent of Rs. 8 Lakhs paid for next 5 Financial years on 30.06.2014
- Rent of Rs.8 lakhs paid to 5 co-owners
- Warehousing Charges
- Cooling Charges paid to cold storage owners

Discuss...

Issues - u/s 194I - Rent

- ❑ Rent paid to owner as a percentage of sales.
- ❑ Tenants in a commercial complex following payments are made to the owner:-
 - Rent
 - Maintenance charges
 - Power & Water charges re-imburesements.

Discuss...

Issues - u/s 194I - Rent

- M/s. Land Owners Pvt Ltd. entered into Joint Venture with M/s. Developers Pvt Ltd. to develop a property. The Developer agreed to compensate the land owner @ Rs. 10 Lakh per month during the period of construction. Kindly examine the applicability of TDS for the compensation payment.

Discuss...

Issues - u/s 194J - Fees for Professional or Technical Services

□ Threshold limit - Rs.30,000

□ Rate of deduction: 10%

Issues - General

- ❑ M/s X Private Limited paid statutory audit fee of Rs.1,00,000/- in cash during the accounting year 2014 - 2015 with out deduction of tax at source.
- ❑ For Assessment year 2015-16, Examine the disallowance u/s 40(a)(ia) and u/s 40A(3) ?

Issues - General

- The Assessee claimed a deduction of Rent of Rs. 10 Lakhs in the Statement of Total Income without debiting to Profit and Loss Account.

Examine the applicability of section 194I and 40(a)(ia).....

Issues - General

- The deductor M/s Defaults ltd not filed the quarterly returns for the financial year 2014-15. The AO proposed to disallow the expenses u/s 40(a)(ia) on which TDS is deducted & remitted.

Discuss...

Issues - General

- Mr. R purchased a residential property from Mr. NR for Rs. 20 Crores and sale was concluded by registration on 01.01.2013 Mr. R received notice from Income Tax Department stating that Mr. R violated the provisions of Section 195.

Discuss...

Issues - General

- Mr. R purchased a property from Mr. NR (Non - Resident) for Rs. 20 Crores and deducted Tax at Source U/s. 195. The tax was remitted through a company's TAN Number in which Mr. R is a Director. Subsequently the Income-tax Department issued a notice to Mr.R for violation of provisions of section 195.

Discuss...

Defaults

- ☐ Non-Deduction
- ☐ Short Deduction
- ☐ Delay in Deduction
- ☐ Non-Remittance
- ☐ Short Remittance
- ☐ Delay in Remittance
- ☐ Non / Delay in filing of Statements - Form 24Q / 26Q
- ☐ Issue of Forms - Form 16A / 16

Consequences

- ☐ Interest
- ☐ Fees
- ☐ Penalty
- ☐ Disallowance
- ☐ Compounding Fee
- ☐ Prosecution

Prosecution

□ Sec 276B

- Shall be punishable with rigorous imprisonment for a term which shall not be less than three months but it may extend to seven years and with fine
- Compounding fee at the rate of 5% p.m if TDS deducted and not remitted - default is more than twelve months

CONTROVERSIES

No TDS	v/s	Yes TDS
194C	v/s	194J
194C	v/s	194I
194C	v/s	194H
194J	v/s	192
192	v/s	194H

Conclusion

- ❑ Duty / Responsibility under chapter XVII-B cannot be bypassed.

Conclusion

- ❑ Method of accounting
 - ❑ Cash Basis
 - ❑ Mercantile Basis
 - ❑ Compliance Basis

GOLDEN PRINCIPLES

- ☐ Applicability
- ☐ Rate
- ☐ Deduction & Remittance
- ☐ Planning

TIPS FOR BETTER AND CLEAR UNDERSTANDING OF PROVISIONS OF CHAPTER XVII B

□ **Step 1**

Understand the facts of the assessee clearly and correctly.

□ **Step 2**

Read, Read and Read the relevant provisions (Sections & rules) until you are clear.

□ **Step 3**

Read, circulars and notifications.

☐ Step 4

Read case laws of Supreme Court, High Court, ITAT...

☐ Step 5

Advise accordingly

☐ Step 6

.....???

FINALLY

Deduct & Remit	Without failure
Avoid - Interest, penalty, prosecution and disallowance	With due care
File TDS returns & Issue the forms	Within Prescribed time

THEN...

THE
DEDUCTOR
DEDUCTEE &
INCOME TAX DEPARTMENT
WILL
SMILE FOREVER 😊😊

**THANK
GOD
YOU**

**CA D R Venkatesh
Ph : +91 98807 25104
Email : drv.mssv@gmail.com**