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Just 7 More Needed to Complete the Full ABC



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A, B, C.....Q, R, S....

Well Friends, don't get confused...I am not memorising the alphabets here.

I am simply referring to the **New TDS Sections**, inserted year after year, by the Legislature, in Chapter XVIIB of the Income Tax Act, 1961.

Keeping pace with the previous years' momentum, the **Finance Bill 2022** has also proposed two completely fresh (read new) **TDS sections 194R** and **194S**, in the Income Tax Act, to be made effective from **1.7.2022**.

So, now, only seven more sections 194T/U/V/W/X/Y and Z are needed to complete the full ABC alphabetical universe.

Before diving scuba-deep, into these two new TDS sections 194R and 194S, let us have a look at some of the official figures, throwing some light on the quantum contribution of Tax Deducted at Source (more popularly known as TDS), in the total direct tax collections.

As per the Press Release, issued by the Ministry of Finance, on 17.12.2021, the contribution of TDS, in the gross direct tax collections of Rs. 10.80 lakh crore (for FY 2021-22 up till 16.12.2021) is Rs.4.93 lakh crore in absolute terms. Other constituents are Self-Assessment Tax of Rs. 74,336.2 crore; Regular Assessment Tax of Rs. 44,028.7 crore; Dividend Distribution Tax of Rs. 6,525.9 crore and Tax under other minor heads of Rs. 2390.6 crore.

So, in the gross direct tax collections of Rs. 10.80 lakhs, for the fiscal 2021-22 (up to 16.12.2021), the pre-assessment revenue collection measures of TDS, Advance Tax, Dividend Distribution and Self-Assessment Tax, constituted approximately 99% of the total collections and post assessment measures of regular assessment and others, constituted even less than 1%.

Further, **TDS constituted approximately forty-six percent of the gross collection of direct taxes in the fiscal 2021-22** (as on 16.12.2021).

Usually, Outsourcing Partners are rewarded commensurately for their outsourcing contribution. But here, even after undertaking this onerous outsourcing of tax collection, on behalf of the Legislature, so effectively, the taxpayer is not rewarded in any manner. In fact, to the contrary, even a small lapse in compliance, results in some dire consequences, even prosecution.

In addition to this statutory onus of tax collection, last year, the Finance Act 2021, has also put the responsibility of examining the return filing discipline of the deductees on the deductors, by inserting another set of alphabets AB in section 206(**read section 206AB**), requiring them to deduct TDS at twice the applicable rate or @ 5% (in some sections like 194C), in cases where the deductees have not filed their returns in the two immediately preceding years and the aggregate amount of TDS in each of the two years is Rs. 50,000 or more.

The Finance Bill 2022, has further widened the scope and coverage of this section 206AB, by reducing the time period for return filing of the deductees, to be considered by the deductors, from two years to one year w.e.f. 1.4.2022.

So, now, w.e.f. 1.4.2022, the deductors will be required to deduct TDS at twice the applicable rate or @5% (in some cases like section 194C), in cases, where the deductees have not filed their returns in the immediately preceding previous year and the amount of TDS equals Rs. 50,000 or more in that year.

With this backdrop, we now come to deciphering the two newly baked TDS sections by the Finance Bill 2022 Oven.

Section 194R: TDS @ 10% on Benefits or Perquisites arising out of Business or Profession

In Union Budget 2022, a new TDS section **194R**, has been proposed in the **Finance Bill 2022, w.e.f. 1.7.2022.**

This new section 194R requires deduction of tax at source @ 10%, by any person, providing any benefit or perquisite, exceeding Rs. 20,000 in value, in a year, to a resident, arising from the business or profession of such resident and such benefit or perquisite is in the nature of income falling under section 28(iv) of the Income tax Act.

The benefit or perquisite referred to in this new section 194R is **not** the perquisite u/s 17(2), under the head salary income, paid or payable by the employer to employees, as for that perquisite u/s 17(2),

another TDS section 192 is already there.

The benefits or perquisites proposed to be covered by this new section 194R are those perks, benefits, amenities, or facilities, probably in kind, or in a combination of cash and kind, which a resident person enjoys, pursuant to, or in exercise of his business or profession, in lieu of the regular consideration payable to him, in monetary terms, in exercise of such business or profession. Such benefits or perquisites are taxable as business receipts u/s 28(iv) of the Income Tax Act.

Let us understand this new section 194R with the help of an example. Say for instance, Mr. Arth is a businessman engaged in trading of high-end electronic items, and his sales in the previous year 2020-21, was rupees 2.5 crores. Now, suppose, in one of his business meets, in another city, he comes across a big wholesale supplier say Mr. Shastri, for procurement of electronic items for his business.

Mr. Arth requests Mr. Shastri, for giving a discount in his purchases. Mr. Shastri happens to visit the city of Mr. Arth. Mr. Arth sponsors his 5-star hotel accommodation, conveyance, and also gift him a Rolex watch, in order to develop friendly business relations. Pleased with his hospitality, Mr. Shastri, eventually agrees for giving the favourable discounting terms to Mr. Arth.

So, Mr. Arth makes the procurements of electronic items from Mr. Shastri, at an agreed discount and pays him the discounted consideration.

In this new section 194R, such benefits or perquisites like free accommodation, conveyance and gifted Rolex watch, in our example, are amenable to be considered as benefits or perquisites arising to Mr. Shastri in exercise of his whole sale business of electronic items, as Mr. Arth has provided such benefits or perks to Mr. Shastri, in order to get the favourable discounted terms for his procurements. So, such benefits or perks are having a direct nexus with the wholesale business of Mr. Shastri, in our example.

This new section 194R, now makes it mandatory for Mr. Arth to deduct TDS @ 10% in the name/PAN of Mr. Shastri, on the value of the gifted Rolex watch and the sponsored 5-star accommodation and

conveyance, since the value of these benefits or perquisites is in excess of the prescribed threshold limit of rupees twenty-thousand, in a year.

In this example, since Mr. Arth is providing these benefits in kind only and as such there is no money consideration against which the stipulated TDS u/s 194R may be deducted, so, Mr. Arth will have to pay the TDS amount @ 10% on the value of such benefits or perks in the form of gifted Rolex watch and sponsored hotel accommodation and conveyance, out of his own pocket.

However, if in the immediately preceding previous year, the turnover of Mr. Arth would have been up to Rs. 1 crore only, then he would not have been required to deduct TDS under this new section 194R, as this section is not applicable in those cases, where the gross receipts in business, of the deductor, in the immediately preceding year, are up to rupees one crore or the gross receipts from profession are up to rupees fifty lakhs.

Section 194S: TDS @ 1% on Purchase Consideration of Virtual Digital Asset

In line with the existing TDS section 194IA requiring deduction of tax at source @ 1% on purchase of any immovable property exceeding rupees fifty lakhs in a year, the Finance Bill 2022, has proposed a new section 194S applicable w.e.f. 1.7.2022, mandating deduction of tax at source @ 1% on the payment of purchase consideration to a resident person, on transfer of a virtual digital asset, as defined in another new section 2(47A).

Further, two threshold limits, for the amount of purchase consideration, has been prescribed, to be liable for deduction of TDS under this new section 194S.

For 'specified person', i.e. an individual or HUF, whose total sales or gross receipts does not exceed rupees one crore, in case of business, or rupees fifty lakhs in case of profession, during the immediately preceding financial year, or, an individual or HUF, who does not have any income under the head business or profession, TDS under this new section 194S is required to be deducted only, if the amount

of purchase consideration for purchase of virtual digital asset, exceeds rupees fifty thousand, during the financial year.

In case of a person other than such specified person, including firms, LLPs and companies, TDS under this new section 194S is required to be deducted only, if the amount of purchase consideration for purchase of virtual digital asset, exceeds rupees ten thousand, during the financial year.

It is also noteworthy to mention here that the Finance Bill 2022 has also proposed a new section 115BBH applicable w.e.f. 1.4.2022, mandating the taxability of the income arising from the transfer of virtual digital asset at a flat rate of 30% plus applicable surcharge and cess, with reduction only in respect of its cost of acquisition, and excluding all other reductions including adjustment of brought forward losses.

Issues requiring more Clarity from the Legislature

In respect of new section 194R

- a.* How the value of benefits or perquisites arising out of business or profession, provided in kind, will be arrived at, for the purpose of deduction of tax at source? Will it be the fair market value in line with existing Rule 11U or 11UA or any other criteria?

In respect of new section 194S

- a.* The sale and purchase of cryptocurrencies usually takes place at the crypto exchanges, just like a stock exchange, where the identity of the buyer and seller is not revealed. So, in such cases, how it will be possible for the buyer to deduct TDS in the name of the seller of such virtual digital asset? In such cases, whether the crypto exchanges will be required to deduct the TDS?
- b.* The current definition of 'Virtual Digital Asset' in the newly proposed section 2(47A) in the Income Tax Act, excludes 'foreign currency' from its ambit. The most commonly used

cryptocurrency, 'Bitcoin' has been recognized as 'legal tender' in the country El Salvador, w.e.f. 1.9.2021 (as per the Wikipedia), and as such, it is amenable to be considered as a 'foreign currency'. So, the currently proposed definition of 'virtual digital asset' in section 2(47A), will exclude 'Bitcoin' from its ambit, which will defeat the very purpose and objective of bringing about this amendment.

Before parting, it seems desirable to do justice with the other already existing TDS provisions/sections(A,B,C, D.....) also.

Accordingly, sharing the TDS Chart for FYs 2021-2022& 2022-23 as a Ready Refrencer

Nature of Payment	Section	Threshold Limit (INR)	TDS Rate for Individual/HUF in %	TDS Rate for Others
Salaries	192	Rs. 5,00,000	According to employees' individual slab rates	-
EPF premature withdrawal	192A	Rs.50,000	10	-
Interest of securities	193	RS.10,000	10	10
Dividends	194	Rs.5,000	10	10
Interest (Banks)	194A	Rs.40,000	10	10
Senior Citizens	194A	Rs.50,000	10	-
Single contractor payment	194C	Rs.30,000	1	2

Aggregate contractor payment	194C	Rs.1 lakh	1	2
Insurance commission	194D	Rs.15,000	5	10
Life insurance policy	194DA	Rs.1 lakh	1	1
NSS	194EE	Rs.2500	10	10
Repurchase Units by MFs	194F	-	20	20
Commission - Lottery	194G	Rs.15,000	5	5
Commission/Brokerage	194H	Rs.15,000	5	5
Plant/Equipment/Machinery Rent	194I(a)	Rs.2.40 lakh	2	2
Land Building and furniture rent	194I(b)	Rs.2.40 lakh	10	10
Transfer of certain immovable property other than agricultural land	194IA	Rs.50 lakh	1	1
Rent by Individual / HUF	194IB	Rs.50,000/pm	5	-
Payment under specified agreement applicable for F.Y: 2017-18 onwards	194IC	-	10	10
Fees-tech services, call centre, royalty for sale etc.	194J(a)	Rs.30,000	2	2
Fee for professional service or royalty etc.	194J (b)	Rs.30,000	10	10
Payment of dividends by mutual funds	194K	Rs.5,000	10	10
Compensation on the transfer of certain immovable property other than agricultural	194LA	Rs.2.50 lakh	10	10

land

Immovable property (TDS exempted under RFCTLARR Act (w.e.f. 01.04.2017))	194LA	-	-	-
Income on infrastructure debt fund(non-resident)	194LB	-	5	5
Income from a business trust (applicable from 01.10.2014)	194LBA	-	10	10
Income from a business trust to non-resident (applicable from 01.10.2014)	194LBA	-	5	5
Interest on certain bonds and Govt. securities (from 01.06.2013)	194LD	-	5	5
Payment to commission or brokerage by individual & HUF	194M	Rs.50 lakh	5	5
Cash withdrawal exceeding 1 crore during the previous year from 1 or more accounts with a bank or co-operative society (w.e.f. 01.09.2019)	194N	Rs.1 crore	2	2
TDS on e-commerce participants	194O	Rs.5 lakh	1	1
TDS on Purchase of Goods	194Q	Rs.50 lakh	0.10	0.10
TDS on any Benefit or Perquisite arising out of any Business or Profession on Incomes u/s 28(iv)	194R	Rs. 20,000	10	10

TDS on Purchase of Virtual Digital Asset

194S

Rs. 50,000 for
specified person and
Rs. 10,000 for non
specified person

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Well Friends, summing up this piece with the hope that the Legislature will soon bring out the 7 remaining sections i.e. 194T to 194Z, also, to complete the full ABC...

