Tax deducted at source from interest other than interest on securities (Section-194A), from fees for professional services/technical services/royalty (Section-194J) and from interest on securities (section 193)

For quick and efficient collection of taxes, the Income-tax Law has incorporated a system of deduction of tax at the point of generation of income. This system is called "Tax Deducted at Source" commonly known as TDS. Under this system, tax is deducted at the point of origination of income. Tax is deducted by the payer and the same is directly remitted to the Government by the payer on behalf of the payee.

Introduction

The provisions of tax deducted at source presently apply to several payments like salary, interest, commission, brokerage, professional fees, royalty, etc. In this part, you can gain knowledge on three major payments covered under the TDS mechanism viz. (1) TDS on interest other than interest on securities; (2) TDS on interest on securities and (3) TDS on fees for professional/technical services/royalty.

Tax deducted at source from interest other than interest on securities (Section-194A)

Section 194A deals with the provisions relating to TDS on interest other than on securities. Tax is to be deducted under section 194A, if interest (other than interest on securities) is paid to a resident. Thus, the provisions of section 194A are not applicable in case of payment of interest to a non-resident. Payments made to non-residents are also covered under TDS mechanism, however, tax in such a case is to be deducted as per section 195.

Illustration – 1

Essem Enterprises, a partnership firm took a loan of Rs. 8,40,000 from a person resident in India. Interest on loan for the financial year 2016-17 amounted to Rs. 84,000. Should the firm deduct tax at source from the interest?

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Tax is to be deducted under section 194A on interest (other than interest on securities). Tax is to be deducted if the interest is paid to a resident. In this case, the firm has paid interest (other than interest on securities) to a resident and hence, the firm has to deduct tax under section 194A from interest of Rs. 84,000 paid by it.

Illustration – 2

Essem Enterprises, a partnership firm took a loan of Rs. 8,40,000 from a non-resident. Interest on loan for the financial year 2016-17 amounted to Rs. 84,000. Should the firm deduct tax at source from the interest?

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Tax is to be deducted under section 194A on interest (other than interest on securities). Tax is to be deducted if the interest is paid to a resident. In this case, the firm has paid interest (other than interest on securities) to a non-resident and hence, the firm is not liable to deduct tax at source under section 194A. However, section 195 requires deduction of tax at source from payment made to a non-resident. Hence, the firm is not required to deduct tax at source under section 194A but it is required to deduct tax at source under section 195.

Who must deduct tax at source?

Every person (i.e. the payer) other than an individual or a Hindu undivided family (HUF), who is responsible to pay interest (interest other than on securities) to a resident, is liable to deduct tax at source under section 194A.

However, an individual or a HUF, whose total sales, gross receipts or turnover from the business or profession carried on by him/it exceeds the monetary limits specified under section 44AB during the financial year immediately preceding the financial year in which the aforesaid amount is credited or paid, shall be liable to deduct tax under section 194A. In other words, an individual or a HUF is liable to deduct TDS under section 194A, if such individual or HUF was liable to get his/its accounts audited under section 44AB in the preceding financial year.

Illustration – 1

Mr. Kumar is running a plastic factory under proprietary ship. The total turnover of the factory during the financial year 2015-16 amounted to Rs. 84,00,000. On 1-4-2016, he took a loan from his friend who is residing in Mumbai (the funds were used in business). Interest on loan for the financial year 2016-17 amounted to Rs. 25,000. Should Mr. Kumar deduct tax from interest of Rs. 25,000?

**

As per section 194A, an individual or a HUF has to deduct tax from interest (other than interest on securities) if he/it was liable to get his/its account audited in the preceding financial year. In this case, interest pertains to the financial year 2016-17 and the immediately preceding financial year is 2015-16. Thus, if in the financial year 2015-16, Mr. Kumar was liable to get his accounts audited, then he will be liable to deduct tax at source on interest of Rs. 25,000 to be paid by him in the financial year 2016-17. However, if he was not liable to get his accounts audited during the financial year 2015-16, then he will not be liable to deduct tax at source from interest of Rs. 25,000.

For the financial year 2015-16, a person has to get his accounts audited if the turnover from the business exceeds Rs. 1,00,00,000. In this case, the turnover of Mr. Kumar for the financial year 2014-15 was Rs. 84,00,000 which was below Rs. 1,00,00,000 and hence, he was not liable to get his accounts audited for the financial year 2016-17.

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As Mr. Kumar was not liable to get his accounts of the financial year 2015-16 audited, he is not liable to deduct tax at source in respect of interest paid by him during the financial year 2016-17.

Illustration – 2

Mr. Rajat is running a garment factory. The total turnover of the factory during the financial year 2015-16 amounted to Rs. 1,84,00,000. On 1-4-2016, he took a loan from his relative residing in Delhi (the funds were used in business). Interest on loan for the financial year 2016-17 amounted to Rs. 84,000. Should Mr. Rajat deduct tax from the interest of Rs. 84,000?

**

As per section 194A, an individual or a HUF has to deduct tax from interest (other than interest on securities) if he/it was liable to get his/its account audited in the preceding financial year. In this case, interest pertains to the financial year 2016-17 and the immediately preceding financial year is 2015-16. Thus, if in the financial year 2015-16, Mr. Rajat was liable to get his accounts audited, then he will be liable to deduct tax on interest of Rs. 84,000 to be paid by him in the financial year 2016-17. However, if he was not liable to get his accounts audited during the financial year 2015-16, then he will not be liable to deduct tax from interest of Rs. 84,000.

For the financial year 2015-16, a person has to get his accounts audited if the turnover from the business exceeds Rs. 1,00,00,000. In this case, the turnover of Mr. Rajat for the financial year 2015-16 is Rs. 1,84,00,000 which is above Rs. 1,00,00,000 and hence, he will be liable to get his accounts audited during the financial year 2015-16.

As Mr. Rajat is liable to get his books of account of the financial year 2015-16 audited, he is liable to deduct tax in respect of interest paid by him during the financial year 2016-17.

Illustration – 3

Kumar & Co. a partnership firm is engaged in the business of trading of food grains. The total turnover of the firm during the financial year 2015-16 amounted to Rs. 84,00,000. On 1-4-2016, it took a loan from a friend of one of its partners (resident of Agra). Interest on loan for the financial year 2016-17 amounted to Rs. 25,000. Should the firm deduct tax from interest of Rs. 25,000?

**

As per section 194A, any person other than an individual or a HUF has to deduct tax from interest (other than interest on securities) irrespective of its obligation to get its accounts audited under Section 44ABduring the preceding financial year. Hence, irrespective of the obligations to gets accounts audited during the preceding year, the firm has to deduct tax from interest paid by it.

When tax is to be deducted?

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As per section 194A, tax is to be deducted at the time of payment or credit of interest (to any account by whatever name called), whichever is earlier.

In case of interest on compensation awarded by Motor Accident Claims Tribunal, tax is to be deducted at the time of payment (TDS applies only if interest exceeds Rs. 50,000).

Illustration

Essem Industries, a partnership firm has taken a loan of Rs. 8,40,000 from Mr. Kumar residing in Mumbai (friend of one of its partners). Interest on loan for the financial year 2016-17 amounted to Rs. 84,000. The interest is credited to the account of Mr. Kumar in the month of March 2017, but the same is actually paid in the month of May 2017. When is the firm liable to deduct tax, in March 2017 or in May 2017?

**

As per section 194A, tax is to be deducted at the time of payment or credit of interest (to any account by whatever name called), whichever is earlier. In this case, interest is credited to the account of the payee in March 2017 and the same is actually paid in the month of May 2017. In other words, the time of credit is March 2017 and the time of payment is May 2017, hence, the liability to deduct tax will arise in the month of March 2017.

When no tax is to be deducted?

Following are few important instances in which there is no requirement of deduction of tax at source under section 194A.

1. No tax is to be deducted if the aggregate amount of interest during the financial year does not exceed Rs. 5,000.

   However, the limit of Rs. 5,000 will increase to Rs. 10,000 in case of interest paid/payable by banking company on time deposit or a co-operative society carrying on banking business on time deposit and in case of interest paid/payable by post office on deposit made under Senior Citizens Saving Scheme Rules, 2004. The limit of Rs. 5,000 will be increased to Rs. 50,000 in case of Interest on compensation awarded by Motor Accident Claims Tribunal.

For the above purposes "time deposits" means deposits *including* recurring deposits repayable on the expiry of fixed periods.

It should be noted that interest on time deposits/deposits with a public company eligible for deduction under section 36(1)(viii) shall be computed with reference to the income credited or paid by the banking company or the co-operative society or the public company, as the case may be, where such entity has adopted core banking solutions.

Illustration – 1

Essem Enterprise., a partnership firm took a loan of Rs. 8,400 from Mr. Kumar residing in Mumbai (friend of one of its partners). Interest on this loan for the year 2016-17 amounted to Rs. 840. Is the firm required to deduct tax at source from interest paid by it?

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As per section 194A, no tax is to be deducted if the aggregate amount of interest during the financial year does not exceed Rs. 5,000. In this case, the amount of annual interest is Rs. 840 i.e. below Rs. 5,000 and hence, the firm is not liable to deduct tax from the amount of interest of Rs. 840.

Illustration – 2

SM & Co.., a partnership firm took a loan of Rs. 84,000 from Mr. Kamal residing at Delhi (friend of one of its partners). Interest on this loan for the year 2015-16 amounted to Rs. 8,400. Is the firm required to deduct tax at source from interest paid by it? If yes, then should it deduct tax on Rs. 8,400 or on Rs. 3,400 (i.e. excess over Rs. 5,000)?

**

As per section 194A, no tax is to be deducted if the aggregate amount of interest during the financial year does not exceed Rs. 5,000. Once the amount of interest exceeds Rs. 5,000, then tax is to be deducted on the entire amount. In this case, the amount of annual interest is Rs. 8,400 i.e. above Rs. 5,000 and hence, the firm is liable to deduct tax from entire amount of Rs. 8,400.

Illustration – 3

Mr. Kumar has made a fixed deposit with XYZ Bank. The annual interest on deposit will amount to Rs. 8,400.Should the bank deduct tax at source from the interest to be paid to Mr. Kumar?

**

As per section 194A, no tax is to be deducted if the aggregate amount of interest during the financial year does not exceed Rs. 5,000. However, the limit of Rs. 5,000 is increased to Rs. 10,000 in case of interest paid/payable by banking company on time deposit or a co-operative society carrying on banking business on time deposit and in case of interest paid/payable by post office on deposit made under Senior Citizens Saving Scheme Rules, 2004. Hence, in this case, the applicable limit will be Rs. 10,000.

The annual interest is below Rs. 10,000 and hence, the bank will not deduct tax from the interest of Rs. 8,400.

Illustration – 4

Mr. Kapoor has made a fixed deposit with ABC Bank. The annual interest on deposit will amount to Rs. 18,400.Should the bank deduct tax at source from the interest to be paid to Mr. Kapoor? If yes, then should it deduct tax on Rs. 18,400 or on Rs. 8,400 (i.e. on excess over Rs. 10,000)?

**

As per section 194A, no tax is to be deducted if the aggregate amount of interest during the financial year does not exceed Rs. 5,000. However, the limit of Rs. 5,000 is increased to Rs. 10,000 in case of interest paid/payable by banking company on time deposit or a

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co-operative society carrying on banking business on time deposit and in case of interest paid/payable by post office on deposit made under Senior Citizens Saving Scheme Rules, 2004. Once the interest exceeds the above limit, tax is to be deducted on the entire amount of interest. The annual interest in this case exceeds Rs. 10,000 and hence, bank has to deduct tax on the total interest of Rs. 18,400.

2. No deduction of tax shall be made under this section in the case of an individual, who is resident in India, if such individual furnishes to the payer, a declaration in writing in Form 15G/15H, as the case may be, to the effect that his income is below exemption limit. The provisions in this regard are as follows:

- Declaration (in duplicate) is to be made in Form No. 15H when the recipient is a senior citizen and in Form No. 15G when the recipient is other than senior citizen.
- Declaration in Form No. 15G/15H can be made only by an individual resident in India.
- Declaration in Form No. 15G/15H can be made, if the annual interest does not exceed the exemption limit (i.e. Rs.2,50,000 or Rs. 3,00,000 or Rs. 5,00,000, as the case may be). However, this condition is not applicable in case of a senior citizen (i.e. resident individual of at least 60 years of age) i.e. a resident senior citizen can furnish declaration in form 15H even if annual interest likely to be paid to him exceeds the exemption limit of Rs. 2,50,000 or Rs. 5,00,000, as the case may be, provided the tax payable on his total income is *nil*.
- The tax payable on total income of the year should be "*Nil*".

The payer who receives such a declaration in Form No. 15G/15H, has to deliver one copy of such declaration to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner , within 7 days of the month next following the month in which such declaration is received by him.

Illustration – 1

Mr. Kumar, the proprietor of Kumar & Co., has taken a loan from Mr. Raman (a resident and aged 35). Interest for the year amounted to Rs. 84,000. Mr. Raman did not have any other income apart from interest income received from Kumar & Co. Mr. Raman furnished Form 15G. Should Mr. Kumar deduct tax from the interest to be paid to Mr. Raman?

**

As per section 197A, the person paying interest is not required to deduct tax from the interest, if the payee has furnished a declaration in Form No. 15G/15H to the effect that his income is below the exemption limit. In this case, Mr. Raman has furnished Form No.15G and hence, no tax is to be deducted by Mr. Kumar. However, Mr. Kumar has to deliver one copy of declaration received by him to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, within 7 days of the month following the month in which the declaration is received by him.

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Illustration – 2

Mr. Kumar proprietor of Kumar & Co, has taken a loan from Mr. Raja (resident and aged 70). Total amount of interest for the year amounts to Rs. 3,65,000.. Mr. Raja intimated to Mr. Kumar that apart from interest income he had no other income and he has invested Rs. 70,000 in PPF entitled for deduction under section 80C. As his total income is below exemption limit, he furnishes Form No. 15H to Mr. Kumar for non deduction of tax at source. Mr. Kumar argued that he could not accept Form No. 15H, since the amount of interest to be paid during the year would exceed the basic exemption limit. Is the contention of Mr. Kumar correct?

**

As per section 197A, the person paying the interest other than interest on securities to an individual is not required to deduct tax from the interest, if such individual issues a declaration in Form No. 15G. Form No. 15G can be accepted only if the amount of interest for the year does not exceed the exemption limit.

It should be noted that if the person receiving the interest is a resident senior citizen, then the declaration is to be given in Form No. 15H and not in Form no. 15G. Form No. 15H can be given by the resident senior citizen even if the amount of interest exceeds the exemption limit provided tax on his total income is *nil*. Mr. Raja is a senior citizen and his total income is below exemption limit, therefore, he can furnish a declaration in Form No. 15H even though interest exceeds the basic exemption limit and Mr. Kumar has to accept the declaration. Hence, the argument of Mr. Kumar is not correct.

Suppose in the given case, if the age of Mr. Raja is 56 years (i.e. below 60 years) then he is not a senior citizen and in that case the discussed benefit will not apply. In other words, if the age of Mr. Raja is 56 years then he cannot issue Form 15G because the amount of annual interest exceeds the basic exemption limit.

3. When the payee has obtained a certificate from the Assessing Officer for no deduction or lower deduction of tax.

The payee may approach the Assessing Officer by making an application in Form No. 13 for issuance of certificate for no deduction of tax or lower deduction of tax at source.

On receiving such an application, the AO may issue appropriate certificate in this regard if he is satisfied that the total income of the payee justifies the deduction of income-tax at any lower rate or nil deduction of income tax.

As per Income-tax (Ninth Amendment) Rules, 2014, Certificate for non-deduction of income-tax shall be issued directly to the person responsible for deducting the tax under an advice to the payee (i.e. who made an application for issue of such certificate).Whereas, certificate of lower deduction of income-tax shall be issued to payee itself.

If AO has issued certificate for no deduction of tax or lower deduction of tax, as the case may be, then payer should deduct tax accordingly.

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4. No tax is to be deducted under section 194A in respect of interest credited or paid by the firm to its partners.

Illustration

Mr. Khushal and Mr. Mangal are partners of Essem Trading Co. (a partnership firm). The firm has paid interest on capital of Rs. 84,000 to Mr. Khushal and Rs. 90,000 to Mr. Mangal. Should the firm deduct tax at source under section 194A from interest paid to its partners?

**

The provisions of section 194A do not apply to interest credit or paid by a partnership firm to its partners. Thus, in this case, the firm is not liable to deduct tax from interest paid to partners.

5. Apart from above discussed instances, few other instances where no tax is to be deducted are as follows:

- Interest paid to any banking company to which the Banking Regulation Act, 1949, applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank).
- Interest paid to any financial corporation established by or under a Central, State or Provincial Act.
- Interest paid to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956.
- Interest paid to the Unit Trust of India established under the Unit Trust of India Act, 1963.
- Interest paid to any company or co-operative society carrying on the business of insurance.
- Interest paid to any other institution, association or body or class of institutions, associations or bodies which the Central Government may notify.
- Interest paid by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society.
- Interest credited or paid in respect of deposits notified by the Central Government. Interest credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank.
- Interest credited or paid by the Central Government under any provision of Income-tax Act, 1961 or Wealth-tax Act, 1957.
- Interest which is paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company or scheduled bank in relation to a zero coupon bond issued on or after the 1st day of June, 2005

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- Interest paid by special purpose vehicle to business trust as given in section 10(23FC) [from 1-10-2014].

Illustration

Kamal Enterprises, a partnership firm has taken a business loan from XYZ bank. Interest for the year amounted to Rs. 84,000. Should the firm deduct tax under section 194A from the interest to be paid to the bank?

**

No tax is to be deducted under section 194A from interest paid to any banking company to which the Banking Regulation Act, 1949, applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank). Thus, no tax is to be deducted by Kamal Enterprises from interest paid to bank.

Rate of TDS

As per section 194A read with Part II of First Schedule to Finance Act, tax is to be deducted @ 10% from the amount of interest. However, if the payee does not furnish his Permanent Account Number (PAN), then the payer has to deduct tax at the higher of following:

- At the rate specified in the relevant provision of the Income-tax Act.
- At the rate or rates in force, i.e., the rate prescribed in the Finance Act.
- At the rate of 20%.

Illustration – 1

SM Traders, a partnership firm has taken a loan from Mr. Kumar residing in Delhi (friend of one of its partners). The annual interest on the loan amounted to Rs. 84,000. Mr. Kumar has furnished the copy of his PAN card. At what rate the firm has to deduct tax from the interest?

**

In respect of interest other than interest on securities, tax is to be deducted @ 10%. Tax is to be deducted at a higher rate if the payee does not furnish his PAN. In this case, Mr. Kumar has furnished his PAN and hence, tax is to be deducted @ 10%. The firm has to deduct tax of Rs. 8,400 (10% of Rs. 84,000) from interest to be paid to Mr. Kumar.

Illustration – 2

Essem Builders, a partnership firm has taken a loan from Mr. Mangal residing in Mumbai (friend of one of its partners). The annual interest on the loan amounted to Rs. 25,200. The firm requested Mr. Mangal to provide his Permanent Account Number, however he informed that he does not hold Permanent Account Number and hence, he cannot provide the same. At what rate the firm has to deduct tax from the interest?

**

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In respect of interest other than interest on securities, tax is to be deducted @ 10%. However, if the payee does not furnish his Permanent Account Number, then the payer has to deduct tax at the higher of following:

- At the rate specified in the relevant provision of the Income-tax Act.
- At the rate or rates in force, i.e., the rate prescribed in the Finance Act.
- At the rate of 20%.

In this case, Mr. Mangal does not hold Permanent Account Number and, hence, the firm has to deduct tax @ 20%. The firm has to deduct tax of Rs. 5,040 (20% of Rs. 25,200) from interest to be paid to Mr. Mangal.

Payment of tax to the credit of the Central Government

Tax deducted from interest by the non-Government deductor is to be paid to the credit of the Central Government by the following due dates:

- Tax deducted during the month of April to February should be paid to the credit of the Government on or before 7 days from the end of the month in which the tax is deducted.
- Tax deducted during the month of March should be paid to the credit of the Government on or before 30th day of April.

Illustration

Essem Traders, a partnership firm has taken a loan from Mr. Kaushal residing in Agra (friend of one of its partner). It is paying interest on monthly basis. Monthly interest amounted to Rs. 2,000 and is paid on the last day of each month. The firm deducts tax @ 10% from the monthly interest and pays the net interest to Mr. Kaushal. The tax deducted by the firm is deposited to the credit of Government by the following dates :

Month	*Date of deposit with the Government*
Tax deducted during the month of April 2016	03/05/2016
Tax deducted during the month of May 2016	07/06/2016
Tax deducted during the month of June 2016	18/07/2016
Tax deducted during the month of July 2016	02/08/2016
Tax deducted during the month of August 2016	04/09/2016
Tax deducted during the month of September 2016	09/10/2016
Tax deducted during the month of October 2016	06/11/2016
Tax deducted during the month of November 2016	11/12/2016
Tax deducted during the month of December 2016	02/01/2017

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Tax deducted during the month of January 2017	05/02/2017
Tax deducted during the month of February 2017	05/03/2017
Tax deducted during the month of March 2017	25/04/2017

Had the firm paid the tax to the credit of the Government within the prescribed time?

**

In respect of non-Government deductor, tax deducted during the month of April to February should be paid to the credit of the Government on or before 7 days from the end of the month in which the deduction is made and tax deducted during the month of March should be paid to the credit of the Government on or before 30th day of April. Thus, the due dates for payment of tax to the credit of the Government and the comparison of the due date with actual date of payment will be as per table given below:

TDS for the Month of	*Due date of deposit with Government*	*Date of deposit with Government*	*Whether deposited within the due date?*
April,2016	07/05/2016	03/05/2016	Yes
May, 2016	07/06/2016	07/06/2016	Yes
June, 2016	07/07/2016	18/07/2016	No
July, 2016	07/08/2016	02/08/2016	Yes
August, 2016	07/09/2016	04/09/2016	Yes
September, 2016	07/10/2016	09/10/2016	No
October, 2016	07/11/2016	06/11/2016	Yes
November, 2016	07/12/2016	11/12/2016	No
December, 2016	07/01/2017	02/01/2017	Yes
January, 2017	07/02/2017	05/02/2017	Yes
February, 2017	07/03/2017	05/03/2017	Yes
March, 2017	30/04/2017	25/04/2017	Yes

Interest for delay in payment of TDS

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As per section 201, if any person who is liable to deduct tax at source does not deduct tax at source, or after so deducting fails to pay the whole or any part of the tax to the credit of the Government, then such person shall be liable to pay simple interest at following rates:

- Interest shall be levied @ 1% for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted. Interest shall be levied @ 1.5% for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid to the credit of the Government.

In other words, interest will be levied @ 1% for delay in deduction and @ 1.5% for delay in payment after deduction.

Issuance of TDS certificate

Every deductor has to furnish a TDS certificate to the deductee in Form No. 16A (for tax deducted on payments other than salary). The certificate should be issued on quarterly basis by following dates:

Quarter	*Due date for Non-Government deductor*
April to June	15th August
July to September	15th November
October to December	15th February
January to March	15th June

The certificate should be downloaded from http://contents.tdscpc.gov.in

Furnishing the TDS return

Every deductor who has deducted tax at source has to furnish the details of tax deducted by him to the Government. These details are to be furnished to the Government in the prescribed form. These details are to be furnished on quarterly basis. In other words, every deductor has to furnish the details of tax deducted by him by filing quarterly TDS return in the prescribed form. The due dates for filing the quarterly TDS return by a non-Government deductor are as per table given below :

Quarter	*Due date of filing of TDS return*
April to June	31st July

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July to September	31th October
October to December	31th January
January to March	31th May

Default in any prescribed procedure

The deductor will be liable to penalty/persecution in respect of following defaults:

1. Default in obtaining Tax Deduction Account Number (*)
2. Default in deduction of tax
3. Default in payment of tax to the credit of the Government
4. Default in furnishing the TDS return
5. Default in furnishing the TDS certificate to the payee

(*) As per section 203A(1), every person liable to deduct tax at source has to obtain Tax Deduction Account Number (TAN), except person liable to deduct tax under section 194IA i.e. TDS on purchase of land/building and such person, as may be notified by the Central Government in this behalf.

Disallowance of expenses while computing business income due to non-deduction of tax at source under section 194A

As per section 40(a)(ia), any sum payable to a resident, which is subject to deduction of tax at source, would attract 30% disallowance while computing income chargeable to tax under the head "Profits and gains of business or profession":

- If tax is deductible at source but is not deducted.
- If tax is deducted during the year, and the same is not paid on or before the due date of filing of return of income specified under section 139(1).

In other words, if tax is deducted during the year and the same is paid on or before the due date of filing the return as specified in section 139(1), then the concerned expenditure will be deductible in the year in which such expenditure is incurred.

However, any payment disallowed by aforesaid provision, shall be allowed as a deduction in computing the income of the year in which such tax deducted has been paid to the Government.

Illustration

Essem Traders a partnership firm has taken a loan from Mr. Varun residing at Agra. The annual interest for the financial year 2016-17 amounted to Rs. 84,000. In March 2017, the firm deducted tax of Rs. 8,400 from the interest and paid the same to the credit of the Government on 30th July, 2017. The due date of filing the return of income is 30th

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September, 2017. Can the firm claim deduction of interest of Rs. 84,000 while computing its taxable business income?

**

In this case, the tax deduction pertains to the month of March 2017, hence, it should be deposited to the credit of Government by 30th April 2017. The firm has deposited the tax to the credit of Government by 30th July, 2017, hence, there is a delay by the firm in payment of TDS amount to the credit of Government. For this delay, the firm will be liable to pay interest @ 1.5% per month or part of the month. However, this delay will not impact the deductibility of the interest while computing taxable business income.

As per section 40(a)(ia), any sum payable to a resident, which is subject to deduction of tax at source, would attract 30% disallowance while computing income chargeable to tax under the head "Profits and gains of business or profession":

- If tax is deductible at source but is not deducted.
- If tax is deducted during the year, and the same is not paid on or before the due date of filing of return of income specified under section 139(1).

In other words, if tax is deducted during the year and the same is paid on or before the due date of filing the return as specified in section 139(1), then the concerned expenditure will be deductible in the year in which such expenditure is incurred.

In this case, the due date of filing the return of income is 30th September and the firm has deposited the tax deducted by it to the credit of Government by 30th July, 2017 (i.e. before the due date of filing the return), hence, the firm can claim deduction of interest of Rs. 84,000 while computing its taxable business income.

Suppose in the given case, if instead of 30th July, the tax is deposited to the credit of the Government on 1st November, 2017, then the firm cannot claim deduction of interest to the tune of 30% i.e. of Rs. 25,200 while computing its taxable business income of the financial year 2016-17. In this case, it can claim deduction of Rs. 25,200 while computing its taxable business income of the financial year 2017-18.

Tax deducted at source from fees for professional services/technical services/Royalty (Section-194J)

As per section 194J, tax is to be deducted in respect of the following payments to a resident:

a) Fees for professional services, or

b) Fees for technical services, or

c) Director's fees (not in the nature of salary), or

d) Royalty, or

e) Any sum referred to in clause (va) of section 28 [i.e. non-compete fee].

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The provisions of section 194J are not applicable in case of payment of fees, royalty, etc. to a non-resident. Payments made to non-residents are also covered under TDS mechanism, however, tax in such a case is to be deducted as per section 195.

Illustration – 1

Essem Enterprises, a partnership firm took consultancy from a Chartered Accountant located at Delhi. The firm has paid fees of Rs. 84,000 to a Chartered Accountant. Should the firm deduct tax at source from the professional fees?

**

Tax is to be deducted under section 194J on the following payments to a resident:

(a) Fees for professional services, or

(b) Fees for technical services, or

(c) Director's fees (not in the nature of salary), or

(d) Royalty, or

(e) any sum referred to in clause (va) of section 28.

In this case, the professional fees are paid to a resident and hence, the firm has to deduct tax under section 194J from the fees of Rs. 84,000.

Illustration – 2

SM Trading Co., a partnership firm took consultancy from an engineer located at New York. The firm has paid fees of Rs. 84,000 to the engineer. Should the firm deduct tax at source under section 194J from the fees paid to the engineer?

**

Tax is to be deducted under section 194J on following payments to a resident:

(a) Fees for professional services, or

(b) Fees for technical services, or

(c) Director's fees (not in the nature of salary), or

(d) Royalty, or

(e) any sum referred to in clause (va) of section 28.

In this case, the professional fees are paid to a non-resident and hence, tax is not to be deducted under section 194J. However, section 195 requires deduction of tax at source from payment made to a non-resident. Hence, the firm is not required to deduct tax under section 194J but it is required to deduct tax at source under section 195.

Tax to be deducted by whom?

Every person (i.e. payer) other than an individual or a Hindu undivided family (HUF), who is responsible to make payments covered under section 194J to a resident, is liable to deduct tax at source under section 194J.

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An individual or a HUF, whose total sales, gross receipts or turnover from the business or profession carried on by him/it exceeds the monetary limits specified under section 44AB during the financial year immediately preceding the financial year in which aforesaid amount is credited or paid, shall be liable to deduct tax under this section. In other words, an individual or a HUF is liable to deduct TDS under this section, if such individual or HUF was liable to get accounts audited under section 44AB in the preceding financial year.

Illustration – 1

Mr. Kumar is running a plastic factory. The total turnover of the factory during the financial year 2015-16 amounted to Rs. 84,00,000. On 8-4-2016, he took consultancy of a Delhi based Company Secretary. The consultancy fees amounted to Rs. 84,000. Should Mr. Kumar deduct tax from consultancy fees of Rs. 84,000?

**

As per section 194J, an individual or a HUF has to deduct tax while making payments covered under section 194J if he/it was liable to get its account audited in the preceding financial year. In this case, professional fees pertain to the financial year 2016-17 and the immediately preceding financial year is 2015-16. Thus, if in the financial year 2015-16, Mr. Kumar was liable to get his account audited, then he will be liable to deduct tax on professional fees of Rs. 84,000 to be paid by him in the financial year 2016-17. However, if he was not liable to get his account audited during the financial year 2015-16, then he will not be liable to deduct tax from professional fees of Rs. 84,000.

For the financial year 2015-16, a person has to get his accounts audited if the turnover from the business exceeds Rs. 1,00,00,000. In this case, the turnover of Mr. Kumar for the financial year 2015-16 is Rs. 84,00,000 which is below Rs. 1,00,00,000 and hence he was not liable to get his account audited during the financial year 2015-16.

Mr. Kumar was not liable to get his account audited in the financial year 2015-16 and hence, he will not be liable to deduct tax in respect of professional fees paid by him during the financial year 2016-17.

Illustration – 2

Mr. Rajat is running a garments factory. The total turnover of the factory during the financial year 2015-16 amounted to Rs. 1,84,00,000. On 8-4-2016, he took consultancy of a Delhi based Chartered Accountant . The consultancy fees amounted to Rs. 1,84,000. Should Mr. Rajat deduct tax from consultancy fees of Rs. 1,84,000?

**

As per section 194J, an individual or HUF has to deduct tax while making payments covered under section 194J if he/it was liable to get its account audited in the preceding financial year. In this case, professional fees pertain to the financial year 2016-17 and immediately preceding financial year will be 2015-16. Thus, if in the financial year 2015-16, Mr. Rajat was liable to get his account audited then he will be liable to deduct tax on professional fees of Rs. 84,000 to be paid by him in the financial year 2016-17. However,

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if he was not liable to get his account audited during the financial year 2015-16, then he will not be liable to deduct tax from professional fees of Rs. 84,000.

For the financial year 2015-16, a person has to get his accounts audited if the turnover from the business exceeds Rs. 1,00,00,000. In this case, the turnover of Mr. Rajat for the financial year 2015-16 is Rs. 1,84,00,000 which is above Rs. 1,00,00,000 and hence he was liable to get his account audited during the financial year 2015-16.

Mr. Rajat is liable to get his account audited in the financial year 2015-16 and hence, he will be liable to deduct tax in respect of professional fees paid by him during the financial year 2016-17.

Illustration – 3

Kumar & Co., a partnership firm is engaged in the business of trading of food grains. The total turnover of the firm during the financial year 2015-16 amounted to Rs. 84,00,000. On 8-4-2016, it took consultancy of a Delhi based Chartered Account firm. The consultancy fees amounted to Rs. 84,000. Should the firm deduct tax from interest of Rs. 84,000?

**

As per section 194J, any person other than an individual or HUF has to deduct tax from payment covered under section 194J irrespective of its obligation to gets accounts audited under Section 44AB during the preceding year. Hence, irrespective of obligation of the payer to gets accounts audited during the preceding year, the firm has to deduct tax from interest paid by it.

When tax shall be deducted?

As per section 194J, tax is to be deducted at the time of payment or credit (to any account by whatever name called), whichever is earlier.

Illustration

Essem Publications, a partnership firm has to pay royalty of Rs. 1,84,000 to Mr. Kumar residing in Delhi. The royalty is credited to the account of Mr. Kumar in the month of March 2016, but the same is actually paid in the month of May 2016. When is the firm liable to deduct tax, in March 2016 or in May 2016?

**

As per section 194J, tax is to be deducted at the time of payment or credit (to any account by whatever name called), whichever is earlier. In this case, royalty is credited to the account of the payee in March 2016 and the same is actually paid in the month of May 2016. In other words, the time of credit is March 2016 and the time of payment is May 2016, hence, the liability to deduct tax will arise in the month of March 2016.

When no tax shall be deducted?

Following are few important instances in which there is no requirement of deduction of tax at source under section 194J.

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1. No tax is to be deducted if the amount of professional fees or technical fees or royalty or non-compete fee during the financial year does not exceed Rs. 30,000. However, there is no such limit in case of director's fees.

Illustration – 1

Kumar & Co., a partnership firm is engaged in the business of trading of food grains. During the financial year 2016-17, it took consultancy of a Delhi based Chartered Accountant firm. The consultancy fees for the year amounted to Rs. 24,000. Should the firm deduct tax from fees of Rs. 24,000?

**

As per section 194J, no tax is to be deducted from professional fees if the aggregate fees for the year do not exceed Rs. 30,000. In this case, the aggregate fees for the year amounted to Rs. 24,000 which is below Rs. 30,000 and hence, the firm is not liable to deduct tax from the professional fees of Rs. 24,000.

Illustration – 2

Ratan & Co., a partnership firm is engaged in the business of trading of clothes. During the financial year 2016-17, it took consultancy of a Delhi based software engineer. The consultancy fees for the year amounted to Rs. 31,000. Should the firm deduct tax from fees of Rs. 31,000?

**

As per section 194J, no tax is to be deducted from professional fees if the aggregate fees for the year do not exceed Rs. 30,000. In this case, the aggregate fees for the year amounted to Rs. 31,000. Once the fees for the year exceeds Rs. 30,000, tax is to be deducted from the entire fees and not from fees in excess of Rs. 30,000. Hence, the firm will be liable to deduct tax on total fees of Rs. 31,000.

2. No tax to be deducted from fees paid by an individual/a HUF for the professional service received by him/it for personal purposes.

No tax is to be deducted by a payer being an individual or a HUF in respect of fees for professional service, if such fees are paid for any personal service of such individual or any member of the HUF.

3. When the payee has obtained a certificate from the Assessing Officer for non - deduction or lower deduction of tax.

The payee may approach the Assessing Officer by making an application in Form No. 13 for issuance of certificate for non-deduction of tax at source or lower deduction of tax.

On receiving such an application, the AO may issue appropriate certificate in this regard if he is satisfied that the total income of the payee justifies the deduction of income-tax at any lower rate or nil deduction of income tax.

As per Income-tax (Ninth Amendment) Rules, 2014, Certificate for non-deduction of income-tax shall be issued directly to the person responsible for deducting the tax under

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an advice to the payee (i.e. who made an application for issue of such certificate).Whereas, certificate of lower deduction of income-tax shall be issued to payee itself.

If AO has issued certificate for no deduction of tax or lower deduction of tax, as the case may be, then payer should deduct tax accordingly.

Rate of TDS

As per section 194J, tax is to be deducted @ 10% from the payments covered under section 194J. However, if the payee does not furnish his Permanent Account Number (PAN) then the payer has to deduct tax at the higher of following:

- At the rate specified in the relevant provision of the Income-tax Act.
- At the rate or rates in force, i.e., the rate prescribed in the Finance Act.
- At the rate of 20%.

Payment of tax to the credit of the Government

The time limit for payment of tax to the credit of Government in respect of tax deducted at source under section 194J is same as discussed in case of section 194A.

Interest for delay in payment of TDS

Provisions relating to interest for delay in payment of TDS in respect of tax deducted at source under section 194J are same as discussed in case of section 194A.

Issuance of TDS certificate

The provisions relating to issuance of TDS certificate in respect of tax deducted at source under section 194J are same as discussed in case of section 194A.

Furnishing the TDS return

The provisions relating to furnishing of TDS return in case of tax deducted at source under section 194J are same as discussed in case of section 194A.

Default in any prescribed procedure

The provisions relating to various defaults are same as discussed in case of section 194A.

Disallowance of expenses while computing business income due to non-deduction of tax at source under section 194J

The provisions relating to disallowance are same as discussed in case of section 194A.

Tax deducted at source from interest on securities(section 193)

Section 193 deals with the provisions relating to TDS on interest on securities. Tax is to be deducted under section 193 if any person pays any income by way of interest on securities to a resident. Thus, the provisions of section 193 are not applicable in case of payment of interest on securities to a non-resident. Payments made to non-residents are also covered under TDS mechanism, however, tax in such a case is to be deducted as per section 195.

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Who shall deduct tax at source?

Every person who is responsible to pay interest on securities to a resident, is liable to deduct tax at source under section 193.

When tax shall be deducted?

As per section 193, tax is to be deducted at the time of payment or credit of interest (to any account by whatever name called), whichever is earlier.

When no tax shall be deducted?

In the following cases tax is not to be deducted under section 193 :

1. Any interest payable on 4.25 per cent National Defence Bonds, 1972, where the bonds are held by a resident individual.
2. Any interest payable to an individual on 4.25 per cent National Defence Loan, 1968, or 4.75 per cent National Defence Loan, 1972.
3. Any interest payable on National Development Bonds.
4. Any interest payable on 7-year National Savings Certificate (IV Issue).
5. With effect from 1-7-2012, any interest payable to a resident individual or resident HUF on any debenture issued by a company in which the public are substantially interested, if the following conditions are satisfied :
   - the amount of interest or, as the case may be, the aggregate amount of such interest paid or likely to be paid on such debenture by the company to such individual or HUF does not exceed Rs. 5000; and
   - such interest is paid by the company by an account payee cheque.
6. Any interest payable on any security of the Central Government or State Government, other than 8 per cent Savings (Taxable) Bonds, 2003.However,no tax to be deducted from interest on 8 per cent Savings (Taxable) Bonds, 2003, if interest payable on such bonds does not exceeds Rs. 10,000 for the financial year.
7. Interest payable on certain notified debentures issued by any institution or authority, or any public sector company, or any co-operative society (including co-operative land mortgage bank or a co-operative land development bank).
8. Any interest payable to LIC/GIC/4 companies formed under General Insurance Business Act/any other insurer in respect of any securities owned by it or in which it has beneficial interest.
9. From 1-6-2008, any interest payable on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder.

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10. Interest payable on 6.5 percent Gold Bonds, 1977 or 7 per cent Gold Bonds, 1980 held by a resident individual provided total nominal value of such bonds do not exceed Rs. 10000 at any time during the period to which the interest relates.

11. No tax is to be deducted if the payee (not being a company or a firm) furnishes Form No. 15G/15H (provisions relating to form 15G/15H have already been discussed in section 194A).

12. When the payee has obtained a certificate from the Assessing Officer for no deduction or lower deduction of tax.

The payee may approach the Assessing Officer by making an application in Form No. 13 for issuance of certificate for no deduction of tax or lower deduction of tax at source.

If the payee has obtained such a certificate from the Assessing Officer, then on production of such certificate to the payer will not deduct tax or will deduct tax at lower rate (as provided in the certificate issued by the Assessing Officer).

Rate of TDS

As per section 193 read with Part II of First Schedule of Finance Act, tax is to be deducted @ 10% from the amount of interest. However, if the payee does not furnish his Permanent Account Number (PAN), then the payer has to deduct tax at the higher of following:

- At the rate specified in the relevant provision of the Income-tax Act.
- At the rate or rates in force, i.e., the rate prescribed in the Finance Act.
- At the rate of 20%.

Payment of tax to the credit of the Government

The time limit for payment of tax to the credit of Government in respect of tax deducted at source under section 193 is same as discussed in case of section 194A.

Interest for delay in payment of TDS

Provisions relating to interest for delay in payment of TDS in respect of tax deducted at source under section 193 are same as discussed in case of section 194A.

Issuance of TDS certificate

The provisions relating to issuance of TDS certificate in respect of tax deducted at source under section 193 are same as discussed in case of section 194A.

Furnishing the TDS return

The provisions relating to furnishing of TDS return in case of tax deducted at source under section 193 are same as discussed in case of section 194A.

Default in any prescribed procedure

The provisions relating to various defaults are same as discussed in case of section 194A.

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Disallowance of expenses while computing business income due to non-deduction of tax at source under section 193

The provisions relating to disallowance are same as discussed in case of section 194A.

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MCQs on Tax deducted at source from interest other than interest on securities (Section-194A), from fees for professional services/technical services/royalty(Section-194J) and from interest on securities (section 193)

Q1. Section _____deals with the provisions relating to deduction of tax at source on interest other than interest on securities paid to a resident.

(a)192 (b) 193

(c) 195 (d) 194A

Correct answer : (d)

Justification of correct answer :

Section 194A deals with the provisions relating to TDS on interest other than interest on securities. Tax is to be deducted under section 194A, if interest (other than interest on securities) is paid to a resident.

Thus, option (d) is the correct option.

Q2. An individual or a HUF is liable to deduct TDS under section 194A, if such individual or HUF was liable to get his/its accounts audited under section 44AB in the preceding financial year.

(a) True (b) False

Correct answer : (a)

Justification of correct answer :

An individual or a HUF is liable to deduct TDS under section 194A, if such individual or HUF was liable to get his/its accounts audited under section 44AB in the preceding financial year.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

Q3. As per section 194A, tax is to be deducted at the time of payment or credit of interest (to any account by whatever name called), whichever is later.

(a) True (b) False

Correct answer : (b)

Justification of correct answer :

As per section 194A, tax is to be deducted at the time of payment or credit of interest (to any account by whatever name called), whichever is **earlier**.

In case of interest on compensation awarded by Motor Accident Claims Tribunal, tax is to be deducted at the time of payment.

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Thus, the statement given in the question is false and hence, option (b) is the correct option.

Q4. As per section 40(a)(ia),any sum payable to a resident, which is subject to deduction of tax at source, would attract 70% disallowance while computing income chargeable to tax under the head "Profits and gains of business or profession if no tax was deducted at source while making such payment or after deducting the same it was not credited into the account of Central Government before due date of filing of return.

(a) True (b) False

Correct answer : (b)

Justification of correct answer :

As per section 40(a)(ia), any sum payable to a resident, which is subject to deduction of tax at source, would attract 30% disallowance while computing income chargeable to tax under the head "Profits and gains of business or profession":

- If tax is deductible at source but is not deducted.
- If tax is deducted during the year, and the same is not paid on or before the due date of filing of return of income specified under section 139(1).

Thus, the statement given in the question is false and hence, option (b) is the correct option.

Q5. As per section 194J, tax is to be deducted in respect of _____.

(a) Interest other than interest on securities paid to resident

(b) Insurance commission paid to resident

(c) Fees for professional/technical services paid to resident

(d) Payment made to resident contractors

Correct answer : (c)

Justification of correct answer :

As per section 194J, tax is to be deducted in respect of the following payments to a resident:

a) Fees for professional services, or
b) Fees for technical services, or
c) Director's fees (not in the nature of salary), or
d) Royalty, or
e) Any sum referred to in clause (va) of section 28 [i.e. non-compete fee].

Thus, option (c) is the correct option.

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Q6. No tax is to be deducted if the amount of professional fees or technical fees or royalty or non-compete fees (excluding director's fees) paid during the financial year does not exceed _____

(a) Rs. 5,000 (b) Rs. 20,000

(c) Rs. 30,000 (d) Rs. 50,000

Correct answer : (c)

Justification of correct answer :

No tax is to be deducted if the amount of professional fees or technical fees or royalty or non-compete fees paid during the financial year does not exceed Rs. 30,000. However, there is no such limit in case of director's fees.

Thus, option (c) is the correct option.

Q7. As per section 194J, tax is to be deducted @ 10% from the payments covered under section 194J.

(a) True (b) False

Correct answer : (a)

Justification of correct answer :

As per section 194J, tax is to be deducted @ 10% from the payments covered under section 194J.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

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Q8. Tax is to be deducted under section 193 if any person pays any income by way of interest on securities to a resident as well as to a non-resident.

(a) True (b) False

Correct answer : (b)

Justification of correct answer :

Tax is to be deducted under section 193 if any person pays any income by way of interest on securities to a resident. Thus, the provisions of section 193 are not applicable in case of payment of interest on securities to a non-resident. Payments made to non-residents are also covered under TDS mechanism, however, tax in such a case is to be deducted as per section 195.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

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