FOR MEMBERS / SUBSCRIBERS / VOL. 27 - NO. 6 DECEMBER 2023

# C.V.O.C.A'S NEWS & VIEWS

## From President's Desk...

***Dear Professional Colleagues and Readers,***

Wishing everyone a very happy Diwali and prosperous new year. The month of November was a joyful and celebrative month as CVOCA. Our members went for a Family Picnic at Satpura Tiger Reserve, Madhai, Madhya Pradesh for two nights- three days in which 140+ participants comprising of 60+ members individually or with family participated. Madhai is a small jungle town located in the heart of Madhya Pradesh which is known for its scenic beauty, wildlife, pristine form. It is paradise for nature lovers and botanical scientist.

India produced top-notch performances at the ICC Cricket World Cup 2023 but their dream run came to an end after a six-wicket defeat to Australia in the final at the Narendra Modi Stadium in Ahmedabad on November 19, 2023. Australia continued their exceptional record in the Cricket World Cup history on their way to claim their sixth title.

There was a sigh of relief globally due to four-day Gaza truce agreed by Hamas and Israel takes effect for the first time after seven weeks of war in which more than 14,800 people were killed in Gaza and 1200+ in Israel since October 7. Thirty-nine Palestinian prisoners held in Israeli jails and 13 captives in Gaza expected to be released in last days of the month, with aid trucks also crossing into Gaza.

**At CVOCA**

Program Committee had successfully organized a public Program on, "Recovery of Business Dues and Debt" by speakers Adv Hashmukh Shah and Adv Lalit Jain in which 150+ participants attended physically. The session was uploaded on You tube channel of CVOCA. The session was insightful which provided practical solutions to real life issues faced by business community and public at large.

We motivated our members to attend the study circles and conferences such as Glopac organized by ICAI at Gandhinagar, important aspects of Code of Ethics organized by Dadar East CPE Study Circle, etc.

Publication and Training Committee with Mission Gujrati has jointly organized a Virtual Gujrati Language Learning Crash Course with the object to motivate our members to learn the language. It helps to connect to our very own culture, develops our personality and helps in developing IQ level, convincing skills and expression of self. We received good response for enrollment from our members

Capital Market Committee had organized a session to understand the fundamentals of Chemical Sector on November 24, 2023 in which Equity Research Analyst Mr. Rahul Veera spoke on the subject flawlessly and was an insightful session.

Membership and Recreation Committee has also announced a Box Cricket Tournament on December 9, 2023 at Vasant Dada Patil Turf in which more than 125 participants have taken part. I encourage our members and their families to take active participation in the same.

Our team at CVOCA is continuously working and planning many events and publications for upskilling and learning of our members, students and community at large so I would request all of you to take participate and stay connected with us.

*Thank you all..... Always in Gratitude*

Jeenall

CA Jeenal Savla

**December 1, 2023**

304, Jasmine Apartment, Dada Saheb Phalke Road, Dadar (East), Mumbai - 400 014. Tel.: +91-9167928622 | E-mail : info@cvoca.org | Website : www.cvoca.org
Follow us on : @cvocain @CVOCA Association @cvoca http://bit.ly/cvocayt





## Managing Committee 2023 - 2024

| | | |
|---|---|---|
| President | : | CA Jeenal Savla |
| Vice President | : | CA Vinit Gada |
| Secretary | : | CA Harsh Dedhia |
| Treasurer | : | CA Gautam Mota |
| Jt. Secretary | : | CA Parin Gala |
| Imm. P. P. | : | CA Ameet Chheda |
| Members | : | CA Priti Savla |
| | | CA Umang Soni |
| | | CA Girish Maru |
| | | CA Chintan Rambhia |
| | | CA Viral Satra |
| | | CA Hetal Gada |
| | | CA Nihar Dharod |
| | | CA Deep Chheda |
| | | CA Chintan Saiya |

## News Bulletin Committee 2023 - 2024

| | |
|---|---|
| Chariman: | CA Ameet Mahendra Chheda |
| Advisor: | CA Sanjeev Dungarshi Lalan |
| Convenor: | CA Chintan Tarun Rambhia |
| Jt. Convenor: | CA Nihar Suresh Dharod |
| | CA Grishma Nirav Saiya |
| Invitee/Members: | CA Kirit Premji Dedhia |
| | CA Ashwin Bhavanji Shah |
| | CA Chintan Nitin Dedhia |
| | CA Bhavin Mavji Dedhia |
| | CA Hetal Kewal Malde |
| | CA Pratik Girish Maru |
| | CA Deepesh Talakshi Chheda |
| | CA Kushal Devendra Dedhia |
| | CA Vatsal Nitin Shah |
| | CA Kruti Vinit Sangoi |
| | CA Ankur Kishor Gada |
| | CA Pooja Vatsal Shah |

**Disclaimer:** The views / opinions expressed in the articles are purely of the writers. The readers are requested to take proper professional guidance before abiding the views expressed in the articles. The publisher, the editor and the association disclaim any liability in connection with the use of the information mentioned in the articles.

# "SAM MANEKSHAW'S LEGACY: INSTILLING MILITARY DISCIPLINE FOR PROFESSIONAL EXCELLENCE"

CA Ameet Chheda
Email : amit@dalaldoctor.com

## FROM THE DESK OF CHAIRMAN

### Introduction

Recently I had a chance to see an interesting upcoming movie on India's finest miliary leader and field marshal, Sam Manekshaw. I took this as an opportunity to narrate his biography from what-ever I have learned about his over the year… In fact, I believe, we all professionals should also have a discipline similar to being practised by the military.

Field Marshal Sam Manekshaw stands as a towering figure known not only for his strategic brilliance but also for his emphasis on unwavering discipline.

### Understanding Sam Manekshaw's Leadership

His leadership style was characterized by a firm commitment to discipline as a bedrock principle. His ability to inspire and lead troops through the intricacies of complex military operations was grounded in a disciplined approach. The military, under his command, became a well-oiled machine, where each component functioned with precision—a testament to the transformative power of discipline.

### Early life

Sam Manekshaw, often referred to as "Sam Bahadur," was born as Sam Hormusji Framji Jamshedji Manekshaw on April 3, 1914, in Amritsar into a Parsi family. In early age, he was commissioned into the British Indian Army. He served in various capacities during World War II, including in the Burma campaign against the Japanese.

Post independence, he played a pivotal role in the integration of princely states into the Indian Union after independence in 1947.

He was quite famous for his wit and sense of humor. His quick wit and ability to inject humor even in serious situations were well-known among his colleagues. His humorous anecdotes and quotes have become legendary, adding a unique dimension to his public persona.

I somewhere read, during an official visit to China, he was introduced to a Chinese general who, upon learning that he was from India, remarked, "You know, we fought a war with you in 1962 and we defeated you."

Without missing a beat, he responded with his characteristic humor, saying, "That may be true, but it takes a great nation to lose a war and come back in such a short time for a friendly visit."

This response not only defused any tension in the situation but also showcased his ability to handle delicate diplomatic matters with a touch of humor.

### Indo-Pak Wars:

His leadership during the 1947 Indo-Pak War over Kashmir and the 1971 Bangladesh Liberation War was pivotal. He was appointed as the Chief of the Army Staff during the 1971 war, and under his command, the Indian Army achieved a decisive victory leading to the creation of Bangladesh. His actions during critical moments in India's history, such as the 1971 Bangladesh Liberation War, reflected a deep sense of nationalistic duty.

His strategic decisions were guided by a commitment to the security and welfare of the nation. In fact to maintain discipline and reputation of Indian army, he had strict instructions forbidding looting and rape and stressed the need to respect for refugees.

**Post-Retirement:**
After his retirement too, he was often sought after for his views on military and strategic matters.

**Awards and Honors:**
He received several awards and honors for his distinguished service, including the Padma Bhushan and the Padma Vibhushan, two of India's highest civilian awards.

**Death:**
Sam Manekshaw passed away on June 27, 2008, at the Military Hospital in Wellington, Tamil Nadu, India, at the age of 94.

Owing to the controversies in which he was involved post-retirement, it was reported that his funeral lacked VIP representation, and no national day of mourning was declared which, while not a breach of protocol, was not customary for a leader of national importance. The funeral too, was poorly represented, with just minister of state for defence Pallam Raju attended it. However in a rare gesture, the government took a decision to give a state funeral

His legacy extends beyond his military achievements; he is admired for his integrity, courage, and contributions to the nation. His nickname "Sam Bahadur" reflects the deep respect and affection with which he is remembered by the people of India.

**Applying Military Discipline to CA Life**
Time Management: In the military, deadlines are not mere suggestions; they are imperatives. Similarly, in the world of Chartered Accountancy, meeting regulatory deadlines and client expectations is crucial. Military-inspired time management skills can help CAs prioritize tasks efficiently and navigate the demanding timelines inherent in financial audits.

Attention to Detail: Much like military planning, financial analysis demands meticulous attention to detail. A disciplined focus on accuracy can uncover critical insights and mitigate risks, contributing to the overall success of financial endeavors.

Teamwork and Collaboration: The military thrives on the synergy of teams working towards a common goal. In CA firms, collaboration is equally vital. By fostering a culture of teamwork and shared responsibility, CAs can enhance their effectiveness in addressing complex financial challenges.

Accountability: The military instills a deep sense of accountability within its ranks, a trait equally valuable for Chartered Accountants. Taking ownership of one's responsibilities and decisions is integral to maintaining trust with clients and stakeholders.

**Conclusion**
As we pay homage to Sam Manekshaw's legacy, let us recognize the enduring value of military discipline in the world of Chartered Accountancy. By embracing the principles of time management, attention to detail, teamwork, and accountability, CAs can elevate their professional standards and contribute to a culture of excellence. In this symbiotic relationship between military discipline and CA life, the seeds of unparalleled success are sown.

***Thank you all..... Always in Gratitude***

*CA Ameet Chheda*

# ISSUES UNDER SECTION 194R OF INCOME TAX ACT, 1961

CA Mahendra Gala
Email : mbgalaca@gmail.com

The Finance Act, 2022 has introduced a new section 194R 'Deduction of tax on benefit or perquisite in respect of business or profession'. The section as it stands in the statue is as follows…

*(1) Any person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession, by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent of the value or aggregate of value of such benefit or perquisite:*

*Provided that in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite shall, before releasing the benefit or perquisite, ensure that tax required to be deducted has been paid in respect of the benefit or perquisite:*

*Provided further that the provisions of this section shall not apply in case of a resident where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to such resident during the financial year does not exceed twenty thousand rupees:*

*Provided also that the provisions of this section shall not apply to a person being an individual or a Hindu undivided family, whose total sales, gross receipts or turnover does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided by such person.*

*(2) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.*

*(3) Every guideline issued by the Board under sub-section (2) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person providing any such benefit or perquisite.*

*Explanation[1]. – For the purposes of this section, the expression "person responsible for providing" means the person providing such benefit or perquisite, or in case of a company, the company itself including the principal officer thereof.]*

*Explanation [2]. – For the removal of doubts, it is clarified that the provisions of sub-section (1) shall apply to any benefit or perquisite, whether in cash or in kind or partly in cash and partly in kind.*

* Explanation 1 & 2 were inserted with effect from 01-04-2023 (Finance Act, 2023).

## BACKGROUND:

As per the Memorandum explaining the Finance Bill, 2022 the intent behind insertion of Section 194R is to bring into the tax net, the benefits or perquisites which are taxable under Section 28(iv) and which in many cases may not get reported in the return of income by the recipients. The Hon'ble Apex Court in the case of Commissioner v. Mahindra and Mahindra Ltd. [2018] 404 ITR 1 has held that in order to invoke the

provisions of Section 28(iv) of the Act, the benefit which is received has to be in some other form rather than in the shape of money. Therefore, in case where benefit or perquisite is in cash, the provisions of Section 28(iv) would not get triggered.

However, after the insertion of Explanations to the Section, with effect from 01-04-2023, the cash benefit or perquisites are now covered under the radius of Section 194R.

It may be noted that, erstwhile, the circulars were issued by CBDT under the powers given by Section 119 of the Act, which was to give instructions and directions to other income tax authorities for proper administration of the act. These circulars are binding only on the tax departments.

However, under recent trends Section 194R(2) has empowered the Board to issue guidelines for the purpose of removing difficulties. As per sub-section (3), these circulars and guidelines issued by CBDT under Section 194R(2), are binding on the income-tax authorities and the person providing the benefit or perquisite.

Under the powers conferred under Section 194R(2), the CBDT has issued Circular No.12 dated 16th June, 2022 providing "*Guidelines for removal of difficulties under sub-section (2) of section 194R of the Income Tax Act, 1961*" and Circular No.18 dated 13th September, 2022 providing "*Additional Guidelines for removal of difficulties under sub-section (2) of section 194R of the Income-tax Act, 1961*". These circulars have tried to clarify certain doubts, but have left many ambiguities.

**This article highlights certain ambiguities or practical issues, which may require more clarification from the authorities concerned, till then the taxpayers will have to face many difficulties and may invite litigations.**

## CASH BENEFIT OR PERQUISITE AND SECTION 194R:

- Looking at the intent, from the Memorandum to Finance Bill, 2022 and wordings of Section 194R, it is very clear that scope of section was to bring benefit or perquisite in kind, which is taxable under Section 28(iv) of the Act, under the ambit of TDS provision. Thereafter, FAQ 2 of Circular 12 (2022) has widened the scope of Section 194R.

  The Section 194R as enacted in the statue, circulars issued by CBDT and the judicial pronouncement by Supreme Court in the case of Commissioner v. Mahindra and Mahindra Ltd. [2018] 404 ITR 1, can it be challenged that the cash benefit or perquisite received during FY 2022-23, is out of the scope of Section 194R?

  In my humble view, one can take such a position and argue that the enlargement of scope of Section 194R is by issuances of clarifications under the circulars and is not sufficiently backed by the statue. The amendment to Section 194R, inserting explanations to section, widening the scope, came into effect from 01-04-2023.

## WAIVER OR ONE TIME SETTLEMENT OF LOAN WITH BORROWERS BY SPECIFIED PERSONS:

The waiver or one time settlement of loan was referred in FAQ 3 of Circular 12 (2022). Further, the guidelines given under FAQ 1 of Circular 18 (2022), on waiver or one time settlement of loan with borrowers safeguards the following:

- ✓ One-time loan settlement with borrowers;
- ✓ Waiver of loan granted on reaching settlement with the borrowers;
- ✓ Lender should be the one specified in the circular.

The above safeguards in the circular are providing exclusions to specified persons from making TDS under Section 194R. However, it does not cover the other persons and different situations which still, I feel, would be requiring clarifications; which are dealt here below:

- Whether the circular applies only on arrival of settlement between the two parties, i.e, the lender and the borrower of the loan?

  The Circular provides for 'one time loan settlement' between the lender and the borrower. For the assessee to claim the benefit of Circular, the loan must be settled and there exist a Settlement Agreement, vouching for the same.

- Whether it applies to writes-off of 100% of the amount in absence of any settlement?

  The Circular clarifies on loan settlement or waiver by the bank but does not clarify any 'write-off of loan or any accounting write-off' in books. In case when there is write-off of any amount, on plain reading of Section 194R, the same would amount to benefit or perquisite to the other party, on his part of satisfying his obligation. One view could be that such write-off, having the colour of benefit or perquisite, would attract the provisions of Section 194R.

  On the contrary, technically, the lender retains his right to recover intact and accordingly, there is no benefit or perquisite provided. The benefit or perquisite should be a 'real benefit or perquisite' and not mere 'accounting benefit or perquisite' and hence, provisions of Section 194R does not apply. In order to avoid litigation, this requires clarification from CBDT.

- Whether restructuring of a loan, viz….

  1) Moratorium period granted for repayment of loan, or
  2) Reducing rate of interest, or
  3) Assignment or discounting of loan at discount to third party, or
  4) Conversion of loan to equity, or
  5) Settlement of loan for some other asset, etc.

  are subject to provisions of Section 194R?

  The provisions of Section 194R are attracted if there exists 'any benefit or perquisite'. Restructuring or modifications or conversion of loan, per se does not lead to any benefit or perquisite, and therefore the provisions of Section 194R does not get triggered. However, the wordings of circular provide for exclusions to one time loan settlement, thereby giving different interpretations. Thus, in order to avail the benefit of exclusion, assessee may face challenges in future.

- Whether settlement by operational creditors and / or financial creditors under Insolvency & Bankruptcy Code attract deduction of tax under Section 194R?

  Circular 18 (2022) is restricted only to a waiver of loan and that too by specified persons. In case of settlement under the Insolvency & Bankruptcy Code, financial creditors may avail the benefit of this Circular if they fall within the category of specified persons. However, there is no such benefit provided to operational creditors or financial creditors (who are other than the specified persons under the circular). Thus, there is unjust discrimination which can create differences of opinion.

- Whether waiver of interest on loan by specified persons be subject to tax under Section 194R?

  Circular 18 (2022) makes reference to waiver of 'Loan' and does not provide any clarification as to waiver of 'interest on loan'. In these circumstances, it can be contended that unpaid interest on loan is also a debt accrued and can thus be deemed to be loan and hence should fall within the exclusions of Circular.

- Whether write-off of loans or trade receivables written-off as bad debts are subject to deduction of tax under Section 194R?

  The Circular 18 (2022) does not provide clarity on write-off of loans or write-off of trade receivables as bad debts. However, the purpose of Section 194R is to tax benefit or perquisite arising in a transaction. Since, write-off does not intend to any benefit or perquisite to the other party, the exclusions provided under the circular ought to be extended in such cases. Further, writing of bad debts is preferred by the lender, then to settlement of dues as it retains the right to recover the debt in future.

- Whether waiver of interest charged on late payments from debtors, subsequently written-off, attracts provisions of Section 194R?

  The circulars do not clarify for waiver of interest charged on outstanding receivables pursuant to settlement or understanding with customer. One can argue that the said waiver of interest charged, which is subsequently written off, is not a benefit or perquisite and no tax should be deducted under Section 194R. However, this requires detailed clarification.

Some of the other issues are:

- Whether loan credit given to the credit card holders & interest receivable thereon is covered under section 194R, if such credit and interest thereon is settled with the recipient?

- The circular provides exclusions to specified persons only, however there is no clarity as to loan given by companies or other persons?

- There could be a situation of waiver or settlement of loan by holding company for loans given to their subsidiary. How should the same be dealt with?

- Whether inter-corporate deposits or loans waived or written-off are also covered under these exclusions?

  Where the circulars are not covering the situation, on standalone or on one-to-one basis, the questions will have to be answered on the merits of provisions of Section 194R of the Act.

  The circulars should have dealt with 'in principle' rather than carving out the exclusions which would have better addressed more questions or issues.

## TDS ON REIMBURSEMENT:

Reimbursement, as we all know, means a case where the payer reimburses the recipient for expenditure incurred on behalf of the payer. Section 194R applies only when the benefit or perquisites is provided by the recipient under business or profession. In case of reimbursement, when exact amount of expenditure is paid back to recipient, there is no question of any benefit or perquisite provided by one person to another.

TDS should not be deducted on reimbursement as upheld in following decisions:

- ✓ Zephyr Biomedicals v JCIT [2020] 122 taxmann.com 124 (Bombay)
- ✓ PCIT y National Health & Education Society [2019] 103 taxmann.com 286 (Bombay)

FAQ 7 of Circular 12 (2022) and FAQ 2 of Circular 18 (2022), provides for test to be carried out as to whether the expenditure reimbursed is the liability of the person carrying on business or profession (i.e. service recipient) which is met by the other person (i.e. service provider).

For example: Customs duty, other import charges, etc. paid by C&F agent on behalf of his client who is an importer of goods. In this case, the expense is of service recipient and is paid by service provider in the course of disseminating his services and therefore, it does not amount to any benefit or perquisite.

Contrary to the above, one will have to keep in mind that, if the expense incurred, in any case, was expense of service provider (& not of service recipient) and the said expense is not a separate expense incurred during the course of service provided, then, in substance (irrespective of the terms agreed upon) such expense is liability of service provider and not of the service recipient and therefore the exclusion can be denied.

Now, the concept of 'pure agent' is introduced for the first time in TDS and thereby under the Income Tax Act and this may open up a different set of questions under different provisions of Income Tax, wherever the concept of 'Principal-Agent' is followed.

"*Pure agent*" *means a person who.*….(Similar to GST Law)

*a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*

*b) neither intends to hold nor holds any title to the goods or services or both, so procured or provided as pure agent of the recipient of supply;*

*c) does not use for his own interest such goods or services so procured; and*

*d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.*

As per circular, to establish the status of pure agent, the supplier will have to satisfy the following additional conditions:

*i) the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;* (Authorisation condition)

Here, Authorisation should be prior to expenditure incurred by the service provider.

In case of Leave and License agreement, where electricity, water, etc. is consumed by tenant but such expense of lessee (tenant) is paid by lessor, prior to authorisation obtained, then benefit of pure agent is not available. [Indiana Engineering Works (Bombay) (P.) Ltd.: AAR - Maharashtra]

*ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service;* (Invoicing condition)

In case composite invoice is raised, 'reimbursement' should be separately specified and indicated in the same invoice.

*iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.* (Additional Supply condition)

It means that there has to be additional supply of goods or services by service provider for which he is to incur expense and later on to get it reimbursed. In case, if the service provider is liable to pay charges, which he was supposed to pay for providing his services, then that expense is of service provider & not of service recipient and therefore, such reimbursement of expense may face challenges and pure agent concept won't rescue from application of provisions of Section 194R.

If all the above conditions of pure agent are fulfilled, then the expense incurred by such an agent will be on behalf of principal and will not attract the provisions of Section 194R. However, in case of non-fulfilment of any one of the conditions stated herein above may attract the provisions of Section 194R and the provisions Section 201 (1) and Section 201 (1A) of the Act.

For example: A CA enters into an agreement with the client where it is agreed that out-of-pocket expense is to be borne by the client, over and above the amount payable as professional fees. Then such out-of-pocket expenses shall not be the basis to determine the status of pure agent, when no two separate sets of services are involved and such ancillary services are required by the CA to render his professional services. (The expense related to such ancillary services is supposed to be incurred by the professional in execution of his professional services). Therefore, by virtue of law, one cannot grant the other person the status of pure agent. So, one should not principally state the ancillary services for pure agent, just because reimbursement is stated.

- Whether non-compliance of procedural aspects or some conditions (say absence of contractual agreement) attract TDS under Section 194R?

  The Circular clarifies that it is must for an assessee to satisfy all the conditions to qualify as 'pure agent' and then only claim the benefit of circular. However, I believe that mere non-compliance of certain procedural aspects should not be harsh on the part of the assessee and deny him the benefit as provided in circular. This requires some clarification to avoid challenges in future.

  Following are the illustrations of person to be held as 'pure agent':

  - ✓ Customs broker paying port fees, port charges, custom duty, dock dues, transport charges etc. on behalf of owner of the goods.
  - ✓ C&F agent paying expenses such as freight, godown charges, etc. and later on reimbursed by principal.

  Following are the illustrations of person not to be held as 'pure agent':

  - ✓ Applicant is engaged in service of supply of labour and engages manpower & assumes responsibilities under various Acts. Applicant invoices for manpower supply cost on actual basis.
  - ✓ Applicant provides housekeeping services to hospitals. The hospitals pay service fees and reimburses supervisors salaries and wages on actual basis.

## INTERPLAY BETWEEN SECTION 194R AND SECTION 194J/SECTION 194C:

As per question 30 of Circular No. 715 dated 8th August, 1995; it is clarified therein, that, whenever service provider raises a bill for their service fees along with reimbursement of out-of-pocket expenses, then TDS under Section 194J or under Section 194C (for services rendered by technical professionals) should be done on gross amount i-e. including reimbursement of expenses. This is for the reason that the applicability of TDS under these sections is based on the wordings used… 'any sum' payable to payee is subject to TDS.

Introduction of Section 194R requires TDS to be done on any benefit or perquisites `provided' to any resident during course of business or profession. However, FAQ 2 of Circular 18 (2022) clarifies that, in case of such reimbursement of expenses paid to 'pure agent' (as explained here in above), there is no need to deduct TDS on such reimbursement of expense payable to pure agent.

Circular 18 (2022) merely states that if tax is deducted on gross amount (i-e. even on reimbursement) under Section 194J or Section 194C, then no tax is required to be deducted under Section 194R. However, it does not give order of priority to apply Section 194J, Section 194C over Section 194R.

Therefore, issue arises that….

- Is it possible for payer to deduct TDS under Section 194R only on service fees and exclude out-of-pocket expenses claiming exclusions on the basis of pure agent rather than deducting TDS under Section 194J or Section 194C on gross amount?

  In my view, in the absence of clarification of order of priority to apply Section 194J / Section 194C over Section 194R, one can claim this benefit.

  Also, illustration given under Rule 33 of GST Valuation Rules, 2017 states as under….

  *Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, the registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.*

  The example is in support of this argument and being part of the other legislation and therefore such a proposition cannot be denied.

  Another proposition could be that, when there are two components of service provided, viz:

  - Service fees charged for professional services rendered and
  - Reimbursement of expenses

  one can argue, that in case of reimbursement of expense there is no benefit or perquisite, under the bonafide belief that service provider is acting as pure agent, and therefore no TDS is applicable on such reimbursement under Section 194R, taking support of the clarifications provided under the circulars.

  At the same, TDS can be done on service fees for professional services rendered under Section 194J or Section 194C (for technical professionals), as the case may be. However, this requires clarification to avoid litigations in future.

## DEALERS OR BUSINESS CONFERENCE:

As per FAQ 8 of Circular 12 (2022), the expenditure pertaining to dealer or business conference would not be considered as benefit or perquisite for the purposes of Section 194R, in a case where such conference is held with the prime object to educate such dealers or customers about the aspects specified therein.

FAQ 4 of Circular 18 (2022) further clarifies that, the expense on conference would not be considered as benefit or perquisites in following cases:

1) It is not necessary that all dealers are required to be invited in a dealer or business conference.
2) If the dealers arrive only one day before and leave immediately or one day after the end of dealer or business conference.
3) Dealers or business conference expense need to be classified among each participant using reasonable allocation key.

However, in case of group activities, there are multiple dealers & identifying such benefit or perquisite to actual recipient is practically difficult and reasonable allocation is not possible. In such a case, the circular clarifies that the benefit/perquisite provider may at his option not claim the expense to avoid disallowance.

However, taxpayer will always consider claiming the expense which would attract disallowance under Section 40(a)(ia) at 30% of expense unlike 100% disallowance under alternative provided in the circular. But, this may invoke provisions of Section 201(1) and Section 201(1A). However, Person claiming benefit of Section 10AA will still opt for the alternative provided by the circular, which is beneficial to him.

In-spite of the clarifications provided by the circular, following issues may still arise:

- Where it is difficult to match such benefit or perquisite to each participant using a reasonable allocation key driver, is wisdom of assessee in determination of difficulty, is subject to scrutiny?
- Does the circular mandate the assessee to document the difficulties it faced, in determination of reasonable allocation key, so as to justify option selected?
- Can assessee opt 'pick and choose option' for each of the conference out of the various conferences held during the period under consideration?

The issues require more clarifications, so as to avoid inquiries and challenges in future.

**GIFT OF ASSET AND SECTION 194R:**

FAQ 5 of Circular 18 (2022) clarifies that benefit or perquisites received, in the form of asset, shall be offered as an income, in the Return of Income of the recipient, then it would be treated as "actual cost" of the asset for the purposes of Section 32. Also, the assessee, on fulfilment of other conditions as applicable, can claim depreciation.

However, following practical difficulties still arise…..

- The recipient of gift would not have any documentary evidence to prove the actual cost of the asset except the income offered in his Return of Income.
- The valuation of asset will be a real challenge to the recipient and may attract litigation.
- In case when the asset is gifted and TDS is paid additionally by the donor of asset, then for the purpose of Section 194R, the value of benefit or perquisite needs to be grossed up. In this scenario, what would be the actual cost of the asset in the hands of the recipient?

**EMBASSY/HIGH COMMISSIONS AND SECTION 194R:**

FAQ 6 of Circular 18 (2022) clarifies that provisions of Section 194R would not apply on benefit or perquisites provided by Embassy or High Commissions, etc.

**BONUS SHARES AND RIGHTS SHARES**

FAQ 7 of Circular 18 (2022) clarifies that the tax under Section 194R is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested, as defined under Section 2(18) of the Act.

- Here, the primary question arises that whether issuance of bonus shares or rights shares are in the course of business or profession?

Some of the other issues are:

- Whether the benefit of exclusion from Section 194R is limited to company in which the public are substantially interested or applies to all the companies?
- Whether Section 194R applies to issue of shares on a preferential basis?
- Whether buy-back of shares at less than FMV attract provisions of Section 194R?

## DIFFICULTIES IN CLAIMING TDS CREDIT AGAINST INCOME NOT CHARGEABLE TO TAX:

FAQ 1 of Circular 12 (2022) and Para 7 of Circular 18 (2022), has clarified that the deductor of tax is not required to analyse the taxability of the benefit or perquisite in the hands of the recipient while deducting tax under Section 194R. Accordingly, there may be a situation where taxes are deducted under Section 194R but the corresponding amount is not taxable in the hands of the recipient.

Section 199 read with Rule 37BA states that credit for taxes deducted at source shall be available to the assessee in respect of the assessment year for which such income is assessable. There has been no amendment in Rule 37BA, after the introduction of Section 194R as was done in case of Section 194N. This might lead to future litigations where the tax authorities might deny the TDS credit, where the corresponding income is not offered to tax. Proper guidelines should be provided to avoid any kind of hardships to the deductee in claiming credit of taxes deducted.

## VALUATION OF BENEFIT OR PERQUISITE:

FAQ 5 of Circular 12 (2022) clarifies that the valuation of benefit or perquisite should be on Fair Market Value (FMV), except where the purchase price and price charged to its customers, if the benefit provider manufactures such item, is available.

However, further clarification is required on the following issues…

- Basis of the calculation of FMV under various scenarios.
- When manufacturer supplies goods to distributors as well as retailers at different prices, which price should be considered for Section 194R?
- In the case of services, one may face challenges to arrive at the FMV of services provided.

In the absence of any clarification, different approaches adopted by the taxpayer may lead to anomalies and litigations in future.

The above list of issues is not exhaustive or conclusive, there could be many more issues under Section 194R which requires early redressal by the legislature.

## CONCLUSION:

The introduction of Section 194R has surely increased the compliance burden for the taxpayer. Further, even after issuance of circulars and guidelines by CBDT, there are various areas which are not yet settled, and more clarification is required on the same. Hence, the taxpayer will have to ensure due care in taking positions and complying with the provisions of Section 194R of the Act.

*Disclaimer: The views presented herein are for better understanding the subject, person using the same is advised to confirm with their professional consultant and look into circulars, guidelines and judicial pronouncements before acting upon the same. The author does not carry any responsibility for the same.*

# INTERPLAY BETWEEN TDS U/S. 194Q AND TCS U/S. 206C(1H)

CA Kunthan Gada
Email : kunthan.gada@gmail.com

To understand the interplay between TDS on Purchase of Goods u/s. 194Q and TCS on Sale of Goods u/s. 206C(1H), it is essential first to understand the Sections individually.

## 1. Section 194Q – TDS on Purchase of Goods:

- The Finance Act, 2021, introduced Section 194Q of the Income-tax Act, 1961, which is related to Tax Deducted at Source (TDS) on the purchase of goods and not to the provisions of services.

- Applicability:

  This Section applies to a buyer in the following cases:

  - A Buyer whose turnover or gross receipts or sales in the immediately preceding financial year was more than Rs. 10 Crores

    AND

  - A Buyer is responsible for making payment to a Resident Seller

    AND

  - Such payment is to be made for the purchase of goods of the value/aggregate of the value exceeding Rs. 50 Lakhs

    - Rate of TDS:
      Tax is to be deducted at source at the rate of 0.1% on the amount exceeding Rs 50 lakh in a financial year. In cases where the Seller fails to furnish PAN, TDS would be deducted at 5%.

    - When to Deduct TDS:
      TDS is to be deducted at the time of credit to the Seller or payment made to him, whichever is earlier.

## 2. Section 206C(1H) – TCS on Sale of Goods:

- Vide Finance Act, 2020, a new TCS provision was introduced with the insertion of sub-section (1H) to section 206C of the Income Tax Act, 1961. The said provision deals with TCS collection on the sale of goods.

- Applicability:

  This Section applies to a seller in the following cases:

  - Seller is engaged in the sale of any goods other than export goods; alcoholic liquor; tendu leaves; timber; scrap; motor vehicles; foreign remittance; etc

    AND

- Total sales/ gross receipts/ turnover from the business of the seller should exceed Rs. 10 Crores in the immediately preceding Financial Year

AND

- Value/ aggregate value of sale consideration for goods received from the buyer is more than INR 50 Lakhs.

- Rate of TCS:

  Tax is to be collected at source at the rate of 0.1% of the sale consideration exceeding Rs. 50 Lakhs. In cases where the Buyer fails to furnish PAN, TCS would be collected at 1%.

- When to Collect TCS:

  TCS is to be collected at the time of receipt of the amount from the buyer.

## 3. Interplay between Sec. 194Q and Sec. 206C(1H):

- TDS on Purchase of Goods u/s. 194Q was introduced in the Finance Act 2021 to cover those transactions that were left uncovered by TCS u/s. 206C(1H) which was introduced earlier in Finance Act 2020.
- These amendments have increased the compliance burden for the taxpayer as they impact the most basic transactions of the sale and purchase of goods.
- An interplay of the above Sections has added to the practical difficulties faced by the taxpayers entering into the above transactions, especially with the overlap between the TDS and the TCS provisions.
- Hence it is important to understand the Sections individually first before diving into the Interplay.
- The interplay comes into the picture when both the buyer and the seller have turnover exceeding Rs. 10 crores in the previous financial year and the transactions between these parties exceed Rs. 50 Lakhs in a financial year. In such cases both the Sections i.e. Sec 194Q and Sec 206C(1H) become applicable. It is not possible for the buyer to deduct TDS and the Seller to collect TCS on the same transaction at the same time.
- Circular No. 13 of 2021 provides clarification of this issue. The Circular explicitly mentions that when a transaction is within the purview of both Sections, the tax is required to be deducted under Section 194Q of the Act. The transaction will come out of the purview of Section 206C(1H) after the buyer has deducted the tax on that transaction.
- However, if for any reason tax has been collected by the seller under Sec 206C(1H) before the buyer could deduct any tax under Section 194Q, such transaction would not be subjected to tax deduction again by the buyer.
- The circular can be accessed and read at:

  https://incometaxindia.gov.in/communications/circular/circular_13_2021.pdf

- Let us understand the Individual Sections and their interplay with the following example:

| Particulars | Scenario 1 | Scenario 2 | Scenario 3 |
|---|---|---|---|
| T/o of Seller (In Rs. Crores) | 12 | 9 | 15 |
| T/o of Buyer (In Rs. Crores) | 8 | 17 | 18 |
| Sale/Purchase of Goods (In Rs. Crores) | 3 | 4 | 1 |
| Sales Consideration received/paid (In Rs. Crores) | 2 | 1.50 | 0.75 |

Answer the following for all three Scenarios:

i. Who is liable to deduct TDS or Collect TCS?

ii. Amount on which the tax needs to be deducted or collected

iii. Amount of tax deducted or collected

(Assume PAN of the buyer and seller is available and these are the first transactions for the year between the parties)

**Solution:**

Scenario 1:

i. Seller's turnover in the previous financial year exceeds Rs. 10 crores whereas the buyer's turnover doesn't. Therefore, the seller is liable to collect TCS u/s. 206C(1H).

ii. Seller has to collect tax on the amount of sales consideration received in excess of Rs. 50 Lakhs in a financial year. This being the first transaction of the year, seller will have to collect tax on the following amount:

| | |
|---|---|
| Consideration received | Rs. 2 crores |
| Less: Basic limit | Rs. 50 Lakhs |
| Amount on which tax will be collected | Rs. 1.50 crores |

iii. PAN of the buyer is available and hence the rate of TCS applicable is 0.10%. Therefore, tax collected = Rs. 1.50 crores * 0.10% = Rs. 15,000

Scenario 2:

i. Buyer's turnover in the previous financial year exceeds Rs. 10 crores whereas the seller's turnover doesn't. Therefore, the buyer is liable to deduct TDS u/s. 194Q.

ii. Buyer has to deduct tax on the amount of Purchase of goods in excess of Rs. 50 Lakhs in a financial year. This being the first transaction of the year, buyer will have to deduct tax on the following amount:

| | |
|---|---|
| Amount of Purchase | Rs. 4 crores |
| Less: Basic limit | Rs. 50 Lakhs |
| Amount on which tax will be deducted | Rs. 3.50 crores |

iii. PAN of the seller is available and hence the rate of TDS applicable is 0.10%. Therefore, tax deducted = Rs. 3.50 crores * 0.10% = Rs. 35,000

Scenario 3:

i. Buyer as well as the seller has turnover exceeding Rs. 10 crores in the previous financial year. This leads to provisions of Sec 194Q and Sec 206C(1H) both becoming applicable. But as per Circular 13 of 2021, when a transaction is within the purview of both Sections, the tax is required to be deducted under Section 194Q of the Act. Therefore, the buyer is liable to deduct TDS u/s. 194Q.

ii. Buyer has to deduct tax on the amount of Purchase of goods in excess of Rs. 50 Lakhs in a financial year. This being the first transaction of the year, buyer will have to deduct tax on the following amount:

| | |
|---|---|
| Amount of Purchase | Rs. 1 crore |
| Less: Basic limit | Rs. 50 Lakhs |
| Amount on which tax will be deducted | Rs. 50 Lakhs |

iii. PAN of the seller is available and hence the rate of TDS applicable is 0.10%. Therefore, tax deducted = Rs. 50 Lakhs * 0.10% = Rs. 5,000

# ANALYSIS OF SECTION 194O VS SEC 52 OF GST E-COMMERCE AND IT'S RELATED ISSUES

CA Ankur Gada
Email : pasadgada@gmail.com

Earlier, when there were no provisions on the E-Commerce transactions, small sellers who were selling their goods/ providing services through E-Commerce Operators, the transactions were out of the tax nets and taxes were being avoided. Also, the Non-Resident E-Commerce Operators made profits in India without paying any taxes. So, the Government introduced the following provisions in Income Tax. Although, similar provision already exists in the GST Act of collecting tax at source (TCS) by the E-Commerce Operator, such collection is limited only if the E-commerce operator is responsible for collecting the sale amount from the buyer.

## TCS Mechanism under GST:

Tax Collected at Source (TCS) under GST means the tax collected by an E-Commerce Operator from the consideration received by it on behalf of the supplier of goods, or services who makes supplies through the operator's online platform. TCS will be charged as a percentage on the net taxable supplies. The provision of TCS under GST is dealt under Section 52 of the CGST Act, 2017

## UNDER INCOME TAX ACT:

The Government of India introduced Section 194O (in Union Budget 2020) to address the issue, which mandated TDS on E-commerce transactions. According to Section 194-O, an e-Commerce operator is required to deduct TDS for facilitating any sale of goods or providing services through an e-Commerce participant. TDS on E-Commerce Operator under section 194-O is applicable from 1 October 2020.

## Who are E-commerce operators and participants?

**E-Commerce Operator**

An E-Commerce Operator is a person who owns, operates, or manages a digital/electronic facility for the sale of goods and services. He is responsible for making payments to the e-Commerce participant on such sales. Notable examples of E-Commerce Operators include Amazon, Flipkart and Myntra.

**E-Commerce Participant**

An E-Commerce Participant is a person who sells goods, services, or both through an electronic facility provided by an E-Commerce Operator. He must be a resident of India. For instance, various local clothing brand such as SASSAFRAS and BIBA are available on platforms like Amazon, Flipkart and Myntra.**Scope of Section 194O.**

E-Commerce operators should deduct ***TDS @1% on the gross amount of such sales or services or both*** at the time of credit of the amount of sale of goods, services, or both to the account of an e-commerce participant or at the time of making payment to an e-Commerce participant by any other mode, whichever is earlier.

But the word **"gross amount of sales"** has not been defined in this case. Let us understand it through an example. Suppose there is sales of Rs 30 lacs and returns of Rs 5 lacs, TDS should be deducted @1% on Rs 30 lacs and not on Rs 25 lacs.

**E-Commerce Participant being a resident individual or HUF:** E-commerce operator is not required to deduct TDS if the gross amount of sale of goods, services, or both during the previous year does not exceed Rs 5 lakh and if the e-Commerce participant has furnished his PAN or Aadhaar.

If the E-Commerce Participant does not furnish his PAN or Aadhaar, TDS must be deducted at the rate of 5%, as per provisions of Section 206AA.

For example, a proprietary firm M/s DEF (E-Commerce Participant) is selling its products through Amazon (E-Commerce Operator). Mr. A buys this product online from M/s DEF for Rs 100,000 on 1 October 2020. Amazon credits the account of M/s DEF on 1 October 2020, but the customer makes the payment directly to M/s DEF on 15 October 2020. Here, Amazon is required to deduct TDS @1% on Rs 100,000 at the time of credit to the party or making payment, whichever is earlier. In this case, TDS should be deducted on 1 October 2020.

**E-Commerce Participant being a non-resident:** As stated earlier, an E-Commerce Participant must be a resident of India. Thus, no TDS will be deducted if the participant is a non-resident. In Case of Non-resident Equalization Levy gets triggered.

## Purpose of Section 194O

The purpose of the introduction of Section 194O is to widen the TDS base by bringing e-Commerce participants under the tax. Of late, customers prefer digital platforms for buying or selling of goods and services because:

**From the sellers' perspective:** It requires less cost for creating the setup and less effort for the search of buyers.

**From the buyers' perspective:** Many options are available at one platform and the comparison of products becomes very easy. This has resulted in an increase in the number of E-Commerce users over a period of time. It is difficult to identify small sellers (E-Commerce Participants) who don't file their income tax returns. Thus, the government has enlarged the tax base to bring such E-Commerce Participants under the tax base.

In this article, we will first examine the confusion and difficulties that are caused to the stakeholders in the space of electronic commerce, because of this provision.

## Contradiction between Income Tax and GST

As it can be observed that TDS u/s 194O of Income Tax Act and Section 52 of CGST Act creates a liability on the electronic commerce operators to deduct TDS under the Income Tax Act and collect tax under GST Act respectively on the same transaction.

Example 1- Supplier Mr. A (Resident) makes the following inter-state sales through the E-Commerce Operator Amazon to its customers:

| Particulars | Amount (Rs) | Amount (Rs) |
|---|---|---|
| Taxable Value (Gross Sales) | 25,00,000 | |
| Add: GST @ 12% | 3,00,000 | 28,00,000 |
| Sales return | 5,00,000 | |
| Add: GST 12% | 60,000 | 5,60,000 |
| Net Sales | | 22,40,000 |

So, in the above case, Gross Sales is 25 lacs, Net Sales is 20 lacs which is net of Sales Returns and exclusive of GST. Hence, Amazon will deduct TDS under Income Tax Act @1% on 25 lacs which is Rs 25,000 and collect TCS under CGST Act @1% on 20 lacs which is Rs 20,000. Suppose Amazon Ltd charges 5% as commission which comes to Rs 1,00,000 (5% of 20 lacs) and charges 18% GST on it, total commission is Rs 1,18,000. There is no liability on Mr. A to deduct TDS under Section 194H on the commission it pays to Amazon. **since Section 194O overrules the entire chapter of TDS.**

Mr. A will be able to claim the TCS of Rs 20,000 in Electronic Cash Ledger and utilize/claim refund of the same. TDS of Rs 25,000 can be claimed in the Income Tax Return.

**Lets understand one actual practical scenario/issue faced by most of the ecommerce participant selling goods on more than one platform.**

The Practical difficulties faced by the E-commerce Participant is reconciliation of their TDS as per 26AS and actual sales as recorded in GST and Books of accounts.

For Example – Supplier B (Resident) makes supply of his goods on Amazon and Flipkart platform. Sales on Amazon platform are Gross Sales – Rs 450,000/-, Goods return – Rs 50,000/- Net Sales were Rs 400,000/-. Sales on flipkart are Gross Sales – Rs 300,000/-, Goods Return – Rs 100,000/- Net Sales were Rs 200,000/-.

In such scenario Amazon normally deducts TDS on Gross amount ignoring the Goods return i.e. 1% on 450,000 = 4500, whereas Flipkart deducts TDS on Net Sales amount i.e. 1% on 200,000 = 2000. All this TDS would be rightly be submitted by the E-Commerce Operator in their TDS returns which will be reflected in Form 26AS of E-Commerce Participant. It will create discrepancy while filing the income tax return by Mr. B since he will disclose his turnover on Net basis in his Income Tax Return whereas Turnover as per 26AS as disclosed by E-Commerce Participant would be higher being gross amount reported by Amazon.

In such a scenario, Mr. B has to reconcile his books of accounts vis a vis 26AS to clarify the difference arisen due to goods return mismatch since under automatic processing done by CPC, would mark such return defective due to turnover mismatch. However, in reality on submission of response against such defective notice, the CPC has ignored the response and adjusted the refund proportionately to cater the difference.

The difference is not just about 26AS and Income Tax Return but also notice could be issued for difference in turnover in GST vis a vis Income Tax return. Such mismatches may also create high chances of assessment by Income tax department.

During the assessment, assessee can place his points relating to goods return and provide the reconciliation of his books of accounts vis a vis 26AS. The same can be proven with reports generated by ecommerce operator from their portal and also TCS reports as declared by the same ecommerce operator on GST Portal wherein Sales net of returns are disclosed by same operator.

**Other ISSUES Faced by the assesses and E-Commerce Operators are as under:**

One of the key challenges for any E-Commerce Operator is to deduct TDS on all supply transactions, irrespective of whether the amount is being collected by the them or not.

The TCS provision under the GST Act provides that only when consideration for supply is collected by the ECO, TCS is required to be charged and collected by the E-Commerce Operator from the suppliers. Therefore, the GST law appreciated the business wisdom that wherever the E-Commerce Operator has been acting as a collection agent for the suppliers, the E-Commerce Operator should also collect TCS and deposit it with the Government exchequer and not otherwise.

**Service And Cancellation Charges:**

Cancellation of orders or return to the suppliers is also a regular phenomenon in the electronic commerce world. For example, online food orders placed through the E-Commerce Operator may be cancelled, inviting cancellation charges payable by the customer to the supplier.

However, a question arises as to whether such cancellation charges would attract TDS. It is interesting to note that this was highly debated issue under the erstwhile service tax regime and it would continue to trouble taxpayers even in the current GST regime. The revenue authorities have been contending that the cancellation charges should be treated as the consideration for 'agreeing to the obligation to refrain from an act or to tolerate an act'; on the other hand, the assesses have been contending that such cancellation charges are merely a compensation for the loss which cannot be treated at par with consideration and, accordingly, not taxable. It is interesting to note that it is still a disputed question under foreign VAT legislations as well.

Where any E-Commerce Operator has decided to litigate Service Tax or GST demand on cancellation charges, such E-Commerce Operator will have to revisit its litigation strategy in view of the new TDS provision introduced in the Finance Bill, 2020. It will be necessary for these E-Commerce Operators to reconcile their positions harmoniously considering the new TDS provision.

**Aspect Of Sales Returns**

For good reasons, sales return is a very common trade practice in the E-Commerce industry. Thus, tax laws should recognize the value of sales return similar to what is being provided under the GST Act, under, which there is a provision for issuance of credit note for sales return and reduction of tax liability.

Under the GST Act and regulations made thereunder, TCS is to be collected on the net taxable value of the supplies of goods or services after considering the value of sales returns. Section 194-O, on the other hand, does not provide any clarity as to whether TDS would apply on the net value after deducting the value of the sales return. This would also keep the E-Commerce Operator pondering whether to deduct TDS on the reduced value, particularly when the TDS has to be paid by the E-Commerce Operator from its own pocket.

## Discounts

Every industry has its unique way of offering discounts for business promotion. The E-Commerce Operators are not exception and they have also introduced innovative schemes for offering business discounts.

Normally, the E-Commerce Operators offer discount on the total value of supplies. Refer to the above online food transaction and consider the following scenario: As per the list price, a restaurant charges Rs. 100 for food and the E-Commerce Operator charges a delivery fee of Rs. 20. Thereby making the total amount payable by the customer as Rs. 120. However, the e-commerce operator provides various offer promotion codes and offer net discounted price of Rs. 80. The discount of Rs. 40 is applied to the E-Commerce Operator charges as well as to the restaurant charges. The said additional discount is being compensated by the E-Commerce Operator to the restaurants.

The question is whether the payment made by the E-Commerce Operator to the restaurant should be liable for the TDS on Rs 120, even though only Rs. 80 is received from the buyer. One can say that the amount paid by the E-Commerce Operator to the restaurant is a third-party consideration and, therefore, it should attract tax withholding. However, this will keep haunting the E-Commerce industry given the ever-changing business models.

## Conclusion:

These are the few practical and possible issues which might be faced by the E-Commerce Participant in their course of business. However, with the amount of fees in name of commission fee, platform fee, advertisement fee, sponsorship fees etc. which these E-Commerce Operators are charging to the participants (ranging from 30%-55%), from business perceptive it is practically difficult for small traders to have a profitable business considering all the other fixed and variable expenses incurred by them. Secondly, reconciliation of receivables after all the charges and deduction by E-Commerce Operator is practically difficult because there is no proper data available or provided by any E-Commerce Operator which would tally with our books of account and receipts in our bank statements.

# RECENT CHANGES UNDER TDS

CA Hardik Saiya
Email : hardik@kdsca.com

In the dynamic landscape of Indian taxation, the meticulous expertise of Chartered Accountants (CAs) plays a pivotal role, ensuring financial compliance and proficiency. Against the backdrop of the nation's evolving economic framework, recent alterations in Tax Deducted at Source (TDS) have emerged as a focal point for financial practitioners

This article endeavors to dissect the intricacies of the latest modifications in India's TDS landscape, empowering CAs with the knowledge to navigate the shifting terrain of fiscal responsibility with precision and acumen.

## TDS on transfer of digital assets - 194S

Under Budget 2022, Finance Minister Nirmala Sitharaman introduced Section 194S to impose TDS on the transfer of cryptocurrency and other Virtual Digital Assets (VDAs) with an objective to widen tax base and to bring these assets under the tax net. In the recent times, Virtual Digital Assets have gained tremendous popularity. Section 194S was effective from 1st July 2022. Further, amendments have been made in section 56 to provide for taxing of these assets by way of gift.

Section 194S requires the buyer of such digital assets to deduct 1% of consideration from any resident person. Such deduction is to be made at the time of credit of consideration to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier.

Non-applicability of TDS under section 194S – No tax is required to be deducted under section 194S, where the consideration is payable by the person referred to in column (2) of the table below and aggregate value of such consideration during the financial year does not exceed the threshold limit in the corresponding row of column (3) of the table below:

| Consideration is payable by | Threshold limit |
|---|---|
| Specified person, being an individual or a Hindu undivided family:<br>• whose total sales, gross receipts or turnover from his business or profession does not exceed ` 1 crore in case of business or ` 50 lakhs in case of profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred; or<br>• not having any income under the head "Profits and gains of business or profession". | ≤ Rs. 50,000 |
| Other than specified person mentioned in (i) above | ≤ Rs. 10,000 |

| Payer | Payee | Rate | Exemption Limit | Timing of Deduction |
|---|---|---|---|---|
| Any Person (Buyer) | Any Resident Person | 1% of Consideration | Rs. 50,000 for Specified Person<br>Rs. 10000 for Other Person<br>(in aggregate during FY) | • At the time of credit of consideration to the account of the resident or<br>• At the time of payment of such sum by any mode,<br>whichever is earlier |

Specified person, being an individual or a Hindu undivided family:

- whose total sales, gross receipts or turnover from his business or profession does not exceed ` 1 crore in case of business or ` 50 lakhs in case of profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred; or
- not having any income under the head "Profits and gains of business or profession".

**Section 194B: TDS on winning from lottery or crossword puzzle:**

This section applies to any income of winnings from lottery or crossword puzzle or card game and other game of any sort or gambling or betting of any form. From the money paid for winnings from the lottery, crossword puzzles, card games, and other similar incomes, the payer should deduct 30% TDS if the amount exceeds Rs.10,000. The TDS must be deducted when the winning amount is paid. Where winning is wholly in kind or partly in cash and partly in kind and, cash is not sufficient for TDS – such person shall not release winnings unless tax is paid in respect of such winning i.e. the person giving the winnings should take the amount of TDS from the receiver of gift then only pass on the winnings to such person.

| | |
|---|---|
| Payer | Any Person |
| Payee | Any Person |
| Rate | 30% |
| Exemption Limit | Rs. 10,000 (in aggregate during FY) |
| Income: | Any income of winnings from lottery or crossword puzzle or card game and other game of any sort or gambling or betting of any form. Online gaming not covered here. It is covered separately u/s 194BA. [FA 2023] |
| If no sufficient cash? | Where winning is wholly in kind or partly in cash and partly in kind and, cash is not sufficient for TDS – such person shall not release winnings unless tax is paid in respect of such winning. |

## Section 194BA: Winning from Online games:

The Definition of online game: Online game means a game that is offered on the internet and is accessible to the user through a computer resource including any telecommunication device.

This Section was introduced in Budget 2023 to cover all the online games in a separate section. Previously, such winnings from online games were taxable under Section 194B. It was made applicable from 1st July 2023. The payer shall deduct TDS at the rate of 30% from the **net winnings** of the user account. The payer shall deduct TDS at the end of financial year and not on payment or credit. In case of withdrawal of winnings during the Financial Year the payer must deduct TDS at time of such withdrawal in prescribed manner in Rule 133 of the Income Tax Rules. Only Rs. 10000 of winnings are exempt under this section.

Whenever there is payment to the user in kind or in cash, or partly in kind and partly in cash, which is not from the user account, the provisions of rule 133 shall apply to calculate net winnings by deeming that the money equivalent to such payment has been deposited as taxable deposit in the user account and the equivalent amount has been withdrawn from the user account at the same time and shall accordingly be included in amount withdrawn from the user account in calculation of net winnings.

| | |
|---|---|
| Payer | Any Person |
| Payee | Any Person |
| Rate | 30% on net winnings on his user account. |
| Threshold Limit | Rs. 10,000 (in aggregate during FY) |
| Income? | Winnings from any online game during the FY |
| If no sufficient cash? | Where net winnings is wholly in kind or partly in cash and partly in kind and, cash is not sufficient for TDS – such person shall not release winnings unless tax is paid in respect of such winning. |
| Timing of Deduction | The payer shall deduct TDS at the end of FY and not on payment or credit. In case of withdrawal of winnings during the Financial Year the payer has to Deduct TDS at time of such withdrawal in prescribed manner in Rule 133 of the Income Tax Rules |

## Difficulties of TDS on non-filers of ITR

In the budget of 2021, a new provision was inserted to provide for a higher tax deduction at source (TDS) rate from payments to persons who have not filed their returns of income (non-filers). Section 206AB becomes applicable to people who haven't filed their income tax returns. Section 206AB requires tax to be deducted at source under the provisions of this Chapter on any sum or income or amount paid, or payable or credited, by a person to a specified person, at higher of the following rates –

- at twice the rate prescribed in the relevant provisions of the Act;
- at twice the rate or rates in force i.e., the rate mentioned in the Finance Act; or
- at 5%

However, section 206AB is not applicable in case of tax deductible at source under sections 192, 192A, 194B, 194BA, 194BB, 194-IA, 194-IB, 194LBC, 194M and 194N. (2) In case the provisions of section 206AA are also applicable to the specified person, in addition to the provisions of this section, then, tax is required to be deducted at higher of the two rates provided in section 206AA and section 206AB.

At the time of deduction of tax, it is pertinent for the tax deductor to verify on the reporting portal to verify whether the payee falls within the ambit of this section. The deductor, can check for this on an individual deductee basis or using the bulk verification facility available on the portal.

Specified person means a person who has not furnished the return of income –

- for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted, for which the time limit for furnishing the return of income under section 139(1) has expired and
- the aggregate of tax deducted at source and tax collected at source in his case is Rs. 50,000 or more in the said previous year.

However, the specified person does not include a non-resident who does not have a permanent establishment in India or a person and who is not required to furnish the return of income for the assessment year relevant to the previous year and is notified by the Central Government.

# THE LEADERSHIP EDGE: UNVEILING THE CRUCIAL ROLE OF EMOTIONAL INTELLIGENCE

CA Grishma Saiya
Email : grishmachheda11@gmail.com

In the dynamic landscape of leadership, technical skills and strategic acumen are undoubtedly significant. However, an often underestimated and yet pivotal aspect that distinguishes good leaders from exceptional ones is emotional intelligence (EI) and its quantifiable measure, the Emotional Quotient (EQ). This article explores why emotional intelligence is not just a desirable trait but an indispensable quality for those aspiring to lead with distinction.

Leadership extends beyond directing tasks and making decisions; it involves inspiring and connecting with individuals on a profound level. Emotional intelligence, often referred to as the EQ (emotional quotient), empowers leaders to forge meaningful relationships, foster a positive work environment, and navigate the complex landscape of human interactions with finesse.

Emotional intelligence (EI) comprises a set of interconnected components that collectively enable individuals to understand, manage, and navigate their own emotions and the emotions of others. The five key components of emotional intelligence, as popularized by psychologist Daniel Goleman, are:

1. **Self-Awareness**: Recognizing and understanding one's own emotions.

   Significance: Self-awareness forms the foundation of emotional intelligence. It involves being in tune with your emotions, understanding their origins, and recognizing how they can influence your thoughts and behavior.

2. **Self-Regulation**: Managing and controlling one's emotions in various situations.

   Significance: Self-regulation is about maintaining composure, even in challenging situations. It involves the ability to think before reacting, controlling impulses, and adapting to changing circumstances with a balanced and constructive mindset.

3. **Motivation**: Being driven to achieve goals and persevere in the face of setbacks.

   Significance: Motivation in the context of emotional intelligence involves setting and working towards meaningful goals, being resilient in the face of obstacles, and maintaining a positive outlook. It fuels a person's drive to continuously improve and succeed.

4. **Empathy**: Understanding and sharing the feelings of others.

   Significance: Empathy is the ability to put oneself in another person's shoes, to understand their perspectives and emotions. It's a critical component for building strong interpersonal relationships, fostering collaboration, and creating a supportive and inclusive environment.

5. **Social Skills**: Effectively navigating social situations and building positive relationships.

   Significance: Social skills encompass a range of abilities, including communication, conflict resolution, and teamwork. Leaders with strong social skills can build rapport, influence others positively, and create a harmonious and productive team environment.

Increasing emotional intelligence (EI) and emotional quotient (EQ) involves a deliberate and ongoing effort to develop self-awareness, regulate emotions, and navigate social situations effectively. Here are some strategies to enhance your emotional intelligence:

1. **Develop Self-Awareness at work place:**

   Pay attention to your emotions at work. Recognize how you react to stress, challenges, and successes. Identify patterns in your emotional responses and their impact on your work and relationships

2. **Practice Mindfulness:**

   Cultivate mindfulness through practices such as meditation and deep breathing. Mindfulness helps you stay present in the moment, observe your emotions without judgment, and respond more thoughtfully.

3. **Cultivate a Positive Work Environment:**

   Foster a positive and supportive atmosphere by expressing appreciation, acknowledging achievements, and offering constructive feedback. A positive workplace encourages emotional well-being and collaboration..

4. **Manage Workplace Stress Effectively:**

   Develop healthy coping mechanisms for managing stress in the workplace. This might include taking short breaks, practicing mindfulness, or engaging in physical activity. Managing stress contributes to better emotional regulation.

5. **Cultivate Empathy:**

   Actively practice putting yourself in others' shoes. Practice active listening to understand the emotions of your colleagues, clients, or team members. Show empathy by acknowledging their feelings and perspectives, even if you don't agree. This fosters positive relationships in the workplace.

6. **Enhance Communication Skills:**

   Work on your communication skills, both verbal and non-verbal. Pay attention to cues in social interactions and practice effective communication. This includes being assertive, resolving conflicts diplomatically, and collaborating with others.

7. **Build strong Professional Relationship:**

   Invest time in building strong connections with colleagues. Networking and relationship-building contribute to a positive work culture. Establishing trust and rapport with others is a key aspect of emotional intelligence.

8. **Seek Feedback:**

   Request feedback from colleagues and superiors to gain insights into your emotional intelligence strengths and areas for improvement. Reflect on your experiences and consider how you can apply emotional intelligence principles in various work scenarios

**9. Encourage Diversity and Inclusion**

Embrace diversity in the workplace and create an inclusive environment. Valuing and respecting diverse perspectives contributes to a more emotionally intelligent and collaborative team

**10. Apply Emotional Intelligence in Real-Life Scenarios:**

Practice applying your emotional intelligence skills in real-life situations. The more you consciously apply these skills, the more they become ingrained in your natural responses

Remember, increasing emotional intelligence is a gradual process that involves consistent effort and a commitment to personal growth. However, by incorporating these strategies into your professional life, you can enhance your emotional intelligence and emotional quotient, fostering a more positive and productive work environment and contributing to your overall success in the workplace.

# EVENTS IN RETROSPECT

| Day & Date | Committee | Program Name | Moderator / Speaker | Attendance / Views |
|---|---|---|---|---|
| Saturday, 4th November 2023, | Programme Committee | Recovery of Business Dues and Debt - Awareness and Legal Remedies | Adv. Hasmukh Shah and Adv. Lalit Jain | 110+ participants |


# EVENTS IN RETROSPECT

| Day & Date | Committee | Program Name | Moderator / Speaker | Attendance / Views |
|---|---|---|---|---|
| 16th November to 19th November 2023 | Membership and Recreation Committee | Picnic at Satpura Tiger Reserve Madhai | NA | 137 participants |

# EVENTS IN RETROSPECT

| Day & Date | Committee | Program Name | Moderator / Speaker | Attendance / Views |
|---|---|---|---|---|
| Friday, 24th November 2023 | Capital Market Committee | Fundamentals & Investing - Chemical Sector | Mr Rahul Veera, Fund manager(Equities) Abbakus Asset Managers LLP | 85+ participants |