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BASICS, UPDATE & CRITICAL ISSUES

CA D R VENKATESH

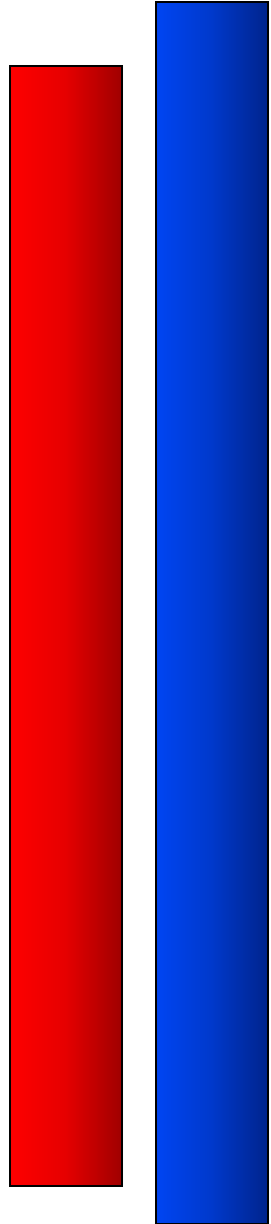
b.cOm, llb, fca

partner, MSSV &CO

Chartered accountants, b'lore

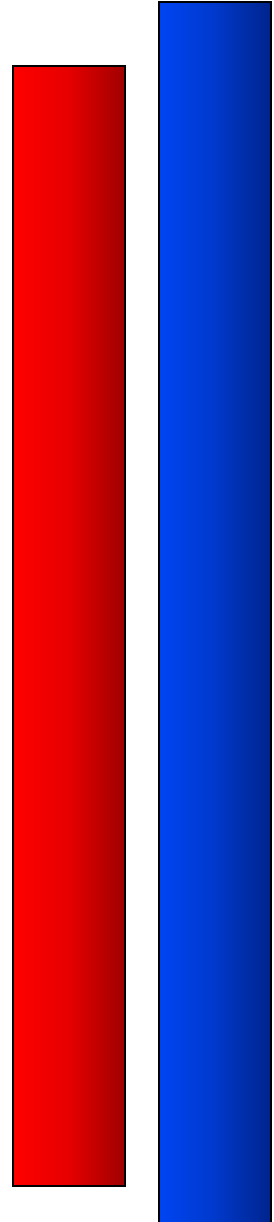
Flow of Discussions:

- Introduction
- Basics
- Updates: Assessment year 2019-2020
 Assessment year 2020-2021
 Assessment year 2021-2022
- Consequences – Interest, Disallowance, Penalty &
 Prosecution
- Conclusion



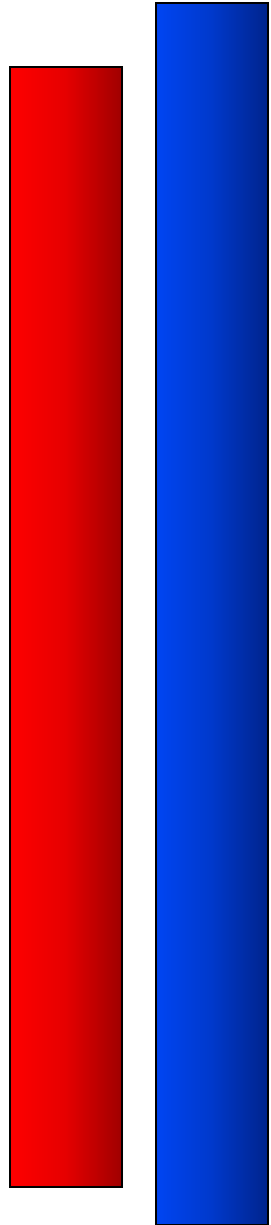
Introduction:

- TDS- Means of Collection
- Chapter XVII-B
- 40% of Direct Tax Collection from TDS
- Every Conceivable income has been brought within the net of TDS and TCS every year leaving little scope for tax evaders.



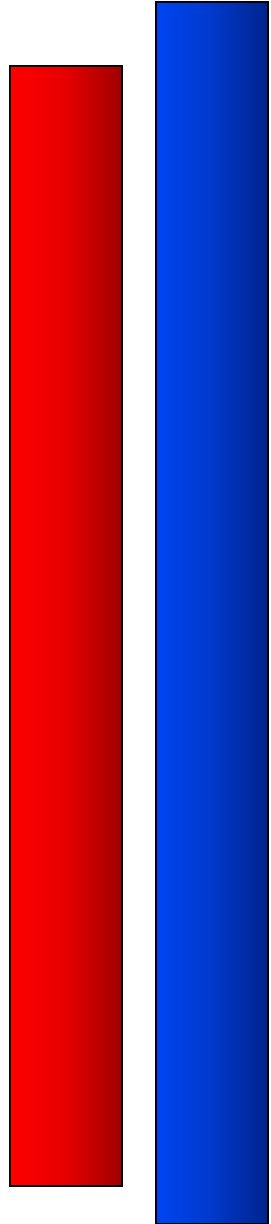
Introduction:

- Administration
 - Chief Commissioner of Income Tax(TDS)
 - Commissioner of Income Tax(TDS)
- Proposed
 - Commissioner of Income Tax(TDS-Salary)
 - Commissioner of Income Tax(TDS-Rent)
 - Commissioner of Income Tax(TDS-Others)



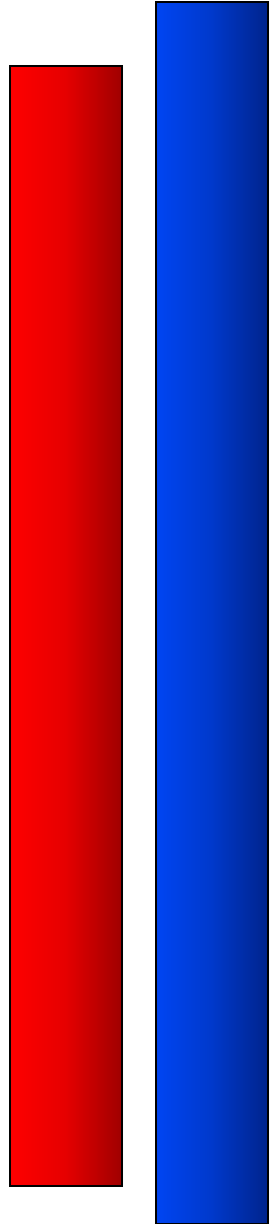
Introduction:

- Deductor – Payer
- Deductee – Payee - Receiver



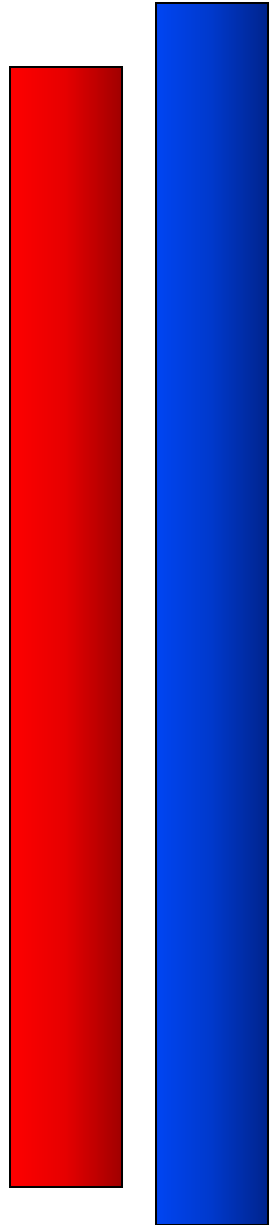
Introduction:

- Today's Discussion is on
- Obligation of Deductor



Basics:

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



Basics:

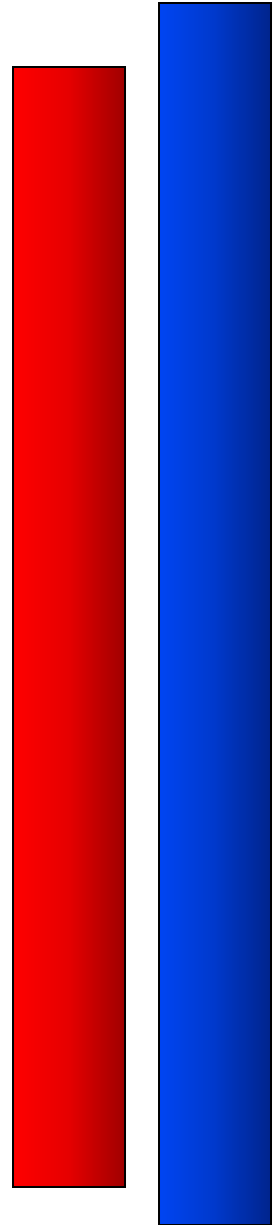
Individual / HUF

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

Basics:

Status of Recipient / Payee

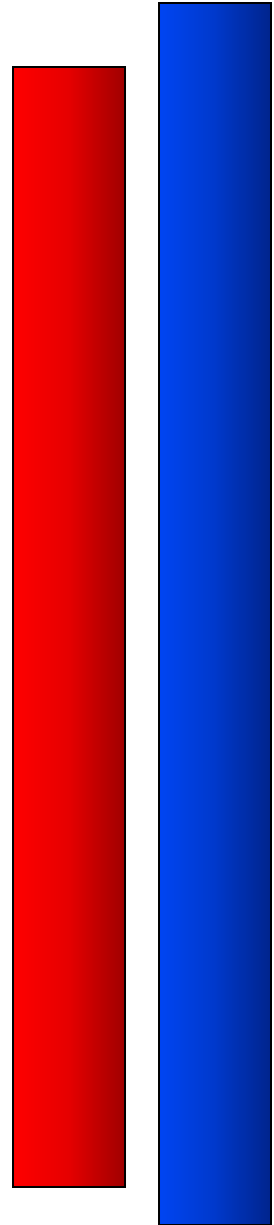
- Rate of Deduction
- Government
- Applicability of surcharge



Basics:

Residential status of Recipient / Payee

- Resident
- Non-resident

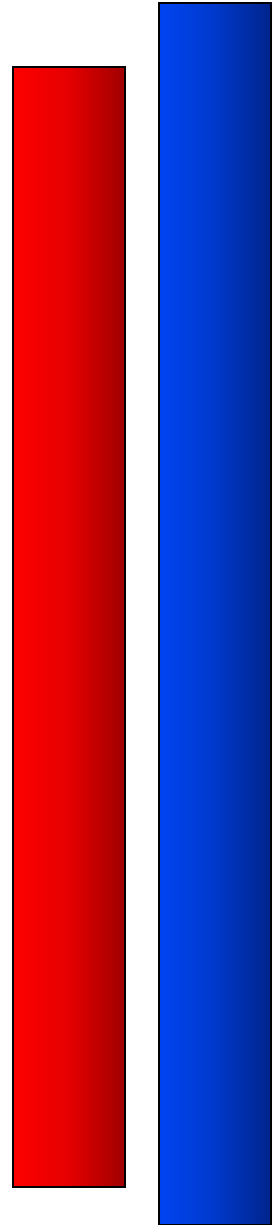


Basics:

Nature of expenditure:

In the hands of the deductor – payment / Debit may be towards

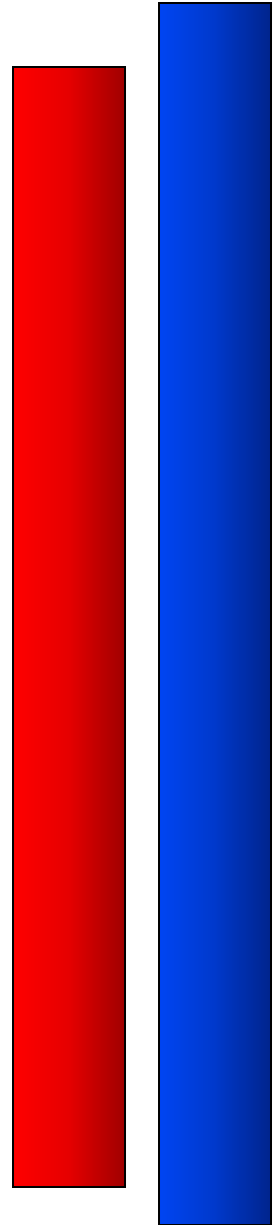
- Capital Expenditure
- Revenue Expenditure
- Reimbursement of Expenses



Basics:

When to deduct

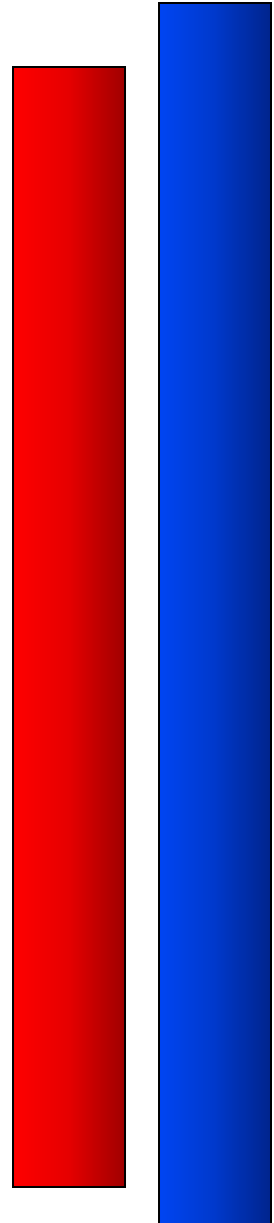
- Payment
- Credit



Basics:

Rate of Deduction

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



Basics:

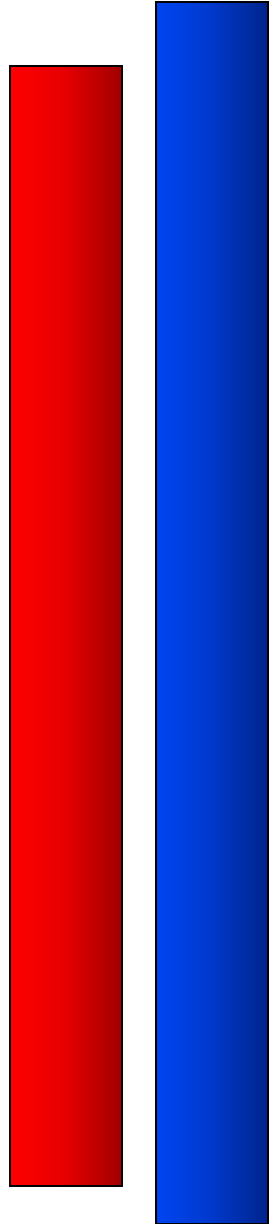
When to Remit

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

Basics:

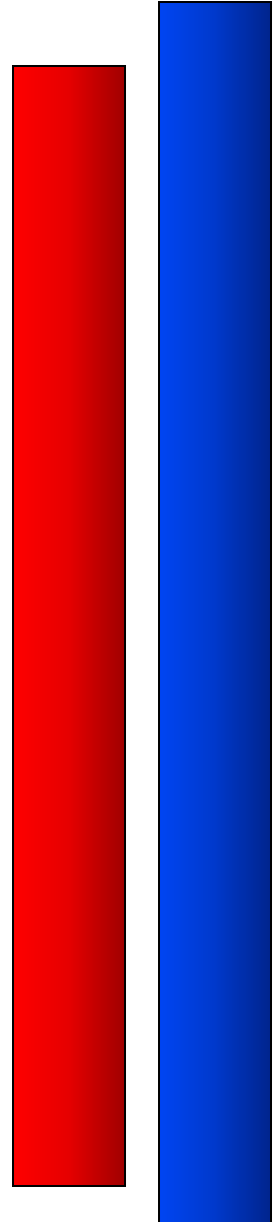
When to Remit

- 194-IA & 194-IB
- On or before 30 days from the end of the month in which deduction is made (w.e.f 1st June 2016).



Returns:

Due Date	On or Before
Quarter Ending 30.06	31 st July
Quarter Ending 30.09	31 st October
Quarter Ending 31.12	31 st January
Quarter Ending 31.03	31 st May



Certificates:

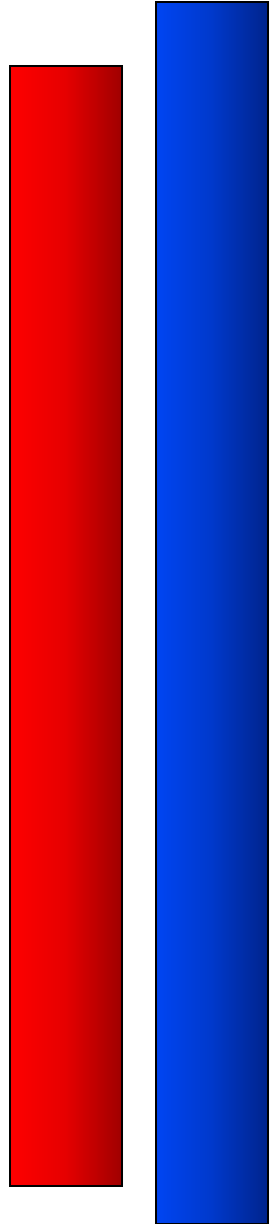
Reason	Certificate	Due Date
Salary	Form 16	By 31st May of the financial year immediately following the financial year in which income was deducted and tax was paid. (w.e.f 1st June, 2016- 14th June)

Certificates:

Reason	Certificate	Due Date
Other than Salary	Form 16A	To be issued Every quarter (14th August, 14th November, 14th February and 14th June)
Under Section 194IB	Form 16C	To be issued within 15 days from the due date for furnishing the challan cum statement in Form No.26QC

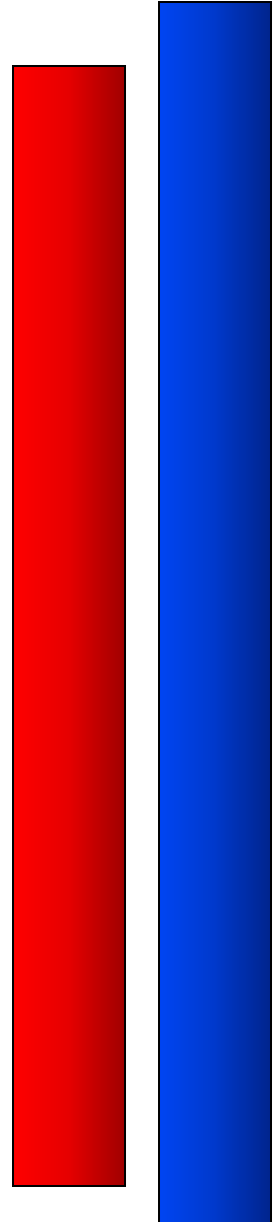
Finance Act, 2018

- Section 194A (Amendment)



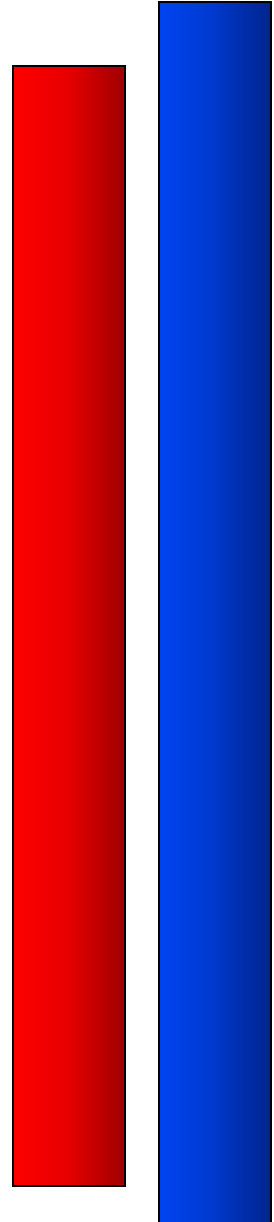
Finance Act, 2019

- Section 194A (Amendment)
- Section 194I (Amendment)
- Section 194DA (Amendment)
- Section 194IA (Amendment)
- Section 194M (New Section)
- Section 194N (New Section)



Finance Act, 2020

- Section 194A (Amendment)
- Section 194C (Amendment)
- Section 194J (Amendment)
- Section 194K (New Section)
- Section 194LBA (Amendment)
- Section 194LC (Amendment)
- Section 194LD (Amendment)
- Section 194O (New Section)
- Section 195 (Amendment)



FINANCE ACT 2018

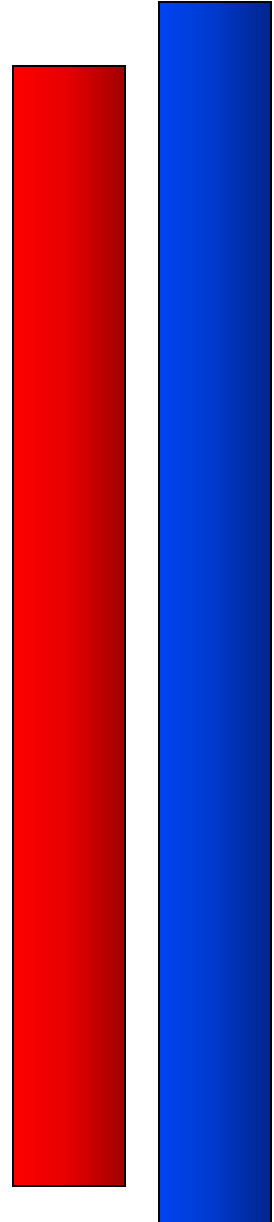
Amendment of Section 194A

- Threshold limit for senior citizen increased to be Rs.50,000/-
- Explanation.—For the purposes of this clause, “senior citizen” means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year

FINANCE ACT 2019

Amendment of Section 194A

- Threshold limit increased to Rs.40,000/- from Rs.10,000/-.
- Threshold limit for senior citizen continues to be Rs.50,000/-.



FINANCE ACT 2019

Amendment of Section 194DA

- Rate of tax deduction at source has been increased from 1% to **5%** (w.e.f 01 September 2019)

FINANCE ACT 2019

Amendment of Section 194IA

- Consideration for immovable property” for the threshold limit of Rs.50 Lakhs shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property (Amendment is applicable w.e.f 01 September 2019)

FINANCE ACT 2019

New Section 194M

- Payer being Individual or HUF other than those covered u/s 194C and 194J has to deduct tax @ 5% on payment made to any resident person for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract or by way of fees for professional services
- Threshold limit – 50 Lakhs
- This section is applicable w.e.f 01 September 2019

FINANCE ACT 2019

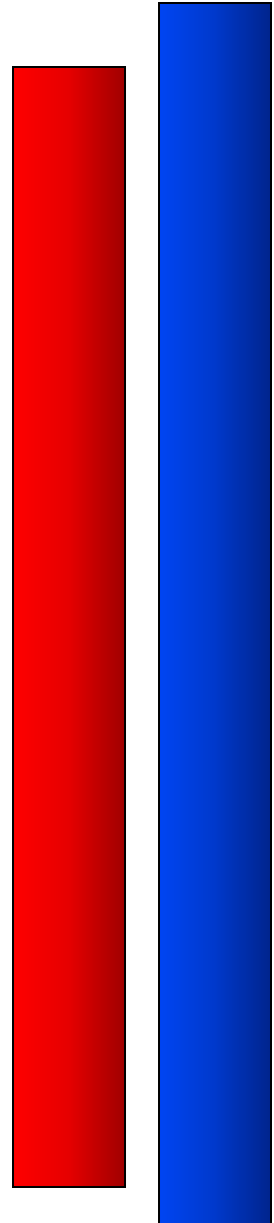
New Section 194N

- Payer being Banks, Co-operative Banks or Post office has to deduct tax @ 2% on payment made to any person
- TDS is applicable only if payer paying sum or aggregate of sum in CASH is in excess of Rs.1 Crore in P.Y from one or more accounts maintained by Payee.

FINANCE ACT 2019

New Section 194N

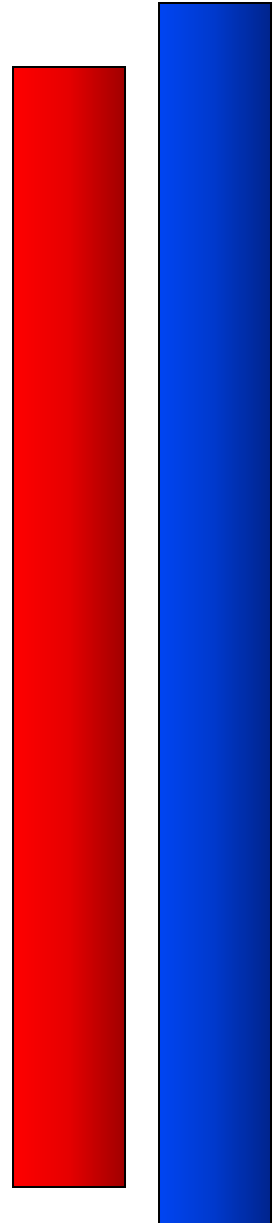
- TDS applicable only on excess of amount over 1 Crore..
- This section is not applicable if Payee is Government, Bank, Co-operative Bank, Post office or White Label ATM Operator or any other person may be notified by RBI.



FINANCE ACT 2019

New Section 194N

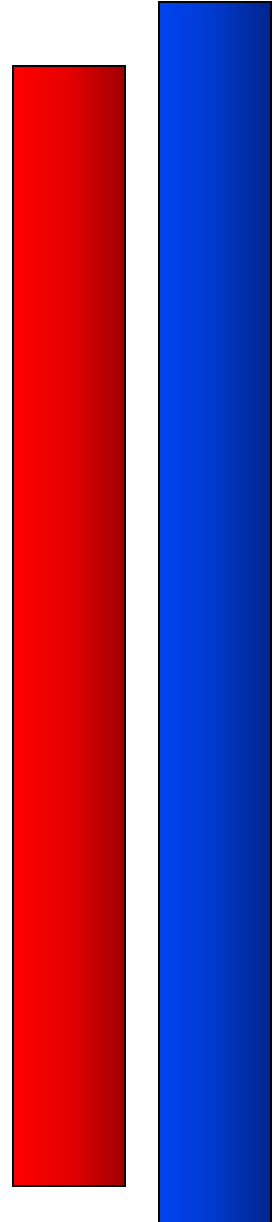
- Press release 30th August 2019
- The CBDT, hereby clarifies that section 194N inserted in the Act, is to come into effect from 1st September, 2019. Hence, any cash withdrawal prior to 1st September, 2019 will not be subjected to the TDS under section 194N. However, since the threshold of Rs. 1 crore is with respect to the previous year, calculation of amount of cash withdrawal for triggering deduction under section 194N of the Act shall be counted from 1st April, 2019.



FINANCE ACT 2019

New Section 194N

- Twitter Statement 16th September 2019
- To avoid inconvenience to farmers and other stakeholders in the agricultural sector, agents operation under APMCs have been exempted from 2% TDS on cash payments over Rs. 1Crore



FINANCE ACT 2020

Amendment of 194A

- Co-operative Societies with Turnover exceeding Rs.50 Crores in the immediately preceeding financial year are required to deduct tax at source at 10% on payment of interest in excess of Rs.40,000/- (Rs.50,000/- in case of Senior Citizen).

FINANCE ACT 2020

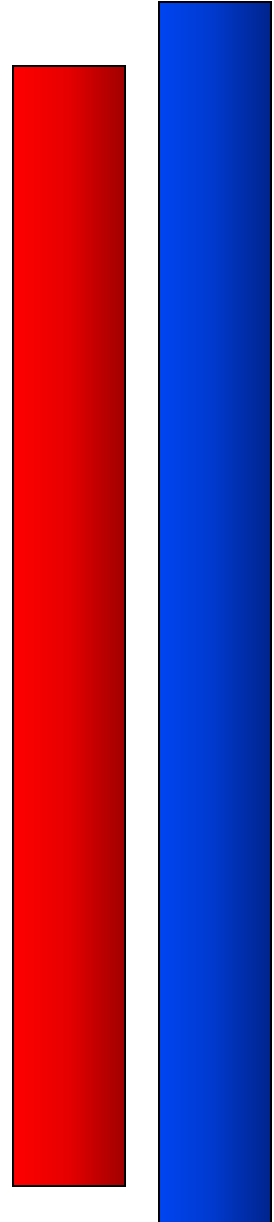
Amendment of 194C

- Definition of “Work” to include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or **its associate**
- Consequently TDS would have to be deducted on the above work as well

FINANCE ACT 2020

Amendment of 194J

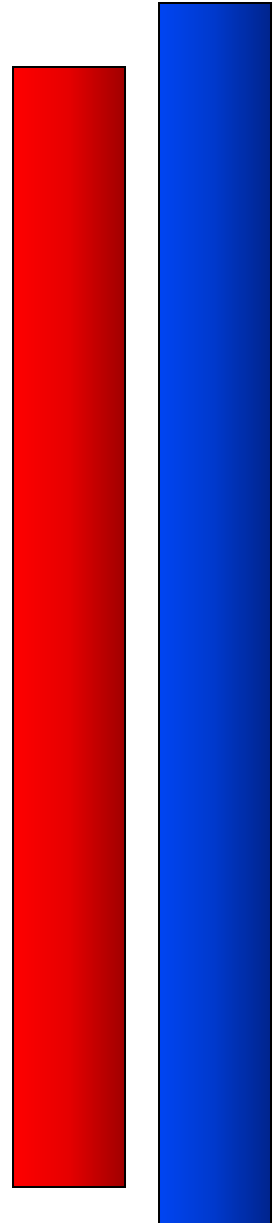
- TDS on payments towards Technical services is reduced to **2%** (previously 10%)
- TDS on payments towards Professional services continues to be at **10%**



FINANCE ACT 2020

New Section 194K

- Tax has to be deducted on payment made to a resident on income in respect of
 - units of a Mutual Fund specified under clause (23D) of section 10; or
 - units from the Administrator of the specified undertaking; or
 - units from the specified company
- Rate of deduction is **10%**



FINANCE ACT 2020

Amendment of Section 194LBA

- Tax has to be deducted on payment to a non resident on any nature of income on unit of Business Trusts
 - Referred to in Section 10(23FC)(a) – 5%
 - Referred to in Section 10(23FC)(b) – 10% (previously 5%)

FINANCE ACT 2020

Amendment of Section 194LC

- Any interest payment to a non resident from an Indian Company in respect of monies borrowed in foreign currency shall be liable for deduction of tax at source at **4%** (previously 5%)
- Applicability - Up to **July 2023** against July 2020 in the previous Acts.

FINANCE ACT 2020

Amendment of Section 194LD

- Any interest payment to a Foreign Institutional Investor or Qualified Foreign Investor in respect of rupee denominated bonds and government securities. be liable for deduction of tax at source at 5% up to July 2023 as against up to July 2020.

FINANCE ACT 2020

New Section 194O

- E-commerce operator is liable to deduct TDS on E-commerce participant (seller / service provider) on payment or credit for sale of goods or service or both.
- Rate of TDS: 1%
- Limit: For excess of Rs.5,00,000/- during the year.

FINANCE ACT 2020

Amendment of Section 195

- Second Provision to Section 195(1) exempting TDS on dividend referred to in Section 115-O has been deleted.

Section 194A - Interest

Threshold Limit

- Rs.40,000 where the payer is a Banking Company to which BR Act, 1949 Applies.
- Rs.40,000 where the payer is a Co-operative Society engaged in carrying on the business of banking.
- Rs.40,000 on any deposit with post office
- Rs.5,000 in any other case
- Senior Citizen – Rs.50,000 from FY 18-19

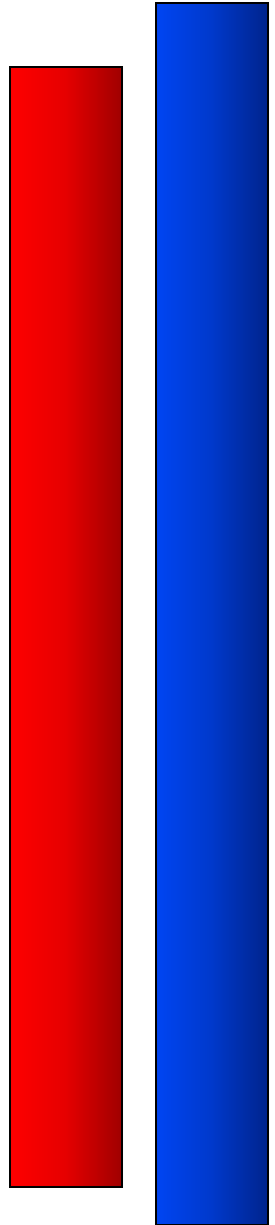
Rate of deduction: 10%

Issue

- Mr A, aged 62 yrs, is a Director in company XYZ Pvt Ltd and has deposited in the company. The Company has agreed to pay interest for the FY 2018 – 2019 of Rs.12,000/-.
- Is TDS applicable on this interest?

Section 194A - Interest

- Co-operative bank pays interest to other co-operative societies – No TDS to be deducted irrespective of the interest paid



Section 194A - Interest

- Earlier, the threshold limit of Rs.10,000 / Rs.40,000 / Rs.50,000 was calculated each branch wise. Now, if the bank has core banking solution, the threshold limit will be calculated for the bank as a whole (Not branch wise).
- Earlier, time deposits / term deposits did not include Recurring deposits. From 01.06.2015, Recurring deposits are also included in time deposits/term deposits and TDS is deductible if interest paid exceeds the threshold limit.

Section 194A - Interest

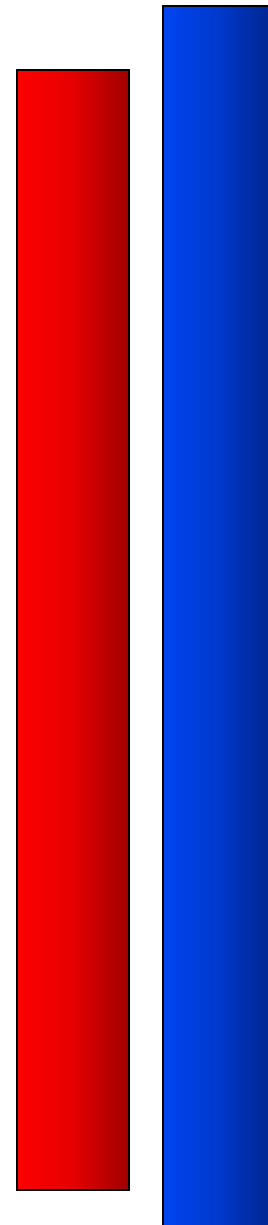
Deductor	Deductee	TDS
Co-operative Bank	Any Member	Yes
Co-operative society	Any member / other co-operative society	No
Co-operative Bank	Co-operative Society	No
Co-operative Bank	Co-operative Bank	??
Co-operative society	Co-operative Bank	??
Nationalised Bank	Co-operative Society	??
Nationalised Bank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

Issue

- Member of a co operative society who is doing business and subject to tax audit u/s 44AB has taken a loan from a credit co operative society of Rs.25 lakhs for his business and is paying interest of Rs.2.5 lakhs.
- Whether member should deduct TDS u/s 194A?

Section 194H - Commission & Brokerage

- Threshold limit – Rs.5,000
(Rs. 15,000 w.e.f 01-06-2016)
- Rate of deduction – 10%
(5% w.e.f 01-06-2016)



Section 194I - Rent

- Threshold limit – Rs.1,80,000
- Threshold limit – Rs.2,40,000 from FY 2019 - 2020
- Rate of deduction:
 - 10% for use of any land / building
 - 2% for use of machinery plant / equipment
- Rent

Section 194IA - Transfer of certain immovable property

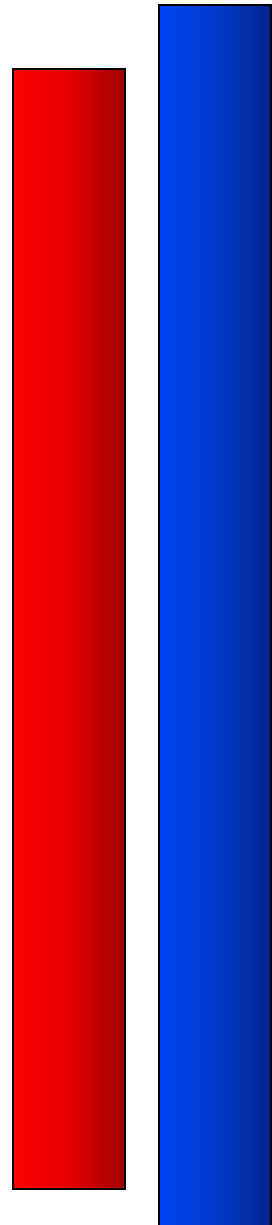
- Inserted by Finance Act, 2013, w.e.f 1st June, 2013
- Payment to a Resident
- Transfer of Immovable Property other than Agricultural Land.
- Consideration should be Rs. 50 Lakhs or more
- TDS @ 1%
- Provisions of section 203A – (Tax Deduction and Collection Account Number) shall not apply to a person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

Section 194-IB - TDS on Rent

- Individual or a HUF responsible for paying to a resident any income by way of rent exceeding **fifty thousand rupees** for a month or part of a month
- Deduction rate: **5%**
- Challan cum statement - Form No. 26QC
- Certificate - Form No.16C

Section 194J: Technical & Professional Charges

- Threshold limit - Rs.30,000
- Rate: 2% in case of Technical Service
10% in case of Professional Service
- Rate of deduction for Call centres: 2%
(W.e.f 1st June 2017)



Issue

- X Pvt. Ltd agreed to pay audit fee of Rs.28,000/- to Mr. S chartered Accountant. Mr. S audit fees bill is as follows:

Audit Fees	28,000
(+) GST @ 18%	5,040
Total	33,040

- Whether to deduct TDS u/s 194J?

As a Deductor

- TAN
- Deduct
- Remit
- Quarterly Return
- Issuing Form(Certificates) i.e Form 16, 16A

No
Consequences

Yes

Comply

No

Consequences

Interest

Fee

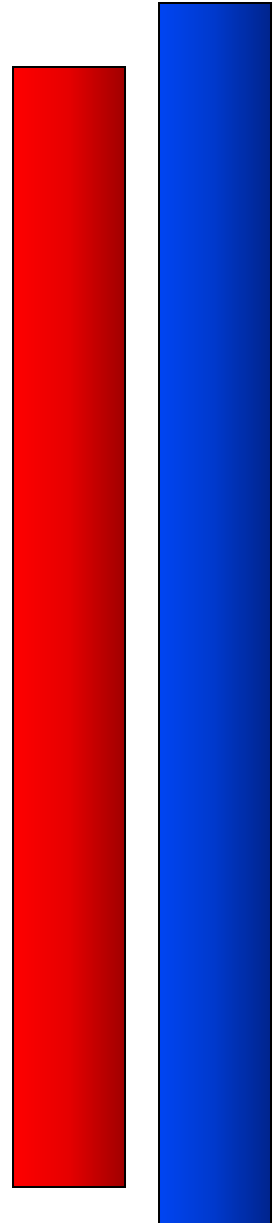
Disallo
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Penalty

Prosecu
tion

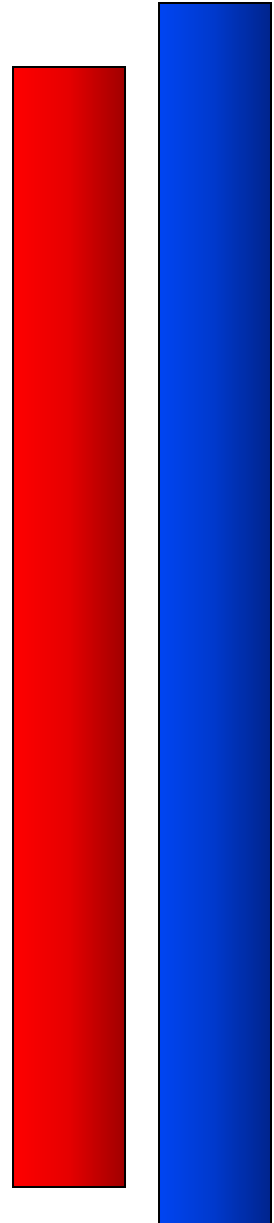
Defaults

- Non-Deduction
- Short Deduction
- Delay in Deduction
- Non-Remittance
- Short Remittance
- Delay in Remittance
- Non / Delay in filing of Statements – Form 24Q / 26Q / 26QB / 26 QC.
- Issue of Forms – Form 16A / 16 / 16C



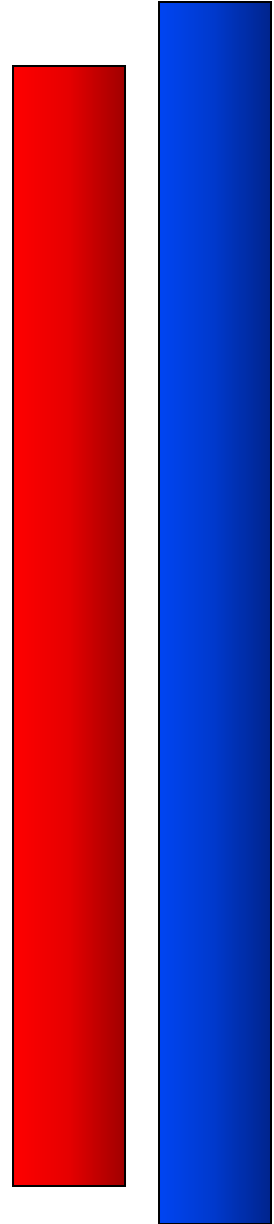
Consequences

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



Interest u/s 201(1A)

- 1% for non-deduction.
- 1.5% for non-remittance.



Issue

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

Internal Audit fee A/c Dr	Rs.3,00,000
To M/s. Smart Associates.	Rs.3,00,000

(Being the internal audit fee payable for the period from January 2020 to March 2020 & Entry passed on 31.03.2020)

Issue

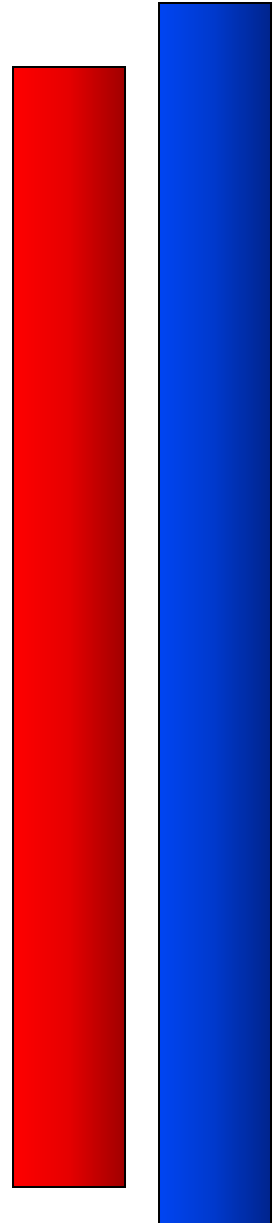
M/s. ABC & Co. passed the following entries in the books of accounts.

Internal Audit fee A/c	Dr	Rs.3,00,000
To M/s. Smart Associates A/c.		Rs.2,70,000
To TDS Payable A/c		Rs.30,000

(Being the internal audit fee payable for the period from January 2020 to March 2020 and TDS payable provided for on 31.03.2020)

Issue

- TDS deducted on 22nd March, 2020.
- TDS remitted on 8th May, 2020.
- Whether Interest U/s. 201(1A) has to be calculated for;
 - 1 month; or
 - 2 months; or
 - 3 months.



Rule 119A - Procedure for calculating interest

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

Section 234E - Fee for default in furnishing Statements

W.e.f. 1st July, 2012

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

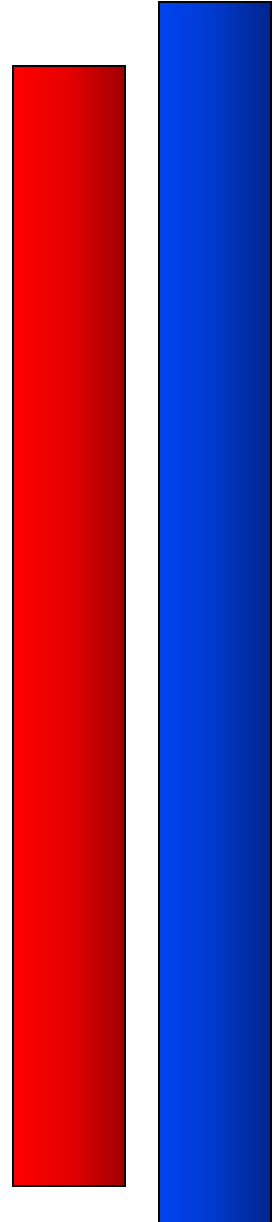
Section 271H - Penalty for failure to furnish Statements

W.e.f. 1st July, 2012

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

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

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



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

W.e.f 01.04.2015

- “Thirty percent of any sum payable to a resident”, on which the tax is deductible at source under chapter XVII-B and such tax has not been deducted or after deduction has not been paid on or before the due date specified in sub section 1 of section 139
- Salary is also covered U/s 40(a)(ia) from AY 2015-16

Issue

- M/s X Pvt. Ltd. paid audit fee of Rs.1,00,000 to Chartered Accountant Mr. S. The bill of Mr. S is as follows:

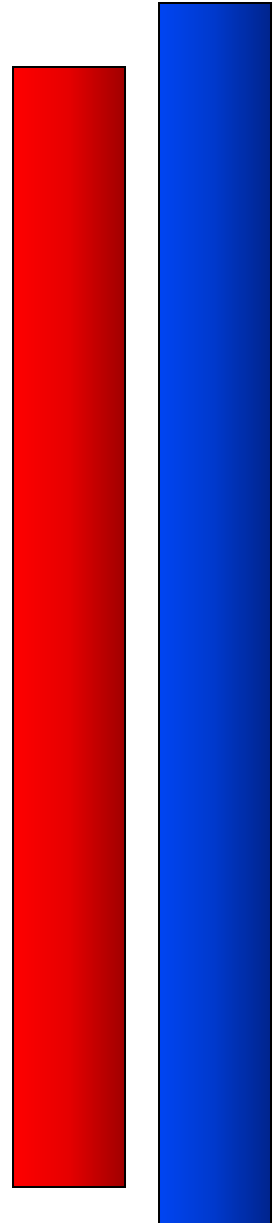
Audit Fees	1,00,000
(+) GST @ 18%	18,000
Total	1,18,000

- Whether to deduct TDS on Rs. 1,00,000 or 1,18,000?
- Whether disallowance u/s 40(a)(ia) is 30% of Rs.1,00,000/- or 30% of Rs.1,18,000/-.

CIRCULARS and PRESS RELEASE

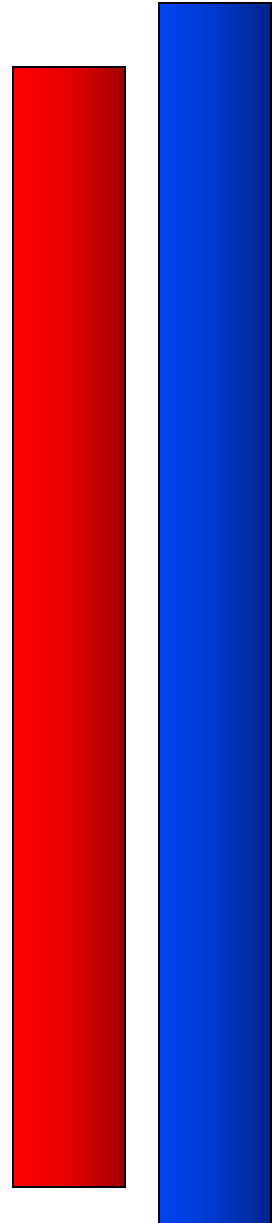
Circular No.23/2017 dated 19th July 2017

- GST should be excluded while deducting TDS.



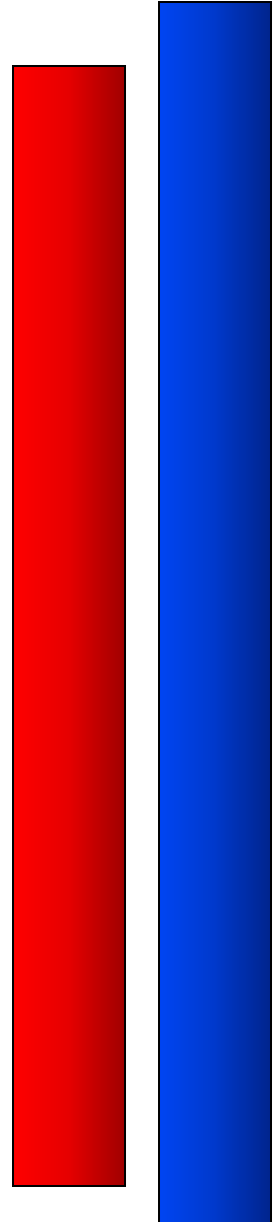
Circular No.18/2017 dated 29th May 2017

- Requirement of Tax deduction at source in case of entities whose income is exempted Under section 10.



Press Release dated 24th March 2020

- Press release by Ministry of Finance
- Due date for furnishing return extended to June 30, 2020
- Interest rate reduced to 0.75% per month

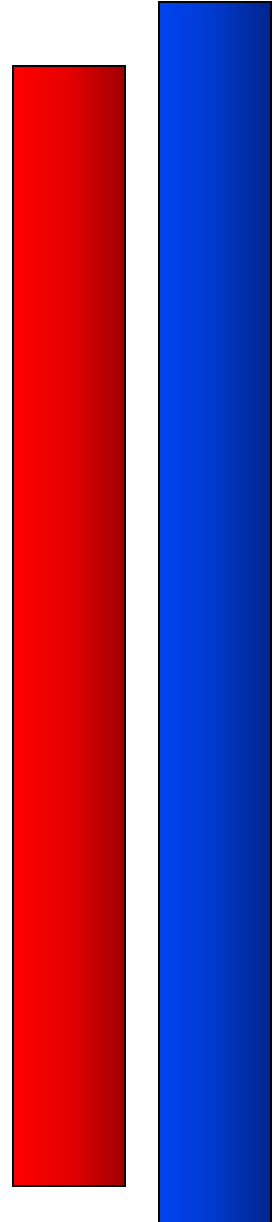


Press Release dated 13th May 2020

- In order to provide more funds at the disposal of the tax payers for dealing with economic situation arising out of COVID-19 pandemic, the rates of TDS for payments made to residents has been reduced by 25% for the period from 14th May 2020 to 31st March 2021.
- All sections other than Section 192 and 194N are covered under this.

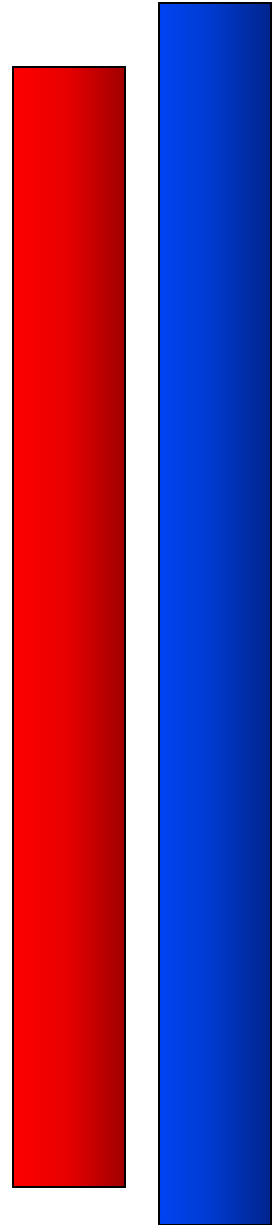
Controversies

Deductor	Vs	TDS Department
No TDS		Yes TDS
194C		194J
194C		194I
194C		194H
194J		192
192		194H



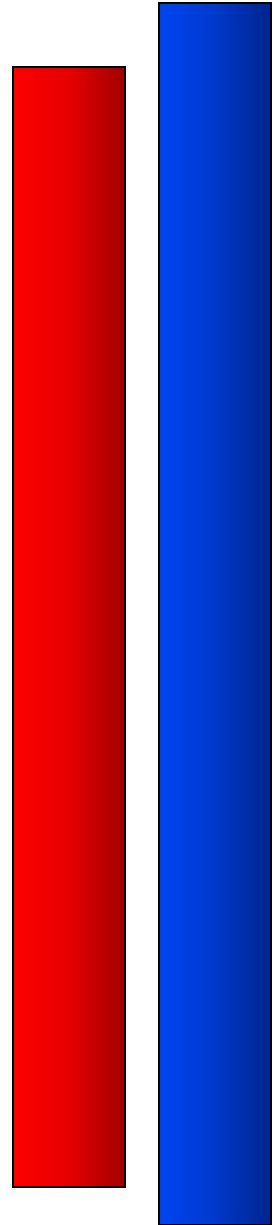
Conclusion

- Duty / responsibility under chapter XVII-B cannot be bypassed.



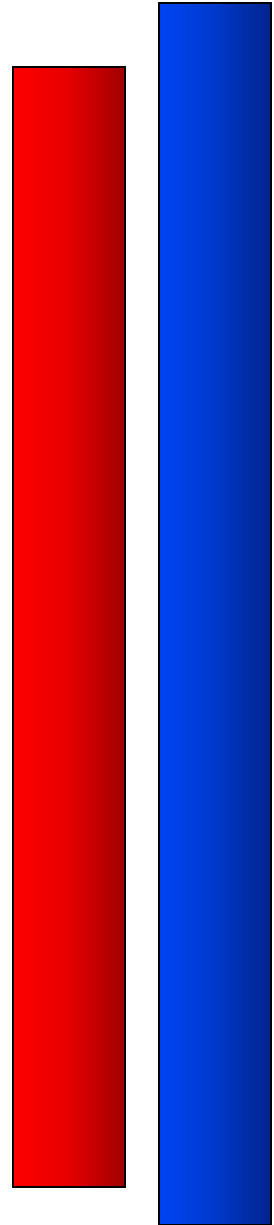
Conclusion

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

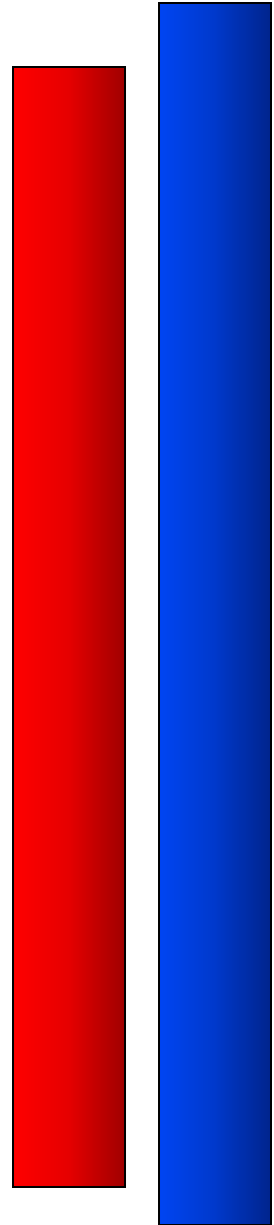


Golden Principles

- Applicability
- Rate
- Deduction & Remittance
- Planning



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



Step 1

- **Read, Read and Read until you are clear about the provisions (Sections & Rules)**

Step 2

- **Read, Circulars and Notifications**

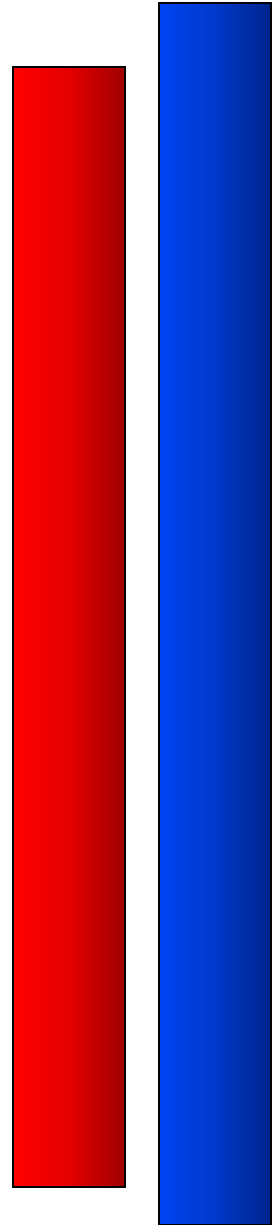
Step 3

- **Read case laws of Supreme Court, High Court, ITAT**

Step 4

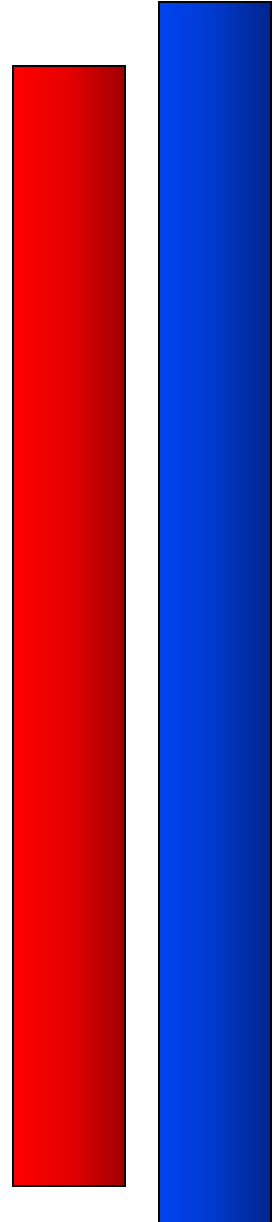
- **Advice accordingly**

- General Law / Common sense
- Basic Law
- Case Law



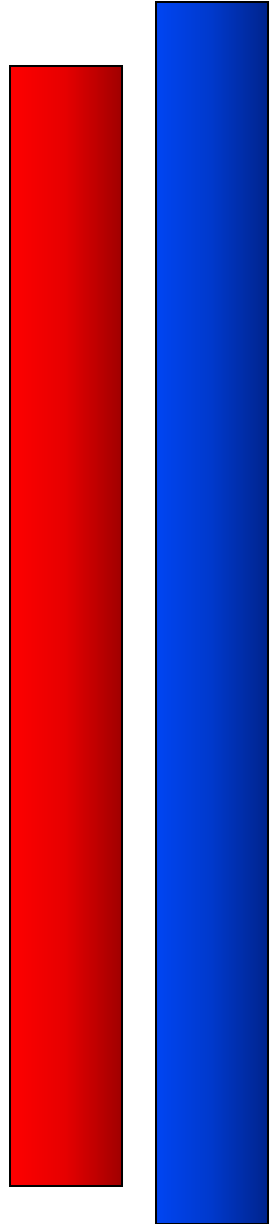
Finally

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



Then

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



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THANK YOU

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