30C

TDS on payment of salary, remuneration, interest, bonus or commission by partnership firm to partners

Deduction of TDS on payment of salary, remuneration, interest, bonus or commission by partnership firm to partners (applicable with effect from 1-4-2025) - Provisions at a glance

Payment from which TDS is to be deducted	Salary, remuneration, commission, bonus and interest paid/credited to a partner of a firm/LLP
Who is liable to deduct TDS	Firm/LLP
Deductee/payee	Partner of the firm/LLP, including a minor admitted to the benefits of partnership
Payees entitled to receive payment without deduction of TDS	*See* **Chapter 36**
Threshold limit for non-deduction of TDS	₹ 20,000
Tax base *i.e.* the amount on which TDS % is to be applied for computing TDS to be deducted	Salary, remuneration, commission, bonus and interest to any account (including capital account) of the partner of the firm under the purview of TDS for aggregate amounts more than ₹ 20,000 in the financial year.

	If threshold exceeded, TDS to be deducted on entire amount of salary, remuneration etc. and not merely the excess over ₹ 20,000
Applicable rate of TDS	10% If the payee partner is a resident, no surcharge/health and education cess If the payee partner is a non-resident, 10%+ applicable no surcharge +4% health and education cess
Rate of TDS if PAN/Aadhaar of payee partner is not available	20%
Whether provisions of higher TDS rates for ITR non-filers (Section 206AB) is applicable to Section 194T	No. *See* **Chapter 44**
Time of deduction	At the time of credit of such amount to the account of the partner (including the capital account) or at the time of payment thereof, whichever is earlier
Whether the payee partner can obtain certificate u/s 197 for no TDS or TDS at a lower rate	No. *See* **Chapter 37**
Whether the payee partner can avail the facility of nil TDS deduction by submitting self-declaration in Form 15G/Form 15H	No. *See* **Chapter 38**
Adjustment of excess/deficiency in TDS deduction from subsequent deduction in same FY	No.
Deposit of TDS deducted to the credit of Central Govt.	Yes. *See* **Chapter 1**
Furnishing of TDS returns/statements by the deductor to Department	Yes. *See* **Chapter 41**
TDS certificate to be issued by deductor (firm/LLP) to deductee (partner)	Form No. 16A *See* **Chapter 42**
Annual statement to payees to be furnished by Department	*See* **Para 39.4**
Furnishing of statement in respect of payment of any income to residents without TDS	No such requirement prescribed for Section 194T yet *See* **Chapter 45**

Consequences of non-deduction or short-deduction of TDS	*See* **Chapter 46**

Scope and Application of Section 194T

30C.1 Presently there is no provision for deduction of tax at source (TDS) on payment of salary, remuneration, interest, bonus, or commission to partners by the partnership firm. In *ACIT* v. *Dhar Construction Company* [2023] 146 taxmann.com 81 (Gauhati - Trib.), it was held that—

- Any payment of salary, bonus, commission or remuneration, is collectively termed as "remuneration" as per section 40(*b*)(*i*) of the Act. As such, no TDS is deductible u/s 194H from commission payable to partners. The contention of the AO that the provisions of section 194H of the Act, which is otherwise applicable in case any commission or brokerage (not being insurance commission referred to in section 194D of the Act) is paid, is also applicable in cases where a partnership firm pays commission to its partners, authorized by the partnership deed, is incorrect.
- *Explanation 2* to Section 15 of the Act specifically provides that salary, bonus, commission, remuneration etc. by whatever name called due to or received by a partner of a firm from the firm shall not be for regarded as "salary" the purposes of this section. Accordingly, provisions of Section 192 related to salary would also not be applicable in cases where remuneration has been paid by the partnership firm to its partners.

Therefore, to overcome the above decision, the Finance (No. 2) Act, 2024 has inserted into the Act a new TDS section 194T to bring payments such as salary, remuneration, commission, bonus and interest to any account (including capital account) of the partner of the firm under the purview of TDS for aggregate amounts more than ₹ 20,000 in the financial year. The applicable TDS rate will be 10%. The provisions of section 194T of the Act will take effect from the 1st day of April, 2025.

TDS under section 194T is applicable with effect from 1-4-2025, not with effect from assessment year 2025-26.

With effect from 1-4-2025, Section 194T(1) provides that any person, being a firm, responsible for paying any sum in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm, shall, at the time of credit of such amount to the account of the partner (including the capital account) or at the time of payment thereof, whichever is earlier, deduct income-tax thereon at the rate of ten per cent sub-section (2) of the said section provides that no deduction shall be made under sub-section (1)

where such sum or, the aggregate of such sums credited or paid or likely to be credited or paid to the partner of the firm does not exceed twenty thousand rupees during the financial year.

The ingredients of Section 194T are as follows:

- Section 194T casts an Obligation upon a firm [**Para 30C.2**]
- Obligation is to deduct TDS on any sum paid or credited to a partner of the firm [**Para 30C.3**]. The credit of the sum may be to any account of the partner, including his capital account.
- Such sum paid or credited should be in the nature of salary, remuneration, commission, bonus or interest [**Para 30C.4**]
- Such sum is paid or credited on or after 1-4-2025 [**Para 30C.5**]
- Deduction of TDS is to be at the rate of 10% of such sum. [**Para 30C.6**]
- Deduction of TDS is to be made at the time of credit of such sum to the account of the partner (including the capital account) or at the time of payment thereof, whichever is earlier [**Para 30C.7**]
- Obligation to deduct TDS as above shall not apply where such sum or, the aggregate of such sums credited or paid or likely to be credited or paid to the partner of the firm does not exceed twenty thousand rupees during the financial year [**Para 30C.8**]
- No power to CBDT to issue any removal of difficulties order [**Para 30C.9**]

The Notes on Clauses to the Finance (No. 2) Bill, 2024 explain the amendment as follows:

> "Clause 62 of the Bill seeks to insert a new section 194T in the Income-tax Act relating to payments to partners of firms.
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> Sub-section (1) of the said section provides that any person, being a firm, responsible for paying any sum in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm, shall, at the time of credit of such amount to the account of the partner (including the capital account) or at the time of payment thereof, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.
>
> Sub-section (2) of the said section provides that no deduction shall be made under sub-section (1) where such sum or, the aggregate of such sums credited or paid or likely to be credited or paid to the partner of the firm does not exceed twenty thousand rupees during the financial year.
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> **This amendment will take effect from 1st April, 2025.**"

The following is the text of Section 194T

> "194T. (1) Any person, being a firm, responsible for paying any sum in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm, shall, at the time of credit of such sum to the account of the

partner (including the capital account) or at the time of payment thereof, whichever is earlier shall, deduct income-tax thereon at the rate of ten per cent.

(2) No deduction shall be made under sub-section (1) where such sum or the aggregate of such sums credited or paid or likely to be credited or paid to the partner of the firm does not exceed twenty thousand rupees during the financial year.".

Obligation cast upon a 'firm' to deduct TDS (Payer/deductor is 'firm')

30C.2 The section casts an obligation to deduct TDS on a firm making specified payments to a partner.

30C.2-1 Definition of "Firm"

- Section 2(*23*) of the Act defines the term "Firm".
- Thus, the expression "firm" in Section 194T shall be understood in the sense that it is defined in section 2(*23*).
- "Firm" shall have the meaning assigned to it in the Indian Partnership Act, 1932, and shall include a Limited Liability Partnership firm as defined in the Limited Liability Partnership Act, 2008.

30C.2-2 'Firm' shall cover traditional partnership firms as well as Indian LLPs

- In terms of section 2(*23*)(*i*) of the Act, the expression 'firm' shall cover traditional partnership firms (Indian Partnership Act, 1932) as well as limited liability partnerships as defined in Limited Liability Partnership Act, 2008.

30C.2-3 Section 194T shall apply to firms assessable as such and firms assessable as AOP

- Section 184 of the Act makes a distinction between a firm assessable as such and a firm assessable as AOP.
- Section 184(1) provides that (1) A firm shall be assessed as a firm for the purposes of this Act, if—(*i*) the partnership is evidenced by an instrument ; and (*ii*) the individual shares of the partners are specified in that instrument. Such firm is referred to as Partnership Firm Assessed As Such (PFAS).
- This distinction is relevant to traditional partnership firms as they may or may not be evidenced by a partnership deed. As far as LLPs are concerned, this distinction is irrelevant as they are invariably evidenced by a written LLP agreement.
- This distinction is relevant to Section 40(*b*) as it applies to PFAS and not to firm assessed as AOP.

- The above distinction is irrelevant to Section 194T. Section 194T will apply to a firm whether assessable as PFAS or whether assessable as AOP.

30C.2-4 Section 194T will apply to Indian LLPs, but not foreign LLPs

- Thus, 'firm'/'partnership' shall include a LLP as defined in the LLP Act, 2008. Section 2(*1*)(*n*) of the LLP Act defines LLP as ***a partnership formed and registered under the LLP Act, 2008.*** *In other words, LLP incorporated outside India (or foreign LLP) is not a 'firm' within the meaning of section 2(23)(i).*
- Thus, Section 194T shall also apply to Indian Limited Liability Partnerships (LLPs) incorporated under the LLP Act, 2008. However, it shall not apply to a foreign LLP, *i.e.*, an LLP incorporated outside India. A foreign LLP is not required to deduct TDS under Section 194T.

Payee is a partner of the firm or LLP

30C.3 Section 194T is attracted when the payee is a partner of the firm/LLP. It does not matter whether the payee-partner is a resident or non-resident.

Definition of 'Partner' [Section 2(*23*)(*ii*)]?

30C.3-1 Section 2(*23*)(*ii*) of the Act defines 'partner' . Accordingly, the term "partner" shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932) and shall include—

(*a*) any person who, being a minor, has been admitted to the benefits of partnership; and

(*b*) a partner of a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009).

Thus, the definition of "partner" in section 2(*23*) of the Act includes minor admitted to benefits of partnership and partner of LLP incorporated in India under the LLP Act, 2008.

Therefore, TDS under Section 194T is deductible even if a minor admitted to the benefits of partnership is paid interest or remuneration.

TDS is deductible whether the payee-partner is a working partner or not

30C.3-2 The distinction between a working partner and a non-working partner is relevant for allowance of deduction u/s 40(*b*) of the remuneration paid by a firm/LLP to its partners. Remuneration paid to working partners is deductible subject to limits and conditions specified in Section 40(*b*). Remuneration paid to non-working partners is not at all deductible.

This distinction is not relevant for Section 194T. TDS is deductible whether the specified sums are paid or credited to a working or non-working partner. Likewise, for deduction of TDS under Section 194T, it does not matter whether the interest payment to the partner is allowable or disallowable under Section 40(*b*).

Nature of payment to partners which attracts TDS under Section 194T

30C.4 Such sum paid or credited to a partner of the firm/Indian LLP should be in the nature of salary, remuneration, commission, bonus or interest.

Specified Payment/credit to partners made on or after 1-4-2025

30C.5 From the Notes on Clauses and Explanatory Memorandum, it is clear that the TDS under Section 194T applies with effect from 1-4-2025 and not with effect from assessment year 2025-26. Therefore, TDS is deductible on interest or remuneration paid or credited to partners on or after 1-4-2025. It will not apply to payments or credits of remuneration or interest to partners by the firm made during the financial year 2024-25 (assessment year 2025-26). So, the tax auditors need not make any adverse remarks in Clause 34 or Clause 21(*b*) of Form No. 3CD for AY 2025-26 if the firm/LLP deducts no TDS on interest payments or remuneration to partners made during FY 2024-25.

Rate of TDS

30C.6 The rate of TDS applicable is 10%. The following points are noteworthy:

- The rate of TDS under section 194T is not to be increased by surcharge and health and education cess, if the payee-partner is a resident.
- The facility of obtaining a certificate for no deduction or lower deduction of tax under Section 197 is not available with respect to payments covered by Section 194T.
- No provision is there in respect of non-deduction of TDS u/s 194T, based on self-declaration by payee partner in Form 15G/Form 15H.
- If deductee (partner) does not furnish PAN/Aadhaar, TDS to be deducted @ 20%.

Time of deduction of TDS

30C.7 TDS is to be deducted at the time of crediting such sum to the partner's account (including his capital account) or at the time of payment thereof, whichever is earlier. Therefore, there is no need to deduct TDS under Section 194T if the earlier of credit and payment occurs before 1-4-2025.

Threshold limit of ₹ 20,000 for applicability of TDS

30C.8 The obligation to deduct TDS as above shall not apply where the sum or the aggregate of such sums credited or paid or likely to be credited or paid to the firm's partner does not exceed twenty thousand rupees during the financial year. The threshold is not to be applied separately to payments salary, remuneration, commission, bonus or interest made to partners but to the aggregate of these types of payments made to partners during a financial year.

Where the earlier of credit and payment took place prior to 1-4-2025, such sum is not covered under TDS and is not to be included in reckoning the limit of ₹ 20,000. This is based on CBDT's Circular issued under Section 194Q in the context of that Section CBDT had, *vide Circular No. 13/2021, dated 30-6-2021*, clarified that Since section 194Q of the Act mandates buyers to deduct tax on credit of sum in the account of the seller or on payment of such sum, whichever earlier, the provision of this sub-section shall not apply on any sum credited or paid before lst July 2021. If either of the two events had happened before 1st July 2021, that transaction would not be subjected to the provisions of section 194Q of the Act.

No power of CBDT to issue any removal of difficulties order

30C.9 Unlike Sections 194Q, 194R and 194S, Section 194T does not empower CBDT to issue any removal of difficulties order binding on the assessee and the authorities, including CIT(A).

How TDS provision of Section 194T is to be interpreted by the Revenue

30C.10 In *Bharti Cellular Ltd.* v. *Assistant Commissioner of Income-tax* [2024] 160 taxmann.com 12 (SC), while interpreting the provisions of Section 194H which fell for the consideration of the Court, the Court laid down the following principle of interpretation which would apply to TDS under every Section and not just u/s 194H. The Court held that the assessee as a deductor is not paying tax on his/her income, and collects and pays tax otherwise payable by the third party. Liability of the third party to pay tax

when not deducted remains unaffected. Failure to deduct tax at source has serious and quasi-penal consequences for an assessee. Therefore, the Revenue should not adopt a catch-as-catch-can approach. In case of a legal or factual doubt in a given case, the assessee can rely on the doctrine of presumption against doubtful penalisation. The Court's observations in this regard in Para 35 of its judgment are reproduced below for ready reference:

> 35. Deduction of tax at source is a substantial source of the direct tax revenue. The ease of collection and recovery is obvious. Deduction and deposit of tax at source checks evasion and non-payment of tax. It expands the tax base. However, the assessee as a deductor is not paying tax on his/her income, and collects and pays tax otherwise payable by the third party. Liability of the third party to pay tax when not deducted remains unaffected. Failure to deduct tax at source has serious and quasi-penal consequences for an assessee. The deduction of tax provisions should be programmatically and realistically construed, and not as enmeshes or by adopting catch-as-catch-can approach. In case of a legal or factual doubt in a given case, the assessee can rely on the doctrine of presumption against doubtful penalisation.[1] Whether or not the said doctrine should be applied[2], will depend on facts and circumstances of the case, including the past practice followed by the assessee and accepted by the department. When there is apparent divergence of opinion, to avoid litigation and pitfalls associated, it may be advisable for the Central Board of Direct Taxes to clarify doubts by issuing appropriate instruction/circular after ascertaining view of the assessees and stakeholders.[3] In addition to enhancing revenue and ensuring tax compliance, an equally important aim/objective of the Revenue is to reduce litigation. The instructions/circular, if and when issued, should be clear, and when justified – require the obligation to be made prospective.

Applicability of disallowance under Section 40(*a*) for defaults in respect of TDS under Section 194T

30C.11 It may be noted that Section 40 applies "Notwithstanding anything to the contrary in sections 30 to 38". Therefore, disallowances in clauses (*a*) [in respect of TDS defaults] and (*b*) [of interest/remuneration paid by the firm to partners] shall apply notwithstanding anything to the contrary in sections 30 to 38. Since interest payable to the partners has to be tested for

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1. *See Securities and Exchange Board of India* v. *Sunil Krishna Khaitan and Others*, (2023) 2 SCC 643. However, in the present case doctrine of presumption against doubtful penalisation is not applicable. The assessees were earlier deducting tax at source under Section 194H of the Act, though the amount on which tax was being deducted is unclear. On legal opinion they stopped deducting tax at source.
2. This would include the question of prospective or retrospective application.
3. We do acknowledge that the Central Board of Direct Taxes has on several occasions quelled doubts and issued instructions/circulars.

allowability under Section 36(1)(*iii*) and since Section 40 overrides Sections 30 to 38 which includes Section 36(1)(*iii*), non-deduction of TDS under Section 194T/non-deposit of TDS deducted under Section 194T in respect of interest to partners will attract disallowance under Section 40(*b*). If it escapes the clutches of Section 36(1)(*iii*) and Section 40(*a*), then it will be tested for allowance/disallowance under Section 40(*b*)(*iv*) subject to the limit of interest rate of 12% per annum.

Though both clause (*a*) and clause (*b*) of Section 40 will override sections 30 to 38, neither of the clauses is expressed to override the other. Therefore, both will have to be interpreted harmoniously. Suppose remuneration is paid to non-working partners without deduction of TDS under Section 194T. In that case, the same is not deductible under Sections 30 to 38 as the same will be entirely disallowable under Section 40(*b*). Therefore, the necessity of considering whether they will be disallowed under Section 40(*a*) will not arise.

Now comes the question of Remuneration to working partners. It may be noted that remuneration to working partners is not treated as a deduction allowable under Sections 30 to 38. In a plethora of cases, Revenue has opposed the deduction of interest to partners u/s 40(*b*)(*iv*) on the footing that it does not pass the test of deductibility under Section 36(1)(*iii*). A few such cases are as follows:

- *Devi Construction Company* v. *Deputy Commissioner of Income Tax, Circle-2, Pune* [2020] 118 taxmann.com 361 (Pune - Trib.)
- *Universal Stone Crushing Co. Dala* v. *Income-tax Officer Range-3*(*3*),*Mirzapur* [2021] 129 taxmann.com 199 (Allahabad - Trib.)
- *Ariff & Co.* v. *Assistant Commissioner of Income-tax* [2024] 158 taxmann.com 135 (Chennai - Trib.)
- *Assistant Commissioner of Income-tax - 19(3), Mumbai* v. *Pahilajrai Jaikishin* [2016] 66 taxmann.com 30 (Mumbai - Trib.)

However, the Revenue opposes the deduction of remuneration paid to the working partners u/s 40(*b*)(*v*) on a variety of grounds but not on the grounds of not meeting the test of deductibility under Sections 30 to 38. The deduction for remuneration is allowed under Section 40(*b*) only subject to the limits specified in Section 40(*b*)(*v*). Therefore, a view can be taken that Section 40(*a*) will not apply to TDS defaults under Section 194T since Section 40(*a*) is expressed to override Sections 30 to 38 but not Section 40(*b*).