

TDS – BUILDERS AND DEVELOPERS JAN 2013

**THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA
WESTERN INDIA REGIONAL COUNCIL**

**TDS – BUILDERS AND DEVELOPERS – PRACTICAL
DIFFICULTIES**

5TH JANUARY 2013

J S LODHA AUDITORIUM, CUFFE PARADE, MUMBAI

JUSTICE SUJATA MANOHAR'S OFT QUOTED LIMMERICK:

“ I AM THE COUNTRY'S DRAFTSMAN

I DRAFT THE COUNTRY'S LAWS

FOR MORE THAN HALF THE LITIGATION

I AM THE CAUSE!”

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COMMON FEATURES WITH OTHER INDUSTRIES / SERVICE PROVIDERS:

- AGENTS OF THE GOVERNMENT WITHOUT REMUNERATION
- ONEROUS RESPONSIBILITY
- NO REWARD FOR ACTION ON BEHALF OF THE GOVT.
- CONSEQUENCES FOR NON / MIS-COMPLIANCE
 - INTERESTS
 - PENALTIES
 - PROSECUTIONS
 - DISALLOWANCES OF EXPENSES
 - ADDITION TO INCOME FOR ACTIONS OF OTHERS.

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TAX DEDUCTION AND COLLECTION ACCOUNT NUMBER (TDCAN)

- **FORM 49B**
- **NSDL**

JURISDICTION OVER BRANCHES / FACTORY / GODOWNS, ETC

- **MORE THAN ONE PLACE OF ACTIVITY**
- **HOW TO DRAW THE LINE**
- **WHEN TO OBTAIN SEPARATE TDCAN**

CIRCULAR 719 OF 1995

CIRCULAR 744 OF 1996

L & T's CASE – 278 ITR 369 (ORI)

EMPHASIS IS ON ADMINISTRATIVE CONVENIENCE OF COMPLIER NOT ON JURISDICTIONAL AUTHORITY OF ADMINISTRATOR

SECTION 192 – SALARIES

- **All types of assesseees are liable to deduct tax at source if the payment of salary is of an amount that exceeds the exemption limit in the hands of the recipient.**
- **Employer Employee relationship needs to be examined.**
- **Builder or Developer - one is required to keep a qualified supervisor who is responsible for the site.**

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SECTION 194A: INTEREST OTHER THAN INTEREST ON SECURITIES

- Interest means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.
- nature of transaction for money received by builders – open to change from flat booking to unsecured loan to other liability or bulk booking to joint venture or tie up with investor.

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SECTION 194C – PAYMENTS TO CONTRACTORS AND SUB-CONTRACTORS:

- Contract for carrying out a “work”
 - “Work” shall include:
 - a. Advertising
 - b. broadcasting and telecasting including production of programmes for such broadcasting or telecasting;
 - c. Carriage of goods or passengers by any mode of transport other than by railways.
 - d. catering;
 - e. Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer,
- but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person other than such customer.

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SECTION 194C:

- Subsection 6: No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his Permanent Account Number, to the person paying or crediting such sum.
- Site visit arrangements
- Water tanker - water supply is for potable water – natural resource - Substance over form - there is contract for water supply to construction site and hence TDS.
- Bharani expenses or leveling expenses.
- Hire of JCB or Dumper - such hire is for shifting of material or demolishing and charges are per hours. Substance over form hire of equipment or contract for demolishing. No doubt rate is 2% in 194I or 194C.
- payments to “BHAILOG”.
- payment to Supervisor and provider of labour gangs.

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194 H: Commission or Brokerage

- includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities.
- Builders pay brokerage for getting bookings of the flats / apartments.
- Brokerage is generally paid after full payment is received and possession is given.
- One should have a policy for brokerage accrual and due and for release of payment.
- Area of concern – cancelled contracts.

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SECTION 194I: RENT ..

- DEFINITION OF RENT FROM 13-7-2006:

“rent” means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any-

a. land; or

b. building (including factory building); or

c. land appurtenant to a building (including factory building); or

d. machinery; or

e. plant; or

f. equipment; or

g. furniture; or

h. fittings,

Whether or not any or all of the above are owned by the payee.

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SECTION 194I: RENT ..

- shifting charges or dislocation or compensation for alternate accommodation -
No TDS as such payments are to tenant for them as a compensation and not in the nature of rent.

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SECTION 194J: PROFESSIONAL SERVICE MEANS

- Services rendered by a person
- In the course of carrying on
 - Legal,
 - Medical,
 - Engineering or architectural profession or the
 - Profession of accountancy or
 - Technical consultancy or interior decoration or
 - Advertising or
 - Such other profession as is notified by the board for the purposes of section 44AA or of this section

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SECTION 194J ..

- “FEES FOR TECHNICAL SERVICES” SECTION 9(1)(vii) EXPL 2:

Means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provisions of services of technical or other personnel) but does not include consideration for construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head “salaries”

- “ROYALTY” – Meaning in Section 9(1)(vi) Expl 2.

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194 J:

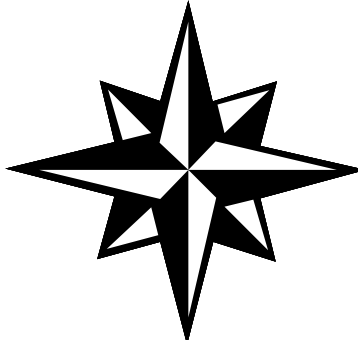
- on account payment or advance payment to Advocate and Architect attracts TDS
- Water or Soil testing - falls in 194J but many of the accountants take it as 194C. Everyone cannot do soil testing . Explanation to section 9.
- Survey fees - will fall in 194J and not 194C.
- Drilling for pile foundation. This will fall in 194J as it requires precision and expertise.
- Rate of TDS causes the difference.

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PROSECUTION – SECTION 276B

- SUPREME COURT – MADHUMILAN SYNTEX 160 TAXMAN 71
- DELHI IRON WORKS 2010 TIOL 762 HC DEL IT
- DOCTRINE OF UNJUST ENRICHMENT

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THANK YOU