CHAPTER 13

DEDUCTION, COLLECTION AND RECOVERY OF TAX

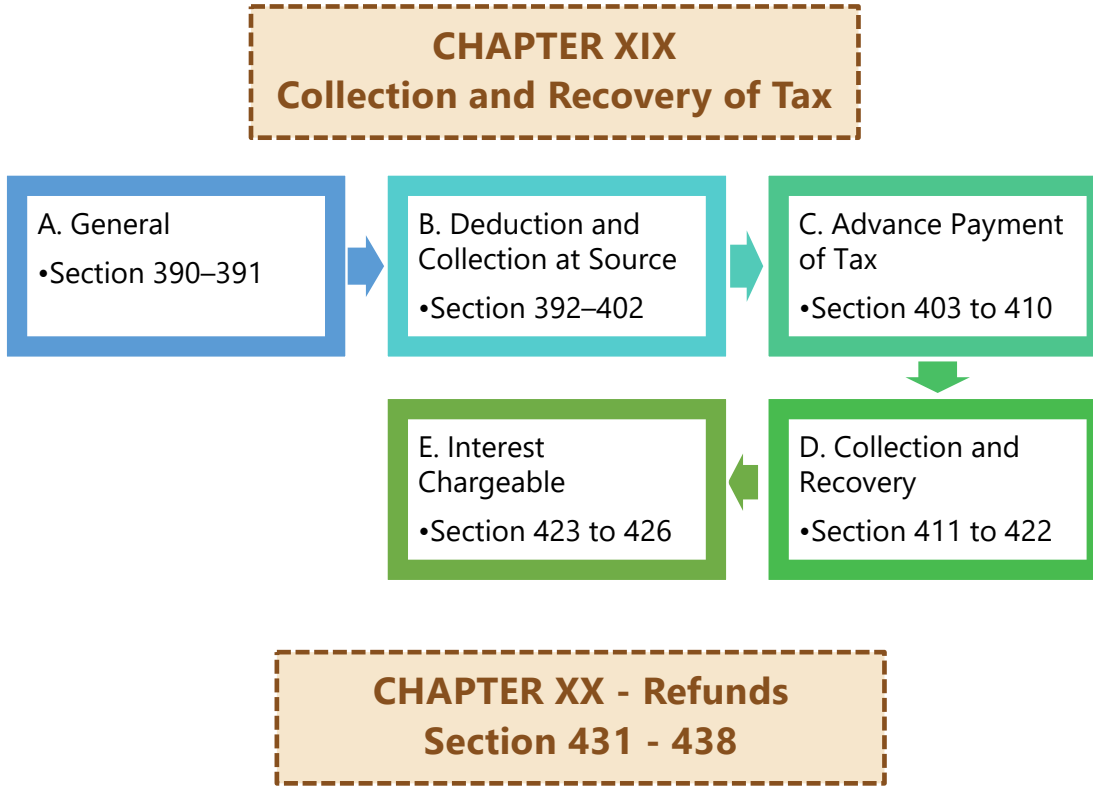


LEARNING OUTCOMES

After studying this chapter, you would be able to -

- **examine** the provisions relating to deduction and collection of tax at source to determine whether tax needs to be deducted/collected at source;
- **compute** the amount of tax to be deducted/collected at source;
- **analyse and apply** the provisions relating to deduction and collection of tax at source to address related issues;
- **examine** the provisions relating to advance tax obligations, the instalments and due dates, and interest and penal consequences of non-payment or delayed payment of advance tax; **analyse and apply** such provisions to determine the quantum of advance tax payment and interest liability, if any, and address related issues;
- **examine** the provisions relating to chargeability of interest for defaults in furnishing return of income, for non-payment of advance tax and deferral of advance tax; **analyse and apply** such provisions to compute interest and address related issues;
- **analyse and apply** the provisions relating to refunds to compute the refund due and address related issues.

CHAPTER OVERVIEW



13.1 DEDUCTION OR COLLECTION AT SOURCE AND ADVANCE PAYMENT [SECTION 390]

The tax on income shall be payable as per this Chapter XIX of the Income Tax Act, 2025, by way of –

(1) Deduction or collection at source; or

(2) Advance payment

(3) Payment under section 392(2)(a) (i.e. tax paid by the employer on the non-monetary perquisites provided to the employee).

The tax referred above shall be payable as per the provisions of the Act, irrespective of the fact that the assessment in respect of such income is to be made in a later tax year. The payment of tax referred to above shall be **in addition to any other**

mode of tax recovery to discharge the liability in respect of income assessed for a tax year.

The tax deducted at source or collected at source or sum referred to in section 392(2)(a) under this Chapter and paid to the Central Government shall be treated as payment of tax on behalf of the person-

(a) from whose income such tax has been deducted; or

(b) from whom such tax has been collected; or

(c) in respect of whose income such tax has been paid.

Nothing contained in this section shall affect the charge of tax on such income under section 4(1). In other words, this provision will not nullify the charge of income-tax on such income which is otherwise applicable.

The Board may make rules for -

a) giving credit of tax deducted or collected or paid to a person referred to in the above and also a person other than the person mentioned above;

b) the tax year for which the credit may be given

Accordingly, Rule 203 of the Income Tax Rules, 2026 specified the following-

(i) **Grant of Credit:** Credit for tax deducted or collected at source and paid to the Central Government shall be granted on the basis of the information furnished by the deductor or collector. Such credit shall ordinarily be given to the deductee ***(person to whom payment has been made or whose account has been credited)*** or the collectee ***(person from whom tax has been collected or whose account has been debited).***

(ii) **Income Assessable in the Hands of Another Person:** Where the deductee or collectee furnishes a declaration that the income is assessable in the hands of another person, the deductor or collector shall report the deduction or collection in the name of such other person, and the credit shall accordingly be granted to that person.

(iii) **Year of Allowability of Credit** Credit for TDS/TCS shall be allowed in the tax year in which the income corresponding to such tax is assessable. Where such income is assessable over more than one year, credit shall be allowed proportionately in those years.

(iv) Basis of Grant and Verification Credit shall be granted on the basis of the information furnished by the deductor or collector and the claim made in the return of income, subject to verification in accordance with the risk management strategy prescribed by the Board.

13.2 DIRECT PAYMENT [SECTION 391]

(1) Direct payment of tax [Section 391(1)]- Section 391 provides that in the following cases, income-tax on any income is payable by the assessee directly if–

(i) there is no provision under this Chapter to deduct income-tax on such income at the time of payment

(ii) income-tax has not been deducted as per the provisions of this Chapter.

Direct payment of Tax

Section 391(3) provides that if any person, including the principal officer of a company

(i) who is required to **deduct any sum** as per the provisions of this Act; or

(ii) an employer referred to in section 392(2)(a) does not deduct or after deducting fails to pay such tax, or does not pay, the whole or part of the tax, **and** where the assessee has also failed to pay such tax directly, then, such person shall, apart from any other consequences that he may incur, be **deemed to be an assessee in default** within the meaning of section 398(1), in respect of such tax.

Deemed to be assessee in

(2) Direct payment of tax, where income of the assessee includes value of specified security or sweat equity shares allotted or transferred free of cost or at a concessional rate to the assessee by an employer being an eligible start-up [Section 391(2)] – In a case where the income of the assessee includes the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the current employer, being an eligible start-up referred to in section 140, free of cost or

ELIGIBLE START UP

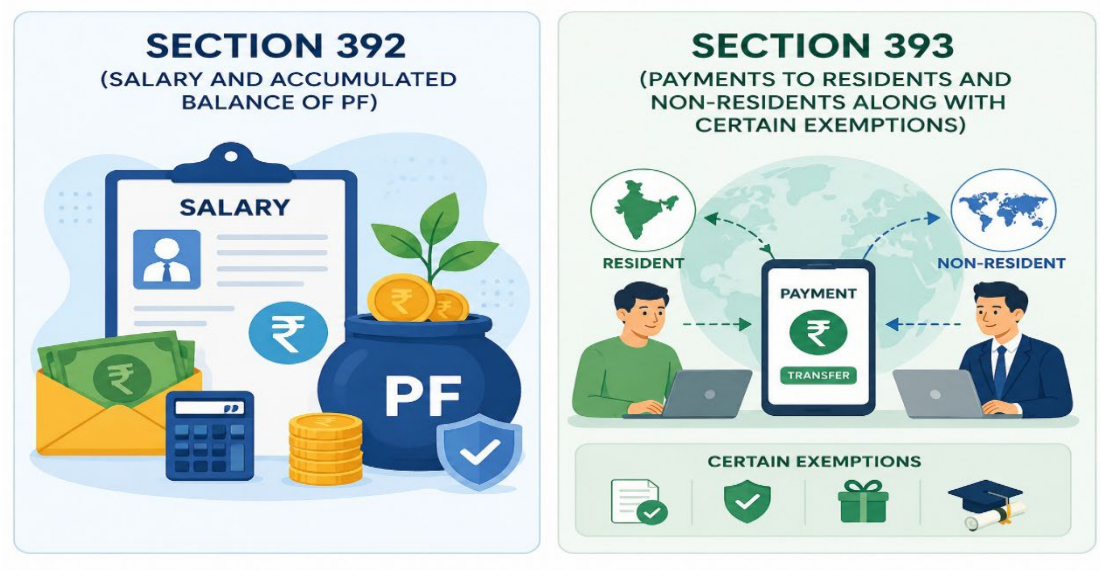
at concessional rate to the assessee, the direct payment of tax on such income has to be paid by the assessee as per section 289(3) within 14 days of the earlier of the following dates -

(a) after the **expiry of 60 months** from the end of the relevant tax year; or

(b) from the date of the sale of such specified security or sweat equity share by the assessee; or

(c) from the date of the assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or sweat equity shares.

13.3 DEDUCTION OF TAX AT SOURCE



Students may note that under the new Income Tax Act, 2025, the various transactions that attract Tax Deduction at Source (TDS) are covered under two main sections, i.e., Section 392 (Salary and Accumulated Balance of PF) and Section 393 (Payments to residents, non-residents and any person along with certain exemptions), followed by the compliance and reporting provisions. Let's first discuss the provisions of section 392 relating to "Salary and Accumulated Balance due to an Employee."

I. Salary and Accumulated Balance due to an Employee [Section 392]

SALARY

(1) Applicability of TDS under section 392(1)



This section casts an obligation on any person responsible for paying any income **chargeable to tax under the head 'Salaries'** to deduct income-tax **at the time of payment on the amount payable.**

(2) Time and Manner of deduction of tax

(i) Such income-tax has to be calculated **at the average rate of income-tax** computed on the basis

- of the rates in force for the tax year in which the payment is made,
- on the estimated total income of the assessee
- where the employee intimates to the employer his intent to exercise the option under section 202(4) of shifting out of the default tax regime.



*The liability to deduct tax at source in the case of salaries arises only **at the time of payment.***

(ii) **Average rate of income-tax** means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income.

(iii) **Computation of TDS under default tax regime:** The income-tax in respect of the total income of an employee would be computed at the rates provided in section 202, subject to certain conditions, including the condition that the employee does not avail of specified exemptions and deductions. The tax regime provided in section 202 is the default tax regime applicable, *inter alia*, to an individual.

However, under section 202(4), an employee may exercise an option to opt out of this tax regime.

(iv) Information regarding intended tax regime: The CBDT has, vide Circular No.4/2023 dated 5.4.2023 clarified that an employer, has to seek information from each of its employees having income under section 392 regarding their intended tax regime and each such employee shall intimate the same to his employer, regarding his intended tax regime for each year and upon intimation, the employer will compute his total income, and deduct tax at source thereon according to the option exercised.

If intimation is not made by the employee, it would be **presumed** that the employee continues to be in the **default tax regime** and has not exercised the option to opt out of the new tax regime. Accordingly, in such a case, the employer shall deduct tax at source, on income under section 392, in accordance with the rates provided under section 202.

It is also clarified that the intimation would not amount to exercising option in terms of section 206(4) and the person shall be required to do so separately in accordance with the provisions of the said section. It implies that the employee is entitled to choose afresh the tax regime while filing the ITR under section 263(1) for every tax year.

(v) Tax on non-monetary perquisites: The concept of payment of tax on non-monetary perquisites has been provided in sections 392(2)(a) and 392(2)(b).

These sections provide that the employer may pay this tax, at his option, in lieu of the deduction of tax at source from salary payable to the employee.

Such tax will have to be worked out at the average rate applicable to the "Salaries", including the value of non-monetary perquisites and payment of tax will have to be made every month along with tax deducted at source on monetary payment of salary, allowances etc.

(vi) Tax deduction on perquisite being any specified security or sweat equity shares: An employer, being an eligible start-up referred to in section 140, responsible for paying any income to the assessee by way of perquisite being any specified security or sweat equity shares allotted or



transferred, directly or indirectly, free of cost or at concessional rate to the assessee, has to deduct or pay, tax on the value of such perquisite provided to its employee within the timelines specified above under the heading "13.2 Direct Payment".

Such tax has to be deducted on the basis of rates in force for the tax year in which the said specified security or sweat equity share is allotted or transferred.

(vii) Particulars for determining the tax deducted at source: The employer shall consider the following particulars furnished by the employee assessee, at his option[1], for deducting tax at source and such particulars can increase or decrease the tax to be deducted:

(a) any income under the head "**Salaries" due or received from any for other employer(s)** during the tax year.

(b) any **relief allowable under section 157**, in case of a Government servant, or an employee in a company, co-operative society, local authority, university, institution, association or body is entitled for such relief.

(c) **any loss from house property** for the same tax year.

(d) any **income under any other head of income, not being a loss** under any such head for the same tax year.

(e) any **tax deducted at source (TDS) or Tax collected at source (TCS)** for the same tax year;

Note - *Students may note that the tax deductible from income under the head "Salaries" shall not be reduced in any case,* ***except on account of*** *-*



- *loss under the head "Income from house property"; if the employee intimated to the employer his intent to exercise the option of shifting out of the default tax regime and*
- *the amount of TDS or TCS.*

[1] *in Form no. 122*

(viii) **Furnishing of statement of particulars of perquisites or profits in lieu of salary by employer to employee**: The person responsible for paying any income chargeable under the head "Salaries" to the employee

(a) shall furnish a statement in prescribed form[2] with correct and complete particulars of perquisites or profits in lieu of salary paid, along with their value, to the employee;

(b) shall, obtain from the assessee the evidence or proof or particulars of prescribed claims (including claim for set off of loss for the purposes of estimating income or computing tax deductible; and

(c) may, increase or reduce the amount to be deducted under this section for adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the tax year



As referred in (b) above, in case an employee has intimated his employer of his **intent to exercise the option under section 202(4) of shifting out of the default tax regime**, Rule 205 requires furnishing of the evidence of the following claims[3] to the employer for the purpose of estimating his income or computing the amount of TDS:

S. No.	Nature of Claim	Evidence or particulars
1.	House Rent Allowance	Name, address and PAN of the landlord(s) where the aggregate rent paid during the tax year exceeds ₹ 1 lakh and relationship with the landlord, if any

[2] The statement shall be in Form 123. This requirement is applicable only if the salary paid/payable to an employee for the tax year is more than ₹ 1,50,000. For other employees, the particulars of perquisites/profits in lieu of salary shall be given in Form 130 itself.

[3] in Form No.124

2.	Leave Travel Concession or Assistance	Evidence of expenditure
3.	Deduction of interest under the head "Income from house property"	Name, address and PAN of the lender
4.	Deduction under Chapter VIII	Evidence of investment or expenditure.

(ix) **Salaries payable in a foreign currency**: For purposes of deduction of tax out of salaries payable in a foreign currency, the value of salaries in terms of rupees should be calculated at the prescribed rate of exchange as specified in Rule 207. [Section 392(8)]

ILLUSTRATION 1

LL Limited paid leave travel facility to its employees and considered an exemption in respect of Leave Travel Concession (LTC) under Schedule III (Table: Sl. No. 8), based on the self-declaration furnished by the employees, who have exercised option to opt out of the default tax regime. The Assessing Officer held that the company as an employer ought to have verified the genuineness of the claim of exemption by obtaining from them, the proof of actual expenditure incurred by availing LTC. Accordingly, the Assessing Officer treated the assessee company as an assessee in default. Decide the correctness of action.

SOLUTION

Section 392 casts liability on the employer to deduct tax at source from the salary paid to its employees. In this case, the employer has paid LTC to its employees and the said LTC is eligible for exemption, subject to the conditions laid down in Schedule III (Table: Sl. No. 8) read with Rule 278 of the Income-tax Rules, 2026.

Section 392(5)(b) casts responsibility on the employer paying any income chargeable under the head 'Salaries' to obtain from the assessee, the evidence or proof or particulars of certain claims for –

(1) estimating the income of the employee; or

(2) computing TDS.

Rule 205 mandates a salaried assessee claiming, *inter alia*, leave travel concession to furnish evidence of expenditure incurred in relation thereto to the employer, for the estimating his income for computing TDS.

In the given case, LL Limited paid leave travel concession to its employees and considered for exemption based on mere self-declaration, instead of verifying and obtaining the evidence/ proof of actual expenditure. Thus, the action of the Assessing Officer is correct in law.

Accumulated Balance due to an Employee

(1) Taxability of Accumulated Balance due to an Employee

(i) Provident Fund Scheme: Under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952), certain specified employers are required to comply with the Employees' Provident Fund Scheme, 1952 (EPFS). However, these employers are also permitted to establish and manage their own private provident fund (PF) scheme subject to the fulfilment of certain conditions.



(ii) Recognised Provident Fund: The provident funds established under a scheme framed under EPF & MP Act, 1952, or Provident Fund exempted under section 17 of the said Act and recognised under the Income-tax Act, 2025, are termed as Recognised Provident Fund (RPF).

(iii) Withdrawal of accumulated balance: Part A of the Schedule XI to the Income-tax Act, 2025, contains the provisions relating to RPFs. Under the provisions of Paragraph 8 of Part A of the Schedule XI, the withdrawal of an accumulated balance by an employee from the RPF is exempt from taxation.

(iv) Withdrawals subject to tax: For the purpose of discouraging pre-mature withdrawal and promoting long term savings, if the employee makes withdrawal

- **before continuous service of five years** (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.) and

- **does not opt for transfer** of accumulated balance to the new employer,

the withdrawal would be subject to tax.

(v) **TDS on withdrawals:** Paragraph 9 of Part A of the Schedule XI provides the manner of computing the tax liability of the employee in respect of such premature withdrawal.

To ensure the collection of tax in respect of such premature withdrawals, Paragraph 10 of Part A of the Schedule XI casts responsibility on the payer, being trustees of the RPF or any person authorised by the regulations of the fund to make payment of the accumulated balances to deduct tax as computed in Paragraph 9 at the time of payment.

Paragraph 9 provides that the tax on the withdrawn amount is required to be calculated by re-computing the tax liability of the years for which the contribution to RPF has been made by treating the same as a contribution to an unrecognised provident fund.

(2) Applicability and Rate of TDS

Section 392(7) provides for the deduction of tax @10% on the taxable amount of withdrawal from the employees' provident fund scheme.



Accordingly, in a case where the accumulated balance due to an employee participating in a RPF is includible in his total income owing to the provisions of Paragraph 8 of Part A of the Schedule XI not being applicable, the payer making payment of accumulated balance due to employees are required to deduct income-tax @10%.

(3) Time of tax deduction at source

Tax should be deducted **at the time of payment** of the accumulated balance due to the employee participating in RPF.

(4) Threshold limit for deduction of tax under section 392(7)

The tax is required to be deducted under section 392(7) where the aggregate amount of payment of the accumulated balance due to the employee is ₹ 50,000 or more.



ITC Ltd v. CIT (2016) 384 ITR 14 (SC)

Issue: Whether "tips" received by the hotel-company from its customers (who made payment through credit card) and distributed to the employees would fall within the meaning of "Salaries" to attract tax deduction at source u/s 392?

Analysis & Decision: Section 15 applies when an employee has a vested right to claim any salary from an employer or former employer. However, in the case on hand, there is no vested right on the part of the employee to claim any amount of tips from the employer, since tips are purely voluntary amounts that may or may not be paid by customers for services rendered.

The amount of tips paid by the employer to the employees had no reference to the contract of employment at all. Tips were received by the employer in a fiduciary capacity as trustee for payments that were received from customers, which they disbursed to their employees for service rendered to the customer. There was, therefore, no reference to the contract of employment when these amounts were paid by the employer to the employee.

Therefore, **the tips received by the employees could not be regarded as "profits in lieu of salary" in terms of section 18(1).** The payment by the employer of tips collected from the customers to the employees would not be a payment made "by or on behalf of" an employer. Such payments would be outside the purview of section 15(b) of the Act.

The person who paid the tip was the customer and not the employer. Even though the amounts were with the employer, he had no title to the money, and it was held in a fiduciary capacity as trustee for and on behalf of the employees.

Therefore, in such a case, **no liability to deduct tax at source u/s 392 arises**, and hence, the assessee company cannot be treated as an assessee in default for non-deduction of tax at source from the amount of tips collected and distributed to its employees.

ILLUSTRATION 2

Mr. Sharma, an employee of M/s. ABC Ltd., since 10-04-2022, resigned on 31-03-2027 and withdrew ₹ 60,000, being the balance in his RPF account. Discuss with reasons whether the provisions of Chapter XIX-B are attracted, and if so, what is the net amount receivable by the payee, Mr. Sharma?

SOLUTION

As per section 392(7), in a case where the accumulated balance due to an employee participating in RPF is includible in his total income owing to the provisions of Para 8 of Part A of the Schedule XI not being applicable, the payer making payment of accumulated balance due to employees is required to deduct income-tax@10% at the time of payment. Tax deduction at source has to be made only if the amount or the aggregate amount is ₹ 50,000 or more.

Para 8 of Part A of the Schedule XI, *inter alia*, provides that only if an employee has rendered continuous service of 5 years or more with the employer, then the accumulated balance in RPF payable to an employee would be excluded from the total income of that employee i.e., exempt income.

In the present case, Mr. Sharma has withdrawn an amount exceeding ₹ 50,000 on his resignation after rendering continuous service of four years with M/s. ABC Ltd. Therefore, tax has to be deducted at source@10% under section 392(7) on ₹ 60,000, being the amount withdrawn on his resignation without rendering continuous service of a period of five years with M/s. ABC Ltd.

The net amount receivable by Mr. Sharma is ₹ 54,000 [i.e., ₹ 60,000 – ₹ 6,000, being tax deducted at source].

II. Tax to be deducted at source [Section 393]

The Income-tax Act, 2025, seeks to consolidate all transactions (other than salary and the accumulated balance of PF) involving payments to both residents and non-residents that are liable for tax deduction at source under a single comprehensive provision, i.e., Section 393.

Section 392 provides for tax deduction from salaries and payment of accumulated balance due to an employee in respect of provident fund. All other TDS provisions have been merged under the Income-tax Act, 2025 into one section, namely, section 393. Accordingly, Sub-sections (1) to (4) to section 393 relate to the following –

Section No.	Particulars
Section 393(1)	TDS on income or sum credited, paid or distributed during the tax year **to a resident**

Section 393(2)	TDS on income or sum credited or paid during the tax year to **a non-resident**
Note – Provisions relating to section 393(2) with respect to payment to non-residents are discussed in Chapter 21: Non-resident Taxation in Module 4.	
Section 393(3)	TDS on income or sum credited or paid during the tax year **to any person**
Section 393(4)	For **no deduction** of tax at source

A. TDS on Payments to Resident Person [Section 393(1)]

Table to section 393(1) contains certain payments made to residents listed from Sl. No. 1 to 8, along with the details of the payer, being the person responsible for paying such sum, the rate of TDS and the threshold limit.

Further, **Table to section 393(4)** contains the relevant conditions and exemptions from deduction of tax at source, while the interpretation of certain terms is contained in section 402.

For ease of understanding, the discussion to section 393(1) has been arranged transaction-wise with reference to each Serial Number. While discussing each transaction, the relevant conditions and exemptions specified in the Table referred to in section 393(4), along with the interpretation of certain terms referred to in section 402, have also been incorporated so as to enable students to understand the complete implications of the transaction a single place for comprehensive reading and clear understanding. Now let's begin with the discussion:

As per section 393(1), where any income or sum of the nature specified in the Table to section 393(1), is credited or paid or distributed by the person specified in the said table during the tax year, **to a resident**, the person responsible for paying (referred as "Payer") such income or sum, shall deduct income-tax -

(a) on the **entire amount** of such income or sum, where the amount or aggregate of amounts exceeds the specified threshold limit **unless otherwise mentioned**.

(b) at the specified rate; and

(c) **at the time of credit of such income or sum to the account of the payee or at the time of its payment** in cash or by way of a cheque or a draft or by any other mode, whichever is earlier, **unless otherwise mentioned**.

The credit of any income or sum to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income or sum, shall be deemed to be the credit of such income or sum to the account of the payee and tax has to be deducted at source accordingly [Section 393(11)].

Insurance Commission [Section 393(1) Table Sl. No. 1(i)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
1(i)	**Insurance Commission** Any income by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring **insurance business** (including business relating to the continuance, renewal or revival of insurance policies)	Any Person	Rate in force i.e., 2% in case of resident other than a domestic company and 10% in case of a domestic company	₹ 20,000

Section 393(1) [Table: Sl. No. 1(i)] casts responsibility on any person responsible for paying insurance commission referred above **to a resident** to deduct tax at source @

- 2% in case of resident other than a domestic company and
- 10% in case of a domestic company

on the entire amount if the amount or aggregate of amounts of such income **exceeds ₹ 20,000,** at the time of credit or payment, whichever is earlier.

Commission or brokerage other than insurance commission [Section 393(1) Table Sl. No. 1(ii)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
1(ii)	Any income by way of commission [not being insurance commission referred to in serial number 1(i)] or brokerage.	Specified Person	2%	₹ 20,000

Meaning of "Commission or brokerage" [Section 402(7)]

"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, other than securities.

As per section 402(37), Specified Person means -

(a) Any person, not being an individual or HUF; or

(b) An individual and HUF whose total sales, gross receipts or turnover from business or profession exceed

- ₹ 1 crore in case of business or
- ₹ 50 lakhs in case of the profession

during the tax year immediately preceding the tax year in which the income or sum is credited or paid.

Section 393(1) [Table: Sl. No. 1(ii)] casts responsibility **on specified person responsible for paying** any **income by way of commission (not being insurance commission) or brokerage** to a resident to deduct tax at source **@2%** on the entire amount if the amount or aggregate of amounts of such income exceeds ₹ 20,000.



It implies that an Individual or HUF who are not carrying on business or profession or whose total sales, gross receipts or turnover does not exceed ₹ 1 crore in case of business or ₹ 50 lakhs in case of the profession during the tax year immediately preceding the tax year in which the income or sum is credited or paid are not required to deduct tax at source.

No deduction of tax at source [Section 393(4) Table Sl. No. 1]

No tax is required to be deducted from commission or brokerage payable by Bharat Sanchar Nigam Limited (BSNL) or Mahanagar Telephone Nigam Limited (MTNL) to their public call office franchisees.



CIT v. Ahmedabad Stamp Vendors Association (2012) 348 ITR 378 (SC)

Issue: Can discount given to stamp vendors on purchase of stamp papers be treated as 'commission or brokerage' to attract the provisions for tax deduction u/s 393(1) (Table: Sl. No. 1(ii))?

Analysis & Decision: Although the Government has imposed a number of restrictions on the licensed stamp vendors regarding the manner of carrying on the business, the stamp vendors are required to purchase the stamp papers on payment of price less discount on "principal to principal" basis and there is no "contract of agency" at any point of time. The definition of "commission or brokerage" under section 402(7) indicates that the payment should be received, directly or indirectly, by a person acting on behalf of another person, *inter alia*, for services in the course of buying or selling goods. Therefore, the element of agency is required in case of all services and transactions contemplated by the definition of "commission or brokerage" under section 402(7).

When the licensed stamp vendors take delivery of stamp papers on payment of full price less discount and they sell such stamp papers to the retail customers, neither of the two activities (namely, buying from the Government and selling to the customers) can be termed as service in the course of buying and selling of goods. The discount on purchase of stamp papers, therefore, does not fall within the expression "commission or brokerage" to attract the provisions of tax deduction at source u/s 393(1) (Table: Sl. No. 1(ii)).



Bharti Cellular Ltd. vs. ACIT [2024] 462 ITR 247 (SC)

Issue: Are cellular mobile telephone service providers required to deduct tax at source under section 393(1) [Table: Sl. No. 1(ii)] on the difference between the discounted price at which it sold start-up kits and recharge vouchers to franchisees or distributors and the sale price at which these products were subsequently sold by the franchisees or distributors?

Analysis and Decision: The obligation to deduct tax at source in terms of section 393(1) [Table: Sl. No. 1(ii)] arises when the legal relationship of principal and agent is established. Agency is a triangular relationship between the principal, agent and the third party.

To decide whether a contracting party acts for himself as an independent contractor (and not as an agent), it needs to be examined whether in the course of work, he intends to make profits for himself, or is entitled to receive pre-arranged remuneration. If the party is concerned about acting for himself and making the maximum profits possible, he is usually regarded as a buyer, or an independent contractor and not as an agent of the principal.

The legal position of a distributor is generally regarded as different from that of an agent. The distributor buys goods on his account and sells them in his territory. The profit made is the margin of difference between the purchase price and the sale price. Unlike an agent, he does not act as a communicator or creator of a relationship between the principal and a third party.

Based on perusal of agreement between assessee and distributors / franchisee, the franchisee/distributor paid the discounted price regardless of, and even before, the pre-paid products being sold and transferred to the retailers or the actual consumer. The franchisee/distributor was free to sell the prepaid products at any price below the price printed on the pack. The franchisee /distributor determined his profits / income.

Section 393(1) fixes the liability to deduct tax at source on the 'person responsible to pay' and the liability to deduct tax at source arises when the income is credited or paid by the person responsible for paying. The expression is meant to ensure that "the person responsible for paying" does not dodge the obligation to deduct tax at source, even when the payment is indirectly made by the principal-payer to the agent-payee. However, deduction of tax at source in terms of section 393(1) [Table: Sl. No. 1(ii)] is not to be extended and widened in ambit to apply to true/genuine business transactions, where the assessee is not

the person responsible for paying or crediting income. In the present case, the assessee neither pays nor credit any income to the person with whom he has contracted.

The assessee is not privy to the transactions between distributors/franchisees and third parties. It is, therefore, impossible for the assessee to deduct tax at source and comply with section 393(1) [Table: Sl. No. 1(ii)], on the difference between the total/sum consideration received by the distributors/ franchisees from third parties and the amount paid by the distributors/ franchisees to them.

Accordingly, the Apex Court held that the contractual obligations of the franchises or distributors did not reflect a fiduciary character of the relationship, or the business being done on the Principal's own account. Hence, section 393(1) [Table: Sl. No. 1(ii)] is not applicable to the facts and circumstances of this case and the assessee would not be under a legal obligation to deduct tax at source on the income/profit component in the payments received by the distributors/ franchisees from the third parties/customers, or while selling/transferring the pre-paid coupons or starter-kits to the distributors.

Payment of Rent by certain Individuals or HUF
[Section 393(1) Table Sl. No. 2(i)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
2(i)	**Any income by way of rent**	Person other than specified person	2%	₹ 50,000 for a month or part of a month

Meaning of Rent [Section 402(29)]

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 land, or building (including factory building) or land appurtenant to a building (including factory building), whether or not owned by the payee.

Time of Deduction:

The tax shall be deducted on such rent

- at the time of credit of rent to the account of payee or
- at the time of payment,

whichever is earlier, **for the last month of the tax year or the last month of tenancy**.

Deduction of tax not to exceed rent for last month

As per section 397(2)(b)(i), **where PAN is not furnished** by the payee to the payer, tax is deductible **at higher of the rate** of 2% or 20%.

However, as per section 397(2)(e), the amount of TDS cannot exceed the amount of rent payable for the last month of the tax year or the last month of the tenancy.

[Note - Section 397(2)(b)(i) provides for deduction of tax at source at a higher rate on non-furnishing of PAN by the payee, is discussed at length later in this chapter]

No requirement to obtain TAN

The payer is not required to obtain Tax Deduction and Collection Account Number (TAN) [Section 397(1)(c)].



Section 393(1) [Table: Sl. No. 2(i)] casts responsibility on an individual or HUF

- not carrying any business or profession or
- whose total sales, gross receipts or turnover from the business or profession carried on by him **does not exceed** ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession during the tax year immediately preceding the tax year in which such income or sum is credited or paid.

responsible for paying to a resident any **income by way of rent** to deduct tax at source **@2% on the entire amount if** the amount **of rent exceeds ₹ 50,000 for a month or part of a month**.

The deduction is to be made at the time of credit of rent to the account of the payee or at the time of payment, whichever is earlier, for the last month of the tax year or the last month of tenancy.

Tax has to be deducted under this Sl. No. on payment of **rent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building)**.

ILLUSTRATION 3

Mr. X, a salaried individual, pays rent of ₹55,000 per month to Mr. Y from June, 2026. Is he required to deduct tax at source? If so, when is he required to deduct tax? Also, compute the amount of tax to be deducted at source.

Would your answer change if Mr. X vacated the premises on 31st August, 2026?

Also, what would be your answer if Mr. Y does not provide his PAN to Mr. X?

SOLUTION

Since Mr. X pays rent exceeding ₹ 50,000 per month in the tax year 2026-27, he is liable to deduct tax at source @2%. The tax is to be deducted in the last month of the tax year i.e., March 2027 or in the last month of tenancy, if the property is vacated during the year. Since property is not vacated during the year, ₹ 11,000 [(₹ 55,000 x 2% x 10)] has to be deducted from rent payable for March, 2027.

If Mr. X vacated the premises in August, 2026, then tax of ₹ 3,300 [₹ 55,000 x 2% x 3] has to be deducted from rent payable for August, 2026.

In case Mr. Y does not provide his PAN to Mr. X, tax would be deductible @20%, instead of 2%.

In case 1 above, this would amount to ₹ 1,10,000 [₹ 55,000 x 20% x 10] but the same has to be restricted to ₹ 55,000, being rent for March, 2027.

In case 2 above, this would amount to ₹ 33,000 [₹ 55,000 x 20% x 3].

Rent [Section 393(1) Table Sl. No. 2(ii)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
2(ii)	**Any income by way of rent**	Specified Person	• **2%,** for the use of any machinery or plant or equipment • **10%,** for the use of any land, or building (including factory building), or land appurtenant to a building (including factory building), or furniture, or fittings.	₹ 50,000 per month or part of the month

(i) Meaning of Rent [Section 402(29)]

"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—

1. land; or
2. building (including factory building); or
3. land appurtenant to a building (including factory building); or
4. machinery; or
5. plant; or
6. equipment; or
7. furniture; or
8. fittings,

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

(ii) Meaning of Specified Person [Section 402(37)]

Specified person means -

(a) Any person, not being an individual or HUF; or

(b) An individual and HUF whose total sales, gross receipts or turnover exceed
- ₹ 1 crore in case of business or
- ₹ 50 lakhs in case of the profession

during the tax year immediately preceding the tax year in which the income or sum is credited or paid.

Section 393(1) [Table: Sl. No. 2(ii)] casts responsibility **on specified person** responsible for paying to a resident any **income by way of rent** to deduct tax at source **@**



- **2%,** for the use of any **machinery or plant** or equipment or
- **10%,** for the use of any **land, or building** (including factory building), or land appurtenant to a building (including factory building), or **furniture, or fittings.**

on the entire amount if the amount of **rent exceeds ₹ 50,000 for a month or part of a month**.

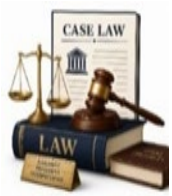
Circulars & Notifications

Applicability/non-applicability of TDS under section 393(1) [Table: Sl. No. 2(ii)] on certain payments

Nature of Payment	Analysis	Conclusion
Payments made by the customers on account of **cooling charges to the cold storage owners**. **[Circular No.1/2008 dated 10.1.2008]**	The main function of cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only incidental in nature. **The customer is also not given any right to use any demarcated space/place or the machinery of the cold store and thus does not become a tenant.** Therefore, the provisions of section 393(1) [Table: Sl. No. 2(ii)] are not applicable to the cooling charges paid by the customers of the cold storage. However, **since the arrangement between the customers and cold storage owners is basically contractual in nature**, the provision of section 393(1) [Table: Sl. No. 6(i)] will be applicable to the amounts paid as cooling charges by the customers of the cold storage.	No tax is to be deducted under section 393(1) [Table: Sl. No. 2(ii)]. However, tax to be deducted under section 393(1) [Table: Sl. No. 6(i)]
Lumpsum lease premium paid for acquisition of long-term lease [Circular No.35/2016, dated 13-10-2016]	The CBDT has, clarified that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for the acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 393(1) [Table: Sl. No. 2(ii)].	Not liable for TDS under section 393(1) [Table: Sl. No. 2(ii)].

Remittance of Passenger Service Fees (PSF) by an Airline to an Airport Operator [Circular No. 21/2017, dated 12.06.2017]	The primary requirement for any payment to qualify as rent is that the payment must be for the use of land and building and mere incidental/minor/insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 393(1) [Table: Sl. No. 2(ii)]. Accordingly, the CBDT has, vide this circular, clarified that the provisions of section 393(1) [Table: Sl. No. 2(ii)] shall not be applicable on payment of PSF by an airline to Airport Operator.	The provisions of section 393(1) [Table: Sl. No. 2(ii)] shall not be applicable.
Payment of lease rent or supplemental lease rent, made by a 'lessee' to a lessor, being a Unit located in International Financial Services Center for lease of an aircraft [Notification No. 65/2022, dated 16.06.2022] and for lease of a ship [Notification No. 57/2023 dated 01.08.2023]	The Central Government has, vide this Notification, specified that no tax is to be deducted under section 393(1) [Table: Sl. No. 2(ii)] on lease rent or supplemental lease rent payments, made by a lessee to a lessor, being a Unit located in IFSC, **for lease of an aircraft or ship** subject to the following conditions- (a) The lessor has to furnish a statement-cum-declaration for each tax year to the lessee giving details of tax years for which the lessor opts for claiming deduction under section 147 (b) The lessee would not deduct tax on payment made or credited to lessor after the date of receipt of copy of statement cum-declaration from the lessor; and furnish the particulars of all the payments made to lessor on which tax has not been deducted.	No tax is to be deducted u/s 393(1) [Table: Sl. No. 2(ii)] The **above relaxation is available for the tax years** as declared by the lessor for which deduction u/s 147 is being opted. The lessee shall be liable to deduct tax on payment of lease rent for any other tax year.

TDS on GST component of rental income [Circular No.4/2008 dated 15.4.2008]	Service tax paid by the tenant doesn't partake the nature of income of the landlord. The landlord only acts as a collecting agency for the Government for collection of service tax. Therefore, tax deduction at source under section 393(1) [Table: Sl. No. 2(ii)] would be required to be made on the amount of rent paid/payable without including the service tax. **Note -** It is possible to take a view that the clarification given in Circular No. 4/2008 would apply in the GST regime also.	TDS to be deducted only on the amount of rent excluding GST



Japan Airlines Co. Ltd. v. CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)

Issue: Are landing and parking charges paid by an airline company to Airports Authority of India in the nature of rent to attract tax deduction at source under section 393(1) (Table: Sl. No. 2(ii))?

Analysis & Decision: The charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport. Hence, **the charges are not for use of the land *per se* and, therefore, it cannot be treated as "rent" within the meaning of section 393(1) [Table: Sl. No. 2(ii)].**

Since the payment is contractual in nature, tax is required to be deducted at source under section 393(1) [Table: Sl.No.6(i)].

Consideration for Transfer of immovable property other than agricultural land [Section 393(1) Table Sl. No. 3(i)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
3(i)	Any consideration for the transfer of any immovable property (other than agricultural land).	Any Person [other than the person who are required to deduct tax under serial number 3(iii) i.e., for compulsory acquisition of immovable property]	1% of - consideration for transfer of the immovable property; or - stamp duty value of such property, whichever is higher	₹ 50,00,000

More than one transferor or transferee

- For the purpose of threshold limit of ` 50 lakhs, consideration for transfer of any immovable property shall be the aggregate of the amounts paid or payable by all the transferees to the transferor or all the transferors for transfer of such immovable property.
- Tax shall be deducted where consideration for transfer of any immovable property or the stamp duty value of such land ≥ ₹ 50 lakhs

Meaning of certain terms

(i) Agricultural land [Section 402(2)]

Agricultural land in India, not being a land situated in any area referred to in section 2(22)(iii) i.e., Rural agricultural land.

(ii) Consideration for transfer of any immovable property [Section 402(9)]

Consideration for transfer of any immovable property includes all charges of the nature of –

(a) club membership fee; or

(b) car parking fee; or

(c) electricity or water facility fee; or

(d) maintenance fee; or

(e) advance fee; or

(f) any other charges of similar nature, which are incidental to transfer of the immovable property. **(iii) Immovable property** Any land (other than agricultural land) or any building or part of a building.
No requirement to obtain TAN The payer is not required to obtain Tax Deduction and Collection Account Number (TAN) [Section 397(1)(c)]



Section 393(1) [Table: Sl. No. 3(i)] casts responsibility **on person** (**other than** person who are required to deduct tax at source **for compulsory acquisition of immovable property)** responsible for paying to a resident any consideration for transfer of **any immovable property (other than rural agricultural land)** to deduct tax at source **@1% of**

- such **consideration** or
- **stamp duty value** of such property,

whichever is higher, on the entire amount if the consideration or stamp duty value of such property is ₹ 50,00,000 or more.

ILLUSTRATION 4

Mr. X sold his house property in Bangalore as well as his rural agricultural land for a consideration of ₹ 60 lakh and ₹ 15 lakh, respectively, to Mr. Y on 1.8.2026. He has purchased the house property and the land in the year 2025 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 1.8.2026, is ₹ 85 lakh and ₹ 20 lakh for the house property and rural agricultural land, respectively. Examine the tax implications in the hands of Mr. X and Mr. Y and the TDS implications, if any, in the hands of Mr. Y, assuming that both Mr. X and Mr. Y are resident Indians.

SOLUTION

(i)	**Tax implications in the hands of Mr. X**
	As per section 78, the stamp duty value of house property (i.e., ₹ 85 lakh) would be deemed to be the full value of consideration arising on transfer of property since the stamp duty value exceeds 110% of the consideration received. Therefore, ₹ 45 lakh (i.e., ₹ 85 lakh – ₹ 40 lakh,

	being the purchase price) would be taxable as short-term capital gains for the tax year 2026-27. Since rural agricultural land is not a capital asset, the gains arising on the sale of such land is not taxable in the hands of Mr. X.
(ii)	**Tax implications in the hands of Mr. Y**
	In case the immovable property is received for inadequate consideration, the difference between the stamp value and actual consideration would be taxable under section 92(2)(*m*), if such difference exceeds the higher of ₹ 50,000 and 10% of the consideration. Therefore, in this case, ₹ 25 lakh (₹ 85 lakh – ₹ 60 lakh) would be taxable in the hands of Mr. Y under section 92(2)(*m*). Since rural agricultural land is not a capital asset, the provisions of section 92(2)(*m*) are not attracted in spite of inadequate consideration.
(iii)	**TDS implications in the hands of Mr. Y**
	Since the sale consideration and stamp duty value of house property, both are not less than ₹ 50 lakhs, Mr. Y is required to deduct tax at source under section 393(1) [Table: Sl. No. 3(i)]. The tax to be deducted under section 393(1) [Table: Sl. No. 3(i)] would be ₹ 85,000, being 1% of ₹ 85 lakh (higher of ₹ 60 lakhs and ₹ 85 lakhs). However, TDS provisions under section 393(1) [Table: Sl. No. 3(i)] are not attracted in respect of the transfer of rural agricultural land.

Consideration under a Specified Agreement [Section 393(1) Table Sl. No. 3(ii)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
3(ii)	Any consideration, not being consideration in kind, under a Specified Agreement	Any Person	10%	NIL



Section 393(1) [Table: Sl. No. 3(ii)] casts responsibility on **every person** who is paying to a resident **any consideration** not being consideration in kind, under a Specified Agreement referred u/s 67(14) to deduct tax at source **@10% of entire consideration.**

In case of provisions of both Sl. Nos. 3(i) and 3(ii) are applicable, tax shall be deducted under Sl. No. 3(ii) only.

As per section 67(15)(b), **specified Agreement** means a registered agreement in which a person owning land or building, or both,

- agrees to allow another person to develop a real estate project on such land or building, or both,
- in consideration of a share, being land or building or both, in such project,
- whether with or without payment of part of the consideration in cash.

Consideration for transfer of immovable property (other than agricultural land) on compulsory acquisition [Section 393(1) Table Sl. No. 3(iii)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
3(iii)	Any sum, being in the nature of – (a) compensation or enhanced compensation; or (b) consideration or enhanced consideration, on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land).	Any Person	10%	₹ 5,00,000

Meaning of certain terms

(i) Agricultural land

Agricultural land in India, including a land situated in any area referred to in section 2(22)(iii) i.e., agricultural land whether rural or urban.

(ii) Immovable property

Any land (other than agricultural land) or any building or part of a building.

Section 393(1) [Table: Sl. No. 3(iii)] casts responsibility **on any person** responsible for paying to a resident



- any compensation or the enhanced compensation or
- consideration or enhanced consideration**,**

on account of **compulsory acquisition of any immovable property (other than urban or rural agricultural land)** to deduct tax at source **@10% on the entire amount, if such sum exceeds ₹ 5,00,000.**

No deduction of tax at source [Section 393(4) Table Sl. No. 3]

No tax would be deducted at source on income by way of any award agreement made on account of compulsory acquisition of any land which has been exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [i.e. RFCTLARR Act, 2013].

Income from Capital Market
[Section 393(1) Table Sl. No. 4(i)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
4(i)	Any sum in respect of- (a) units of a Mutual Fund[4]; or (b) units from the Administrator of the specified undertaking (c) units from the specified company[5].	Any Person	10%	₹ 10,000

Section 393(1) [Table: Sl. No. 4(i)] casts responsibility **on any person** responsible for paying to a resident any **sum in respect of units of**



- **a mutual fund,**
- **administrator of the specified undertaking or**
- **specified company**

to deduct tax at source **@10% on the entire sum, if such amount exceeds ₹ 10,000.**

---

[4] specified under Schedule VII

[5] referred to in section 2(h) of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002

No deduction of tax at source [Section 393(4) Table Sl. No. 4]

No tax is required to be deducted in respect of the income **in the nature of capital gains.**

Note – *Income listed under Sl. No. 4(ii)/(iii)/(iv) in relation to business trust, investment fund and securitisation trust, respectively are discussed in Chapter 10: Assessment of Registered Non-profit Organisations, Political Parties and other Special Entities in Module 2.*



Interest on Securities [Section 393(1) Table Sl. No. 5(i)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
5(i)	Any income by way of interest on securities	Any Person	Rates in force i.e., 10%	₹ 10,000

Meaning of interest on securities [Section 2(60)]

Interest on securities means -

(i) interest on any security of the Central Government or a State Government

(ii) interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act.



Section 393(1) [Table: Sl. No. 5(i)] casts responsibility **on any person** paying to a resident **any income by way of interest on securities** to deduct tax at source **@10% on entire income, if such amount exceeds ₹ 10,000.**

No Deduction of Tax at Source [Section 393(4) Table Sl. No. 6]

(a) **No tax** shall be required to be deducted from the interest payable on:

- ✓ National Development Bonds.
- ✓ Such Debentures issued by any institution or authority, or any other person as notified by the Central Government.



Notification No. 27 & 28/2018 dated 18-06-2018

Accordingly, the Central Government has notified –

(i) "Power Finance Corporation Limited 54EC[6] Capital Gains Bond" issued by Power Finance Corporation Limited {PFCL} and

(ii) "Indian Railway Finance Corporation Limited 54EC[7] Capital Gains Bond" issued by Indian Railway Finance Corporation Limited (IRFCL)

Thus, no tax to be deducted at source on interest payable on these Capital Gains Bonds".

- ✓ Any security of the Central Government or a State Government, **other than**
  - 8% Savings (Taxable) Bonds, 2003 or
  - 7.75% Savings (Taxable) Bonds, 2018 or
  - Floating Rate Savings Bonds, 2020 (Taxable) or
  - any other notified security of the Central Government or State Government.

(b) **No tax** to be deducted from the interest payable to:

- ✓ Life Insurance Corporation of India;
- ✓ General Insurance Corporation of India
- ✓ Any other insurer in respect of any securities owned by LIC, GIC or such companies or any other insurer or in which LIC, GIC or such companies or any other insurer has a full beneficial interest.
- ✓ A business trust in respect of any securities by a special purpose vehicle.

---

[6] *Now section 54EC is section 85*

[7] *Now section 54EC is section 85*

Interest other than interest on securities
[Section 393(1) Table Sl. No. 5(ii) & 5(iii)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
5(ii)	Interest other than Interest on Securities	(a) A Banking company; (b) A Co-operative society carrying on the business of banking (c) Post office for a deposit made under a scheme notified by the Central Government[8].	Rates in force i.e., 10%	(a) ₹ 1,00,000 in the case of a senior citizen (b) ₹ 50,000 in case of a person other than a senior citizen
5(iii)	Interest other than Interest on Securities	Specified Person [other than person in Sl. No. 5(ii)]	Rates in force i.e., 10%	₹ 10,000

Meaning of Certain Terms

(i) Specified Person [Section 402(37)] –

(a) Any person, not being an individual or HUF; or

(b) An individual and HUF whose total sales, gross receipts or turnover exceed ₹ 1 crore in case of business or ₹ 50 lakhs in case of the profession during the tax year **immediately preceding the tax year** in which the income or sum is credited or paid.

(ii) Time Deposits [Section 402(41)]

Time deposits mean deposits (including recurring deposits) repayable on the expiry of fixed periods.

(iii) Interest [Section 2(59)]

Interest means interest payable in any manner for moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and

[8] *"Senior Citizens Saving Scheme, 2019" and "Mahila Samman Savings Certificate, 2023" have been notified by the Central Government for this purpose*

includes service fee or any other charges for the moneys borrowed or debt incurred or for any credit facility that has not been utilized.

Adjustment in the amount of tax deduction at source

The payer, may at the time of making any deduction, increase or reduce the amount to be deducted for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the tax year.

Deduction of tax at source on payment of interest on time deposits if the banks, co-operative society or public company not adopted core banking solutions.

Where the interest income credited or paid is in respect of -

(a) time deposits with a banking company; or

(b) time deposits with a co-operative society engaged in carrying on the business of banking; or

(c) deposits with a public company formed and registered in India with the main object of carrying on business of long-term finance for construction or purchase of houses in India for residential purposes and is eligible for deduction under section 32(e) i.e., deduction in respect of amount carried to specified reserves.

and the payer **has not adopted core banking solutions (CBS)**, the threshold limit shall be computed with reference to the income credited or paid **by a branch** of such payer.

Section 393(1) [Table: Sl. No. 5(ii)] casts responsibility **on banking company, co-operative society carrying on banking business or post office for a notified deposit** paying to a resident **any interest other than interest on securities** to deduct tax at source **@10%** on the entire amount if the amount or aggregate of amounts of such income **exceeds**



- **₹ 1,00,000 in case of payee, being a senior citizen or**
- **₹ 50,000 in any other case.**

Section 393(1) [Table: Sl. No. 5(iii)] casts responsibility **on specified person (other than banking company, co-operative society carrying on banking business or post office for a notified deposit), being -**

- any person not being an individual or HUF; or
- an individual and HUF whose total sales, gross receipts or turnover exceed

₹ 1 crore in case of business or ₹ 50 lakhs in case of the profession during the tax year immediately preceding the tax year in which the income or sum is credited or paid.

responsible for paying to a resident **any income by way of interest other than interest on securities** to deduct tax at source **@10% on the entire interest other than interest on securities** paying to a resident **if** the amount or aggregate of amounts of such **income exceeds ₹ 10,000.**

No Deduction of Tax at Source [Section 393(4) Table Sl. No. 7]

(a) **No tax** is to be deducted from interest income credited or paid to –

- ✓ Banking Company
- ✓ Co-operative societies engaged in the business of banking, including co-operative land mortgage banks.
- ✓ Financial Corporation established under a Central, State or Provincial Act
- ✓ Life Insurance Corporation of India
- ✓ Unit Trust of India
- ✓ Any Company or Co-operative Society carrying on the business of insurance or
- ✓ Any other institution, association or body or class of institutions, associations or bodies notified by the Central Government on or before 01-04-2020.

(b) **No tax** to be deducted on interest income credited or paid by the following persons-

- ✓ by a co-operative society other than a co-operative bank **to its members**;
- ✓ by a co-operative society **to any other co-operative society**;
- ✓ in respect of deposits with a Primary Agricultural Credit Society or a Primary Credit Society or a Co-operative Land Mortgage Bank, or a Co-operative Land Development Bank;
- ✓ In respect of deposits (other than time deposits made on or after the

1st July, 1995) with a co-operative society engaged in the banking business (other than Primary Agricultural Credit Society or a Primary Credit Society or a Co-operative Land Mortgage Bank, or a Co-operative Land Development Bank).

Exception to the exemption- The co-operative society in the above cases shall deduct tax from interest is paid or payable, if the following conditions are satisfied:

- Where total sales, gross receipts, or turnover of the co-operative society exceeds ₹ 50 crores during the tax year immediately preceding the tax year in which the interest is credited or paid; **AND**
- the amount or aggregate amount of interest credited or paid during the tax year exceeds the threshold limit, i.e. ₹ 1,00,000 (if payee is a senior citizen) or ₹ 50,000 (in any other case).

(c) **No tax** shall be deducted at source on interest credited or paid-

- ✓ By the Central Government under any provision of the Income-tax Act, 2025 or Income-tax Act, 1961.
- ✓ In respect of deposits under any scheme notified by the Central Government;
- ✓ in respect of deposits (other than time deposits made on or after the 1st July, 1995) with a banking company
- ✓ on the compensation amount awarded by the Motor Accident Claims Tribunal
  - to an individual or
  - to a person other than an individual where aggregate interest on compensation does not exceed ₹ 50,000 during the tax year.
- ✓ By the Infrastructure Capital Company, Infrastructure Capital Fund, Infrastructure Debt Fund, Public Sector Company, or Scheduled Bank in relation to a Zero-Coupon Bond issued on or after 1st June, 2005.
- ✓ By Special Purpose Vehicle (SPV) to a business trust;
- ✓ By a **firm to a partner of the firm**. [Covered Separately in section 393(3) Table Sl. No. 7]

S. No.	Circulars & Notifications
1.	**Clarification regarding deduction of tax at source on interest where such interest is credited by the banks to the provisioning account on a daily/monthly basis for the purpose of macro monitoring only by the use of CBS software under section 393(1) [Table: Sl. No. 5(ii)]** As per Section 393(11), the credit of any income or sum to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income or sum, shall be deemed to be the credit of such income or sum to the account of the payee and tax has to be deducted at source accordingly. The CBDT has, *vide Circular No.3/2010 dated 2.3.2010* clarified that section 393(11) is not meant to apply in cases of banks where credit is made to the provisioning account on a daily/monthly basis for the purpose of macro monitoring only by the use of CBS software. It has been further clarified that since no constructive credit to the depositor's/ payee's account takes place while calculating interest on time deposits on daily or monthly basis in the CBS software used by banks**, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only**. In such cases, tax shall be deducted at source on accrual of interest at the end of tax year or at periodic intervals as per practice of the bank or as per the depositor's/ payee's requirement or on maturity or on encashment of time deposits, whichever event takes place earlier, whenever the aggregate of amounts of interest income credited or paid or likely to be credited or paid during the tax year by the banks exceeds the limits specified in section 393(1) [Table: Sl. No. 5(ii)]. ***Note* -** The time for making the payment of tax deducted at source would reckon from the date of credit of interest made constructively to the account of the payee.
2.	**Applicability of provisions for deduction of tax at source under section 393(1) [Table: Sl. No. 5(ii)] on interest on fixed deposit made in the name of the Registrar General of Court or the depositor of the Fund on directions of Courts [*Circular No.23/2015, dated 28-12-2015*]** It is clarified vide this circular that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions

	of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 393(1) [Table: Sl. No. 5(ii)] will apply to the recipient of the income.
3.	**No deduction of tax at source 393(1) [Table: Sl. No. 5(ii)] on payment made to a member of Schedule Tribe referred to in Schedule III, Table: Sl. No. 19 by a Scheduled Bank [Notification No. 110/2021, dated 17.09.2021]** No tax is required to be deducted on the following payment under section 393(1) [Table: Sl. No. 5(ii)], namely payment in the nature of interest, other than interest on securities, made by a Scheduled Bank located in a specified area to a member of Scheduled Tribe residing in any specified area as referred to in Schedule III, Table: Sl. No. 19 *[Refer Chapter 2 in Module 1]* for detail regarding specified area], subject to the following conditions: (i) the payer satisfies itself that the receiver is a member of Scheduled Tribe residing in any specified area, and the payment as referred above is accruing or arising to the receiver as referred to in Schedule III, Table: Sl. No. 19, during the tax year in which the payment is made, by obtaining necessary documentary evidence in support of the same; (ii) the payer reports the above payment in the statements of deduction of tax as referred to in section 397(3)(*b*). (iii) the payment made or aggregate of payments made during the tax year does not exceed ₹ 20 lakh.
4.	**Deduction of tax at source on interest income accrued to a minor child, where both the parents have deceased [Notification No. 05/2017, dated 29.05.2017]** In case of minors where both the parents have deceased, TDS on the interest income accrued to the minor is required to be deducted and reported against PAN of the minor child unless a declaration is filed under Rule 203 that credit for tax deducted has to be given to another person.
5.	**Deduction of tax at source on interest on deposits made under Capital Gains Accounts Scheme, 1988 where depositor has deceased *[Notification No. 08/2017, dated 13.09.2017]*** In case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased:

	(i) TDS on the interest income accrued for and upto the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and (ii) TDS on the interest income accrued for the period after the death of the depositor is required to be deducted and reported against PAN of the legal heir, unless a declaration is filed under Rule 203 that credit for tax deducted has to be given to another person.

ILLUSTRATION 5

Examine the TDS implications in the cases mentioned hereunder –

(i) On 1.10.2026, Mr. Harish, aged 45 years, made a six-month fixed deposit of ₹ 12 lakh@9% p.a. with ABC Co-operative Bank. The fixed deposit matures on 31.3.2027.

(ii) On 1.6.2026, Mr. Ganesh, aged 35 years, made three nine months fixed deposits of ₹ 3 lakh each, carrying interest @9% p.a. with Dwarka Branch, Janakpuri Branch and Rohini Branch of XYZ Bank, a bank which has adopted CBS. The fixed deposits mature on 28.2.2027.

(iii) On 1.10.2026, Mr. Rajesh, aged 40 years, started a six months recurring deposit of ₹ 2,00,000 per month @8% p.a. with PQR Bank. The recurring deposit matures on 31.3.2027.

SOLUTION

(i) ABC Co-operative Bank has to deduct tax at source@10% on the interest of ₹ 54,000 (9% × ₹ 12 lakh × ½) under section 393(1) [Table: Sl. No. 5(ii)]. The tax deductible at source from such interest would be ₹ 5,400.

(ii) XYZ Bank has to deduct tax at source@10% u/s 393(1) [Table: Sl. No. 5(ii)], since the aggregate interest on fixed deposit with the three branches of the bank is ₹ 60,750 [3,00,000 × 3 × 9% × 9/12], which exceeds the threshold limit of ₹ 50,000. Since XYZ Bank has adopted CBS, the aggregate interest credited/paid by all branches has to be considered. Since the aggregate interest of ₹ 60,750 exceeds the threshold limit of ₹ 50,000, tax has to be deducted @10%.

(iii) No tax has to be deducted under section 393(1) [Table: Sl. No. 5(ii)] by PQR Bank on the interest of ₹ 28,000 falling due on recurring deposit on 31.3.2027 to Mr. Rajesh, since such interest does not exceed the threshold limit of ₹ 50,000.

ILLUSTRATION 6

Maya Bank credited ₹ 73,50,000 towards interest on the deposits in a separate account for macro-monitoring purposes by using Core-branch Banking Solutions (CBS) software. No tax was deducted at source in respect of interest on deposits so credited even where the interest in respect of some depositors exceeded the limit of ₹ 50,000.

The Assessing Officer disallowed 30% of interest expenditure, where the interest on time deposits credited exceeded the limit of ₹ 50,000 and levied a penalty under section 448. Decide the correctness of action of the Assessing Officer.

SOLUTION

As per section 393(11), the credit of any income or sum to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income or sum, shall be deemed to be the credit of such income or sum to the account of the payee and tax has to be deducted at source accordingly.

Accordingly, provisions of section 393(1) [Table: Sl. No. 5(ii)], shall apply in respect to credit of such interest on the deposits in a separate account for macro-monitoring purposes by using Core-branch Banking Solutions (CBS) software.

However, the CBDT has, vide *Circular No.3/2010 dated 2.3.2010*, clarified that section 393(11) will not apply in cases of banks where credit is made to provisioning account on daily/monthly basis for the purpose of macro monitoring only by the use of CBS software.

Since no constructive credit to the depositor's/ payee's account takes place while calculating interest on daily/monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only.

In such cases, tax shall be deducted at source on accrual of interest at the end of the tax year or at periodic intervals as per practice of the bank or as per the depositor's or payee's requirement or on maturity or on encashment of time

deposit, whichever event takes place earlier and wherever the aggregate amount of interest income credited or paid or likely to be credited or paid during the tax year by the bank exceeds the limits specified i.e., ₹ 50,000.

In view of the above, the action of the Assessing Officer in disallowing the interest expenditure credited in a separate account for macro monitoring purpose is not valid and consequent initiation of penalty proceedings under section 448 is not tenable in law.

Payment to Contractors
[Section 393(1) Table Sl. No. 6(i)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
6(i)	Any sum for carrying out any work (including the supply of labour for carrying out any work) in pursuance of a contract between the contractor and a designated person	Any designated person	1%, if the contractor is an individual or HUF 2% if contractor is a person other than individual or HUF.	₹ 30,000 for any such sum (single payment) ₹ 1,00,000 for the aggregate of such sum

(i) Meaning of Work [Section 402(47)]

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 –

  (i) such customer; or

  (ii) its associate, being a person placed similarly in relation to such customer as is the person placed in relation to the assessee under the provisions contained in section 36(3).

(f) supply of manpower to a person to work under his supervision, control or direction.

However, work does not include –

(A) 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 or associate of such customer; or

(B) any sum referred to in section 393(1) [Table: Sl. No. 6(iii)] i.e., fees for professional services, technical services, any payment to directors (other than salary), royalty or non-compete fees (referred to in section 26(2)(h).

(ii) Meaning of Designated Person i.e. Payer [Section 402(11)]

Designated person means –

(a) the Central Government or any State Government; or

(b) any local authority; or

(c) any corporation established by or under a Central Act or State Act or Provincial Act; or

(d) any company; or

(e) any co-operative society; or

(f) any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

(g) any society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India; or

(h) any trust; or

(i) any University established or incorporated by or under a Central Act or State Act or Provincial Act and an institution declared to be a university under the UGC Act, 1956; or

(j) any Government of a foreign State or a foreign enterprise or any association or body established outside India; or

(k) any firm; or

(l) any person, being **an individual or a HUF or an AOPs or a BOIs**, if such person, -

(i) does not fall under any of the above category; and

(ii) has total sales, gross receipts or turnover from business or profession carried on by him exceeding ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession during the tax year immediately preceding the tax year in which such sum is credited or paid to the account of the contractor.

(iii) Meaning of Contract [Section 402(10)]

"Contract" shall include sub-contract.

Section 393(1) [Table: Sl. No. 6(i)] casts responsibility **on any designated person** responsible for paying to a resident **contractor and sub-contractors for carrying out any work (including supply of labour for carrying out any work)** in pursuance of a contract between designated person and contractor to deduct tax at source



- @ **1% if the contractor is an individual or HUF or**
- @ **2% if the contractor is another person**

on the entire amount if the amount of such sum exceeds ₹ 30,000 or if the aggregate of such sum exceeds ₹ 1,00,000.

If a single payment to a contractor does not exceed **₹ 30,000**, TDS provisions would be attracted if the aggregate of the amounts of such sums exceeds **₹ 1,00,000**.

TDS under this Sl. No. will apply only in relation to 'works contracts' and 'labour contracts' and will not cover contracts for sale of goods.



TDS on Value of Material purchase from customer

If any sum is paid or credited for manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, tax shall be deducted at source -

- on the invoice value excluding the value of material purchased from such customer or its associate, if such value is specified separately in the invoice
- If the value of material is not specified separately in the invoice, tax shall be deducted on the whole of the invoice value.

No Deduction of Tax at Source [Section 393(4) Table Sl. No. 8]

(a) **No deduction** is required to be made from the sum credited or paid or likely to be credited or paid during the tax year

- to the account of a contractor, during the course of the **business of plying, hiring or leasing goods carriages,**
- who **owns 10 or less goods** carriages at any time during the tax year and

- if he furnishes a declaration to that effect along with his PAN to the payer.

Thereafter, the person responsible for paying to the contractor furnishes to the prescribed income-tax authority the particulars in such form and within such time as may be prescribed.

To convey the true intent of law, it has been clarified that this **relaxation from the requirement to deduct tax at source shall only be** applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to **a contractor that fulfils the following three conditions cumulatively-**

No TDS if contractor

- is engaged in the business of plying, hiring or leasing goods carriages
- owns 10 or less goods carriages at any time during the previous year
- has furnished a declaration to this effect along with his PAN

(b) **No tax has to be deducted** at source in respect of payments made by individuals/ HUF to a contractor **exclusively for personal purposes of such individual or any member of such HUF.**

Summary of applicable rates of TDS Section 393(1) [Table: Sl. No. 6(i)]

Payee	TDS rate
Individual/HUF contractor/sub-contractor	1%
Other than individual/HUF contractor/ sub-contractor	2%
Contractor in transport business (if PAN is furnished and conditions are satisfied)	Nil
Sub-contractor in transport business (if PAN is furnished and conditions are satisfied)	Nil

S. No.	Circulars
1.	**Deduction of tax at source on payment of gas transportation charges by the purchaser of natural gas to the seller of gas *[Circular No. 9/2012 dated 17.10.2012]*** In case the Owner/Seller of the natural gas sells as well as **transports the gas to the purchaser till the point of delivery,** where the ownership of gas to the purchaser is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) **does not alter the basic nature of such contract which remains essentially a 'contract for sale'** and not a 'works contract' as envisaged in section 393(1) [Table: Sl. No. 6(i)]. Further, the use of different modes of transportation of gas by Owner/ Seller will not alter the position. Therefore, in such circumstances, TDS provisions are not applicable to the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. However, TDS provisions would be attracted on transportation charges paid to a third-party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person.
2.	**Applicability of TDS provisions on payments by broadcasters or Television Channels to production houses for production of content or programme for telecasting *[Circular No. 04/2016, dated 29-2-2016]*** The issue under consideration is whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a 'work contract' liable for tax deduction at source under section 393(1) [Table: Sl. No. 6(i)] or a contract for 'professional or technical services' liable for tax deduction at source under section 393(1) [Table: Sl. No. 6(iii). In this regard, the CBDT has clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between: (i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster; and (ii) a payment for acquisition of broadcasting/ telecasting rights of the content already produced by the production house.

	In the first situation where the **content is produced as per the specifications provided by the broadcaster/ telecaster and the copyright of the content/programme also gets transferred** to the telecaster/ broadcaster, such contract is covered by the definition of the term 'work' in section 393(1) [Table: Sl. No. 6(i)] and, therefore, **subject to TDS under that section.** However, in a case where the **telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced** by the production house, there is no contract for ''carrying out any work", as required in section 393(1) [Table: Sl. No. 6(i)]. Therefore, such payments are not liable for TDS.
3.	**Applicability of TDS provisions on payments by television channels and publishing houses to advertisement companies for procuring or canvassing for advertisements *[Circular No. 05/2016, dated 29-2-2016]*** There are two types of payments involved in the advertising business: (i) Payment by client to the advertising agency for preparing advertisement content, designing advertisements, planning media strategy, booking advertisement slots/space or coordinating with TV channels/ newspapers, and (ii) Payment by advertising agency to the television channel/newspaper company for purchasing advertising space/time. Apart from these payments, it is also possible that payment is directly made to television channel/newspaper for advertisement. The applicability of TDS on these payments is dealt with in Circular No. 715 dated 8-8-1995, in the following question: **Question 1 : What would be the scope of an advertising contract for the purpose of section 393(1) [Table: Sl. No. 6(i)] of the Act?** **Answer :** The term 'advertising' has not been defined in the Act. Provisions of tax deduction at source under section 393(1) [Table: Sl. No. 6(i)] would apply when a client makes payment to an advertising agency and not when advertising agency makes payment to the media, which includes both print and electronic media. It was further clarified that when an advertising agency makes payments to their models, artists, photographers, etc., the tax shall be deducted at the rate applicable to fees for professional and technical services under section 393(1) [Table: Sl. No. 6(iii)].

	Question 2 : Whether the advertising agency would deduct tax at source out of payments made to the media ? **Answer :** No. The position has been clarified in the answer to question No. 1 above. **Question 4 : Where the tax is required to be deducted at source on payments made directly to the print media/Doordarshan for release of advertisements ?** **Answer :** The payments made directly to print and electronic media would be covered under section 393(1) [Table: Sl. No. 6(i)] as these are in the nature of payments for purposes of advertising. It may, however, be clarified that the payments made directly to Doordarshan may not be subjected to TDS as Doordarshan, being a Government agency, is not liable to income-tax. **Question 5 : Whether a contract for putting up a hoarding would be covered under section 393(1) [Table: Sl. No. 6(i)] or [Table: Sl. No. 2(ii)] of the Act ?** **Answer:** The contract for putting up a hoarding is in the nature of advertising contract and provisions of section 393(1) [Table: Sl. No. 6(i)] would be applicable. It may, however, be clarified that if a person has taken a particular space on rent and thereafter sublets the same fully or in part for putting up a hoarding, he would be liable to TDS under **section 393(1) [Table: Sl. No. 2(ii)] i.e., rent** and not under section **393(1) [Table: Sl. No. 6(i)]**.

ILLUSTRATION 7

ABC Ltd. makes the following payments to Mr. X, a contractor, for contract work during the T.Y. 2026-27 –

₹ 20,000 on 1.5.2026

₹ 25,000 on 1.8.2026

₹ 28,000 on 1.12.2026

On 1.3.2027, a payment of ₹ 30,000 is due to Mr. X on account of a contract work.

Discuss whether ABC Ltd. is liable to deduct tax at source from payments made to Mr. X.

SOLUTION

In this case, the individual single contract payments made to Mr. X does not exceed ₹ 30,000. However, since the aggregate amount paid to Mr. X during the tax year 2026-27 exceeds ₹ 1,00,000 (on account of the last payment of ₹ 30,000, due on 1.3.2027, taking the total from ₹ 73,000 to ₹ 1,03,000), the TDS provisions under section 393(1) [Table: Sl. No. 6(i)] would get attracted.

Tax has to be deducted @1% on the entire amount of ₹ 1,03,000 from the last payment of ₹ 30,000 and the balance of ₹ 28,970 (i.e., ₹ 30,000 – ₹ 1,030) has to be paid to Mr. X.

ILLUSTRATION 8

Bharathi Cements Ltd. purchased jute bags from Raj Kumar & Co. The latter has to supply the jute bags with the logo and address of the assessee, printed on it. From 01.09.2026 to 20.03.2027, the value of jute bags supplied is ₹ 8,00,000, for which the invoice has been raised on 20.03.2027. While effecting the payment for the same, is the assessee bound to deduct tax at source, assuming that the value of the printing component involved is ₹ 1,10,000. You are informed that the assessee has not sold any material to Raj Kumar & Co. and that the latter has to manufacture the jute bags in its plant using raw materials purchased by it from outsiders.

SOLUTION

As per the definition under section 402(47), "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer or associate of such customer. This is regardless of the quantum of expenditure incurred towards printing or processing comprised in the bill amount.

The problem clearly states that Raj Kumar & Co. has to manufacture the jute bags using raw materials purchased from outsiders and that the assessee Bharathi Cements Ltd has not sold any material to them. Therefore, in this case, it is a contract of sale.

Hence, the provisions of section 393(1) [Table: Sl. No. 6(i)] are **not** attracted and no liability to deduct tax at source would arise.

ILLUSTRATION 9

Alap Ltd. has made the following payments on various dates in the tax year 2026-27 to Vilambit Ltd. towards work done under different contracts:

Contract Number	Date of payment	Amount (₹)
1.	5.5.2026	20,000
2.	6.6.2026	15,000
3.	8.8.2026	25,000
4.	10.12.2026	25,000
5.	29.01.2027	17,000

Alap Ltd. claims that it is not liable for deduction of tax at source under section 393(1) [Table: Sl. No. 6(i)]. Examine the correctness of the claim made by the company.

What would be the position if the value of contract no. 5 is ₹ 14,000 only and there was no further contract during the year?

SOLUTION

As per section 393(1) [Table: Sl. No. 6(i)], tax has to be deducted at source where the amount credited or paid to a contractor or sub-contractor exceeds ₹ 30,000 in a single payment or ₹ 1,00,000 in aggregate during the tax year.

Therefore, in the given case, even though the value of each individual contract does not exceed ₹ 30,000, the aggregate amount exceeds ₹ 1,00,000. Hence, Alap Ltd's contention is not correct and tax is required to be deducted at source on the whole amount of ₹ 1,02,000 from the last payment of ₹ 17,000 towards Contract No.5, on account of which the aggregate amount exceeded ₹ 1,00,000.

However, no tax deduction is to be made if the value of the last contract is ₹ 14,000 as the aggregate amount in such case would only be ₹ 99,000, which is below the aggregate monetary limit of ₹ 1,00,000.

ILLUSTRATION 10

Moon TV, a television channel, made payment of ₹ 50 lakhs to a production house for the production of programme for telecasting as per the specifications given by the channel. The copyright of the programme is also transferred to Moon TV. Would such payment be liable for tax deduction at source under section 393(1) [Table: Sl. No. 6(i)]? Discuss.

Also, examine whether the provisions of tax deduction at source under section 393(1) [Table: Sl. No. 6(i)] would be attracted if the payment was made by Moon TV for the acquisition of telecasting rights of the content already produced by the production house.

SOLUTION

In this case, since the programme is produced by the production house as per the specifications given by Moon TV, a television channel, and the copyright is also transferred to the television channel, the same falls within the scope of definition of the term 'work' under section 393(1) [Table: Sl. No. 6(i)]. Therefore, the payment of ₹ 50 lakhs made by Moon TV to the production house would be subject to tax deduction at source under section 393(1) [Table: Sl. No. 6(i)].

If, however, the payment was made by Moon TV for the acquisition of telecasting rights of the content already produced by the production house, there is no contract for ''carrying out any work", as required in section 393(1) [Table: Sl. No. 6(i)]. Therefore, such payment would not be liable for tax deduction at source under section 393(1) [Table: Sl. No. 6(i)].

Shree Choudhary Transport Co. v ITO [2020] 426 ITR 0289(SC)



The assessee-firm entered into contract with a cement company for transporting cement to various places in India. As the assessee did not have transport vehicles of its own, it engaged the services of other transporters for the said purpose. The cement company effected payments to the assessee towards transportation charges after due deduction of tax at source. In its return of income, the assessee showed the income arising out of the business of transport contracts. While making payment to the truck operators or owners, the assessee had not deducted tax at source.

The Supreme Court observed that the nature of the contract entered into by the assessee with the consignor company (cement company) makes it clear that it was the responsibility of the assessee to transport the goods (cement) of the company; and how to accomplish this task of transportation was a matter exclusively within the domain of the assessee.

The Supreme Court opined that the assessee was not acting as a facilitator or intermediary between the consignor company (cement company) and the truck operators or owners because those two parties had no privity of contract

between them. The contract of the company for transportation of its goods was only with the assessee and it was the assessee who hired the services of the trucks. The payment made by the assessee to such transporter was clearly a payment made to a sub-contractor.

The Supreme Court, thus, held that section 393(1) [Table: Sl. No. 6(i)] was applicable and the assessee was under obligation to deduct tax at source in relation to the payments made by it to the truck operators or owners for hiring the vehicles for the purpose of its business of transportation of goods.

Payment to contractors, fees for professional services and commission by certain individual or HUF [Section 393(1) Table Sl. No. 6(ii)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
6(ii)	Any sum- • 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; or • by way of commission [other than insurance commission] or brokerage.	Any person, being an Individual or HUF not required to deduct tax as per Section 393(1) [Table Sl. No. 6(i) and (iii) or 1(ii)]	2%	₹ 50,00,000

No requirement to obtain TAN

The payer is not required to obtain Tax Deduction and Collection Account Number (TAN) [Section 397(1)(c)]

Section 393(1) [Table: Sl. No. 6(ii)] casts responsibility **on individual and HUF (other than those who are required to deduct tax as per the provisions of Sl. No. 6(i), 6(iii) or 1(ii))** responsible for paying to a resident **any sum**



- for **work contract or**
- by way of **fees for professional services or**
- by way of **commission (not being insurance commission) or brokerage**

to deduct tax at source on the entire amount **@2%** if the amount or aggregate of amounts **exceed ₹ 50 lakhs**.

In other words, an individual or a HUF **is not liable to deduct tax at source under section 393(1)[Table: Sl No. 6(ii)],** whose total sales, gross receipts or turnover from business or profession carried on by him exceeds ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession during the tax year immediately preceding the tax year in which –

(i) the sum for **carrying out any work contract** is credited or paid to the contractor and such amount **is not exclusively for personal purposes** of such individual or HUF.

(ii) **fees for professional services** is credited or paid and such amount **is not exclusively for personal purposes** of such individual or HUF.

(iii) the **commission (other than insurance commission)** or brokerage is credited or paid.

ILLUSTRATION 11

Examine whether TDS provisions would be attracted in the following cases, and if so, under which section. Also, specify the rate of TDS applicable in each case. Assume that all payments are made to residents.

Sl. No.	*Particulars of the payer*	*Nature of payment*	*Aggregate of payments made in the tax year 2026-27*
1.	*Mr. Ganesh, an individual carrying on retail business with turnover of ₹ 2.5 crores in the tax year 2025-26*	*Contract Payment for repair of residential house*	*₹ 5 lakhs*
		Payment of commission to Mr. Vallish for business purposes	*₹ 80,000 in November 2026*
2.	*Mr. Rajesh, a wholesale trader whose turnover was ₹ 95 lakhs in tax year 2025-26.*	*Contract Payment for the reconstruction of a residential house (made during the period January-March, 2027)*	*₹ 20 lakhs in January, 2027, ₹ 15 lakhs in February 2027 and ₹ 20 lakhs in March 2027.*

3.	*Mr. Satish, a salaried individual*	*Payment of brokerage for buying a residential house in March, 2027*	*₹ 51 lakhs*
4.	*Mr. Dheeraj, a pensioner*	*Contract payment made during October-November 2026 for reconstruction of a residential house*	*₹ 48 lakhs*

SOLUTION

Sl. No.	Particulars of the payer	Nature of payment	Aggregate of payments in the tax year 2026-27	Whether TDS provisions are attracted?
1.	Mr. Ganesh, an individual carrying on retail business with turnover of ₹ 2.5 crores in the *tax year 2025-26*	Contract Payment for repair of residential house	₹ 5 lakhs	No; TDS under section 393(1) [Table: Sl. No. 6(i)] is **not** attracted since the payment is for personal purpose. TDS under section 393(1) [Table: Sl. No. 6(ii)] is not attracted as aggregate of contract payment to the payee in the tax year 2026-27 does not exceed ₹ 50 lakhs.
		Payment of commission to Mr. Vallish for business purposes	₹ 80,000	Yes, u/s 393(1) [Table: Sl. No. 1(ii)] @2%, since the payment exceeds ₹ 20,000, and Mr. Ganesh's turnover exceeds from business ₹ 1 crore in the tax year 2025-26.

2.	Mr. Rajesh, a wholesale trader whose turnover was ₹ 95 lakhs in tax year 2025-26	Contract Payment for reconstruction of a residential house	₹ 55 lakhs	Since his turnover from business does not exceed ₹ 1 crore in the tax year 2025-26, TDS provisions under section 393(1) [Table: Sl. No. 6(i)] are not attracted in respect of payments made in the tax year 2026-27. However, TDS is to be deducted under section 393(1) [Table: Sl. No. 6(ii)] @2%, since the aggregate of payments (i.e., ₹ 55 lakhs) exceeds ₹ 50 lakhs.
3.	Mr. Satish, a salaried individual	Payment of brokerage for buying a residential house	₹ 51 lakhs	Since Mr. Satish is a salaried individual, the provisions of section 393(1) [Table: Sl. No. 1(ii)] are not applicable. However, TDS is to be deducted under section 393(1) [Table: Sl. No. 6(ii)] @2%, since the payment of ₹ 51 lakhs made in March 2027 exceeds the threshold of ₹ 50 lakhs.
4.	Mr. Dheeraj, a pensioner	Contract payment for the reconstruction of residential house	₹ 48 lakhs	TDS provisions under section 393(1) [Table: Sl. No. 6(i)] are **not** attracted since Mr. Dheeraj is a pensioner. TDS provisions under section 393(1) [Table: Sl. No. 6(ii)] are also **not**

				applicable in this case, since the payment of ₹ 48 lakhs does not exceed the threshold of ₹ 50 lakhs.

Fees for professional or technical services, remuneration etc. to director, royalty and non-compete fees [Section 393(1) Table Sl. No. 6(iii)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
6(iii)	Any sum by way of – (a) fees for professional services (FPS); or (b) fees for technical services (FTS); or (c) remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 392, to a director of a company; or (d) royalty; or (e) any sum referred to in section 26(2)(h) i.e., non-compete fees.	Specified Person	• **2% of** such sum in case of - FTS (other than FPS) - royalty income as a consideration for the sale, distribution or exhibition of cinematographic films - payee, engaged only in the business of operation of call centre **10%: In other cases.**	- **₹ 50,000** each for FPS, FTS, royalty and non-compete fees - **Nil,** for any remuneration, fees or commission (other than salary) payable to the Director of Company

(i) Meaning of Specified Person [Section 402(37)]

(a) Any person, not being an individual or HUF; or

(b) An individual and HUF whose total sales, gross receipts or turnover exceed ₹ 1 crore in case of business or ₹ 50 lakhs in case of the

profession during the tax year immediately preceding the tax year in which the income or sum is credited or paid.

(ii) Meaning of "Fees for technical services" [Section 402(15)]

The term 'fees for technical services' shall have the same meaning as defined in section 9(7)(b). Accordingly, it means any consideration (including any lump sum consideration) for rendering of managerial services, technical services, consultancy services (including provision of services of technical or other personnel) but does not include consideration -

- for any construction, assembly, mining or like project undertaken by the recipient; or
- which would be income of the recipient chargeable under the head 'Salaries'.

(iii) Meaning of "Professional Services" [Section 402(28)]



"Professional services" 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 CBDT for the purposes of this section or section 62 i.e., maintenance of books of account.

Other professions notified for the purposes of section 62 are as follows:

(a) Profession of "authorised representatives";

(b) Profession of "film artist";

(c) Profession of "company secretary";

(d) Profession of "information technology".

It may be noted that the professions of information technology and of company secretary are now included in the definition of specified profession in section 62(4)(a) itself.

The CBDT has notified the services rendered by the following persons in relation to the sports activities as Professional Services for the purpose of section 393(1)[Table Sl. No. 6(iii)]

(a) Sports Persons,

(b) Umpires and Referees,

(c) Coaches and Trainers,

(d) Team Physicians and Physiotherapists,

(e) Event Managers,

(f) Commentators,

(g) Anchors and

(h) Sports Columnists.

Accordingly, the requirement of TDS as per section 393(1) [Table Sl. No. 6(iii)] would apply to all the aforesaid professions.

The term "profession", as such, is of a very wide import. However, the term has been defined exhaustively in this section.

For the purposes of TDS, therefore, all other professions would be outside the scope of section 393(1) [Table Sl. No. 6(iii)]. For example, this section will not apply to professions of teaching, sculpture, painting, etc., unless they are notified.



Section 393(1) [Table: Sl. No. 6(iii)] casts responsibility **on specified person** responsible for paying to a resident any sum by way of **FPS or FTS or any remuneration or fees or commission, other than those on which tax is deductible under section 392, to a director of a company or royalty or non-compete fees** to deduct tax at source on the entire amount if exceed the specified threshold limit @ 2% in case of –

- **FTS (not being professional services) or**
- **royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films or**
- **payee engaged only in the business of operation of call centre.**

and @10% in other case.

The limit of ₹ 50,000 under section 393(1) [Table: Sl. No. 6(iii)] is applicable separately for FPS, FTS, royalty and non-compete fees. It implies that if the payment to a person towards each of the above is ₹ 50,000 or less, no tax is required to be deducted at source, even though the aggregate payment or credit exceeds ₹ 50,000.

However, there is **no threshold limit** in case of **remuneration or fees or commission, other than those on which tax is deductible under section 392, payable to director of a company** [Ex. 'sitting fees' paid to directors].

Further, **an individual or HUF is not required** to deduct tax at source where the **fees for professional or technical services** are credited or paid by individual or HUF **exclusively for their personal purposes** [Section 393(4) Table Sl. No. 9].

Summary of rates and threshold limit under section 393(1) [Table: Sl. No. 6(iii)] for deduction of tax at source

Nature of payment	TDS rate	Threshold for each category
Fees for technical services (not being professional services)	2%	₹ 50,000
Fees for professional services	10%	₹ 50,000
Royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films	2%	₹ 50,000
Other royalty	10%	
Any remuneration or fees or commission, by whatever name called, other than those on which tax is deductible under section 392, to a director of a company	10%	Nil
Non-compete fees	10%	₹ 50,000
Note - In case of a payee, engaged only in the business of operation of call centre, the tax shall be deducted at source **@2%.**		

Consideration for use or right to use of computer software is royalty within the meaning of section 9(6)(c)

As per section 9(6)(b), any income payable by way of royalty in respect of any right, property or information is deemed to accrue or arise in India. The term "royalty" means consideration for transfer or grant of all or any rights in respect of any right, property or information.



As per section 9(6)(c)(i), consideration for transfer or grant of all or any rights in respect of any right, property or information includes transfer or grant of all or any **right for use or right to use a computer software** (including granting of a licence) irrespective of the medium through which such right is transferred would be royalty.

Consequently, the provisions of tax deduction at source under section 393(1)[Table: Sl. No. 6(iii)]] would be attracted in respect of consideration for use or right to use computer software.

Notifications & Circulars

(1) **Exemption from the applicability of tax deduction at source in respect of certain software payments**

The Central Government has, vide *Notification No.21/2012 dated 13.6.2012*, effective from 1st July, 2012, exempted certain software payments from the applicability of tax deduction under section 393(1) [Table: Sl. No. 6(iii)]. Accordingly, where payment is made by the transferee for acquisition of software from a resident-transferor, the provisions of section 393(1) [Table: Sl. No. 6(iii)] would **not** be attracted if

- the software is acquired in a subsequent transfer without any modification by the transferor
- tax has been deducted either under section 393(1) [Table: Sl. No. 6(iii)] or under section 393(2) i.e., TDS on payments to non-residents on payment for any previous transfer of such software; AND
- the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.

(2) **TPAs liable to deduct tax under section 393(1) [Table: Sl. No. 6(iii)] on payment to hospitals on behalf of insurance companies**

The CBDT has, through *Circular No.8/2009 dated 24.11.2009*, clarified that TPAs (Third Party Administrator's) who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc., under various schemes, including cashless schemes are liable to deduct tax at source under section 393(1) [Table: Sl. No. 6(iii)] on all such payments to hospitals etc. This is because the services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 393(1) [Table: Sl. No. 6(iii)] are applicable to payments made by TPAs to hospitals, etc.



(3) **TDS on Goods and Services Tax (GST) component comprised in payments made to residents *[Circular No. 23/2017 dated 19.07.2017]***

The CBDT has, vide this circular, clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid

	or payable without including such 'GST on services' component. GST shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax. ***Note –*** *The clarification given in the above circular applies to any amount paid or payable to a resident on which tax is deductible at source as per the provisions of Chapter XIX-B.*

ILLUSTRATION 12

East Bengal Club, a renowned football club, has engaged Raghu, a resident in India, as its coach at a remuneration of ₹ 6 lakhs per annum. The club wants to know from you whether it is liable to deduct tax at source from such remuneration.

SOLUTION

Section 393(1) [Table: Sl. No. 6(iii)] requires deduction of tax at source @10% from the amount credited or paid by way of fees for professional services, where such amount or aggregate of such amounts credited or paid to a person exceeds ₹ 50,000 in the tax year.

As per section 402(28), professional services include services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purposes of section 393(1) [Table: Sl. No. 6(iii)].

Accordingly, the CBDT has, vide *Notification No.88 dated 21.8.2008*, notified the services rendered by coaches and trainers in relation to the sports activities as professional services for the purposes of section 393(1) [Table: Sl. No. 6(iii)].

Therefore, the club is liable to deduct tax at source under section 393(1) [Table: Sl. No. 6(iii)] from the remuneration payable to the Coach, Raghu.

Dividend [Section 393(1) Table Sl. No. 7]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
7	Any dividend (including dividend on preference shares) declared	Any domestic company	10%	NIL
The tax shall be deducted at source **before** making any distribution or payment of dividend.				

Section 393(1) [Table: Sl. No. 7] casts responsibility on a **domestic company** responsible for paying to a resident



- **any dividend including dividend on preference shares**
- to deduct tax at source **@10% on the entire amount**
- **if the amount or aggregate of amounts of dividend** distributed or paid **to individual** by any mode other than cash **exceeds ₹ 10,000.**

For shareholders other than individuals, there is no threshold. Likewise, if dividend is paid in cash, there is no threshold even if the shareholder is an individual.

No Deduction of Tax at Source [Section 393(4) Table Sl. No. 10]

The TDS provisions will **not** apply to such dividend credited or paid to

- LIC, GIC, subsidiaries of GIC or any other insurer provided the shares are owned by them, or they have full beneficial interest in such shares
- a business trust by a special purpose vehicle
- any other person as may be notified by the Central Government.
- to an individual shareholder, if
  - the dividend is paid by the company by any mode other than cash; and
  - amount or aggregate of amounts of such dividend distributed or paid or likely to be distributed or paid during the tax year does not exceed ₹ 10,000.

Payment in respect of a life insurance policy) (LIP)
[Section 393(1) Table Sl. No. 8(i)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
8(i)	Any sum under a life insurance policy, including the sum allocated as bonus on such policy, other than the amount not includible in the total income under Schedule II (Table: Sl. No. 2).	Any person	2% on income comprised in such sum	₹ 1,00,000

Section 393(1) [Table: Sl. No. 8(i)] casts responsibility **on any person** responsible for paying to a resident



- **any sum under a LIP,** including the sum allocated **as bonus on such policy,**
- which are **not exempt under Schedule II (Table: Sl. No. 2)**
- to deduct tax at source **@2% on income comprised in such sum if the amount or aggregate of amounts exceeds ₹ 1,00,000.**

ILLUSTRATION 13

Examine the applicability of the provisions for tax deduction at source under section 393(1) [Table: Sl. No. 8(i)] in the following cases -

(i) Mr. X, a resident, is due to receive ₹ 4.50 lakhs on 30.6.2026, towards maturity proceeds of LIC policy taken on 1.7.2023, for which the sum assured is ₹ 4 lakhs and the annual premium is ₹ 1,25,000. Assume he has not claimed deduction in respect of premium paid on such policy while computing his total income in any year.

(ii) Mr. Y, a resident, is due to receive ₹ 3.95 lakhs on 31.12.2026 on LIC policy taken on 1.1.2012, for which the sum assured is ₹ 3.50 lakhs and the annual premium is ₹ 26,100.

(iii) Mr. Z, a resident, is due to receive ₹ 95,000 on 1.8.2026 towards maturity proceeds of LIC policy taken on 31.7.2018 for which the sum assured is ₹ 90,000 and the annual premium is ₹ 10,000.

SOLUTION

(i) Since the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, the maturity proceeds of ₹ 4.50 lakhs due on 30.6.2026 are not exempt under Schedule II (Table: Sl. No. 2) in the hands of Mr. X. Therefore, tax is required to be deducted @2% under section 393(1) [Table: Sl. No. 8(i)] on the amount of income comprised therein i.e., on ₹ 75,000 (₹ 4,50,000, being maturity proceeds - ₹ 3,75,000, being the aggregate amount of insurance premium paid).

(ii) Since the annual premium is less than 20% of sum assured in respect of a policy taken before 1.4.2012, the sum of ₹ 3.95 lakhs due to Mr. Y would be

exempt under Schedule II (Table: Sl. No. 2) in his hands. Hence, no tax is required to be deducted at source under section 393(1) [Table: Sl. No. 8(i)] on such sum payable to Mr. Y.

(iii) Even though the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, and consequently, the maturity proceeds of ₹ 95,000 due on 1.8.2026 would not be exempt under Schedule II (Table: Sl. No. 2) in the hands of Mr. Z. However, tax deduction at source provisions under section 393(1) [Table: Sl. No. 8(i)] are not attracted since the maturity proceeds are less than ₹ 1 lakh.

Purchase of Goods [Section 393(1) Table Sl. No. 8(ii)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
8(ii)	Any sum exceeding ₹ 50,00,000 for **purchase of any goods**	Any person, being a buyer	0.1%	₹ 50,00,000

- The tax has to be deducted on the sum exceeding ₹ 50 lakhs.
- Tax is **not** required to be deducted under this Sl. No. to a transaction on which tax is deductible or collectible under any of the provisions of the Act.



Meaning of Buyer [Section 402(6), Table Sl. No. 1]

Buyer means a person whose total sales, gross receipts or turnover from the business carried on by him exceeds ₹ 10 crores during the tax year immediately preceding the tax year in which the purchase of goods is carried out.

However, the buyer does not include a person as notified by the Central Government for this purpose, subject to fulfilment of the stipulated conditions.

Section 393(1) [Table: Sl. No. 8(ii)] casts responsibility **on a buyer whose total sales,** gross receipts or turnover from the business carried on by him



- **exceeds ₹ 10 crores** during the tax year immediately preceding the tax year in which the purchase of goods is carried out
- who is responsible for paying to a resident

- **any sum exceeding ₹ 50 lakhs for purchase of goods**
- to deduct tax at source **@0.1% on the sum exceeding ₹ 50 lakhs.**

Deduction of tax at higher rate where PAN is not furnished by the seller [Section 397(2)(b)(i)]:

In case where PAN is not furnished by the seller to the buyer, tax shall be deducted at the higher of the following rates:

- At the rate specified in the relevant provisions of the Act
- At the rate or rates in force
- At the rate of 5%



Power of the CBDT to issue guidelines [Section 400(2)]

In case of any difficulty arises in giving effect to the provisions of this section, CBDT is empowered to issue guidelines, with the approval of the Central Government, for the purpose of removing the difficulty.

Every guideline issued by the CBDT shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person liable to deduct tax.



Accordingly, the CBDT has, vide ***Circular no. 13/2021 dated 30.6.2021 and Circular No. 20/2021 dated 25.11.2021,*** issued the following guidelines for removing certain difficulties-

1. Applicability on transactions carried through various Exchanges

There are practical difficulties in implementing the provisions of TDS contained in section 393(1) [Table: Sl. No. 8(ii)] in case of certain exchanges and clearing corporations. In these transactions, sometimes, there is no one-to-one contract between the buyers and the sellers.

In order to remove such difficulties, it is provided that the provisions of section 393(1) [Table: Sl. No. 8(ii)] would **not** be applicable in relation to -

(i) **transactions in securities and commodities which are traded through recognized stock exchanges** or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre (IFSC)

(ii) transactions in **electricity, renewable energy** certificates and **energy saving** certificates **traded** through **registered power exchanges**.

2. Adjustment for GST, various state levies and taxes other than GST, purchase returns



It has been clarified in Circular No.23/2017 dated 19th July 2017 as under –

"Wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XIX-B on the amount paid or payable without including such 'GST on services' component. GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax."

Treatment of tax deduction on GST component included in the invoice and in case of purchase of goods which are not covered within the purview of GST, but which are subject to VAT/Sales tax/Excise duty/CST has been clarified vide CBDT Circular No. 13/2021 dated 30.6.2021 and Circular No. 20/2021 dated 25.11.2021, respectively.

	Condition	Amount on which tax is to be deducted u/s 393(1) [Table: Sl. No. 8(ii)]
(i)	Where **tax is deducted at the time of credit** of amount in the account of the seller and in terms of the agreement or contract between the buyer and seller, component of GST **is indicated separately in the invoice** and where purchase of goods is not covered within the purview of GST, VAT/ Sales tax/ Excise duty/ CST and it is indicated separately in the invoice.	Tax has to be deducted on the amount credited (**without including such GST**/ VAT/ Sales tax/ Excise duty/ CST)

(ii)	Where **tax is deducted on payment basis** (if payment is earlier than the credit).	Tax has to be deducted on the **whole amount** (since it is not possible to identify the payment with the tax component to be invoiced in the future)
(iii)	In case of purchase returns, where the money is refunded by the seller.	Tax deducted earlier u/s 393(1) [Table: Sl. No. 8(ii)] on such purchase (which is now returned) may be adjusted against the next purchase from the same seller
(iv)	In case of purchase returns, where goods are replaced by the seller.	No adjustment is required as in that case the purchase on which tax was deducted under section 393(1) [Table: Sl. No. 8(ii)] has been completed with goods replaced

3. Can a non-resident be a buyer under section 393(1) [Table: Sl. No. 8(ii)]?

The provisions of section 393(1) [Table: Sl. No. 8(ii)] would **not** apply to a non-resident whose purchase of goods from a seller resident in India is not effectively connected with the permanent establishment of such non-resident in India. For this purpose, "permanent establishment" shall mean to include a fixed place of business through which the business of the enterprise is wholly or partly carries on.

4. Should tax be deducted when the seller is a person whose income is exempt?

The provisions of section 393(1) [Table: Sl. No. 8(ii)] would **not** apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax under the Act or under any other Act passed by the Parliament (like the RBI Act, ADB Act etc.).

The above clarification would not apply if only part of the income of the person (being a buyer) is exempt.

5. Should tax be deducted on an advance payment?

Since the provisions apply on payment or credit whichever is earlier, the provisions of section 393(1) [Table: Sl. No. 8(ii)] **shall apply to advance payment** made by the buyer to the seller.

6. Would provisions of section 393(1) [Table: Sl. No. 8(ii)] apply to buyer in the year of incorporation?

Under section 393(1) [Table: Sl. No. 8(ii)], a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding ₹ 10 crore during the tax year immediately preceding the tax year in which the purchase of goods is carried out. **Since this condition would not be satisfied in the year of incorporation,** the provisions of section 393(1) [Table: Sl. No. 8(ii)] shall **not** apply in the year of incorporation.

7. Would provisions of section 393(1) [Table: Sl. No. 8(ii)] apply to buyer if the turnover from the business is ₹ 10 crore or less?

As regards whether the provisions of section 393(1) [Table: Sl. No. 8(ii)] would apply to a buyer who has turnover or gross receipts exceeding ₹ 10 crore but total sales or gross receipts or turnover from business is ₹ 10 crore or less, it is clarified that, for the purposes of section 393(1) [Table: Sl. No. 8(ii)], a buyer is required to have total sales or gross receipts or turnover **from the business carried on by him** exceeding ₹ 10 crore during the tax year immediately preceding the tax year in which the purchase of goods is carried out. **Hence, the sales or gross receipts or turnover from business carried on by him must exceed ₹ 10 crore.** His **turnover or receipts from non-business activity** is **not** to be counted for this purpose.

8. Cross application of section 393(1)[Table: Sl. No. 8(v) and 8(ii)]: Clarification of how section 393(1) [Table: Sl. No. 8(v)] and section 393(1) [Table: Sl. No. 8(ii)] apply on the same transaction.

Under section 393(1) [Table: Sl. No. 8(v)], a transaction in respect of which tax has been deducted by the e-commerce operator, or which is not liable to tax deduction u/s 393(4) [Table: Sl. No. 11], shall **not** be liable to tax deduction at source under any other provision of Chapter XIX-B of the Act.



Under section 393(1) [Table: Sl. No. 8(ii)], the provisions shall not apply to a transaction on which tax is deductible or collectible under any of the provisions of the Act.

After conjoint reading of these provisions, it is clarified that:

(i) If tax has been deducted by the e-commerce operator on a transaction u/s 393(1) [Table: Sl. No. 8(v)] [including transactions on which tax is not deductible u/s 393(4) [Table: Sl. No. 11], that transaction shall not be subjected to tax deduction u/s 393(1) [Table: Sl. No. 8(ii)].

(ii) If a transaction is both within the purview of section 393(1) [Table: Sl. No. 8(v)] as well as section 393(1) [Table: Sl. No. 8(ii)], tax is required to be deducted u/s 393(1) [Table: Sl. No. 8(v)] and not u/s 393(1) [Table: Sl. No. 8(ii)].

9. Applicability of the provisions of section 393(1) [Table: Sl. No. 8(ii)] in case of department of Government not being a public sector undertaking or corporation

As per the provisions of section 393(1) [Table: Sl. No. 8(ii)], for a person to be considered as a buyer, following conditions are required to be fulfilled:

(a) Such person shall be carrying out a business/ commercial activity;

(b) The total sales, gross receipts or turnover from such business/ commercial activity shall be more than ₹ 10 crore during the tax year immediately preceding the tax year in which goods are being purchased by such person.

	Issue	Would TDS u/s 393(1) [Table: Sl. No. 8(ii)] be attracted?
(i)	Can Department of Government be a "buyer" for the purposes of section 393(1) [Table: Sl. No. 8(ii)]?	
	- If it is carrying on business/ commercial activity	Yes (subject to fulfillment of other conditions)
	- If it is not carrying on any business/ commercial activity	No, since it will not be considered as a buyer

(ii)	Can Department of Central/State Government be considered as "seller" for the purpose of section 393(1) [Table: Sl. No. 8(ii)]?	No, [Hence, no tax can be deducted u/s 393(1) [Table: Sl. No. 8(ii)] by the buyer]

Note - A Public Sector Undertaking or corporation established under a Central or State Act or any other such body, authority or entity, would, however, be required to comply with the provisions of section 393(1) [Table: Sl. No. 8(ii)] and tax shall be deducted accordingly.

Payment by a specified bank in case of specified senior citizen [Section 393(1) Table Sl. No. 8(iii)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
8(iii)	Total income of a specified senior citizen after giving effect to deduction allowable under Chapter VIII and rebate allowable under section 156.	Specified Bank	Rates in force	As applicable

Meaning of specified senior citizen [Section 402(39)]

Specified senior citizen means an individual, being a resident in India, who –

(a) is of the **age of 75 years or more** at any time during the tax year.

(b) is having **pension income** and no other income except the interest received or receivable from any account maintained by such individual in the same specified bank in which he is receiving his pension income; and

(c) has **furnished a declaration to the specified bank** containing particulars, in prescribed form and verified in prescribed manner.

Meaning of "Specified Bank" [Section 402(35)]

Specified bank means a banking company as the Central Government may, by notification, specify.

The provisions of this Sl. No. will override any other provisions of this Chapter and tax has to be deducted according to provision under this Sl. No. where the assessee has opted to avail this provision by submitting the declaration in the prescribed form and verified in the prescribed manner.



Section 393(1) [Table: Sl. No. 8(iii)] casts responsibility **on a specified bank, being a notified banking company** to deduct tax at source



- **at the rates in force** on the total income of a specified senior citizen
- **after giving effect to deduction** allowable under Chapter VIII and **rebate allowable** under section 156
- where the deductee exercises the option under section 202(4) to shift out of the default tax regime.

Where the deductee does not exercise the option to shift out of the default tax regime, tax is required to be deducted **as per the rates provided under section 202(1)** subject to certain conditions, including the condition that the specified senior citizen does not avail of specified exemptions and deductions.

The threshold limit for deduction of tax at source is basic exemption limit i.e.,

- ₹ 4,00,000, in case the specified senior citizen pays tax under the default tax regime
- ₹ 3,00,000 / ₹ 5,00,000, as the case may be, if the specified senior citizen has exercised the option of shifting out of the default tax regime provided.

Exemption from filing return of income [Section 263(8)(b)]

The specified senior citizen is not required to furnish his return of income for the relevant tax year in which the tax has been deducted under this Sl. No.

ILLUSTRATION 14

Mr. Sharma, a resident Indian aged 77 years, gets pension of ₹ 82,000 per month from the UP State Government. The same is credited to his savings account in SBI, Lucknow Branch. In addition, he gets interest@8% on fixed deposit of ₹ 40 lakhs with the said bank. Out of the deposit of ₹ 40 lakhs, ₹ 2 lakh represents a five-year term deposit made by him on 1.4.2026. Interest on savings bank credited to his SBI savings account for the tax year 2026-27 is ₹ 9,500.

(I) From the above facts, compute the total income and tax liability of Mr. Sharma for the T.Y. 2026-27, assuming that he has exercised the option u/s 202(4) of shifting out of the default tax regime.

(II) What would be the amount of tax deductible at source by SBI, assuming that the same is a specified bank? Is Mr. Sharma required to file his return of income for T.Y. 2026-27, if tax deductible at source has been fully deducted? Examine.

(III) Is Mr. Sharma required to file his return of income for T.Y. 2026-27, if the fixed deposit of ₹ 40 lakhs was with Canara Bank instead of SBI, other facts remaining the same?

SOLUTION

(I) Computation of total income of Mr. Sharma for Tax Year 2026-27

	Particulars	₹	₹
I	**Salaries**		
	Pension (₹ 82,000 x 12)	9,84,000	
	Less: Standard deduction u/s 19(1) Table: Sl. No. 2	50,000	
			9,34,000
II	**Income from Other Sources**		
	Interest on fixed deposit (₹ 40 lakhs x 8%)	3,20,000	
	Interest on savings account	9,500	3,29,500
Gross total income			**12,63,500**
Less:	**Deductions under Chapter VIII**		
	Under section 123		
	Five years term deposit (₹ 2 lakh, restricted to ₹ 1.5 lakh)	1,50,000	
	Under section 153		
	Interest on fixed deposit and savings account, restricted to ₹ 50,000, since Mr. Sharma is a resident Indian of the age of 77 years.	50,000	2,00,000
Total Income			**10,63,500**
Computation of tax liability			
Tax payable [₹ 63,500 x 30% + ₹ 1,10,000]			1,29,050
Add: Health and Education Cess@4%			5,162
Tax liability			**1,34,212**
Tax liability (rounded off)			**1,34,210**

(II) SBI, being a specified bank, is required to deduct tax at source u/s 393(1) [Table: Sl. No. 8(iii)] of ₹ 1,34,212 and remit the same to the Central Government. In such a case, Mr. Sharma would not be required to file his return of income u/s 263.

(III) If the fixed deposit of ₹ 40 lakh is with a bank other than SBI, which is the bank where his pension is credited, then, Mr. Sharma would not qualify as a "specified senior citizen". In this case, Mr. Sharma would have to file his return of income u/s 263(1), since his total income (without giving effect to deduction under Chapter VIII) exceeds the basic exemption limit.

Benefit or perquisite arising from business or profession [Section 393(1) Table Sl. No. 8(iv)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
8(iv)	Any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession of any resident	Specified Person	10% of value or aggregate of values of such benefit or perquisite.	₹ 20,000

Meaning of Specified Person [Section 402(37)]

(a) Any person, not being an individual or HUF; or

(b) An individual and HUF whose total sales, gross receipts or turnover exceed ₹ 1 crore in case of business or ₹ 50 lakhs in case of the profession during the tax year immediately preceding the tax year in which the income or sum is credited or paid.

Cases where a benefit or perquisite is wholly in kind or partly in kind and partly in cash

The provisions of serial number 8(iv) shall also apply to any benefit or perquisite, whether in cash or in kind or partly in cash and partly in kind, provided to a resident and before providing such benefit or perquisite, as the case may be, **the person responsible for providing such benefit or perquisite** shall ensure that tax has been deducted.



Where the benefit or perquisite, as the case may be is-

(a) in exchange of another virtual digital asset where there is no part in cash,

(b) wholly in kind or

(c) partly in cash and partly in kind, but the part in cash is not sufficient to meet the liability of deduction of tax in respect of the whole of such benefit or perquisite,

the person responsible for providing such benefit or perquisite has to, before releasing the benefit or perquisite, ensure that the tax required to be deducted at source has been paid in respect of the benefit or perquisite.

"Person responsible for providing" means the person providing such benefit or perquisite. In the case of a company, it means the company itself, including the principal officer thereof.

Section 393(1) [Table: Sl. No. 8(iv)] casts responsibility **on specified person** responsible for providing to a resident



- **any benefit or perquisite** arising from business or the exercise of a profession**, by such resident**
- to deduct tax at source **@10% on the entire value or** aggregate of values of such benefit or perquisite
- **if** the amount or aggregate of benefit or perquisite exceeds **₹ 20,000.**



Guidelines - Circular no. 12/2022 dated 16.6.2022 and Circular no. 18/2022 dated 13.9.2022

The CBDT has, with the prior approval of the Central Government, has, vide these Circulars**,** issued the following guidelines –

Question 1: Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable under Section 26(2)(*f*), before deducting tax under section 393(1) [Table: Sl. No. 8(iv)]?

Answer: No. The deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient under section 26(2)(f). The amount could be taxable under any other section, like section 38(1) & (2), etc. Section 393(1) [Table: Sl. No. 8(iv)] casts an obligation on the person responsible for providing any benefit or perquisite to a resident, to deduct tax at source 10%. There is no further requirement to check whether the amount is taxable in the hands of the recipient or under which section it is taxable.

Question 2: Is it necessary that the benefit or perquisite must be in kind for section 393(1) [Table: Sl. No. 8(iv)] to operate?

Answer: Tax under section 393(1) [Table: Sl. No. 8(iv)] is required to be deducted whether the benefit or perquisite is in cash or in kind.

Section 393(1) [Table: Sl. No. 8(iv)] clearly indicates the intent of the legislature that there could also be situations where the benefit or perquisite is in cash or the benefit or perquisite is in kind or partly in cash and partly in kind. Thus, section 393(1) [Table: Sl. No. 8(iv)] clearly brings in its scope the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.

Question 3: Is there any requirement to deduct tax under section 393(1) [Table: Sl. No. 8(iv)], when the benefit or perquisite is in the form of a capital asset?

Answer: As has been stated in answer to question no 1, there is no requirement to check whether the perquisite or benefit is taxable in the hands of the recipient and the section under which it is taxable.

Further, Courts have held many benefits or perquisites to be taxable even though one can argue that they are in the nature of a capital asset. The following judgments illustrate this point:

- Assessee entered into an agreement with "J" for purchase of a plot of land and certain amount was paid as earnest money. However, possession of land was not given to assessee, and seller entered into another agreement with a third party to develop the said plot. Assessee filed suit in which a consent decree was passed, and in pursuance of the same, certain amount was paid to assessee. On appeal, it was held that such sum received in pursuance of the consent decree was liable to tax as business income under section 26 [Ramesh Babulal Shah v CIT (2015) 53 taxmann.com 277(Bom)].
- The amount representing principal loan waived by bank under one time settlement scheme would constitute income falling under section 26(2)(f) relating to value of any benefit or perquisite, arising from business or exercise of profession [CIT v Ramaniyam Homes (P) Ltd (2016) 68 taxmann.com 289 (Mad)].
- Value of rent-free accommodation, furniture and fixtures given to director was held as taxable under section 26(2)(f). CIT v Subrata Roy (2016) 385 ITR 547 (All).

- Where a car was given to an assessee by his disciple, who had been benefited from his preaching, the value of car was held to be taxable in the hands of the assessee being a receipt from the exercise of the vocation carried on by him [CIT (Addl) v Ram Kripal Tripathi (1980) 125 ITR 408 (All)].
- The assessee was a director of a company. In terms of an agreement with the promoters, shares were allotted to the director. On these facts, it was held that the shares received by the director were benefit or perquisite received from a company by the director, and it was a benefit assessable to tax [D. M. Neterwala v CIT (1986) 122 ITR 880 (Bom)].
- Value of gift of land was held as a receipt by the assessee in carrying on of his vocation and was held as taxable [Amarendra Nath Chakraborty v CIT (1971) 79 ITR 342 (Cal)]

Thus, the asset given as benefit or perquisite may be a capital asset in general sense of the term, like car, land, etc, but in the hands of the recipient, it is benefit or perquisite and has accordingly been held to be taxable. In any case, as stated earlier, the deductor is not required to check if the benefit or perquisite is taxable in the hands of recipient. Thus, the deductor is required to deduct tax under section 393(1) [Table: Sl. No. 8(iv)] in all cases where benefit or perquisite (of whatever nature) is provided.

Question 4: If loan settlement/waiver by a bank is to be treated as benefit/ perquisite, it would lead to hardship as the bank would need to incur the additional cost of tax deduction in addition to the haircut that he has taken. Will section 393(1) [Table: Sl. No. 8(iv)] apply in such a situation?

As per the judgment of *CIT v. Ramaniyam Homes (P) Ltd (2016) 68 taxmann.com 289 (Mad)* mentioned above, the amount representing principal loan waived by bank under one time settlement scheme would constitute income falling under section 26(2)(*f*) relating to value of any benefit or perquisite, arising from business or exercise of profession.

However, it has been clarified, vide Circular no. 18/2022 dated 13.9.2022, that one-time loan settlement with borrowers or waiver of loan granted on reaching settlement with the borrowers by the following would not be subjected to tax deduction at source under section 393(1) [Table: Sl. No. 8(iv)]:

(i) Public Financial Institution

(ii) Scheduled Bank

(iii) Cooperative bank (other than a primary agricultural credit society)

(iv) Primary Co-operative Agricultural and Rural Development Bank

(v) State Financial Corporation

(vi) State Industrial Investment Corporation, being a Government company, engaged in the business of providing long-term finance for industrial projects;

(vii) Deposit taking Non-Banking Financial Company

(viii) Systemically Important Non-Deposit Taking Non-Banking Financial Company

(ix) Public company engaged in providing long-term finance for construction or purchase of houses in India for residential purpose and which is registered in accordance with the guidelines/ direction issued by the National Housing Bank formed under the National Housing Bank Act 1987;

(x) Registered Asset Reconstruction Companies

This clarification is only for the purposes of section 393(1) [Table: Sl. No. 8(iv)]. The treatment of such settlement/ waiver in the hands of the person who had got benefitted from such waiver would not be impacted by this clarification. Taxability of such settlement/ waiver in the hands of the beneficiary will be governed by the relevant provisions of the Act.

Question 5: Whether sales discounts, cash discounts and rebates are benefit or perquisite?

Answer: Sales discounts, cash discounts or rebates allowed to customers from the listed retail price represent a lesser realization of the sale price itself. To that extent, the purchase price of a customer is also reduced.



These are also benefits though related to sales/purchase. Since TDS under section 393(1) [Table: Sl. No. 8(iv)] is applicable on all forms of benefit/perquisite, tax is required to be deducted. However, subjecting these to tax deduction would put the seller to difficulty. To remove such difficulty, it has been clarified that no tax is required to be deducted under section 393(1) [Table: Sl. No. 8(iv)] on sales discounts, cash discounts and rebates allowed to customers.

Where a seller is selling its items from its stock in trade to a buyer, the seller offers two items free with purchase of 10 items. In substance, the seller is actually selling 12 items at a price of 10 items. Let us assume that the price of each item is ₹ 12. In this case, the selling price for the seller would be ₹ 120 for 12 items. For buyer, he has purchased 12 items at a price of 10. Just like seller, the purchase price for the buyer is ₹ 120 for 12 items and he is expected to record so in his books.

In such a situation, again, there could be difficulty in applying section 393(1) [Table: Sl. No. 8(iv)] provision. Hence, to remove difficulty it has been clarified that on the above facts no tax is required to be deducted under section 393(1) [Table: Sl. No. 8(iv)].

It has been clarified that the situation is different when free samples are given, and the **above relaxation would not apply to a situation of free samples**.

Similarly, this relaxation should not be extended to other benefits provided by the seller in connection with its sale. To illustrate, the following are some of the examples of benefits/perquisites on which tax is required to be deducted under section 393(1) [Table: Sl. No. 8(iv)] (the list is not exhaustive):

- When a person gives incentives (other than discount, rebate) in the form of cash or kind such as car, TV, computers, gold coin, mobile phone etc.
- When a person sponsors a trip for the recipient and his/her relatives upon achieving certain targets
- When a person provides free ticket for an event
- When a person gives medicine samples free to medical practitioners.

The above examples are only illustrative. The relaxation provided from the non-deduction of tax for sales discounts and rebates is only for those items and should not be extended to others.

It has been further clarified that these benefits/perquisites may be used by owner/ director/ employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession. However, the tax is required to be deducted by the person in the name of recipient entity since the usage by owner/ director/ employee/ relative is by virtue of their relation with the recipient entity and in substance the benefit/perquisite has been provided by the person to the recipient entity.

To illustrate, the free medicine sample may be provided by a company to a doctor who is an employee of a hospital. The TDS under section 393(1) [Table: Sl. No. 8(iv)] is required to be deducted by the company in the hands of hospital as the benefit/perquisite is provided to the doctor on account of him being the employee of the hospital. Thus, in substance, the benefit/perquisite is provided to the hospital. The hospital may subsequently treat this benefit/perquisite as the perquisite given to its employees (if the person who used it is his employee) under section 16 and deduct tax under section 392. In such a case, it would first be taxable in the hands of the hospital and then allowed as a deduction as salary expenditure. Thus, ultimately the amount would get taxed in the hands of the employee and not in the hands of the hospital. Hospital can get credit of tax deducted under section 393(1) [Table: Sl. No. 8(iv)] by furnishing its tax return. It has been further clarified that the threshold of ₹ 20,000 is also required to be seen with respect to the recipient entity.

Similarly, the tax is required to be deducted under section 393(1) [Table: Sl. No. 8(iv)] if the benefit or perquisite is provided to a doctor who is working as a consultant in the hospital. In this case the benefit or perquisite provider may deduct tax under section 393(1) [Table: Sl. No. 8(iv)] with hospital as the recipient and then hospital may again deduct tax under section for providing the same benefit or perquisite to the consultant. To remove difficulty, as an alternative, the original benefit or perquisite provider may directly deduct tax under section 393(1) [Table: Sl. No. 8(iv)] in the case of the consultant as a recipient.

The provisions of section 393(1) [Table: Sl. No. 8(iv)] would not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, not carrying on business or profession.

Question 6: How is the valuation of benefit/perquisite required to be carried out?

Answer: The valuation would be based on the fair market value of the benefit or perquisite, except in following cases:-



Value for such benefit/perquisite

(i) The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient purchase price

(ii) The benefit/perquisite provider manufactures such items given as benefit/perquisite the price that it charges to its customers for such items

It has been further clarified that GST would not be included for the purposes of valuation of benefit/perquisite for TDS under section 393(1) [Table: Sl. No. 8(iv)].



Question 7: Many times, a social media influencer is given a product of a manufacturing company so that he can use that product and make audio/video to speak about that product in social media. Is this product given to such influencer a benefit or perquisite?

Answer: Whether this is benefit or perquisite will depend upon the facts of the case.

In case of benefit or perquisite being a product like car, mobile, outfit, cosmetics, etc. and if the product is returned to the manufacturing company after using for the purpose of rendering service, then it will not be treated as a benefit/perquisite for the purposes of section 393(1) [Table: Sl. No. 8(iv)].

However, if the product is retained, then it would be in the nature of benefit/perquisite and tax is required to be deducted accordingly under section 393(1) [Table: Sl. No. 8(iv)].

Question 8: Whether reimbursement of out-of-pocket expenses incurred by service provider in the course of rendering service is benefit/perquisite?

Answer: Any expenditure which is the liability of a person carrying out business or profession, if met by the other person is in effect a benefit/perquisite provided by the second person to the first person in the course of business/profession.



For example, a consultant is rendering service to a person "X" for which he is receiving consultancy fee. In the course of rendering that service, he has to travel to a different city from the place where is regularly carrying on business or profession. For this purpose, he pays for boarding and lodging expenses incurred exclusively for the purposes of rendering the service to "X". Ordinarily, the expenditure incurred by the consultant is part of his business expenditure which is deductible from the fee that he receives from company "X". In such a case, the fee received by the consultant is his income and the expenditure incurred on travel is his expenditure deductible from such income in computing his total income.

If this travel expenditure is met by the company "X", it is benefit or perquisite provided by "X" to the consultant.

However, sometimes the invoice is obtained in the name of "X" and accordingly, if paid by the consultant, is reimbursed by "X". In this case, since the expense paid by the consultant (for which reimbursement is made) is incurred wholly and exclusively for the purposes of rendering services to "X" and the invoice is in the name of "X", then the reimbursement made by "X" being the service recipient will not be considered as benefit/perquisite for the purposes of section 393(1) [Table: Sl. No. 8(iv)].

If the invoice is not in the name of "X" and the payment is made by "X" directly or reimbursed, it is the benefit/perquisite provided by "X" to the consultant for which deduction is required to be made under section 393(1) [Table: Sl. No. 8(iv)].

However, it has been clarified, vide circular no. 18/2022 dated 13.9.2022, that in case of a supplier who is a "pure agent" fulfilling the following conditions, the reimbursement would not be treated as benefit/ perquisite for the purpose of section 393(1) [Table: Sl. No. 8(iv)] -

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;

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; and

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.

In case these conditions are not satisfied, such expenditure incurred is included in the value of supply under GST. However, in the abovementioned case of "pure agent", if all the conditions are satisfied, the GST input credit is allowed to the recipient and it is not considered as supply of the pure agent. In such a case, it is clarified that the amount incurred by such "pure agent" for which he is reimbursed by the recipient would not be treated as benefit/perquisite for the purpose of section 393(1) [Table: Sl. No. 8(iv)].

Meaning of "Pure Agent" – A "pure agent" means a person who

(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.

Question 9: Tax deduction under sections 393(1) [Table: Sl. No. 6(i)] and 393(1) [Table: Sl. No. 6(ii)] is required to be made from the gross amount of bill, including the reimbursement. A person has provided service to a company and out-of-pocket expenses are charged by him to the company along with service fee in the same bill. Company deducts tax under section 393(1) [Table: Sl. No. 6(ii)] on both service fee components as well as on out-of-pocket expense. Is there a noncompliance with the provision of section 393(1) [Table: Sl. No. 8(iv)]?

Answer: If out-of-pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act, other than section 393(1) [Table: Sl. No. 8(iv)], it is clarified, vide circular no. 18/2022 dated 13.9.2022, that there will not be further liability for tax deduction under section 393(1) [Table: Sl. No. 8(iv)].

In the above example, out-of-pocket expense is part of the consideration in the bill for professional fee that is charged to the company and the tax is deducted under section 393(1) [Table: Sl. No. 6(ii)] on the entire consideration, including out-of-pocket expense. In such a case, the out-of-pocket expense is already included as part of professional fee. Hence, there is no further benefit/perquisite which requires tax deduction under section 393(1) [Table: Sl. No. 8(iv)].

Question 10: If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?

Answer: The expenditure pertaining to dealer/ **business conference would not be considered as benefit/ perquisite for the purposes of section 393(1) [Table: Sl. No. 8(iv)]** in a case where dealer/ business conference is held with the prime object to educate dealers/customers about any of the following or similar aspects:



(i) new product being launched

(ii) discussion as to how the product is better than others

(iii) obtaining orders from dealers/customers

(iv) teaching sales techniques to dealers/customers

(v) addressing queries of the dealers/customers

(vi) reconciliation of accounts with dealers/customers

However, such conference must not be in the nature of incentives/ benefits to select dealers/customers who have achieved particular targets.

Further, in the following cases **the expenditure would be considered as benefit or perquisite for the purposes of section 393(1) [Table: Sl. No. 8(iv)]** -

(i) Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer/ business conference.

(ii) Expenditure incurred for family members accompanying the person attending dealer/ business conference

(iii) Expenditure on participants of dealer/ business conference for days which are on account of prior stay or overstay beyond the dates of such conference. However, a day immediately prior to actual start date of the conference and a day immediately following the actual end date of conference would not be considered as over stay.

Question 11: If there is a dealer conference to educate the dealers about the products of the company - (i) is there a requirement that all dealers must be invited in the conference, (ii) how to identify benefit against individual dealers in a group activity?

Answer: It has been clarified, vide Circular No. 18/2022 dated 13.9.2022, that it is not necessary that all dealers are required to be invited in a dealer/business

conference for the expenses to be not considered as benefit/perquisite for the purposes of tax deduction under section 393(1) [Table: Sl. No. 8(iv)].

There may be expenses during such dealer/business conference which need to be classified as benefit/perquisite and tax is required to be deducted under section 393(1) [Table: Sl. No. 8(iv)]. However, there may be practical difficulties in identifying such benefit/perquisite to actual recipient due to the fact that it is a group activity and reasonable allocation is not possible. Non compliance of the provision of section 393(1) [Table: Sl. No. 8(iv)], in such a case, would not only result in disallowance under section 35(*b*)(*i*) but may also result in treating the benefit/perquisite provider as assessee in default under section 398 with all other consequences.

In order to remove these practical difficulties, it has been clarified that if benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key, the benefit/perquisite provider may at his option not claim the expense, representing such benefit/perquisite, as deductible expenditure for calculating his total income. If he decides to opt so, he will not be required to deduct tax under section 393(1) [Table: Sl. No. 8(iv)] on such benefit/perquisite, and therefore, he will not be treated as an assessee in default under section 398. Thus, in such a case, he must add back the expenditure, representing such benefit/perquisite, to calculate his total income if such expenditure is debited in the account.

Question 12: Section 393(1) [Table: Sl. No. 8(iv)] provides that if the benefit/ perquisite is in kind or partly in kind (and cash is not sufficient to meet TDS) then the person responsible for providing such benefit or perquisite is required to ensure that tax required to be deducted has been paid in respect of the benefit or perquisite, before releasing the benefit or perquisite. How can such person be satisfied that tax has been deposited?

Answer: The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted under section 393(1) [Table: Sl. No. 8(iv)], the person is required to ensure that tax required to be deducted has been paid by the recipient. Such recipient would pay tax in the form of advance tax. The tax deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming



that the tax required to be deducted on the benefit/perquisite has been deposited. This would then be required to be reported in TDS return along with challan number.

In the alternative, as an option to remove difficulty if any, the benefit provider may deduct the tax under section 393(1) [Table: Sl. No. 8(iv)] and pay to the Government. The tax should be deducted after taking into account the fact the tax paid by him as TDS is also a benefit under section 393(1) [Table: Sl. No. 8(iv)]. In the Form 140 he will need to show it as tax deducted on benefit provided.

Question 13: Company "A" gifts a car to its dealer "B" and deducted tax on this benefit under section 393(1) [Table: Sl. No. 8(iv)]. Dealer "B" uses this car in his business. Will he get deduction for depreciation in calculating his income under the head "profits and gains of business or profession"?

It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that once Company "A" has deducted tax on gifting of car in accordance with section 393(1) [Table: Sl. No. 8(iv)] (or released the car after dealer "B" showed him payment of tax on such benefit) and dealer "B" has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the car for the purposes of section 33 shall be the amount of benefit included by dealer "B" as income in his income-tax return. **Hence, dealer "B" can get depreciation on fulfilment of other conditions for claiming depreciation.**

Question 14: Whether Embassy/High Commissions are required to deduct tax under section 393(1) [Table: Sl. No. 8(iv)]?

Answer: It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that the provision of **section 393(1) [Table: Sl. No. 8(iv)] is not applicable** on benefit/perquisite provided by, an organization in scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under a specific Act of Parliament (such as the Asian Development Bank Act 1966), an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state.

Question 15: Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public are substantially interested and whether tax is required to be deducted under section 393(1) [Table: Sl. No. 8(iv)]?

Answer: In case of bonus shares which are issued to all shareholders by a company in which the public are substantially interested as defined in clause (29) of section 2 of the Act, it has been represented that this does not result in any benefit to shareholders as the overall value and ownership of their holding does not change. Further cost of acquisition of bonus share is taken as nil for capital gains computation when this share is sold. Similar representations have been received seeking clarity on issuance of right shares.

It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that the **tax under section 393(1) [Table: Sl. No. 8(iv)] is not required to be deducted on the issuance of bonus or right shares by a company in which the public is substantially interested, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.**

Payment by an e-commerce operator to an e-commerce participant [Section 393(1) Table Sl. No. 8(v)]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold
8(v)	Any sum on account of sale of goods or provision of services by an e-commerce participant, facilitated by an e-commerce operator through its digital or electronic facility or platform.	Any e-commerce operator	0.1% of the gross amount of such sale or services or both.	Nil

Meaning of certain terms

Term	Meaning
Electronic commerce **[Section 402(12)]**	Supply of goods or services, or both, including digital products, over a digital or electronic network.
E-commerce operator **[Section 402(13)]**	A person who owns, operates or manages a digital or electronic facility or platform for electronic commerce.

E-commerce participant **[Section 402(14)]**	A person resident in India selling goods or providing services, or both, including digital products, through a digital or electronic facility or platform for electronic commerce.
Services **[Section 402(34)]**	Service includes "fees for technical services" and fees for "professional services".

Notes -

(a) For deduction of tax, the provisions thereof shall take precedence over any other provisions of this Chapter.

(b) **Any payment made by a purchaser** of goods or recipient of services **directly to an e-commerce participant** for the sale of goods or provision of services or both, facilitated by an e-commerce operator, shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant and this amount shall be included in the gross amount of such sale or services for the purposes of deduction of income-tax under this serial number.

(c) An e-commerce operator shall be deemed to be the person responsible for paying to the e-commerce participant.

(d) Irrespective of anything contained in this Chapter, if—

- ✓ tax has been deducted on a transaction under this serial number; or
- ✓ a transaction is not liable for tax deduction due to the exemption provided in section 393(4) (Table: Sl. No. 11)

then tax shall not be deducted on such transaction under any other provision of this Chapter.

However, this shall not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator for -

- ➢ hosting advertisements; or
- ➢ providing any other services,

which are not in connection with the sale or services referred to in this serial number.

Section 393(1) [Table: Sl. No. 8(v)] casts responsibility **on** E-commerce operator who is responsible for paying any sum on account of sale of goods or provision of services by an e-commerce participant, facilitated by an e-commerce operator through its digital or electronic facility or platform shall deduct tax at source @0.1% on the entire amount.



However, **no tax is required to be deducted at source** where the amount is credited or paid or likely to be credited or paid during the tax year to the account of an e-commerce participant, which is -

(a) an individual or a HUF; and

(b) the gross amount of the sales or services or both during the tax year does not exceed ₹ 5,00,000; and

(c) the e-commerce participant has furnished the PAN or Aadhaar number to the e-commerce operator.

Power of the CBDT to issue guidelines [Section 400(2)]



The CBDT has, vide **Circular no. 17/2020 dated 29.9.2020 and Circular no. 20/2021 dated 25.11.2021,** issued the following guidelines for removing certain difficulties-

1. **Applicability on transactions carried through various Exchanges:** In order to remove practical difficulties in implementing section 393(1) [Table: Sl. No. 8(v)] in case of certain exchanges and clearing corporations, it has been provided that section 393(1) [Table: Sl. No. 8(v)] shall **not be applicable** in relation to-
   - transactions in securities and commodities which are traded through recognised stock exchanges or cleared and settled by the recognised clearing corporation, including recognised stock exchanges or recognised clearing corporation located in the International Financial Service Centre;
   - transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC (Central Electricity Regulatory Commission).
2. **Applicability on payment gateway:** In e-commerce transactions, the payments are generally facilitated by payment gateways. Consequently, it is possible that there may be applicability of the section 393(1) [Table: Sl. No. 8(v)] twice i.e., once on the main e-commerce operator who is facilitating sale of goods or provision of services or both and once on payment gateway who also happens to qualify as an e-commerce operator for facilitating the service. To illustrate, a buyer buys goods worth ₹ 1 lakh on e-commerce website "XYZ". He makes a payment of ₹ 1 lakh through the digital platform of "ABC". On these facts, the liability to deduct tax

under section 393(1) [Table: Sl. No. 8(v)] may fall on both "XYZ" and "ABC". In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 393(1) [Table: Sl. No. 8(v)] on a transaction, if the tax has been deducted by the e-commerce operator under section 393(1) [Table: Sl. No. 8(v)], on the same transaction. Hence, in the above example, if "XYZ" has deducted tax under section 393(1) [Table: Sl. No. 8(v)] on ₹ 1 lakh, "ABC" will not be required to deduct tax under section 393(1) [Table: Sl. No. 8(v)] on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from 'XYZ' regarding the deduction of tax.

3. **Applicability on insurance agent or insurance aggregator:** Insurance agents or insurance aggregators, in many cases, have no involvement in transactions between the insurance company and the buyer for subsequent years. Therefore, in subsequent years, the liability to deduct tax may arise on the insurance agents or insurance aggregators, even if the transactions have been completed directly with the insurance company. This may result in hardship for the insurance agents/aggregators.

   In order to remove the difficulty, it is provided that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between the insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 393(1) [Table: Sl. No. 8(v)] for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.

4. **Applicability on E-auction services carried out by e-auctioneers through electronic portal:** The provisions of section 393(1) [Table: Sl. No. 8(v)] **would not** apply in relation to e-auction activities carried out by e-auctioneers if all the facts listed in (a) to (f) are satisfied:

   (a) The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible for the **price discovery only** which is reported to the client.

   (b) The price so discovered through the e-auction process is not necessarily the price at which the transaction takes place, and it is up to the discretion of the client to accept the price or to directly negotiate with the counter-party.

   (c) The transaction of purchase/sale takes place directly between the buyer and the seller party outside the electronic portal maintained by

the e-auctioneer and **price discovery only acts as the starting point** for negotiation and conclusion of purchase/sale.

(d) The e-auctioneer is **not responsible for facilitating the purchase and sale of goods** for which e-auction was conducted on its electronic portal except to the extent of price discovery.

(e) Payments for the transactions are carried out directly between the buyer and the seller outside the electronic portal and the **e-auctioneer does not have any information about the quantum and the schedule of payment** which is decided mutually by the client and the counterparty.

(f) For payment made to the e-auctioneer for providing e-auction services, the client deducts tax under the relevant provisions of the Act other than section 393(1) [Table: Sl. No. 8(v)].

If any of these facts are not satisfied, the provisions of section 393(1) [Table: Sl. No. 8(v)] will apply. Further, the buyer would still be liable to deduct tax as per the provisions of section 393(1) [Table: Sl. No. 8(ii)].

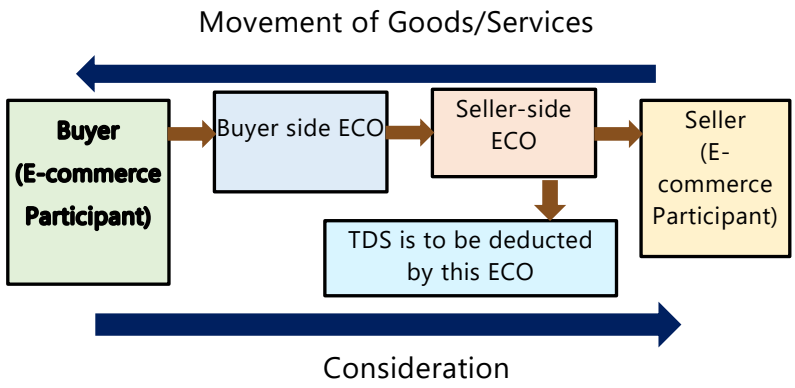
The CBDT further issued, vide **Circular No. 20/2023 dated 28.12.2023,** guidelines for tax deduction at source under section 393(1) [Table: Sl. No. 8(v)] encompassing transactions that involve **multiple e-commerce operators** in respect of the following issues:

1. Who should deduct tax at source where there are multiple e-commerce operators (ECO) involved in a transaction?

There may be a platform or network (e.g. the Open Network for Digital Commerce) on which multiple e-commerce operators are participating in a single transaction. For example, there could be a buyer side ECO involved in buyer-side functions and a seller-side ECO involved in seller side functions. In this case, there may be two situations:

Situation 1: Where multiple ECOs are involved in a single transaction of sale of goods or provision of services through ECO platform or network and **where the seller-side ECO is not the actual seller of the goods or services:**

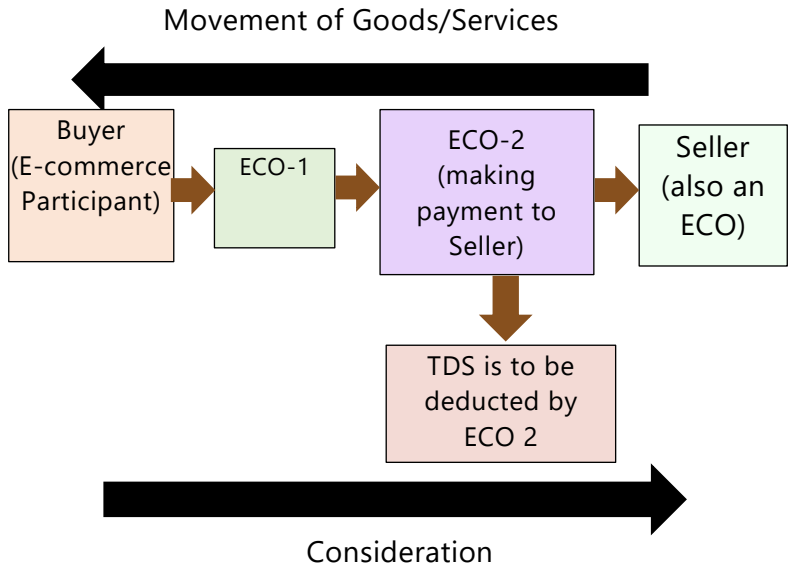
On the buying side, a buyer-side ECO could be providing an interface to the buyer and on the selling side, a seller-side ECO could be providing an interface to the seller.



In this situation, the compliance under section 393(1) [Table: Sl. No. 8(v)] is to be done by the seller-side ECO who finally makes the payment or the deemed payment to the seller for goods sold or services provided.

Situation 2: Where multiple ECOs are involved in a single transaction of sale of goods or provision of services through ECO platform or network and **where the seller-side ECO is the actual seller of the goods or services.**

On the buying side, an ECO could be providing an interface to the buyer and on the selling side, the seller itself is an ECO and is directly interacting with an ECO.



In this situation, since on the selling side, the seller itself is an ECO and is directly interacting with an ECO, the compliance under section 393(1) [Table: Sl. No. 8(v)] is to be done by the ECO which finally makes the payment or the deemed payment to the seller for goods or services sold.

Note - In both the above situations, the tax shall be deducted on the "gross amount" of such sale of goods or provision of services and shall be deducted by seller-side ECO/ECO-2, as the case may be, at the time of credit to the account of a seller (being e-commerce participant) or at the time of the payment or the deemed payment thereof to such seller by any mode, whichever is earlier.

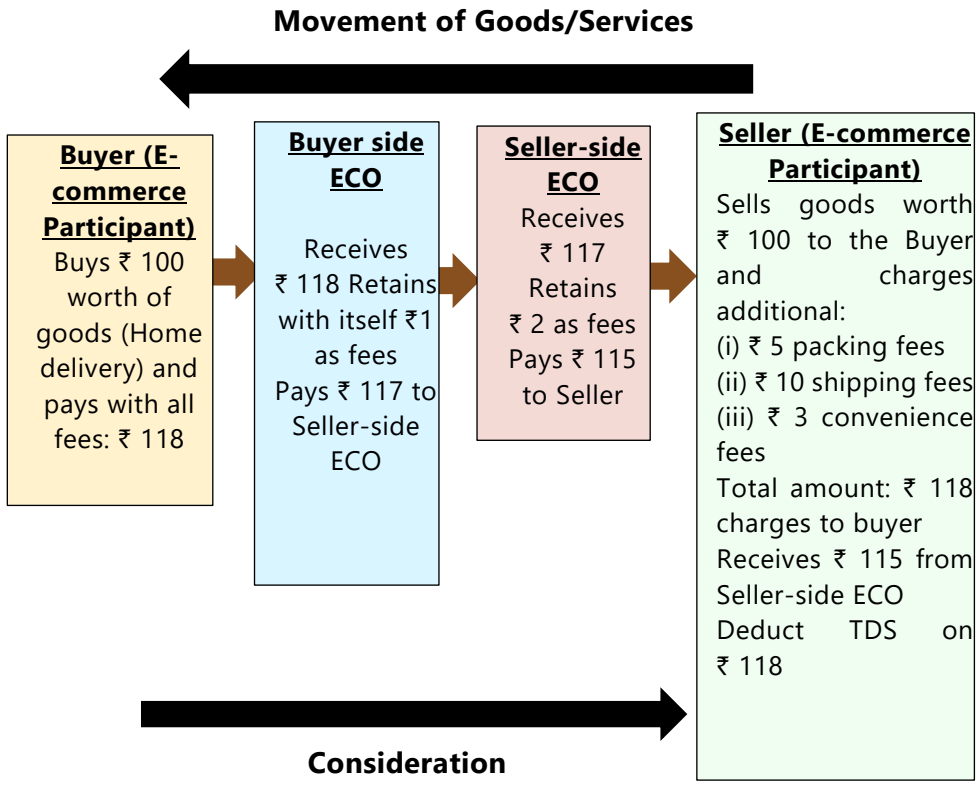
2. E-commerce operators may be levying convenience fees or charging commission for each transaction and seller might levy logistics & delivery fees for the transaction. Payments may also be made to the platform or network (e.g. ONDC) provider for facilitating the transaction. Would these form part of the "gross amount" for the purposes of TDS under section 393(1) [Table: Sl. No. 8(v)] of the Act?

In e-commerce, it is common for an order to be shipped to the buyer from the seller. It is therefore common for the sellers to charge the buyer additionally for shipping in the form of logistics/ delivery/ shipping/ packaging fees.

Further, the buyer-side ECO and seller-side ECO may charge a commission to the seller to enable the online transaction, and the seller may choose to recoup all or part of that amount from the buyer.



A buyer purchases goods worth ₹ 100 from the Seller and opts for home delivery. The Seller charges the Buyer an additional ₹ 5 as packing fees, ₹ 10 as shipping fees, and ₹ 3 as a convenience charge (to recoup the fees charged by the seller-side ECO, which includes ₹ 1 charged by the Buyer-side ECO and ₹ 2 charged by the Seller-side ECO itself). So, the seller will issue an invoice for ₹ 118 (i.e. 100 + 5 + 10 + 2 + 1) to the buyer. The shipping fees, packaging fees and convenience fees are separately charged to the buyer to provide services in relation to the main supply. In such a case, TDS is to be deducted by the seller-side ECO under section 393(1) [Table: Sl. No. 8(v)] on ₹ 118 since this is the gross amount of sales.



It is thus clarified that TDS shall be deducted by the seller-side ECO on the gross amount of sales of goods (₹ 118) or provision of services at the time of payment (including deemed payment) or credit.

As per Note 3 in relation to section 393(1) [Table: Sl. No. 8(v)], a transaction on which tax has been deducted by an ECO under section 393(1) [Table: Sl. No. 8(v)](1), such transaction shall not be liable to TDS under any other provision of Chapter XIX-B. Accordingly, this exclusion will also apply to the amount received by ECO for the provision of services which are in connection with the main transaction of sale of goods or provision of service or both referred to in section 393(1) [Table: Sl. No. 8(v)](1). However, Note 4 below the Table to section 393(1) provides that where the provisions of Sl. No. 8(v) and Sl. No. 8(vi) are both applicable to a transaction, tax on such transaction shall be deducted only under Sl. No. 8(vi).

In this example, fees charged by the seller-side ECO (₹ 3 charged to the seller) and buyer-side ECO (₹ 1 charged to the seller-side ECO) for services

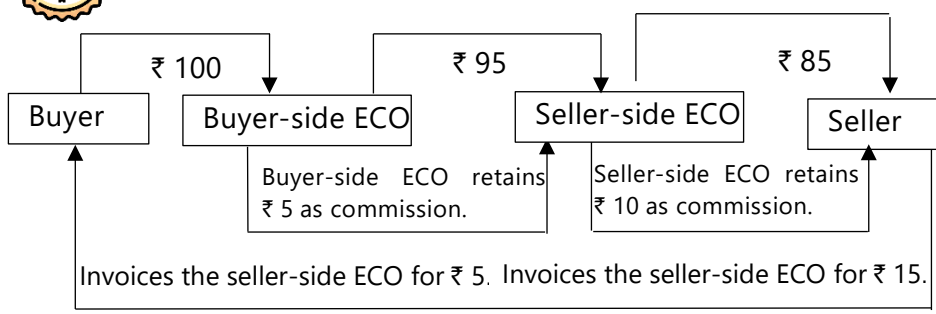
provided would ordinarily have been subjected to TDS under section 393(1) [Table: Sl. No. 1(ii)] and the seller and seller-side ECO respectively would have had to deduct tax and file TDS return with respect to the fees paid.

However, as tax has been deducted under section 393(1) [Table: Sl. No. 8(v)](1) on the gross amount of sales of ₹ 118, this amount (which includes buyer-side ECO fee of ₹ 1 and seller-side ECO fee of ₹ 2 charged to the end customer) will not be subject to TDS under any other provision. However, this is subject to Note 4 below the Table to section 393(1), under which Sl. No. 8(vi) takes precedence where both Sl. No. 8(v) and Sl. No. 8(vi) apply to the same transaction.

Payments may also be made to the platform or network (e.g., the ONDC) provider to facilitate the transaction. These would form part of the "gross amount" for the purposes of TDS under section 393(1) [Table: Sl. No. 8(v)] if they are included in the payment for the transaction. If these payments are being paid on a lump-sum basis and are not linked to a specific transaction, then these need not be included in the "gross amount".



Money Flow



Invoicing Flow

The Seller's label-price for a product is ₹ 85, the seller-side ECO's fee (for listing the Seller catalogue and facilitating the transaction) is ₹ 10, and the Buyer- side ECO's fee (to provide an interface to enable the Buyer to discover the seller/product and to enable them to place an order) is ₹ 5. The Seller charges the Buyer a total of ₹ 100 (₹ 85 + ₹ 10 + ₹ 5) and issues an invoice for ₹ 100 (gross amount) as shown in the above diagram.

The TDS under section 393(1) [Table: Sl. No. 8(v)] has to be calculated on ₹ 100 (gross invoice value) @0.1% by the seller ECO.

3. **How will GST, various state levies and taxes other than GST such as VAT/ Sales tax/ Excise duty / CST be treated when calculating gross amount of sales of goods or provision of services as per the provisions of section 393(1) [Table: Sl. No. 8(v)]?**

Condition	Amount on which tax is to be deducted u/s 393(1) [Table: Sl. No. 8(v)]
Where tax is deducted at the time of credit of amount in the account of the seller and the component of GST/various state levies and taxes comprised in the amount payable to the seller is indicated separately	Tax has to be deducted under section 393(1) [Table: Sl. No. 8(v)] on the amount credited without including such GST/ various state levies and taxes.
Where tax is deducted on payment basis because payment is earlier than the credit	Tax has to be deducted on the whole amount (since it is not possible to identify the payment with GST/various state levies and taxes component to be invoiced in the future)

4. How will the adjustment for purchase returns take place?

Tax is required to be deducted under section 393(1) [Table: Sl. No. 8(v)] at the time of payment or credit, whichever is earlier. Thus, before purchase-return happens, the tax must have already been deducted under section 393(1) [Table: Sl. No. 8(v)] on that purchase. In such case -

(i) Where the money is refunded against purchase returns

Tax deducted, if any, may be adjusted against the next transaction by the deductor with the same deductee in the same tax year. Further, the tax deducted and deposited will be allowed as credit to the seller.

(ii) Where goods are replaced by the seller against the purchase return

No adjustment is required as in that case the transaction on which tax was deducted under section 393(1) [Table: Sl. No. 8(v)] has been completed with goods replaced.

5. How will discounts given by the seller as an e-commerce participant or by any of the multiple e-commerce operators be treated while calculating "gross amount"?

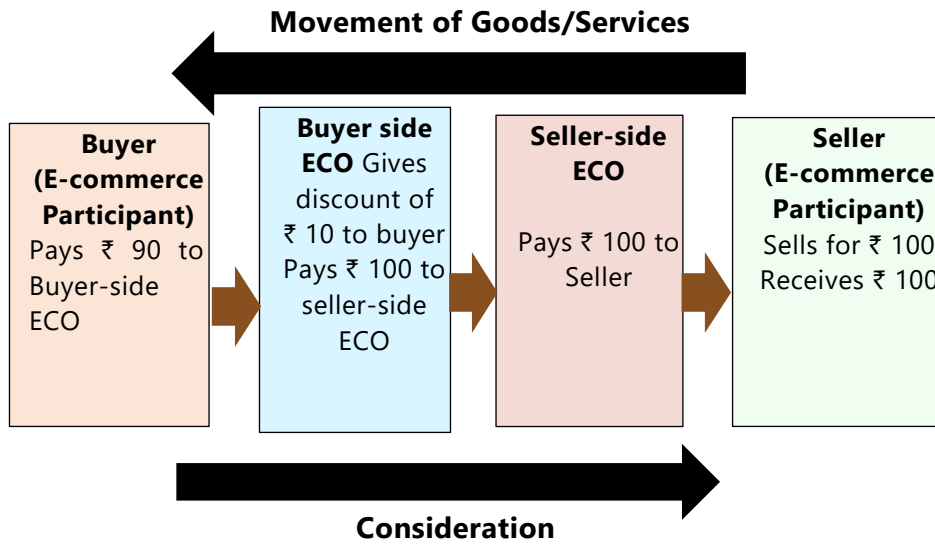
(i) Treatment of discounts offered by the actual seller

Where the discount is given by the seller itself, the seller would reduce the price of the products sold or services provided.

For example, if the label-price of a product is ₹ 100, and the seller offers a discount of ₹ 10, ₹ 90 will be receivable from the buyer. In this case, the seller will invoice the buyer for ₹ 90, and hence the TDS has to be calculated on ₹ 90.

(ii) Treatment of discounts offered by the buyer ECO or Seller ECO

Where discount is given by the buyer ECO/seller ECO, usually the seller receives full consideration for the product, however part of it is received from the buyer and the balance is discharged to the seller by the buyer ECO/seller ECO, as the case may be.



In the above diagram, if the price quoted by the seller is ₹ 100, and the buyer ECO gives a discount of ₹ 10, ₹ 90 (i.e. 100 - 10) will be collected from the buyer and remitted to the seller, and the buyer ECO will pay the remaining ₹ 10 to the seller via the seller ECO. The invoice on the buyer will be raised for ₹ 100 and tax will therefore be deducted by the seller-side ECO on ₹ 100, which is the gross amount of sales.

Person responsible for paying

For the purpose of this section, the e-commerce operator shall be deemed to be the person responsible for paying to the e-commerce participant.

B. Payments to Any Person (Resident/Non-Resident) [Section 393(3)]

Table to section 393(3) contains certain payments made to any person (resident or non-resident) listed from Sl. No. 1 to 7, along with the details of the payer, being the person responsible for making payment of such income or sum, the rate of TDS and the threshold limit.

For ease of understanding, the discussion to section 393(3) has been arranged transaction-wise with reference to each Serial Number. While discussing each transaction, the relevant conditions and exemptions specified in the Table referred to in section 393(4), along with the interpretation of certain terms referred to in section 402, have also been incorporated so as to enable students to understand the complete implications of the transaction in one comprehensive reading. Now let's begin with the discussion:

As per section 393(3), where any income or sum of the nature specified in Table to section 393(3), is credited or paid by the person specified in said table during the tax year, **to any person**, the person responsible for making payment of such income or sum, shall deduct income-tax,

Payee= Resident / Non- Resident Person

(a) **on the entire amount of such income or sum**, where the amount or aggregate of amounts exceeds the specified threshold limit, or on the net winnings as specified thereunder **unless otherwise mentioned**;

(b) at the rate specified in the Table

(c) at the **time of payment** thereof in cash or by way of a cheque or a draft or by any other mode, or as specified therein

(d) subject to the provisions, cases, or transactions specified for non-deduction of tax at source.

Winnings from lottery, crossword puzzle etc.
[Section 393(3) Table Sl. No. 1]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
1	Any income by way of winnings (other than winnings from online games as referred to in serial number 2) from - (a) any lottery; or (b) crossword puzzle; or (c) card game and other game of any sort; or (d) gambling or betting of any form or nature whatsoever	Any Person	Rate in force i.e., 30%	₹ 10,000 in case of a single transaction.
Where the winnings is wholly in kind or partly in kind and partly in cash In a case where the winnings - is wholly in kind or - is partly in kind and partly in cash but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, then, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.				

Section 393(3) [Table: Sl. No. 1] casts responsibility **on any person** responsible for paying to **any person** any income by way of



- winnings from **any lottery or**
- **crossword puzzle or**
- **card game** and other game of any sort or
- **gambling or betting** of any form or nature whatsoever,

to deduct tax at source **@30% on the entire amount** if the amount of **payment in respect of a single transaction exceeds ₹ 10,000.**

ILLUSTRATION 15

Mr. Govind won the first prize in a lottery ticket, and the prize was a Maruti car worth ₹ 5 lakhs. What is the procedure to be adopted before handing over the Maruti Car to Mr. Govind?

SOLUTION

Section 393(3) [Table Sl. No. 1] provides that the person responsible for paying to any person, any income by way of winnings from any lottery or crossword puzzle, card game or any other game of any sort and the amount of winning exceeds ₹ 10,000 in a single transaction, tax shall be deducted at source @30%.

However, in case where the winning is wholly in kind, the person responsible for paying the prize shall before releasing the winning, ensure that the tax has been paid in respect of such winning.

In this regard, the *CBDT Circular No.763 dated 18/2/1998* clarifies that the person responsible for paying the winnings shall, before releasing such winnings, ensure that the tax is paid by the winner. He can do so, for example, by collecting from the winner a sum equal to the tax deductible at source on the winnings in kind, before releasing the winnings. For this purpose, the value of the winnings in kind shall be taken as the cost incurred by the payer in acquiring the said winnings in kind.

Therefore, in this case, since the entire winning is in kind, it must be ensured that the sum equal to the tax deductible at source (i.e., ₹ 1,50,000, being @ 30% of ₹ 5 lakhs) is paid by Mr. Govind, before the car is released in his favour. This can be done by collecting ₹ 1,50,000 from Mr. Govind before releasing the Maruti car to him and remitting the said sum to the Government account or verifying the tax payment by the winner and thereafter releasing the prize.

Winnings from online games [Section 393(3) Table Sl. No. 2]

Sl. No.	Nature of Income or Sum for Payee	Payer	Rate	Threshold
2	Any income by way of **winnings from online game.**	Any Person	Rate in force i.e., 30%	Nil

Notes:

(1) Tax shall be deducted -

- **on the net winnings** in the user's account **at the end of the tax year**;
- **where there is any withdrawal from user account during the tax year**, tax would be deducted
  - at the time of such withdrawal on the net winnings comprised in such withdrawal

  as well as
  - on the remaining amount of net winnings in user account at the end of the tax year.

Net winnings is to be computed in the prescribed manner.

(2) Where the net winnings
- is wholly in kind or
- is partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of the whole of such winnings,

then, the person responsible for paying has to ensure that tax required to be deducted has been paid, before releasing the winnings.

Meaning of certain terms:

Term	Meaning
Computer resource	Computer, computer system, computer network, data, computer data base or software [Section 2(1)(k) of Information Technology Act, 2000]
Internet	The combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that transmits information based on a protocol for controlling such transmission.
Online game	A game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device.
Online gaming intermediary	An intermediary that offers one or more online games.
User	Any person who accesses or avails any computer resource of an online gaming intermediary.
User Account	Account of a user registered with an online gaming intermediary.



Section 393(3) [Table: Sl. No. 2] casts responsibility **on any person** responsible for paying to **any person any income by way of winnings from online games** to deduct tax at source **@30%** on the

- net winnings in the user's account at the end of the tax year
- in case of withdrawals, at the time of such withdrawal on the net winnings and remaining amount of net winnings in the account at the end of the year.

Manner for computation of net winnings

For the purpose of deducting tax under this Sl. No., net winnings from such online games is to be computed in the prescribed manner. Further, section 194(1)[Table Sl. No. 5] provides that any income by way of net winnings from online game, computed in the prescribed manner, would be taxable @30%.

Accordingly, Rule 135 prescribes the manner for computation of net winnings from online games for purpose of section 194(1) (Table: Sl. No. 5) and section 393(3) (Table: Sl. No 2) as follows:

Sub-rule	Provision
(1)	**Computation of net winnings from online game for the purpose of section 194(1) (Table: Sl. No. 5) during the tax year:** **Net winnings = (A + D) - (B + C)** A = Aggregate amount withdrawn from the user account during the tax year. B = Aggregate amount of non-taxable deposit made in the user account by the assessee during the tax year. C = Opening balance of the user account at the beginning of the tax year and D = Closing balance of the user account at the end of the tax year.
(2)	**Computation of net winnings at the time of first withdrawal during the tax year for the purposes of section 393(3) [Table Sl. No. 2]** **Net winnings = A - (B + C)** A = Amount withdrawn from the user account.

	B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the tax year, till the time of such withdrawal. C = Opening balance of the user account at the beginning of the tax year. ***Note -*** *If the sum of amounts B and C is equal to or greater than the amount A, net winnings would be considered as zero [Sub-rule (3)].*
(4)	**Computation of net winnings at the time of each subsequent withdrawal during the tax year, for the purposes of section 393(3) [Table Sl. No. 2]** **Net winnings = A - (B + C + E)** **A =** Aggregate amount withdrawn from the user account during the tax year till the time of subsequent withdrawal, including the amount of such subsequent withdrawal. **B =** Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the tax year, till the time of such subsequent withdrawal. **C =** Opening balance of the user account at the beginning of the tax year. **E =** Net winnings comprised in the earlier withdrawal or withdrawals computed under sub-rule (2), or under this sub-rule, during the tax year till the time of subsequent withdrawal if tax has been deducted in accordance with the provision of section 393(3) [Table Sl. No. 2] on winnings comprised in such withdrawal or withdrawals. ***Note -*** *Net winnings would be zero, if the sum of amounts B, C and E is equal to or greater than the amount A [Sub-rule (5)]*
(6)	**Computation of net winnings at the end of the tax year for the purposes of section 393(3) [Table Sl. No. 2]** **Net winnings = (A + D) - (B + C + E)** A = Aggregate amount withdrawn from the user account during the tax year. B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the tax year. C = Opening balance of the user account at the beginning of the tax year. D = Closing balance of the user account at the end of the tax year.

	E = Net winnings comprised in the earlier withdrawal or withdrawals computed under sub-rule (2), or sub-rule (4), during the tax year if tax has been deducted in accordance with the provision of section 393(3) [Table Sl. No. 2] on winnings comprised in such withdrawal or withdrawals. ***Note -*** *Net winnings would be zero if the sum of amounts B, C and E is equal to or greater than the sum of amounts A and D [Sub-rule (7)].*

Meaning of certain terms:

Term	Meaning
Non-taxable deposit	The amount deposited by the user in his user account and which is not taxable.
Taxable deposit	Any amount deposited in the user account which is not a non-taxable deposit, and includes any amount paid directly to the user, not through the user account.
Withdrawal	Any amount withdrawn by the user from any user account.

Important points for consideration

User Account: User account shall include every account of a user, by whatever name called, which is registered with the online gaming intermediary and where any taxable deposit, non-taxable deposit or the winnings made by the user is credited and withdrawal by the user is debited.



(a) **Multiple user accounts:** Whenever there are multiple user accounts of the same user, **each user account shall be considered** for the purposes of calculating net winnings and the deposit, withdrawal or balance in the user account shall mean the aggregate of deposit, withdrawal or balance in all user accounts.

(b) **Transfer from one user account to another user account:** Whenever there are multiple user accounts of the same user, transfer from one user account to another user account, maintained with the same online gaming intermediary, of the same user shall not be considered as withdrawal or deposit, as the case may be, for the purposes of deducting tax under section 393(3) [Table Sl. No. 2].

Payment in cash or kind

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 this rule 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 A;

Taxable deposit in the form of bonus

- Whenever there is a taxable deposit in the form of bonus, referral bonus, incentives, promotional money, discount by whatever name called; and such deposit can only be used for playing the online games and not for withdrawal or any other purposes, such deposit shall be ignored for the purposes of calculation of net winnings and shall not be included in amount B or amount C or amount D; and
- Whenever any bonus, referral bonus, incentives, promotional money, discount, by whatever name called, is not considered as part of amount B or amount C or amount D under the point above, and subsequently, they are recharacterized and allowed to be withdrawn, they shall be deemed as taxable deposit at the time of such recharacterization and it shall be deemed that the equivalent amount has been deposited in the user account at that time.



Power of CBDT to issue Guidelines [Section 393(3) [Table Sl. No. 2]

Section 400(2) empowers the CBDT to issue guidelines, with the previous approval of the Central Government, to remove any difficulty arising in giving effect to the provisions of this Chapter. Such guidelines shall be -



(a) binding on the income-tax authorities and on the person liable to deduct or collect tax and

(b) laid before each House of Parliament

Accordingly, the CBDT has, vide Circular No. 5/2023 dated 22.5.2023, issued the following guidelines:

Question 1: There are multiple wallets under one user. How "net winnings" is to be computed with respect to multiple wallets of one user.

Answer: It has been clarified in the Rule 135 that user account shall include every account of user, by whatever name called, which is registered with an online gaming intermediary and where any taxable deposit, non-taxable deposit or the winning of the user is credited and withdrawal by the user is debited. Thus, each wallet that

qualifies as a user account shall be considered as user account for the purposes of computing net winnings. It has further been clarified in the Rule 135 that whenever there are multiple user accounts of the same user, each user account shall be considered for the purposes of calculating net winnings. The deposit, withdrawal or balance in the user account shall mean the aggregate of deposits, withdrawals or balances in all user accounts.

For illustration, a user has multiple user accounts under one deductor (one TAN). For the purposes of calculating tax required to be deducted under section 393(3) [Table Sl. No. 2], each of these user accounts is to be considered. Deposits in any of these user accounts would be considered as deposit (non-taxable or taxable as per the definition in Rule 135) and withdrawal from any user accounts would be considered as withdrawal.

Let us suppose that there is a first withdrawal from any of these user accounts. Net winnings for the purposes of calculating tax required to be deducted under section 393(3) [Table Sl. No. 2] shall be calculated as under

Net winnings = A - (B + C)

A = Amount withdrawn from the user account.

B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the tax year, till the time of such withdrawal.

C = Opening balance of the user account at the beginning of the tax year.

Here for the purposes of calculating amount B, the non-taxable deposits in all of the user accounts under that deductor (one TAN) is to be aggregated. The same would apply to calculating all other amounts for calculation under Rule 135.

However, if the one deductor (one TAN) is having multiple platforms and it is not technologically feasible for him to integrate multiple user accounts across platforms, then he may, at his option, calculate tax required to be deducted for the purposes of section 393(3) [Table Sl. No. 2] for each platform separately. But even in that case, all the user accounts under one user in one platform need to be considered for the purposes of calculating net winnings in the formulas provided in Rule 135.

It may also be noted that Rule 135 has also clarified that transfer from one user account to another user account, maintained with the same online gaming intermediary, of the same user shall not be considered as withdrawal or deposit, as

the case may be. However, if the deductor is deducting tax under section 393(3) [Table Sl. No. 2] for each platform separately, as discussed in the immediately preceding paragraph, transfer from one user account to another user account under same online gaming intermediary **across platforms** shall be **considered as withdrawal or deposit** for the purposes of calculation of net winnings under Rule 135.

Question 2: If a user borrows some money and deposits in his user account, will it be considered taxable deposit or non-taxable deposit?

Answer: For non-taxable deposit it is necessary that the amount deposited by the user is not taxable, i.e., it is from already taxed income or it is not chargeable to tax. In a case where user borrows the money and deposit in his user account, it shall be considered as non-taxable deposit.

Question 3: How will bonus, referral bonus, incentives etc., be treated?

Answer: Bonus, referral bonus, incentives etc., are given by the online game intermediary to the user. They are to be considered as taxable deposit under Rule 135. The taxable deposit will increase the balance in user account and is not allowed to be deducted in the calculation of net winnings, as only non-taxable deposits are allowed to be deducted.

Thus, **any deposit in the form of bonus, referral bonus, incentives etc, would form part of net winnings and tax** under section 393(3) [Table Sl. No. 2] is liable to be deducted at the time of withdrawal as well as at the end of the tax year.

Some deposit could be money equivalent too like coins, coupons, vouchers, counters etc. In such a situation the equivalence in money of such deposit shall be considered as taxable deposit and would accordingly form part of balance in user account.

However, it is seen that there is some incentives/bonus which is credited in user account **only for the purposes of playing and they cannot be withdrawn** or used for any other purposes. Rule 135 has provided that such deposit **shall be ignored** for calculation of net winnings. Thus, they shall not be included in non-taxable deposit, and they shall also not be included in opening balance or closing balance of user account. Thus, to the extent they will not be part of net winnings. However, person liable to deduct tax under section 393(3) [Table Sl. No. 2] must keep separate accounts of such deposits.

Further, if and when these incentive/bonuses are recharacterized and they are allowed to be withdrawn, they would be treated as taxable deposit at the time when they are recharacterized. Thus, they will become part of net winnings in the year of recharacterization.

Question 4: At what point we consider that the amount has been withdrawn?

Answer: As stated earlier, it has also been clarified in Rule 135 that transfer from one user account to another user account, maintained with the same online gaming intermediary, of the same user **shall not be considered** as withdrawal or deposit, as the case may be.

However, when the amount is withdrawn from the user account to any other account, it shall be considered as withdrawal.

With respect to deductor, any account of user which is not registered with the online game intermediary (for which he is a deductor) is an account which is not a user account and any transfer from user account to such account is a withdrawal.

When in consideration of amount in user account, some coupons etc are issued for the purchase of goods or services, or some item in kind is issued, that will also be considered as withdrawal. It is the duty of the person who is required to deduct tax at source under section 393(3) [Table Sl. No. 2] to ensure that the tax, as required to be deducted, is deducted at source under section 393(3) [Table Sl. No. 2], before issuing such coupons or items in kind.

The clarification provided in answer to Question no 1 also needs to be kept in mind. It has been clarified that if the deductor is deducting tax under section 393(3) [Table Sl. No. 2] for each platform separately, transfer from one user account to another user account under same online gaming intermediary across platforms shall be considered as withdrawal or deposit for the purposes of calculation of net winnings under Rule 135.

Question 5: There are a large number of gamers who play with very insignificant amount and withdraw also very small amount. Deducting tax at source under section 393(3) [Table Sl. No. 2] for each insignificant withdrawal would increase compliance for tax deductor. Can there be relaxation to ease compliance?

Answer: Tax may not be deducted on withdrawal on satisfaction of all of the following conditions, namely:-

(i) net winnings comprised in the amount withdrawn does not exceed ₹ 100 in a month;

(ii) tax not deducted on account of this concession is deducted at a time when the net winnings comprised in withdrawal exceeds ₹ 100 in the same month or subsequent month or if there is no such withdrawal, at the end of the tax year; and

(iii) the deductor undertakes responsibility of paying the difference if the balance in the user account at the time of tax deduction under section 393(3) [Table Sl. No. 2] is not sufficient to discharge the tax deduction liability calculated in accordance with Rule 135.

Question 6: When the net winnings is in kind how will tax deduction under section 393(3) [Table Sl. No. 2] operate?

Answer: At the outset, it may be clarified that where money in user account is used to buy an item in kind and given to user then it is net winnings in cash only and the deductor is required to deduct tax at source under section 393(3) [Table Sl. No. 2] accordingly.

However, there could be a situation where the winning of the game is a prize in kind. In that situation, provision of Note 2 below section 393(3) [Table Sl. No. 2] will operate.

According to this where the net winnings are wholly in kind or partly in cash, and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the net winnings, the person responsible for paying, shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings.

In the above situation, the deductor will release the net winnings in kind after the deductee provides proof of payment of such tax (e.g., Challan details, etc.).

In the alternative, as an option to remove difficulty, if any, the deductor may deduct the tax under section 393(3) [Table Sl. No. 2] and pay to the Government.

Question 7: How will the valuation of winnings in kind required to be carried out?

Answer: The valuation would be based on the fair market value of the winnings in kind except in the following cases:-

(i) The online game intermediary has purchased the winnings before providing it to the user. In that case, the purchase price shall be the value for winnings.

(ii) The online game intermediary manufactures such items given as winnings. In that case, the price that it charges to its customers for such items shall be the value for such winnings.



It is further clarified that **GST will not be included for the purposes of valuation** of winnings for TDS under section 393(3) [Table Sl. No. 2].

Winnings from any horse race [Section 393(3) Table Sl. No. 3]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
3	**Any income by way of winnings from any horse race**	Any person, being (i) a bookmaker; or (ii) a person to whom a license has been granted by the Government under any law for the time being in force - (a) for horse racing in any race course; or (b) for arranging for wagering or betting in any race course	Rate in force i.e., 30%	₹ 10,000 in case of a single transaction

Meaning of "horse race" [Section 94(6)]

Horse race means a horse race upon which wagering or betting may be lawfully made.

Section 393(3) [Table: Sl. No. 3] casts responsibility

- **on bookmaker or a person holding licence** for horse racing or for arranging for wagering or betting in any race course
- responsible for paying to **any person any income by way of winnings from horse race**
- to deduct tax at source **@30% on the entire amount** if the amount of payment in respect of a **single transaction exceeds ₹ 10,000.**

Commission etc. on sale of lottery tickets [Section 393(3) Table Sl. No. 4]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
4	Any income, credited or paid to a person, who is or has been stocking, distributing, purchasing or selling **lottery tickets**, by way of commission, remuneration or prize (by whatever name called) on such tickets.	Any person	2%	₹ 20,000

Time of Deduction –

The person responsible for making the payment shall deduct tax

- at the time of credit of such sum or
- at the time of payment of such sum in cash or by issue of a cheque or a draft or by any other mode,

whichever is earlier.

Section 393(3) [Table: Sl. No. 4] casts responsibility **on any person responsible for paying any income by way of**

- **commission, remuneration or prize (by whatever name called)**
- **on lottery tickets**

to any person who is stocking, distributing, purchasing or selling lottery tickets to deduct tax at source **@2% on the entire amount** if the amount or aggregate of amounts **exceeds ₹ 20,000**

Cash withdrawals [Section 393(3) Table Sl. No. 5]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold Limit
5	Any sum, paid in cash, from one or more accounts maintained by any person (herein referred as recipient)	Any person, being, - - a banking company - a co-operative society engaged in carrying on the business of banking - a post office	2%	- **₹ 3 crore** in case of recipient being, **a co-operative society;** or - **₹ 1 crore** in case of recipient being **person other than a co-operative society.**

Section 393(3) [Table: Sl. No. 5)] casts responsibility **on**



- **a banking company,**
- **a co-operative society engaged in the business of banking or**
- **a post office**

to deduct tax at source **@2%** from any sum paid in cash from one or more accounts maintained by the recipient, where the amount or aggregate of amounts withdrawn **exceed** –

- **₹ 3 crore**, if the recipient is a **co-operative society**.
- **₹ 1 crore**, if the recipient is a person **other than a co-operative society**.

No Deduction of tax at source [Section 393(4) Table Sl. No. 18]

Liability to deduct tax at source under this Sl. No. shall not be applicable to any payment made to –

(a) the Government

(b) any banking company or co-operative society engaged in carrying on the business of banking or a post office;

(c) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, as per the guidelines issued in this regard by the Reserve Bank of India under the Reserve Bank of India Act, 1934

(d) any white-label automated teller machine operator of a banking company or co-operative society engaged in carrying on the business of banking, as per the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007

The Central Government may specify, with the consultation of RBI, by notification, the recipient in whose case section 393(3) [Table: Sl. No. 5] shall not apply or apply at a reduced rate, subject to the satisfaction of the conditions specified in such notification. Accordingly, the Central Government has, after consultation with the Reserve Bank of India (RBI), specified –

(1) Cash Replenishment Agencies (CRA's) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's) [Notification No. 68/2019 dated 18.9.2019]:

For availing exemption from applicability of TDS Section 393(3) [Table: Sl. No. 5], CRA's and franchise agents of WLATMO's **should maintain a separate bank account from which withdrawal is made only for the purposes of replenishing cash** in the Automated Teller Machines (ATM's) operated by such WLATMO's.

Further, the WLATMO should furnish a certificate every month to the bank certifying that the bank account of the CRA's and the franchise agents of the WLATMO's have been examined and the amounts being withdrawn from their bank accounts have been reconciled with the amount of cash deposited in the ATM's of the WLATMO's.

(2) Commission agent or trader, operating under Agriculture Produce Market Committee (APMC), and registered under any law relating to Agriculture Produce Market of the concerned State [Notification No. 70/2019 dated 20.9.2019]:

For availing exemption from the applicability of TDS Section 393(3) [Table Sl. No. 5], the commission agent/trader should intimate to the banking company or co-operative society or post office, his account number through which he wishes to withdraw cash in excess of ₹ 1 crore in the tax year along with his Permanent Account Number (PAN) and the details of the tax year.

Also, he should certify to the banking company or co-operative society or post office that the withdrawal of cash from the account in excess of ₹ 1 crore during the tax year is for the purpose of making payments to the farmers on account of purchase of agriculture produce.

Further, the banking company or co-operative society or post office has to ensure that the PAN quoted is correct and the commission agent or trader is registered with the APMC, and for this purpose, collect necessary evidences and place the same on record.

(3) For Authorised Dealers and Money Changers [Notification No.80 /2019, dated 15.10.2019]

(a) Authorised dealer and its franchise agent and sub-agent; and

(b) Full-Fledged Money Changer (FFMC) licensed by the RBI and its franchise agent;

Such persons should maintain a separate bank account from which withdrawal is made only for the purposes of -

(i) purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by RBI; or

(ii) disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the RBI;

The exemption from the requirement to deduct tax under section 393(3) [Table Sl. No. 5] would be available only if a certificate is furnished by the authorised dealers and their franchise agent and sub-agent, and the Full-Fledged Money Changers (FFMC) and their franchise agent to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the RBI have been adhered to.

"Authorised dealer" means any person who is authorised by the RBI as an authorised dealer to deal in foreign exchange [Section 10(1) of the Foreign Exchange Management Act, 1999].

(4) Foreign Representations, Diplomatic Missions, etc. [Notification No.123 / 2024 dated 28.11.2024]**:**

The provisions of section 393(3) [Table Sl. No. 5] shall not apply to **Foreign Representations duly approved by the Ministry of External Affairs** of the Government of India including Diplomatic Missions, agencies of the United Nations, International Organisations, Consulates and Offices of Honorary Consuls which are exempt from paying taxes in India as per the Diplomatic Relations (Vienna Convention) Act, 1972 and the United Nations (Privileges and Immunities) Act, 1947.

Sum paid to a Partner [Section 393(3) Table Sl. No. 7]

Sl. No.	Nature of Income or Sum	Payer	Rate	Threshold
7	Any sum in the nature of **salary, remuneration, commission, bonus or interest** paid to a partner of the firm or credited to his account (including capital account).	Any person, being a firm.	10%	Rs. 20,000

Section 393(3) [Table: Sl. No. 7] casts responsibility **on any person, being a firm** responsible for **paying any sum** in the nature of



- salary,
- remuneration,
- commission, bonus or interest

paid to its partner or credited to his account (including capital account) to deduct tax at source **@10% on the entire amount** if the amount or aggregate of amounts of such income **exceeds ₹ 20,000**.

III. No deduction of tax on sums payable to Government, RBI or certain corporations [Section 393(5)]

Irrespective of anything contained in this Chapter, no deduction of tax shall be made by any person from any amount payable to –



(i) the Government; or

(ii) the Reserve Bank of India; or

(iii) a corporation established by or under a Central Act, which is, under any law for the time being in force, exempt from income-tax on its income; or

(iv) a Mutual Fund specified at Schedule VII (Table: Sl. No. 20 or 21), where such amount is payable to it by way of:

(a) interest; or

(b) dividend in respect of any securities or shares owned by it or in which it has full beneficial interest; or

(c) any other income accruing or arising to it.

IV. Declaration for No Deduction at Source [Section 393(6) to (10)]

(1) Enabling provision for furnishing of declaration for receipt of income or sum without deduction of tax

No deduction of tax shall be made under the provisions specified in column (B) of the table below,

- if the person (i.e. deductee or recipient) furnishes
- to the person responsible for paying such income or sum referred to in such provisions,
- a **written declaration[1] in duplicate**, in the prescribed form and manner,
- to the effect that the **tax on his estimated total income** of the tax year in which such income or sum is to be included shall be **Nil.**

[1] *Form No. 121*

TABLE - DECLARATION FOR NO DEDUCTION AT SOURCE

Sl. No.	Person	Provisions for tax deduction at source
A	**B**	**C**
1.	An individual being a resident	a) payment of accumulated balance due to an employee referred to in section 392(7) b) insurance Commission [Section 393(1) Table: Sl. No. 1(i)] c) rent [Section 393(1) Table: Sl. No. 2(ii)] d) income in respect of units [Section 393(1) Table: Sl. No. 4(i)] e) interest [Section 393(1) (Table: Sl. No. 5(i), (ii) and (iii))] f) payment in respect of life insurance policy [Section 393(1) (Table: Sl. No. 8(i))] g) dividend [Section 393(1) (Table: Sl. No. 7)]
2.	Any person not being a company or a firm or an individual covered in Sl. No. (1).	All specified income mentioned above except dividend mentioned in (g)

(2) Furnishing declaration not permissible if income/aggregate of incomes exceed basic exemption limit

A person (other than a resident senior citizen) is allowed to furnish declaration under section 393(6) only where the aggregate amount of income or sum of the nature specified in the Table above, which is credited or paid or likely to be credited or paid during the relevant tax year, **does not exceed** the maximum amount not chargeable to tax.

Accordingly, such a person may furnish the prescribed declaration for non-deduction of tax **only if** the specified income/aggregate income for the tax year is within the basic exemption limit.

The restriction will not apply to resident individual, who is of the age of 60 or more i.e., a senior citizen, at any time during the tax year. The declaration in the prescribed form may be furnished where the tax payable on the estimated total income for the relevant tax year is **Nil.**

(3) Option to furnish declaration to depository in certain cases

The above declaration may also be furnished electronically **to a depository** in accordance with the prescribed procedure and manner, where –

(a) the income is from units, interest on securities or dividends, as the case may be, as referred to in section 393(1) [Table: 4(i), 5(i) or 7];

(b) such units or securities are held with such depository; and

(c) such securities are listed on a recognised stock exchange.

(4) Time limit for delivery of one copy of declaration [Section 393(7)]

On receipt of the declaration referred to in Section 393(6), the person responsible for making the payment or the depository will be required to deliver or cause to be delivered to the prescribed income-tax authority **on or before the 7th day of the month immediately following the end of each quarter in which the declaration is furnished** to him.

(5) Interest payments by an Offshore Banking Unit to a non-resident/not ordinarily resident in India [Section 393(8)]

No deduction of tax shall be made by an Offshore Banking Unit from the interest paid on -

(a) deposit made by a non-resident/not-ordinarily resident in India on or after 1.4.2005; or

(b) borrowing from a non-resident/not-ordinarily resident in India on or after 1.4.2005.



Applicability of section 393(8)) to interest paid by IFSC Banking Units (IBUs) [*Circular No 26/2016 dated 4.7.2016*]

The CBDT Circular clarifies that in accordance with the provisions of section 393(8), tax is not required to be deducted on interest paid by IFSC Banking units, on borrowings or deposit made on or after 1.4.2005 by a non-resident or a person who is not ordinarily resident in India.

(6) Payment to any person for, or on behalf of, the NPS Trust [Section 393(9)]

No deduction of tax at source shall be made from any payment to any person for, or on behalf of, the New Pension System Trust referred to in Schedule VII (Table: Sl. No. 41).

(7) Net of TDS [Section 393(10)]

Where, under an agreement or other arrangement,

- **if the tax chargeable** on any income of the recipient referred to in the foregoing provisions of this Chapter
- **is to be borne by the payer**, then, for the purposes of deduction of tax,
- **the income shall be increased to such amount** as would, **after deduction of tax thereon**, **becomes equal to the net amount payable** under such agreement or arrangement.

However, no grossing up is required in the case of tax is paid under section 392(2)(a) by an employer on the non-monetary perquisites provided to the employee.

V. Tax deducted is income received [Section 396]

The following sums shall be deemed as income received for the purposes of computing the income of an assessee

(a) sums deducted under this Chapter XIX or

(b) income-tax paid outside India by way of deduction in respect of which an assessee is allowed a credit against tax payable under this Act

except tax paid by an employer under section 392(2)(a) **on non-monetary perquisites** provided to the employees and **tax deducted** as per section 393(3) [Table: Sl. No. 5)] **on cash withdrawals**.

VI. Person responsible for paying [Section 402(27)]

"Person responsible for paying" means:

	Nature of income/payment	Person responsible for paying tax
(1)	Salary (other than payment of salaries by the Central or State Government)	(i) the employer himself; or (ii) if the employer is a company, the company itself, including the principal officer thereof.
(2)	Interest on securities (other than payments made by or on behalf of the Central or State Government)	the local authority, corporation or company, including the principal officer thereof.
(3)	Any sum payable to a non-resident Indian, representing consideration for the transfer by him of any foreign exchange asset, which is not a short-term capital asset	the "Authorised Person" responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account maintained as per the provisions of the Foreign Exchange Management Act, 1999 and any rules made thereunder.
(4)	furnishing of information relating to payment to a non-resident (not being a company), or to a foreign company, of any sum, whether or not chargeable under the provisions of this Act	(i) the payer himself; or (ii) if the payer is a company, the company itself including the principal officer thereof.
(5)	Credit/payment of any other sum chargeable under the provisions of the Act	(i) the payer himself; or (ii) if the payer is a company, the company itself including the principal officer thereof.
(6)	Credit/payment of any sum chargeable under the provisions of the Act made by or on behalf of the Central Government or the State Government	(i) the drawing and disbursing officer; or (ii) any other person, by whatever name called, responsible for crediting or paying such sum.

(7)	In case of a person not resident in India (irrespective of the nature of payment or income)	(i) the person himself; or (ii) any person authorized by such person; or (iii) the agent of such person in India including any person treated as an agent under section 306.

13.4 TAX COLLECTION AT SOURCE [SECTION 394]

Every person specified in Table section 394(1) shall collect tax -

(a) on receipts specified in the said Table;

(b) at the rate specified therein; and

(c) **at the time of debiting** the amount payable by the buyer, licensee or lessee to the account of such buyer, licensee or lessee, or **at the time of receipt** of such amount from the said buyer, licensee or lessee, whether in cash, by cheque, draft or by any other mode, **whichever is earlier**.

I. Sale of Certain Goods or Use of Parking Lot, Toll Plaza or Mine or Quarry [Section 394(1) (Table Sl. No. 1 to 5 & 9)]

Sl. No.	Nature of receipt	Person (Collector)	Rate
1	Sale of alcoholic liquor for human consumption.	**Seller**	**2%**
2	Sale of tendu leaves		
3	Sale of timber, whether obtained under a forest lease or otherwise, or any other forest produce (not being timber or tendu leaves) obtained under a forest lease.		
4	Sale of scrap		
5	Sale of minerals, being **coal or lignite or iron ore.**		
9	Use of parking lot or toll plaza or a mine or a quarry for the purpose of business	**Licensor or Lessor**	

	excluding mining and quarrying of mineral oil (including petroleum and natural gas)		

Non-applicability of TCS:

No collection of tax shall be made from **Table Sl. No. 1 to 5** in case of **a buyer, who is a resident in India,** if such buyer furnishes a **written declaration** in duplicate in Form No. 127, to the person responsible for collecting tax, mentioning that **such goods are to be utilised** -

(a) for the purpose of **manufacturing**, processing or producing articles or things or for **generating power** and

(b) **not for trading purposes**.

Seller requires to submit such declaration to tax authorities:

Subsequently, where no collection of tax is to be made as per above provisions, the person responsible for collecting tax will be required to deliver or cause to be delivered, **one copy of the declaration** to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner **on or before the 7th day of the month following the month of receipt of that declaration**.

Meaning of Certain Terms:

Term	Meaning
Buyer [Section 402(6) Table Sl. No. 2]	It means a person who obtains in any sale, by way of auction, tender, or any other mode, goods of nature specified in Sl. No. 1 to 5 above or the right to receive any such goods. However, the following **will not be** included in the buyer – (a) a public sector company, (b) the Central or a State Government, and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State, (c) a club, or (d) a buyer in the retail sale of such goods purchased by him for personal consumption
Seller [Section 402(33)]	(i) The Central Government or (ii) a State Government or (iii) any local authority or corporation or authority established by or under a Central, State or Provincial Act or

	(iv) any **company or firm or co-operative society** or (v) **an individual or a HUF** whose total sales, gross receipts or turnover from the business or profession carried on by him **exceed ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession** during the tax year immediately preceding the tax year in which the goods of the nature specified are sold.
Scrap [Section 402(31)]	It means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons.
Forest produce [Section 394(6)]	It shall have the same meaning as defined in any State Act for the time being in force, or in the Indian Forest Act, 1927.
Licensor or Lessor [Section 402(22)]	It means any person **who grants a lease or a licence** or enters into a contract or otherwise transfers any right or interest either in whole or in part **in any parking lot or toll plaza or mine or quarry, to another person**, **other than a public sector company** for the use of such parking lot or toll plaza or mine or quarry for the purposes of business.
Licensee or Lessee [Section 402(21)]	It means any person, **other than a public sector company**, who has been granted a lease or a licence or entered into a contract or otherwise received any right or interest either in whole or in part **in any parking lot or toll plaza or mine or quarry**, from the licensor or lessor for the use of parking lot or toll plaza or mine or quarry for the purposes of business.

Section 394(1) [Table Sl. No. 1 to 5], cast responsibility on a seller to collect tax at source from sale of certain goods specified thereunder @2% on the entire amount of receipt at the time of debit to the account of the buyer or at the time of receipt by any mode, whichever is earlier.



However, **no TCS** is to be collected where buyer who is a resident in India furnishes a written declaration to the seller that such goods will be utilized -

- for the purposes of manufacturing, processing, or producing articles or things or for generating power and
- not for trading purposes.

Section 394(1) [Table Sl. No. 9], cast responsibility on a licensor or lessor to collect tax at source on receipts **for**

- **use of parking lot or**
- **toll plaza or**
- **a mine or a quarry** excluding mining and quarrying of mineral oil (including petroleum and natural gas)

for the purpose of business @2% on the entire amount of receipt at the time of debit to the account of the licensee or lessee or at the time receipt by any mode, whichever is earlier.

II. Sale of motor vehicle or other notified goods [Section 394(1) Table Sl. No. 6]

Sl. No.	Nature of receipt	Person (Collector)	Rate
6	**Sale consideration exceeding ₹10 lakh** in case of - (a) a **motor vehicle**; or (b) any other goods, as may be **notified by the Central Government**	Seller	1%

Meaning of certain terms

Term	Meaning
Buyer [Section 402(6) Table Sl. No. 3]	A person who obtains in any sale, goods of nature specified in section 394(1) Table Sl. No. 6. However, the following will not be included in the buyer – (a) the Central or a State Government, and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State,

	(c)	a local authority, or
	(d)	**a public sector company which is engaged in the business of carrying passengers**.
Seller **[Section 402(33)]**	(i)	The Central Government or
	(ii)	a State Government or
	(iii)	any local authority or corporation or authority established by or under a Central, State or Provincial Act or
	(iv)	any company or firm or co-operative society or
	(v)	an **individual or a HUF whose total sales**, gross receipts or turnover from the business or profession carried on by him **exceed ₹ 1 crore in case of business** and **₹ 50 lakhs in case of profession** during the tax year immediately preceding the tax year in which the goods of the nature specified are sold.

Section 394(1) Table Sl. No. 6 casts responsibility on every person, being a seller, to collect tax at source @1% from the buyer on receipts of sale consideration exceeding ₹ 10 lakhs in case of motor car or any other notified goods.



The tax is required to be collected at source at the time of debit to the account of buyer to his account or at the time of receipt of such amount from the buyer, whichever is earlier.



It may be noted that threshold limit of ₹ 10 lakhs is applicable in respect of each good separately.

List of Notified Goods

The Central Government has, vide notification no. 36/2025 dated 22nd April 2025, w.e.f. 22.4.2025, notified following goods of the value exceeding ₹ 10 lakh for collection of tax at source:

S. No	Nature of goods
1.	any wristwatch
2.	any art piece such as antiques, painting, sculpture
3.	any collectibles such as coin, stamp
4.	any yacht, rowing boat, canoe, helicopter

5.	any pair of sunglasses
6.	any bag such as handbag, purse
7.	any pair of shoes
8.	any sportswear and equipment such as golf kit, ski-wear
9.	any home theatre system
10.	any horse for horse racing in race clubs and a horse for polo

Circular

The CBDT has, vide *Circular No. 22/2016 dated 8.6.2016*, clarified the following issues in "Question & Answer (Q & A)" format.

Q.1 Whether TCS @1% is on sale of motor vehicle at the retail level or also on sale of motor vehicles by manufacturers to dealers/ distributors?

A. Section 394(1) [Table: Sl. No. 6] covers all transactions of retail sales and **will <u>not</u> apply on sale** of motor vehicles **by manufacturers to dealers/ distributors.**

Q.2 Whether TCS @1% is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions, of motor vehicle or any other goods or provision of services?

A. Government, institutions notified under the United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State **shall not be liable to levy of TCS @1% under section 394(1) [Table: Sl. No. 6].**

Q.3 Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?

A. Tax is to be collected at source @1% on sale consideration of a motor vehicle exceeding ₹ 10 lakhs. It is applicable **to each sale and not to the aggregate value of sale made during the year.**

Q.4 How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?

A. The provisions of TCS on sale of motor vehicle exceeding ₹ 10 lakhs **is not dependent on mode of payment.** Any sale of motor vehicle exceeding ₹ 10 lakhs would attract TCS @1%.

III. Remittance under LRS and Sale of Overseas Tour Package [Section 394(1) Table Sl. No. 7 & 8]

Sl. No.	Nature of receipt	Person (Collector)	Rate
7	Remittance under the Liberalised Remittance Scheme (LRS) of an amount or aggregate of the amounts exceeding ₹ 10,00,000	Authorised dealer	▪ **2%** for purposes of **education or medical treatment** ▪ **20%** for purposes **other than education or medical treatment**.
As per section 394(4), No collection of tax shall be made by the authorised dealer - (a) on such amount on which tax has been collected by the seller in respect of receipt referred to in 394(1) (Table: Sl. No. 8) i.e., on sale of overseas tour programme package (b) if the amount being remitted out is a loan obtained from any financial institution as defined in section 129(3)(b), for the purpose of pursuing any education.			
8	Sale of "overseas tour programme package" including expenses for travel or hotel stay or boarding or lodging or any such similar or related expenditure.	Seller	2%

As per section 394(5), no collection of tax shall be made by the authorised dealer or the seller of "overseas tour programme package", if the buyer is liable to deduct tax at source under any other provisions of the Act and he has deducted such tax.

Meaning of Certain Terms

Term	Meaning
Buyer	**For the purpose of 394(1) Table Sl. No. 7 [Section 402(6) Table Sl. No. 4]** A person remitting amount under the Liberalised Remittance Scheme of RBI. However, the following will not be included in the buyer – (a) the Central or a State Government, and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State, (b) a local authority, or (c) any other person notified by the Central Government, subject to fulfillment of conditions stipulated thereunder.
	For the purpose of 394(1) Table Sl. No. 8 [Section 402(6) Table Sl. No. 5] A person who purchases overseas tour programme package. However, the following will not be included in the buyer – (a) the Central or a State Government, and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State,[2] (b) a local authority, or (c) any other person notified by the Central Government, subject to fulfillment of conditions stipulated thereunder.

Person notified not included as buyer



Accordingly, the Central Government has, vide Notification No. 99/2022 dated 17.8.2022, notified that the provisions of section this Sl. No. 7 & 8 would not apply to a person (being a buyer) **who is a non-resident in India** in terms of section 6 and **does not have a permanent establishment** in India.

[2] *In section 402(6) Table Sl. No. 4, reference with respect to person not to be included is given to Sl. No. 2.D(a) i.e., to a public sector company. However, considering the erstwhile Act, 1961, such reference is to be given to Sl. No. 2.D(b) i.e., "to Central Government…. " as stated here.*

Overseas tour programme package [Section 402(26)]	Overseas tour programme package means any tour package which offers visit to any country or territory outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.
Authorised Dealer [Section 402(4)]	It means a person authorised by the RBI to deal in foreign exchange or foreign security.
Seller [Section 402(33)]	For the purpose of Sl. No. 8, it means a person who sells overseas tour program package.

Section 394(1) Table Sl. No. 7 cast responsibility on every person, being an authorized dealer, to collect tax at source on remittance under the LRS of an amount exceeding ₹ 10 lakhs at the rate -



- 2% if the amount remitted is for purposes of education or medical treatment and
- 20% if the amount remitted is for other purposes.

Section 394(1) Table Sl. No. 8 cast responsibility on every person, being a seller of overseas tour program package, to collect tax at source @2% on sale of "overseas tour programme package" including expenses for travel or hotel stay or boarding or lodging or any such similar or related expenditure.

In both the cases, tax has to be collected at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier.



Power to issue guidelines [Section 400(2)]



Section 400(2) empowers the CBDT to issue guidelines, with the previous approval of the Central Government, to remove any difficulty arising in giving effect to the provisions of this Chapter. Such guidelines shall be -

(a) binding on the income-tax authorities and on the person liable to deduct or collect tax and

(b) laid before each House or Parliament

In exercise of the power to issue guidelines, the CBDT has, with the approval of Central Government, vide **Circular No. 10/2023 dated 30.6.2023,** issued the following guidelines for removing certain difficulties-

Question 1: Whether the threshold of ₹ 10 lakhs, for TCS to become applicable on LRS, applies separately for various purposes like education, health treatment and others? For example, if remittance of ₹ 10 lakh under LRS is made in a financial year for education purpose and other remittances in the same financial year of ₹ 10 lakh is made for medical treatment and ₹ 10 lakh for other purposes, whether the exemption limit of ₹ 10 lakh shall be given to each of the three separately?

Answer: It is clarified that the threshold of ₹ 10 lakh for LRS is **combined threshold** for applicability of the TCS on LRS irrespective of the purpose of the remittance.



In the given example, upto ₹ 10 lakh remittance under LRS during a financial year shall not be liable for TCS. However, subsequent ₹ 20 lakh remittance under LRS shall be liable for TCS in accordance with the TCS rates applicable for such remittance. TCS rates would be applicable as under:-

Remittances	Rate of TCS
First ₹ 10 lakhs remittance under LRS during the tax year 2026-27 for education purpose (or for that matter any purpose)	No TCS
Remittances beyond ₹ 10 lakhs under LRS during the tax year 2026-27	TCS will be 2% (if it is for education or medical treatment) and 20% (if it is for other purposes)

Question 2: Whether the threshold of ₹ 10 lakh, for TCS to become applicable on LRS, applies separately for each remittance through different authorised dealers? If not, how will authorised dealer know about the earlier remittances by that remitter through some other authorised dealer?

Answer: It is clarified that the threshold of ₹ 10 lakh for LRS is qua remitter and not qua authorised dealer.



Since the facility to provide real time updates of remittance under LRS by remitter is still under development by the RBI, it is clarified

that the details of earlier remittances under LRS by the remitter during the financial year may be taken by the authorised dealer through an undertaking at the time of remittance.

If the authorised dealer correctly collects the tax at source based on information given in this undertaking, he will not be treated as "assessee in default". However, for any false information in the undertaking, appropriate action may be taken against the remitter under the Act.

It is further clarified that same methodology of taking undertaking from the buyer of overseas tour program package may be followed by the seller of such package.

Question 3: A resident individual spends ₹ 3 lakh for the purchase of an overseas tour program package from a foreign tour operator and remits money which is classified under LRS. There is no other remittance under LRS or purchase of overseas tour program during the financial year. Whether TCS is applicable?

Answer: In case of purchase of overseas tour program package which is classified under LRS, TCS provision for purchase of overseas tour program package shall apply and **not TCS provisions** for remittance under LRS.

Since for the purchase of overseas tour program package, the threshold of ₹ 10 lakh for applicability of TCS does not apply, TCS is applicable and tax is required to be collected by the seller. In this case the tax shall be required to be collected at 2%. The TCS should be made by the seller.

Question 4: There are different rates for remittance under LRS for medical treatment/education purposes and for other purposes. What is the scope of remittance under LRS for medical treatment/education purposes?

Answer: As per the clarification by the RBI, remittance for the purposes of **medical treatment** shall include,-



(i) remittance for purchase of tickets of the person to be treated medically overseas (and his attendant) for commuting between India and the overseas destination;

(ii) his medical expense; and

(iii) other day to day expenses required for such purpose.

Education Remittance for purpose of education shall include,-

(i) remittance for purchase of tickets of the person undertaking study overseas for commuting between India and the overseas destination;



(ii) the tuition and other fees to be paid to educational institute; and

(iii) other day to day expenses required for undertaking such study.

Question 5: Whether purchase of international travel ticket or hotel accommodation on standalone basis is purchase of overseas tour program package?

Answer: The term 'overseas tour program package' is defined as to mean any tour package which offers a visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

It is clarified that purchase of **only** an international travel ticket or the purchase of **only** hotel accommodation, by in itself is not covered within the definition of 'overseas tour program package'. To qualify as an 'overseas tour program package', the package should include **at least two** of the followings:

(i) international travel ticket,

(ii) hotel accommodation (with or without food)/boarding/lodging,

(iii) any other expenditure of similar nature or in relation thereto.

13.5 CERTIFICATES FOR LOWER / NIL DEDUCTION OR COLLECTION AND ISSUE OF TDS/TCS CERTIFICATES [SECTION 395]

(1) Certificate for Lower / No Deduction of Tax at source [Section 395(1)]

Where tax is required to be deducted under this Chapter -

- The payee may apply to the Assessing Officer for the deduction of tax at a lower rate or for no deduction.

- If satisfied that the total income justifies such lower or nil deduction, the Assessing Officer may issue an appropriate certificate.
- Upon issuance of such certificate, the payer shall deduct tax in accordance with the certificate or not to deduct income-tax till its validity.

(2) Electronic application for certificate of lower or nil deduction of tax [Section 395(6)]

The application for lower or no deduction of tax may also be filed before the prescribed authority, subject to such prescribed conditions, and such authority on electronic verification of the contents of the application, may –

(a) either issue a certificate for deduction of tax at lower rate or no deduction of tax; or

(b) reject such application on account of non-fulfilment of the prescribed conditions or on account of the application being incomplete.

(3) Certificate for collection of tax at source at lower rate [Section 395(3)]

Where tax is required to be collected on any amount

(a) the buyer or licensee or lessee may make an application before the Assessing Officer for collection of tax at a lower rate,

(b) if the Assessing Officer is satisfied that the total income of the buyer or licensee or lessee justifies collection of tax at a lower rate, a certificate as may be appropriate shall be issued to him and

(c) when a certificate is issued, the person responsible for collecting tax shall collect it at the rates specified in such certificate till its validity.

> The Assessing Officer may cancel the certificate granted for lower deduction or no deduction of tax or lower collection at source after giving reasonable opportunity to the applicant. **[Section 395(5)]**

(4) Issue of TDS/ TCS certificate [Section 395(4)]

(a) Every person deducting or collecting tax at source have to, within such period, as may be prescribed, issue a certificate to the deductee or collectee, as the case may be, specifying -

- the amount of tax that has been deducted or collected
- the rate at which tax has been deducted or collected and
- any other particulars as may be prescribed.

(b) Every person, being an employer referred to in section 392(2)(a) shall, within such period, as may be prescribed, issue a certificate to the employee, in respect of whose income payment of tax has been made by the employer, that the tax has been paid to the Central Government, and specify -

- the amount of tax so paid,
- the rate at which the tax has been paid and
- such other particulars as may be prescribed.

I. Certificate of TDS or TCS and due dates under section 395(4) [Rule 215]

Section under which tax deducted, paid or collected	Form No.	Due date
Section 392 [Other than 392(7)] - TDS on salary and Section 393(1) [Table: Sl. No. 8(iii)] - TDS on Total income of a specified senior citizen	130	**By 15th June** of the financial year immediately following the tax year in which the income was paid and tax deducted.
Section 392(7) - TDS on accumulated balance due to an employee, Section 393(1) TDS on other payments to residents other than: • Table Sl. No. (2)(i) - TDS on rent on immovable property by certain individual or HUF, • Table Sl. No. (3)(i) - TDS on consideration for transfer of immovable property (other than agricultural land) • Table Sl. No. (6)(ii)- TDS on payment to contractors, fees for professional services and	131	**Within 15 days** from the due date for furnishing statement of tax deducted at source under Rule 219.

commission by certain individual or HUF and • Table Sl. No. (8)(vi) - TDS on consideration for transfer of VDA and Section 393(2) - TDS on payments to Non-residents and Section 393(3) - TDS on payments to any person		
(i) Section 393(1) • Table Sl. No. (2)(i) - TDS on rent on immovable property by certain individual or HUF, • Table Sl. No. (3)(i) - TDS on consideration for transfer of immovable property (other than agricultural land) • Table Sl. No. (6)(ii) TDS on payment to contractors, fees for professional services and commission by certain individual or HUF and • Table Sl. No. (8)(vi)] TDS on consideration for transfer of VDA **(ii) Section 393(2) (Table Sl. No.17**) in respect of a transaction with a non-resident, where a resident individual or Hindu Undivided Family is required to deduct tax at source on any consideration, for the transfer of any immovable property ***[Effective from 1st October 2026 vide Notification No. 121/2026 dated 22.9.2026].***	132	**Within 15 days** from the due date for furnishing challan-*cum*-statement in Form No. 141.
Section 394(1) (TCS)	133	**Within 15 days** from the due date for furnishing statement of tax collected at source.

13.6 COMPLIANCE AND REPORTING [SECTION 397]

I. Allotment and Quoting of Tax Deduction and Collection Account Number (TAN) [Section 397(1)]

(a) Every person responsible for deducting or collecting tax **shall apply for allotment of a tax deduction and collection account number (TAN)** to the Assessing Officer within the prescribed time, if such person has not already been allotted such number.

(b) Where a TAN has been allotted, such person **shall quote such number** in -

- all challans,
- statements,
- certificates, and
- such other documents relating to the prescribed transactions in the interest of revenue.

(c) The requirement of obtaining and quoting of TAN shall not apply to -

- a person in respect of a transaction where he is required to deduct tax under section 393(1) Table:
  - Sl. No. 2(i) i.e., TDS on rent on immovable property by certain individual or HUF
  - Sl. No. 3(i) i.e., TDS on consideration for transfer of immovable property (other than agricultural land)
  - Sl. No. 6(ii) i.e., TDS on payment to contractors, fees for professional services and commission by certain individual or HUF
- persons referred to in Section 393(4) [Table: Sl. No. 12.C(a)] i.e., an individual or HUF whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him **does not exceed ₹ 1 crore** in case of business or **₹ 50 lakh in case of profession**, during the tax year immediately preceding the tax year in which such virtual digital asset is transferred or not having any income under the head "Profits and gains from business or profession" in respect of transaction with respect to VDA.

- a resident individual or Hindu undivided family in respect of a transaction where he is required to deduct tax on any consideration for the transfer of any immovable property under section 393(2) [Table: Sl. No. 17] i.e., to a non-resident. ***This exemption operates from 1st October 2026. Where the consideration is credited or paid before that date, the payer is required to obtain a Tax Deduction and Collection Account Number.***
- persons notified by the Central Government.

II. Mandatory requirement of furnishing Permanent Account Number (PAN) and consequences of non-furnishing PAN [Section 397(2)]

Every person entitled to receive any amount on which tax is deductible, or paying any amount on which tax is collectible, shall furnish his valid PAN to the person responsible for deducting or collecting tax at source.

Further, the deductee or collectee shall furnish his valid Permanent Account Number to the deductor or collector, as the case may be, and such PAN shall be indicated in all bills, vouchers, correspondence and other documents exchanged between them.

III. Consequences of Failure to Furnish PAN

(A) Tax shall be deducted at source at the higher of—

- the rate specified in the relevant provision.
- the rate or rates in force i.e., the rate mentioned in the Finance Act; or
- at the rate 20% {or 5% in case of section 393(1) [Table: Sl. No. 8(ii) i.e., purchase of goods exceeding ₹ 50 lakhs] or Table: Sl. No. 8(v) i.e., payment by an e-commerce operator to an e-commerce participant}

In case of payment of rent by certain individuals or HUF under Section 393(1) [Table: Sl. No. 2(i)], deduction at higher rate shall not exceed the rent payable for the last month of the tax year or tenancy.



In case of rental payment for plant and machinery, where the payee does not furnish his PAN to the payer, tax would be deductible @20% instead of @2% prescribed under section 393(1) [Table: Sl. No. 2(ii)].

However, non-furnishing of PAN by the deductee in case of income by way of winnings from lotteries, card games etc., would result in tax being deducted at the existing rate of 30% under section 393(3) [Table: Sl. No. 1].

Therefore, wherever tax is deductible at a rate higher than 20%, this provision would not have any impact.

(B) the **tax shall be collected at source** at higher of the following rates, not exceeding 20% –

- at twice the rate prescribed in the Act; or
- at 5%.

The provisions for collection of tax at the higher rate under section 397(2)(b)(ii) do **not** apply to a non-resident who does not have a permanent establishment in India. The relaxation from deduction of tax at the higher rate in the case of certain non-residents is a distinct provision, contained in section 397(2)(c) read with Rule 217 ***(the same is discussed in Chapter 21: Non-resident Taxation)***

(C) Tax would be deductible or collectible at the rates mentioned above if, declaration filed

- under section 393(6) for no deduction of tax at source or
- under section 394(2) for no collection of tax at source

becomes invalid on account of non-furnishing of PAN in the declaration.

(D) No certificate under section 395(1) for deduction of tax at lower rate or no deduction of tax or under section 395(3) for collection of tax at lower rate shall be granted by the Assessing Officer unless the applicant furnishes his valid PAN in the application.



CIT (International Taxation) v. Air India Ltd. [2023] 456 ITR 139 (SC)

Issue: Can the provisions of section 397, which prescribe a higher rate of tax deduction at source in case of non-furnishing of PAN, override the Double Taxation Avoidance Agreement (DTAA) that specify a lower rate of tax?

Facts of the case: Assessee had taken an engine on lease under an agreement with a foreign company (lessor), a tax resident of the Netherlands, having no permanent establishment (PE) in India. The foreign company also does not have PAN in India. The assessee company deducted tax at source @ 10% on lease rental as per provisions contained under DTAA between India and the Netherlands.

However, revenue contended that in the absence of furnishing of PAN, the assessee was under an obligation to deduct tax at a higher rate of 20% following the provisions of section 397.

Analysis and Decision: The High Court noted that section159(4)(a) provides that the provisions of the DTAAs would override the provisions of the Act in cases where the provisions of DTAAs are more beneficial to the assessee. Even the charging sections 4 and 5 of the Act, which deal with the principle of ascertainment of total income under the Act, are also subordinate to the principle enshrined in section 159(4)(*a*). Thus, in so far as the applicability of the scope/rate of taxation with respect to the impugned payments made to the non-residents is concerned, no fault can be found with the rate of taxation invoked by the assessee based on the DTAAs, which prescribe a beneficial rate of taxation.

The provisions of tax withholding, i.e., section 393(2) of the Act, would apply only to sums that are otherwise chargeable to tax under the Act. The provisions of DTAAs, along with sections 4, 5, 9, 159 & 160 of the Act, are relevant while applying the provisions of tax deduction at source. Therefore, section 397 of the Act cannot override charging sections 4 and 5 of the Act.

Accordingly, the High Court upheld the Tribunal's ruling which held that where the tax has been deducted on the strength of the beneficial provisions of DTAAs, the provisions of section 397 cannot be invoked to insist on the tax deduction @ 20%, having regard to the overriding nature of the provisions of section159(4)(*a*).

The Supreme Court upheld the decision of the High Court, resulting in the dismissal of the SLP filed by the Revenue.

IV. Payment of tax deducted or collected at source and Furnishing of Statements [Section 397(3) read with Rule 218 and Rule 219]

Deposit of Tax

Every person responsible for deduction or collection of tax, or employer [referred to in Section 392(2)(a)], shall pay the amount deducted or collected to the credit of the Central Government within the prescribed time.

- **Payment by an Office of the Government**

  All sums deducted or collected by an office of the Government shall be paid to the credit of the Central Government—

  (a) **on the same day**, where tax is paid without production of an income-tax challan;

  (b) **on or before seven days from the end of the month** in which deduction or collection is made (or tax becomes due under Section 392(2)(a)), where payment is accompanied by an income-tax challan

- **Payment by Other Deductors or Collectors**

  In case of deductors or collectors other than an office of the Government, tax shall be paid—

  (a) **on or before 30th April**, where deduction/collection is made in the month of March;

  (b) in any other case, within seven days from the end of the month in which—

  - deduction or collection is made; or
  - income-tax becomes due under Section 392(2)(a).

- **Special Provision – Challan-cum-Statement Cases**

  Where tax is deducted under Section 393(1)/(2)in respect of—

  - **rent on immovable property** by certain individual or HUF [Table: Sl. No. (2)(i)];

- consideration for **transfer of immovable property** (other than agricultural land) [Table: Sl. No. (3)(i)];
- payment to contractors, fees for professional services and commission by certain individual or HUF [Table: Sl. No. (6)(ii)];
- consideration **for transfer of VDA** [Table: Sl. No. (8)(vi)], or
- any consideration for transfer of any immovable property (being a sum of the nature specified in section 393(2) [Table Sl. No.17] and where such consideration is paid or credited by a resident Individual or Hindu Undivided family ***[Effective from 1st October, 2026 vide Notification No. 121/2026 dated 22.9.2026].***

the tax shall be paid **within thirty days from the end of the month of deduction,** and such payment shall be accompanied by a challan-cum-statement in Form No. 141.

In **special** cases, the Assessing Officer may, with the prior approval of the Joint Commissioner of Income-tax, permit quarterly payment of the tax deducted under section 392(1) or 393(1) [Table: Sl. Nos. (1)(i) and (ii), and 5(ii) and (iii)] for the quarters of the tax year specified in the following Table by the following date:

Quarter Ending	Due Date for Quarterly Payment
30 June	7th July
30 September	7th October
31 December	7th January
31 March	30th April

Quarterly Statements of TDS/TCS

As per section 397(3)(b) read with Rule 219, every person responsible for deduction or collection at source shall deliver quarterly statements in the prescribed forms as follows:

Sl. No.	Section	Form
1	Section 392 (other than 392(7) i.e., accumulated balance of PF] and Section 393(1) [Sl. No. 8(iii)] i.e., specified senior citizen	Form 138

2	Sections 392(7), 393(2) and 393(3), in respect of the deductee who is a non-resident, not being a company or a foreign company or a resident but not ordinarily resident.	Form 144
3	Sections 392(7), 393(1) (other than [Table: Sl. No. 8(iii)]) and 393(3), in respect of the deductee other than the deductee referred to in Sl. No. 2.	Form 140
4	Section 394(1) - TCS	Form 143

Due Dates for Quarterly Statements

Quarter Ending	Due Date
30 June	31 July
30 September	31 October
31 December	31 January
31 March	31 May of the financial year immediately following the tax year in which the deduction or collection, as the case may be, is required to be made.

Challan-cum-Statement - In respect of deductions under Section 393(1) [Table: Sl. Nos. (2)(i), (3)(i), (6)(ii), (8)(vi)], and 393(2) [Table Sl. No.17] a challan-cum-statement in **Form No. 141** shall be furnished **within thirty days from the end of the month of deduction**.

In the case of an **office of the Government**, where tax has been paid to the credit of the Central Government without the production of a challan, -

(a) the Pay and Accounts Officer or the District Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person, by whatever name called, to whom the deductor or collector reports the tax so deducted or collected and who is responsible for crediting such sum to the credit of the Central Government, shall submit a statement in Form No. 137; and

(b) such statement shall be submitted to the Director General of Income-tax (Systems) or any other person authorised by him.

Such statement shall be furnished -

(a) on or before the 30th April, where the statement relates to the month of March; and

(b) in any other case, on or before fifteen days from the end of relevant month.

Special Reporting – Virtual Digital Assets

Where an exchange pays tax under guidelines issued under Section 400(2) in relation to transfer of virtual digital assets, it shall furnish quarterly statement in **Form No. 142**. The exchange shall, at the time of preparing the quarterly statement in Form No. 142, furnish particulars of the amount paid or credited, on which tax was not deducted in accordance with said guidelines.

Correction Statement

As per section 397(3)(f), any discrepancy may be corrected or information furnished may be updated, in the statement delivered, by delivering a correction statement, within two years from the end of the tax year in which such statement is required to be delivered under the Income-tax Act, 2025 or under section 200 of the Income-tax Act, 1961.

Liability Despite Failure to Collect tax at source

Where a person responsible for collecting tax at source fails to collect the same, such person shall nevertheless be liable to pay such tax to the credit of the Central Government.

13.7 CONSEQUENCES OF FAILURE TO DEDUCT OR PAY OR, COLLECT OR PAY [SECTION 398]

(1) Deemed assessee-in-default [Section 398(1)]

Any person, including the principal officer of a company,

(i) who is required to deduct or collect any sum in accordance with the provisions of the Act; or

(ii) an employer paying tax on non-monetary perquisites under section 392(2)(a)



would be deemed to be an assessee-in-default, if does not deduct or pay, or does not collect or pay, or after so deducting or collecting fails to pay, the whole or any part of the tax, as required by or under this Act.

(2) Non-applicability of deeming provision

Any person

(a) including the principal officer of the company who fails to deduct or

(b) responsible for collecting tax as per section 394(1) (Table: Sl. Nos. 1 to 5 and 9), who fails to collect

the whole or any part of the tax, as required under this Chapter, on the amount paid or credited to the account of payee or, on the amount collected or debited to the account of the buyer or licensee or lessee, as the case may be, shall not be deemed to be an assessee in default in respect of such tax, if the payee or buyer or licensee or lessee has –

(i) furnished his return of income under section 263;

(ii) taken into account such sum for computing income in such return of income; and

(iii) paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

(3) No penalty under section 412

No penalty shall be levied under section 412 from such person unless the Assessing Officer is satisfied that such person without good and sufficient reasons has failed to deduct and pay the tax.

(4) Interest Liability

(i) A person deemed to be an assessee-in-default under section 398(1), for failure to deduct or collect the whole or any part of the tax or after deducting or collecting fails to pay the tax as required under this Act, he shall be liable to pay simple interest

- **@1% for every month or part of month** on the amount of such tax from the date on which tax was deductible/collectible to the date on which such tax was actually deducted/collected and
- **@1½% for every month or part of month** from the date on which tax was deducted/collected to the date on which such tax is actually paid.

ILLUSTRATION 16

An amount of ₹ 60,000 was paid to Mr. X on 1.7.2026 towards fees for professional services without deduction of tax at source. Subsequently, another payment of ₹ 50,000 was due to Mr. X on 28.2.2027, from which tax @10% (amounting to ₹ 11,000) on the entire amount of ₹ 1,100,000 was deducted. However, this tax of ₹ 11,000 was deposited only on 22.6.2027. Compute the interest chargeable under section 398(3).

SOLUTION

Interest under section 398(3) would be computed as follows –

Particulars	₹
1% on tax deductible but not deducted i.e., 1% on ₹ 6,000 for 8 months	480
1½% on tax deducted but not deposited i.e. 1½% on ₹ 11,000 for 4 months[3]	660
	1140

(ii) Such interest should be paid before furnishing the statements in accordance with section 397(3).

(iii) Where the payer fails to deduct/collect the whole or any part of the tax on the amount credited or payment made to a payee and is not deemed to be an assessee-in-default under section 398(2), interest under section 398(3) i.e., @1% p.m. or part of month, shall be payable by the payer from the date on which such tax was deductible/collectible to the date of furnishing of return of income by such payee or buyer or licensee or lessee.

[3] *TRACES, the TDS Centralised Processing Cell, however, calculates interest @1½% for 5 months in the above case.*

The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the payee or buyer or licensee or lessee.

(iv) Where any order is made by the Assessing Officer for the default under section 398(1), the interest shall be paid by the person in accordance with such order.

(v) Where the tax has not been paid after it is deducted, the amount of the tax, together with the amount of simple interest thereon, shall be a charge upon all the assets of the person or the company, as the case may be.



Guidelines for waiver of interest charged under section 398(3) – [Circular No. 11/2017, dated 24.03.2017]

In exercise of the powers conferred under section 239(3)(*a*), the CBDT has directed that the Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under section 398(3) in the classes of cases specified below for the period and to the extent the Chief Commissioner of Income-tax/Director General of Income-tax may deem fit. However, no reduction or waiver of such interest shall be ordered unless the principal demand under sections 399, 398(1) or 427, as the case may be, stands fully paid or satisfactory arrangements for payment of the principal demand under these sections have been made. The Chief Commissioner of Income-tax or Director General of Income-tax may also impose any other condition as deemed fit for the said reduction or waiver of interest.

The class of cases in which the reduction or waiver of interest under section 398(3) can be considered, are as follows:

(a) Where during the course of proceedings for search and seizure under section 247, or otherwise, the books of account and other documents necessary for making deduction under Chapter XIX-B of the Act were seized and the assessee was not able to, within the time specified, deduct tax at source from any sum credited to any account (whether called "suspense account" or by any other name) in his books of account.

(b) Where any sum paid or payable was not liable for deduction of tax at source in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he did not deduct tax at source in relation to such sum, and subsequently, in consequence of any

retrospective amendment of law or a decision of the Supreme Court of India or a decision of a Larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final) in any proceedings, as the case may be, tax was held to be deductible or the tax deducted by the deductor during such tax year was found to be less than the tax deductible on such sums paid or payable.

(c) Where the default under section 398 relates to non-deduction or a lower deduction of tax under section 393(2) in respect of a payment made to a non-resident (including a foreign company) being a resident of a country or specified territory outside India with whom India has entered into an agreement referred to in section 159 of the Act, and where —

(i) a dispute regarding the tax payable in India in respect of the said payment had been referred to the Competent Authority in India mentioned in Rule 21 of the Income-tax Rules, 2026, under the said agreement under section 159 of the Act;

(ii) such reference had been received by the Competent Authority in India within a period of two years of the date on which the notice of demand determining the tax payable was received by the person in default under section 398

(iii) the dispute has been settled by way of a resolution arrived at under the Mutual Agreement Procedure (MAP) provided in the said agreement; and

(iv) the person in default under section 398 has given his acceptance or non-acceptance to the resolution as per Rule 121 of the Income-tax Rules, within a period of one month from the end of the month in which the resolution is communicated to him. The acceptance of resolution shall be accompanied by proof of withdrawal of appeal.

Even if the interest under section 398 has already been paid by the deductor, the same can be considered for a waiver, subject to the conditions above and a refund may be given to the deductor, if waiver is ordered.

The Chief Commissioner of Income-tax or Director General of Income-tax examining an application for waiver of interest under this order shall pass a speaking order after providing adequate opportunity of being heard to the applicant.

The CBDT reserves the power to examine any grievance arising out of an order passed or not passed by Chief Commissioner of Income-tax or Director General of Income-tax, as the case may be, and issue suitable directions to these authorities for proper implementation of this order. However, no review of or appeal against the orders passed on merits by such authorities would be entertained by the CBDT.

(5) Time limit for deeming a person to be an assessee-in-default for failure to deduct or collect tax at source

No order under section 398(1), deeming a person to be an assessee-in-default for failure to deduct or collect the whole or any part of the tax from a **person, being a resident or non-resident in India**, shall be passed at any time

- After six years from the end of the tax year in which tax was deductible or collectible, or
- two years from the end of the tax year in which the correction statement is delivered under the section 397(3)(f)

whichever is later.

Further, the exclusions from the time limit, as specified in 286(1) and 286(3), would also apply to the above time limit for passing an order deeming a person to be an assessee-in-default.

13.8 PROCESSING OF TDS /TCS STATEMENTS [SECTION 399]

(1) All statements of tax deducted at source or tax collected at source including a correction statement shall be processed in the following manner -

Processing of TDS or TCS Statement

(a) **Permissible adjustments:** the amounts deductible or collectible under this Chapter shall be computed after making the following adjustments -

(i) any arithmetical error in the statement; or

(ii) an incorrect claim apparent from any information in the statement;

(b) **Interest** - the interest, if any, shall be computed on the basis of the amounts deductible or collectible as reflected in the statement;

(c) **Fee -** the fee, if any, shall be computed as per the provisions of section 427(1) and (2).

Fee under section 427(1) and (2)

As per section 427(1), where any person fails to deliver or cause to be delivered a statement within the prescribed time as per section 397(3)(b), he shall be liable to pay a fee of ₹ 200 for every day for which such failure continues shall be levied.



However, the total amount of fee shall not exceed the total amount of tax deductible/tax collectible and such fee has to be paid before delivering the TDS/TCS statement.

(d) (i) the amount payable by; or

(ii) the amount of refund due to, the deductor or collector shall be determined after the above adjustment against any amount paid as TDS or TCS under section 397(3) or interest on account of delay in deduction or deposit of TDS or TCS under section 398 or Fee under section 427(1) and (2) and any amount paid otherwise by way of tax or interest or fee;

(e) **Intimation** - an intimation shall be prepared or generated and sent to the deductor or collector specifying the amount determined to be payable by, or the amount of refund due to, him.



However, no intimation shall be sent after the expiry of the period of **one year** from the end of the tax year in which the statement is filed.

(f) **Grant of refund** - the amount of refund due to a deductor or collector shall be granted to the deductor or collector.

(2) The CBDT is empowered to make a scheme for centralised processing of statements of tax deducted/collected at source.

(3) **Penalty [Section 461]**: Where a person, who is required to deliver or causes to be delivered a statement prescribed in section 397(3)(b),—

(a) fails to do so within the time prescribed in the said section; or

(b) furnishes incorrect information in the said statement,

the Assessing Officer may impose on such person, a penalty of a sum which shall not be less than ₹ 10000 but which may extend to ₹ 100000.

However, no penalty shall be levied for delay in filing or non-filing of statement referred therein, if the person proves that -

(a) tax deducted or collected along with the fee and interest, if any, was paid to the credit of the Central Government; and

(b) the said statement was also delivered or cause to be delivered **before the expiry of one month** from the time prescribed in section 397(3)(b).

13.9 BAR AGAINST DIRECT DEMAND ON ASSESSEE [SECTION 401]

Where tax is deductible at source under chapter XIX, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.



BDR Finvest Pvt. Ltd. v. DCIT [2024] 462 ITR 141 (Delhi)

Issue: Is the deductee entitled to claim credit for tax deducted at source (TDS) if the amount of TDS is not reflected in Form 168 because the deductor has not deposited it with the Government?

Facts, Relevant provision of law, analysis and decision: The assessee received interest income from "Ninex" (Deductor). In the return of income filed for the relevant year, the assessee offered the entire interest income and claimed the credit for tax deducted at source (TDS) by the said deductor.

TDS credit was not allowed by the department, pursuant to intimation issued u/s 270(1) and application filed under section 287 was also rejected for the reason that TDS credit is not reflected in Form 168 and consequently, the said tax was recovered from the assessee itself.

The High Court referring the Delhi High Court ruling in case of *Sanjay Sudan v. Asst. CIT [2023] 452 ITR 107* emphasized that deduction of taxes at source is one of the methods of collecting tax. The tax deducted at source is part of the assessee's income and therefore, the gross amount is included in the total income and offered to tax. It is on this premise that the tax deducted at source would have to be treated as tax paid on behalf of the assessee.

Section 401 provides for restriction against direct demand on assessee to the extent to which tax has been deducted from that income. Thus, no recovery of TDS can be made from the deductee.

The amount retained against remittance made by the payer is nothing but tax which the assessee/deductee has offered for tax by grossing up the remittance. If credit is not given, the Department would end up doing indirectly what they cannot do directly i.e., that recover tax directly from the deductee.

Accordingly, the High Court held that section 390 cannot come in the way of the deductee in case deductor failed to deposit the TDS. Therefore, the deductee should be given credit for TDS though it was not reflected in form 168 and no recovery towards TDS could be made from the assessee in terms of the provisions of section 401.

The assessee had followed the regime put in place in the Act for collecting tax albeit, through an agent (deductor) of the Government. The recovery proceedings could only be initiated against the deductor as the deductor, an agent for collecting tax had failed to deposit the tax with the Government.

13.10 ADVANCE PAYMENT OF TAX [SECTION 403 TO 410]

I. Liability for payment of advance tax [Section 403 and 404]

(1) As per section 403(1), advance tax shall be payable during any financial year, in respect of an assessee's current income as per the provisions of sections 404 to 410.

(2) Current income of a tax year means the total income of the assessee which would be chargeable to tax for such tax year [Section 403(2)].

(3) Under section 404, Advance tax shall be payable by the assessee during a financial year, where the amount of such tax payable during that year, is ₹ 10,000 or more.

Adavnce tax is payable where tax is ₹ 10,000 or more

Note - An assessee who is liable to pay advance tax of less than ₹ 10,000 will not be saddled with interest under sections 424 and 425 for defaults in payment of advance tax. However, the consequences under section 423 regarding interest for belated filing of return would be attracted.

(4) In case of senior citizens who have passive source of income like interest, rent, etc., the requirement of payment of advance tax causes genuine compliance hardship. Therefore, in order to reduce the compliance burden on such senior citizens, exemption from payment of advance tax has been provided to a resident individual-

Non-applicability

(i) not having any income chargeable under the head "Profits and gains of business or profession"; and

(ii) of the age of 60 years or more at any time during the tax year.

Such senior citizens need not pay advance tax and are allowed to discharge their tax liability (other than TDS) by payment of self-assessment tax.

II. Computation of advance tax (Sections 405)

As per section 405(1), the amount of advance tax payable by an assessee, on his own accord under section 406, or in pursuance of an order of the Assessing Officer under section 407, in the financial year shall, subject to section 405(2), be computed as under -

A=B-C

- **A** = amount of advance tax payable in the financial year;
- **B** = income-tax on the specified sum calculated at the rates in force in the financial year;

  "Specified sum" means current income as estimated by the assessee.
- **C =** amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act.

The amount of tax deductible or collectible at source shall be reduced **only where -**

(a) such income has been computed before allowing any deduction admissible under this Act and has been taken into account in computing the specified sum; and

(b) the person responsible for deducting tax has paid or credited such income after deduction of tax, or the person responsible for collecting tax has received or debited such income after collection of tax.

Net Agricultural Income

Where the Finance Act of the relevant year provides that net agricultural income shall be taken into account for computing advance tax, then -

(a) for the purpose of order under section 407(1) or (4), the net agricultural income shall be the amount taken into account for charging income-tax on the specified sum

(b) in any other case, the net agricultural income as estimated by the assessee for the tax year.

III. Payment of Advance Tax by Assessee on His Own Accord [Section 406]

Every person, who is liable to pay advance tax under section 404 (whether or not he has been previously assessed by way of regular assessment) shall, on his own accord, pay advance tax on the specified sum, calculated in the manner laid down in section 405, at the appropriate percentage, on or before the due date of each instalment, as specified in section 408..

A person who pays any instalment or instalments of advance tax, may increase or reduce the amount of advance tax payable in the remaining instalment or instalments to accord with specified sum and the advance tax payable thereon, and make payment of the said tax in the remaining instalment or instalments accordingly.

For the purposes of this section, "specified sum" means current income as estimated by the assessee.

IV. Payment of Advance Tax in Pursuance of Order of Assessing Officer [Section 407]

(1) Order for payment of advance tax [Section 407(1)]: Where a person has already been assessed for the total income of any tax year by way of regular assessment and the Assessing Officer is of the opinion that such person is liable to pay advance tax, he may require such person to pay advance tax on the specified sum, calculated in the manner laid down in section 405, by an order in writing, specifying the instalment or instalments in which such tax is to be paid, on or before the due date of each instalment specified in section 408.

(2) Time limit for passing the order [Section 407(2)]: The order referred to in sub-section (1) may be passed at any time during the financial year but not later than the last day of February of such financial year and it shall be followed by issuance of notice of demand under section 289.

(3) Meaning of "specified sum" [Section 407(3)]: The specified sum means the higher of:

(a) the total income of the latest tax year in respect of which the assessee has been assessed by way of regular assessment; or

(b) total income returned by the assessee in any return of income furnished by him for any subsequent tax year.

(4) Amendment of order [Section 407(4)]: If after making of an order by the Assessing Officer under sub-section (1), -

(a) a return of income is furnished by the assessee, under section 263 or in response to a notice under section 268; or

(b) a regular assessment of the income is made in respect of a tax year, later than the assessment referred to in sub-section (1),

the Assessing Officer may amend the order referred to in sub-section (1), and may require such assessee to pay advance tax on the specified sum, calculated in the manner laid down in section 405, on or before the due date of each instalment specified in section 408.

(5) **Time limit for amended order [Section 407(5)]**: The order referred to in sub-section (4) may be passed at any time before the 1st March of that tax year and it shall be followed by issuance of a demand notice under section 289.

(6) **Specified sum for amended order [Section 407(6)]:** "Specified sum" means the total income declared in the return of income or computed in regular assessment mentioned in sub-section (4)(a) and (b), respectively.

(7) **Demand notice served after instalment due date [Section 407(7)]:** If the notice of demand issued under section 289, as referred in sub-sections (2) and (5), is served after any of the due dates specified in section 408, the appropriate part or, the whole of the amount of the advance tax specified in such notice, shall be payable on or before each of the due date falling after the date of service of the notice of demand.

(8) **Estimate of lower advance tax liability [Section 407(8)]:** Where a person, who is served with an order referred to in sub-section (1) or (4), estimates the advance tax payable on his current income to be lower than the amount of advance tax specified in the said order, then, he may send an intimation in the prescribed form to the Assessing Officer to that effect, and pay such advance tax on the current income, calculated in the manner laid down in section 405 as accords with his estimate, at an appropriate percentage thereof on or before the due date of each instalment specified in section 408 falling after the date of such intimation.

(9) **Estimate of higher advance tax liability [Section 407(9)]:** Where a person, who is served with an order referred to in sub-section (1) or (4), estimates that advance tax payable on his current income would exceed the amount of advance tax specified in such order or intimated by him under sub-section (8), he shall pay such advance tax on the current income, calculated in the manner laid down in section 405 at the appropriate part or whole of such higher amount of advance tax as accords with his estimate, on or before the due date of the last instalment specified in section 408.

V. Instalments of advance tax and due dates [Section 408]

(1) As per section 408(1), all assessees liable to pay advance tax, other than the assessee referred to in sub-section (2), shall pay advance tax on the current income calculated in accordance with section 405 in **four instalments** during each financial year as under:

Sl. No.	Due Date of Instalment	Amount Payable
1	On or before 15th June	Not less than 15% of such advance tax
2	On or before 15th September	Not less than 45% of such advance tax, as reduced by the amount, if any, paid in the earlier instalment
3	On or before 15th December	Not less than 75% of such advance tax, as reduced by the amount(s), if any, paid in the earlier instalment(s)
4	On or before 15th March	The whole amount of such advance tax, as reduced by the amount(s), if any, paid in the earlier instalment(s)

(2) An assessee declaring profits and gains in accordance with section 58(2) [Table: Sl. No. 1 or 3] shall pay the whole amount of advance tax on current income calculated in the manner laid down in section 405 in **one instalment on or before 15th March of the financial year.**

(3) Any amount paid by way of advance tax on or before 31st March shall be treated as advance tax paid during the financial year ending on that day for all the purposes of this Act.

VI. When Assessee is Deemed to be in Default [Section 409]

A person shall be deemed to be an assessee in default, if such person -

(a) does not pay, on the date specified in section 408, any instalment of advance tax that he is required to pay by an order of the Assessing Officer under section 407(1) or section 407(4); or

(b) does not send to the Assessing Officer an intimation under section 407(8) on or before the date on which any such instalment, which is not paid, becomes due; or

(c) does not pay, on the basis of his estimate of his current income, the advance tax payable by him under Section 407(9),

in respect of such instalment or instalments.

VII. Credit for advance tax [Section 410]

Any sum, other than interest or penalty, paid by or recovered from an assessee as advance tax, is treated as a payment of tax in respect of the income of the tax year in which it was payable, and credit thereof shall be given in the regular assessment.

13.11 INTEREST CHARGEABLE IN CERTAIN CASES

I. Interest for defaults in furnishing return of income [Section 423]

(1) **Liability to pay interest** – As per section 423(1), where the return of income for any tax year is furnished after the due date or is not furnished, the assessee shall be liable to pay simple interest computed as under:

Interest @1% p.m. or part of a month

[I = 1% × A × T]

Where—

I = Interest payable

A = Amount of tax on which interest is payable, as specified in section 423(2)

T = Number of months comprised in the period commencing on the date immediately following the starting date and ending on the end date, both specified in section 423(2).

(2) Period and Amount for Computation of Interest - The starting date, ending date and the amount of tax on which interest is payable shall be as specified below –

Sl. No.	Circumstances	Starting Date	Ending Date	Amount of Tax on which Interest is Payable
1	Return furnished under section 263(1), (4) or (6) or in response to the notice for enquiry under section 268(1) after due date	Due date for furnishing the return of income under section 263(1)	Date of furnishing of return	(a) **If no regular assessment is made –** tax on total income determined under section 270(1) as reduced by tax paid (b) **If regular assessment made –** tax determined under regular assessment as reduced by tax paid
2	No return furnished under section 263(1), (4) or (6) or in response to the notice for enquiry under section 268(1)	Due date for furnishing return of income under section 263(1)	Date of completion of assessment under section 271	Tax on the total income determined under regular assessment as reduced by tax paid
3	(a) Where return of income is required by a notice under section 280 issued after the determination of income under section 270(1) or after the completion of an assessment under	Last date of time allowed under such notice	Date of furnishing return	Amount by which the tax on the total income determined on the basis of such reassessment or recomputation exceeds the tax on the total income determined under section 270(1) or on the

	section 270(10) or 271 or 279; and (b) such return is furnished after the expiry of the time allowed under such notice			basis of the earlier assessment under section 270(1) or 271 or 279.
4	(a) Where return of income is required by a notice under section 280 issued after the determination of income under section 270(1) or after the completion of an assessment under section 270(10) or 271 or 279; and (b) no return is furnished.	The last date of time allowed under such notice.	Date of completion of the reassessment or recomputation under section 279.	Amount by which the tax on the total income determined on the basis of such reassessment or recomputation exceeds the tax on the total income determined under section 270(1) or on the basis of the earlier assessment under section 270(1) or 271 or 279.

(3) Increase or Reduction of Interest - Where as a result of an order under section 287 [rectification] or 288 [other amendments] or 359 [order of appeal passed by JC (A) or CIT(A) or 363 [order of ITAT] or 365(10) [order of HC] or 368 [order of SC] or 377[revision of orders prejudicial to Revenue by PCCIT/CCIT/PCIT/CIT] or 378 [other revision orders by PCCIT/CCIT/PCIT/CIT, the amount of tax on which interest was payable under sub-sections (1) and (2) has been increased or reduced, the interest shall be increased or reduced accordingly, and in a case -

(a) where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in such form as may be prescribed specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 289 and the provisions of this Act shall apply accordingly;

(b) where the interest is reduced, the excess interest paid, if any, shall be refunded.

(4) Meaning of "Tax Paid" and Other Clarifications - For the purposes of this section—

(a) tax on total income as determined under section 270(1)shall not include the additional income-tax, if any, payable under section 267;

(b) tax on the total income determined under regular assessment shall not include the additional income-tax payable under section 267;

(c) interest payable under sub-section (1) shall be reduced by the interest, if any, paid under section 266 towards the interest chargeable;

(d) "tax paid" means—

(i) advance tax, if any, paid;

(ii) any tax deducted or collected at source;

(iii) any relief of tax allowed under section 157;

(iv) any relief of tax allowed under section 159(1) on account of tax paid in a country outside India;

(v) any relief of tax allowed under section 159(2) on account of tax paid in a specified territory outside India referred to in that section;

(vi) any deduction, from the Indian income-tax payable, allowed under section 160, on account of tax paid in a country outside India; and

(vii) any tax credit allowed to be set off as per section 206(2)(e) to (h) and 206(3) and (4).

(5) First-Time Assessment under Section 279 - Where for any tax year, an assessment is made for the first time under section 279, the assessment so made shall be regarded as a regular assessment for the purposes of this section.



Interest under section 423 not chargeable on self-assessment tax paid before the due date of filing of return of income [Circular No. 2/2015, dated 10-2-2015]

The Hon'ble Supreme Court has, in the case of *CIT vs Prannoy Roy (2009) 309 ITR 231,* held that interest under section 423 on default of furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the -tax return for the relevant tax year.

No interest

Accordingly, the CBDT has clarified that **no** interest under section 423 shall be charged on self-assessment tax paid by the assessee on or before the due date of filing of return.

II. Interest for Defaults in Payment of Advance Tax [Section 424]

(1) Liability to Pay Interest [Section 424(1)]

Subject to the other provisions of this section, where, in any tax year, an assessee who is liable to pay advance tax under section 404 -

(a) has failed to pay such tax; or

(b) the advance tax paid under section 406 or section 407 is less than 90% of the assessed tax,

the assessee shall be liable to pay simple interest at the rate of **1% for every month or part of a month**, for the period beginning from the **1st April following such tax year -**

(i) up to the date of determination of total income under section 270(1); and

(ii) up to the date of completion of regular assessment, where a regular assessment is made,

on -

- the assessed tax, where clause (a) applies; or
- the amount by which the advance tax paid falls short of the assessed tax, where clause (b) applies.

(2) Meaning of the term 'assessed tax' [Section 424(2)]:

"Assessed tax" means -

- tax on total income determined under section 270(1); and
- where regular assessment is made, tax on total income determined under such regular assessment,

as reduced by the amount of -

(a) any tax deducted or collected at source as per Chapter XIX-B on any income which is subject to such deduction or collection and which is taken into account in computing such total income;

(b) any relief of tax allowed under section 157;

(c) any relief under section 159 on account of tax paid in country or specified territory outside India;

(d) any deduction from Indian income-tax payable, allowed under section 160 on account of tax paid in a country outside India; and

(e) any tax credit allowed to be set-off as per sections 206(2)(e) to (h) and 206(3) and (4).

Note -

- where an assessment is made for the first time under section 279, such assessment shall be regarded as a regular assessment;
- tax on the total income as determined under section 270(1) shall not include additional income-tax, if any payable under section 267;
- tax on the total income determined under regular assessment shall not include additional income-tax payable under section 267.

(3) Interest paid on self-assessment

Where, before the date of determination of total income under section 270(1) or completion of a regular assessment, tax is paid by the assessee under section 266 or otherwise, -

(a) interest shall be calculated as per the foregoing provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 266 towards the interest chargeable under this section;

(b) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

(4) Where total income is increased on reassessment under section 147

Where as a result of an order of reassessment or recomputation under section 279, the amount on which interest was payable in respect of shortfall in payment of advance tax for any tax year under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the 1st April immediately following such tax year and ending on the date of the reassessment or recomputation on such amount determined as per formula below -

A = B – C	
A	the increased amount on which interest was payable in respect of shortfall in payment of advance tax for any tax year as a result of reassessment or recomputation
B	tax on total income determined on the basis of reassessment or recomputation
C	tax on total income determined under section 270(1) or regular assessment

(5) Consequence where interest payable is increased or reduced subsequently as a result of rectification, appeal, revision etc.

Where, as a result of an order of rectification, appeal, revision, the amount on which interest was payable has been increased or reduced, the interest shall be increased or reduced accordingly, and -

	Case	Ending date
(i)	Where the interest is increased	The Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such demand notice shall be a notice under section 289.
(ii)	Where interest is reduced	The excess interest paid shall be refunded

III. Interest for deferment of advance tax [Section 425]

(1) Manner of computation of interest for deferment of advance tax: Where, in any tax year, an assessee liable to pay advance tax under section 404 [other than an assessee who declares profits and gains on presumptive income basis as per section 58(2) (Table: Sl. No. 1 or 3)]

- has failed to pay such tax; or
- the advance tax paid on current income on or before the due dates specified below is less than the advance tax due on returned income,

then, the assessee shall be liable to pay interest on the shortfall of advance tax at the rate of interest specified below:

TABLE – Instalment-wise Interest for Deferment

Sl. No.	Due Date of Instalment	Advance Tax Due on Returned Income	Shortfall (Advance tax due – advance tax already paid)	Interest payable on the shortfall at the rate
1	15th June	15% of tax due on returned income	Shortfall till 15th June	3%
2	15th September	45% of tax due on returned income	Shortfall till 15th September	3%
3	15th December	75% of tax due on returned income	Shortfall till 15th December	3%
4	15th March	100% of tax due on returned income	Shortfall till 15th March	1%

(2) Relief for First Two Instalments - No interest shall be payable if advance tax paid on current income -

- on or before 15th June is 12% or more of tax due on returned income;

- on or before 15th September is 36% or more of tax due on the returned income.

(3) Computation of interest in case of an assessee who declares profits and gains on presumptive basis as per section section 58(2) (Table: Sl. No. 1 or 3) – An assessee who declares profits and gains as per section 58(2) (Table: Sl. No. 1 or 3); or is liable to pay advance tax under section 404, has failed to pay such advance tax or advance tax paid by the assessee on or before 15th March is less than the tax due on the returned income, shall be liable to pay simple interest at 1% on the amount of shortfall from the tax due on returned income.

(4) Non-applicability of interest under section 425 in certain cases – No interest shall be payable under 425 in respect of shortfall in the payment of tax due on returned income where -

(a) the shortfall is on account of under-estimation of or failure to estimate the following income:

- Capital gains;
- Income referred to in section 2(49)(n) i.e. winnings from lotteries, crossword puzzles etc.
- Income under the head profits and gains of business or profession accruing or arising for the first time
- Dividend income as referred in section 2(40), excluding sub-clause (e) thereof) and

(b) the assessee has paid in full, the tax payable on the said income had such income been part of total income, in any of the remaining instalments of advance tax, if any, or by the 31st day of March of the tax year.

(5) Tax due on the returned income: "Tax due on returned income" means the tax chargeable on the total income declared in the return of income furnished by the assessee for the tax year in which the advance tax is paid or payable, as reduced by the amount of -

(a) any tax deducted or collected at source as per the provisions of Chapter XIX-B on any income which is subject to such deduction or collection and which is taken into account in computing such total income.

(b) any relief of tax allowed under section 157.

(c) any relief of tax allowed under section 159(1) on account of tax paid in a country outside India.

(d) any relief of tax allowed under section 159(2) on account of tax paid in a specified territory outside India referred to in that section.

(e) any deduction, from the Indian income-tax payable, allowed under section 160, on account of tax paid in a country outside India; and

(f) any tax credit allowed to be set off as per section 206(2)(e) to (h) and 206(3) and (4).

IV. Interest on excess refund [Section 426]

(1) Interest on Excess Refund - Subject to the other provisions of this Act, where any refund is granted to the assessee under section 270(1) i.e. summary assessment, and -

Interest on refund @ ½% p.m. or part of a month

(a) no refund is due on regular assessment; or

(b) the amount refunded under section 270(1) exceeds the amount refundable on regular assessment,

the assessee shall be liable to pay simple interest @ 0.5% on the whole or the excess amount so refunded, for every month or part of a month comprised in the period from the date of grant of refund to the date of such regular assessment.

(2) Reduction of Interest - Where, as a result of an order rectification, appeal and revision the refund granted under section 270(1) is held to be correctly allowed, either wholly or partly, the interest chargeable under sub-section (1) shall be reduced accordingly.

Note - *Where, in relation to a tax year, an assessment is made for the first time under section 279, such assessment shall be regarded as a regular assessment for the purposes of this section.*

13.12 COLLECTION AND RECOVERY OF TAX

I. When tax payable and when assessee deemed in default [Section 411]

(1) Time for Payment of Demand [Section 411(1)] - Any amount (otherwise than by way of advance tax) specified as payable in a notice of demand under section 289 at the place and to the person mentioned in the notice shall be paid within -

Notice of demand

(a) **30 days** of service of the notice; or

(b) such period being a period of less than thirty days as specified in the notice with the previous approval of the Joint Commissioner, where the Assessing Officer has any reason to believe that allowing it shall be detrimental to revenue if the full period 30 days is allowed.

(2) Interest for Non-payment of Demand - If the amount specified in the notice is not paid within the period as specified above, the assessee shall be liable to pay interest at 1% for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in section 411(1) and ending with the day on which the amount is paid. This is provided for in section 411(3).

Interest@1% p.m. or part of a month

However, no interest shall be charged under this sub-section in respect of any demand raised on account of penalty levied under section 439 -

(i) up to the date of passing of the order under section 359;

(ii) up to the date of passing of the order under section 363, where the assessment or reassessment has been made in pursuance to directions issued by the Dispute Resolution Panel under section 275.

(3) Power to Grant Extension or Instalments [Section 411(5)] – Where an application is made by the assessee before expiry of the due date under sub-section (1), the Assessing Officer may—

- extend the time for payment; or

- allow payment by instalments,

subject to such conditions as he may impose.

(4) No Interest [Section 411(4)] - No interest shall be charged under sub-section (3) for any period for which interest is charged on the same amount under section 398(3) on tax specified in an intimation under section 399.

(5) Effect of Subsequent Orders [Section 411(6)] - Where, as a result of orders of rectification, appeal and revision -

(a) the amount on which interest was payable is reduced, interest shall be reduced accordingly and excess interest shall be refunded;

(b) if subsequent to such reduction as a result of order under the said sections or section 377, the amount on which interest was payable is increased, interest shall be payable

- from the day immediately following the end of the period mentioned in the first notice of demand and
- ending on the day of payment.

(6) Effect of Appeal or Other Proceedings [Section 411(2)]: Section 411(2) provides that where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then

Notice of Demand valid till disposal of appeal

- such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority or disposal of proceedings, and
- any such notice of demand shall have effect as provided in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964.

Note - Section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964

Continuation and validation of certain proceedings

(1) Where any notice of demand in respect of any Government dues is served upon an assessee by a Taxing Authority under any scheduled Act, and any appeal or other proceeding is filed or taken in respect

of such Government dues, then -

(a) where such Government dues are enhanced in such appeal or proceeding, the Taxing Authority shall serve upon the assessee another notice of demand only in respect of the amount by which such Government dues are enhanced and any proceeding in relation to such Government dues as are covered by the notice or notices of demand served upon him before the disposal of such appeal or proceeding may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal or proceeding -

(i) it shall not be necessary for the Taxing Authority to serve upon the assessee a fresh notice of demand;

(ii) the Taxing Authority shall give intimation of the fact of such reduction to the assessee. Further, where a certificate has been issued to the Tax Recovery Officer for the recovery of such amount, intimation of the fact of reduction shall also be given to him;

(iii) any proceedings initiated on the basis of the notice or notices of demand served upon the assessee before the disposal of such appeal or proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;

(c) no proceedings in relation to such Government dues (including the imposition of penalty or charging of interest) shall be invalid by reason only that no fresh notice of demand was served upon the assessee after the disposal of such appeal or proceeding or that such Government dues have been enhanced or reduced in such appeal or proceeding.

(2) No fresh notice of demand shall be necessary in any case where the amount of Government dues is not varied as a result of any order passed in any appeal or other proceeding under any scheduled Act.



(3) The provisions of this section shall have effect notwithstanding any judgment, decree or order of any court, tribunal or other authority.

(7) Power to Reduce or Waive Interest [Section 411(7)] – The Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner may on an application by the assessee reduce or waive interest under sub-section (3) if he is satisfied that -

(a) payment of such amount has caused or would cause genuine hardship to the assessee;

(b) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and

(c) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

Accordingly, w.e.f. 4.11.2024, the CBDT has, vide Circular no. 15/2024, dated 4.11.2024, for the proper administration of the Act, specified the monetary limits for reduction or waiver of interest:

S.No.	Income-tax Authority	Monetary limits for reduction or waiver of interest
1	Principal Commissioner or Commissioner of Income-tax	Upto ₹ 50 lakhs
2	Chief Commissioner of Income-tax	Above ₹ 50 lakhs to ₹ 1.5 crores
3	Principal Chief Commissioner of Income-tax	Above ₹ 1.5 crores

(8) Time Limit for Order [Section 411(8)] - The order under sub-section (7) accepting or rejecting the application of the assessee, either in full or in part,

shall be passed within **twelve months from the end of the month in which the application is received.**

(9) Opportunity of Being Heard [Section 411(9)] - No order rejecting the application under sub-section (7), either wholly or partly, shall be passed without giving the assessee an opportunity of being heard.

ILLUSTRATION 17

The Assessing Officer issued a notice of demand under section 289 to Mr. X on 1.10.2028 for payment of ₹ 15 lakhs towards his income-tax liability for the T.Y.2026-27, requiring him to pay the said amount within 30 days.

(a) Is he required to issue fresh notice of demand and if so, for what amount, in the following two cases (each case has to be considered independently) –

(i) If the tax demand is reduced to ₹ 12 lakhs by the Commissioner (Appeals) by issue of order under section 359;

(ii) If the tax demand is increased to ₹ 20 lakhs by the Appellate Tribunal, by issue of an order under section 363.

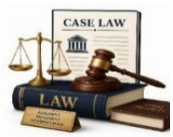
(b) How would the interest liability under section 411(3) be calculated if the tax demand is reduced to ₹ 12 lakhs by the Commissioner (Appeals) by issue of order under section 359 and subsequently increased to ₹ 15 lakhs by the Appellate Tribunal by way of issue of order under section 363?

SOLUTION

(a) (i) No fresh notice of demand is required to be served on Mr. X. The Assessing Officer is only required to give an intimation of the fact of reduction of demand to ₹ 12 lakhs to Mr. X. The proceedings initiated on the basis of the original notice of demand may be continued in relation to the reduced amount of ₹ 12 lakhs from the stage at which such proceedings stood immediately before disposal of appeal.

(ii) A fresh notice of demand has to be given only in respect of ₹ 5 lakhs, being the amount of enhancement. Any proceedings in relation to ₹ 15 lakhs covered by the original notice of demand served upon Mr. X may be continued from the stage at which such proceedings stood immediately before the disposal of appeal.

(b) The interest has to be paid on ₹ 15 lakhs @1% per month or part of the month comprised in the period commencing from 1.11.2028 and ending with the date on which the amount is paid, assuming that Mr. X has not paid any interest so far.



Pioneer Overseas Corporation USA (India Branch) v. CIT (International Taxation) (2022) 449 ITR 186 (SC)

Is pendency of dispute resolution under MAP a valid ground for a waiver of interest under section 411(7)?

Relevant provision of law: Section 411(3) provides for levy of simple interest@1% for every month or part of a month comprised in the period commencing from the day immediately following the 30 days specified in section 411(1) (from service of notice of demand under section 289) and ending on the day on which the amount is paid.

Section 411(7) provides for reduction or waiver of interest payable under section 411(3), if the PCC/CC/PC/Commissioner is satisfied that payment of such amount has caused or would cause genuine hardship to the assessee, default in payment of amount specified in notice of demand was due to circumstances beyond the control of the assessee and the assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

Facts of the case: The assessee applied for waiver of interest under section 411(7) on the ground that the dispute was pending for resolution under the mutual agreement procedure under the Double Taxation Avoidance Agreement between India and the United States of America, which subsequently culminated in the year 2012 and the liability to pay the tax arose thereafter. The Commissioner, however, rejected the assessee's application. The same was confirmed by the High Court.

Decision: The Supreme Court observed that merely raising the dispute before any authority cannot be a ground not to levy the interest and/or waiver of interest under section 411(7). Otherwise, each and every assessee may raise a dispute and thereafter, may contend that since the litigation was *bona fide*, no interest is leviable. It is required to be noted that under section 411(3), the levy of simple interest on non-payment of the tax at 1% for every month or part of a month is, as such, mandatory.

***Note** – It may be noted that under section 411(7), the Commissioner may reduce or waive the interest payable by an assessee on the ground of genuine hardship.*

In this case, the assessee is a part of a global conglomerate which had in the earlier year $ 37.96 billion in net sales and $ 6.253 billion as operating profit, cannot be an irrelevant factor in considering whether any 'genuine hardship' was undergone by the petitioner. Further, in comparison to the profitability of the petitioner over the years, the amount paid by it towards interest under section 411(3) was merely $ 0.004 billion (approx.). In the circumstances, the Commissioner of Income-tax concluded that no 'genuine hardship' can be said to have been caused to the petitioner on account of payment of interest.

II. Penalty payable when tax in default [Section 412]

(1) **Penalty for default in payment of tax [Section 412(1)] -** When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under section 411(3), be liable, by way of penalty, to pay -

(a) such amount as the Assessing Officer may direct; and

(b) in the case of a continuing default, such further amount or amounts as the Assessing Officer may, from time to time, direct.

However, the total amount of penalty shall not exceed the amount of tax in arrears [Section 412(2)].

Further, no penalty shall be levied -

(a) unless the assessee has been given a reasonable opportunity of being heard;

(b) where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons.

(2) **Payment of tax before levy of penalty not to absolve the assessee from penalty:** As per section 412(4), the assessee shall not cease to be liable to any penalty merely by reason of the fact that before the levy of such penalty he has paid the tax.

(3) **Circumstance when penalty levied will be cancelled [Section 412(5)]** – Where as a result of any final order the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

III. Certificate by Tax Recovery Officer (TRO) and Validity thereof [Section 413]

(1) **TRO to draw up statement specifying amount of arrears due from an assessee-in-default [Section 413(1)]** - When an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in such form as may be prescribed specifying the amount of arrears due from the assessee (such statement being herein and in sections 414 to 416 referred to as certificate) and shall proceed to recover from such assessee the amount specified in the certificate by one or more of the modes mentioned below, as per the rules prescribed in this regard, -



(a) attachment and sale of movable property of the assessee;

(b) attachment and sale of immovable property of the assessee;

(c) appointing a receiver for the management of movable and immovable properties of the assessee.

(2) **Property to include property transferred to spouse/minor child/son's wife/son's minor child for inadequate consideration** - The movable or immovable property of the assessee shall include any property -

(a) which has been transferred, directly or indirectly on or after the 1st June, 1973, by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the said persons; and

(b) so far as the movable or immovable property so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the movable or immovable property of the assessee for recovering any arrears due from the assessee in respect of any period prior to such date.

(3) The Tax Recovery Officer may take action whether or not proceedings for recovery of the arrears by any other mode have been taken.

(4) The assessee shall not be entitled to dispute the correctness of any certificate drawn up by the TRO on any ground.

(5) The TRO may -

- cancel the certificate, if considered necessary; or
- correct any clerical or arithmetical mistake therein.

IV. Tax Recovery Officer (TRO) by whom recovery is to be effected [Section 414]

(1) **For the purpose of section 413,** the TRO competent to take action shall be the TRO within whose jurisdiction:



(i) the assessee carries on business or profession or has the principal place of his business or profession is situated.

(iii) the assessee resides, or any movable or immovable property of the assessee is situated **[Section 414(1)].**

(2) **Assignment of jurisdiction**: The jurisdiction is assigned either by the CBDT or by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who is authorised on this behalf by the CBDT under section 241**[Section 414(1)]**.

(3) **Procedure where an assessee has property within the jurisdiction of more than one TRO [Section 414(2)]**: Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer and the Tax Recovery Officer by whom the certificate is drawn up –

(a) is not able to recover the entire amount by sale of the property, movable or immovable, within his jurisdiction; or

(b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Part, it is necessary so to do,

he may send -

(i) the certificate; or

(ii) a copy of the certificate certified in the manner as may be prescribed

and specifying the amount to be recovered, where only a part of the amount is to be recovered,

to a Tax Recovery Officer within whose jurisdiction the assessee resides, or any movable or immovable property of the assessee is situated and, thereupon, such officer shall also proceed to recover the amount under this Part as if the certificate or copy thereof had been drawn up by him.

V. Stay of proceedings in pursuance of certificate and amendment or cancellation thereof [Section 415]

(1) **TRO empowered to grant time for payment of tax [Section 415(1)]:** The Tax Recovery Officer may grant time for the payment of any tax and, till the expiry of such time, shall stay the recovery proceedings for such tax.



(2) **TRO empowered to modify or cancel certificate where demand is reduced on appeal [Section 415(2)]**: Where a certificate has been drawn up and subsequently, the amount of the outstanding demand is reduced as a result of the order giving rise to the said demand, being modified in an appeal or other proceeding under this Act, the Tax Recovery Officer shall -

(a) if the order is the subject-matter of further proceeding under this Act, stay the recovery of such part of the amount specified in the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending; or

(b) if the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate, or cancel it.

VI. Other modes of recovery [Section 416 & 417]

(1) Where no certificate has been drawn up under section 413, the Assessing Officer may recover the tax by any one or more of the modes provided in this section.

(2) Where a certificate has been drawn up under section 413, the Tax Recovery Officer may, without prejudice to the modes of recovery specified in that section, recover the tax by any one or more of the modes provided in this section.

(3) If any assessee is in receipt of any income chargeable under the head "Salaries", the Assessing Officer or Tax Recovery Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee and such person shall comply with the said requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs.

(4) Nothing contained in sub-section (3) shall apply to any part of the salary exempted from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908.

(5) (a) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, by notice in writing require any person -

(I) from whom money is due or may become due to the assessee; or

(II) who holds or may subsequently hold money for or on account of the assessee, to pay to the Assessing Officer or Tax Recovery Officer

(i) either forthwith upon the money becoming due or being held; or

(ii) at or within the time specified in the notice (not being before the money becomes due or is held),

so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.

(b) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person.

(c) For the purposes of this sub-section, the shares of the joint holders in the account, as referred in clause (b), shall be presumed, until the contrary is proved, to be equal.

(d) A copy of the notice under this sub-section shall be forwarded to—

(i) the assessee; and

(ii) in the case of a joint account to all the joint holders,

at his or their last addresses known to the Assessing Officer or Tax Recovery Officer.

(e) Save as otherwise provided in this sub-section, every person to whom a notice is issued under that sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, irrespective of any rule, practice or requirement to the contrary.

(f) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(g) Where a person, to whom a notice under this sub-section is issued, objects to it by a statement on oath that—

(a) the sum demanded or any part thereof is not due to the assessee; or

(b) he does not hold any money for or on account of the assessee,

then nothing contained in that sub-section shall be deemed to require such person to pay any such sum or part thereof.

(h) Where it is discovered that the statement given by a person under clause (g) was false in any material particular, such person shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(i) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, amend or revoke any notice issued under this sub-section

or extend the time for making any payment in pursuance of a notice issued under the said sub-section.

(j) The Assessing Officer or Tax Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(k) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the Assessing Officer or the Tax Recovery Officer—

(i) to the extent of his own liability to the assessee so discharged; or

(ii) to the extent of the assessee's liability for any sum due under this Act,

whichever is less.

(l) If the person to whom a notice under this sub-section is issued fails to make payment in pursuance thereof to the Assessing Officer or Tax Recovery Officer, -

(i) he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 413 to 415; and

(ii) the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 413.

(6) The Assessing Officer or Tax Recovery Officer may apply to the court in whose custody there is money belonging to the assessee—

(a) for payment to him of the entire amount of such money; or

(b) if it is more than the tax due, an amount sufficient to discharge the tax.

(7) The Assessing Officer or Tax Recovery Officer may, if so authorised by an income- tax authority not below the rank of Commissioner by general or special order, recover any arrears of tax due from an assessee by distraint and sale of his movable property in the manner as may be prescribed.

(8) In addition, tax may be recovered through the State Government if the recovery of tax in any area has been entrusted to it under the Constitution. In such a case, the State Government may direct that the tax shall be recovered in respect of any particular area together with the municipal taxes or local rates, if any, by the municipality or local authority [Section 417].

VII. Recovery of tax in pursuance of agreements with foreign countries [Section 418]

(1) Where an agreement is entered into by the Central Government with the Government of any country outside India for recovery of income-tax under this Act and the corresponding law in force in that country and the Government of that country or any authority under that Government which is specified in this behalf in such agreement sends to the Board a certificate for the recovery of any tax due under such corresponding law from -

(a) a resident; or

(b) a person having any property in India,

the Board may forward such certificate to any Tax Recovery Officer having jurisdiction over the resident, or within whose jurisdiction such property is situated and thereupon such Tax Recovery Officer shall -

(i) proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under section 413; and

(ii) remit any sum so recovered by him to the Board after deducting his expenses in connection with the recovery proceedings.

(2) Where an assessee who is in default or is deemed to be in default in making a payment of tax -

(a) is a resident of a country being a country with which the Central Government has entered into an agreement for the recovery of income-tax under this Act and the corresponding law in force in that country; or

(b) has any property in the country referred to in clause (*a*),

then, Tax Recovery Officer may forward to the Board a certificate drawn up by him under section 413 and the Board may take such action thereon as it

may deem appropriate having regard to the terms of the agreement with such country.

VIII. Tax Clearance Certificate [Section 420]

(1) **Undertaking to be furnished by a person not domiciled in India visiting India in connection with business, profession or employment [Section 420(1) & (2)]**

(i) Subject to such exceptions as the Central Government may, by notification, specify in this behalf, no person –

(a) who is not domiciled in India;

(b) who has come to India in connection with business, profession or employment; and

(c) who has income derived from any source in India,

shall leave the territory of India by land, sea or air unless he furnishes to the prescribed authority an undertaking in the prescribed form.



(ii) The said undertaking should be furnished from the employer of the said person or through whom such person is in receipt of the income.

(iii) The undertaking should be to the effect that tax payable by such person who is not domiciled in India shall be paid by the employer or such person.

(iv) The prescribed authority shall, on receipt of the undertaking, immediately give to such person a **No Objection Certificate (NOC)**, for leaving India.

(v) However, the provisions contained in sub-section (1) shall not apply to a person who is not domiciled in India but visits India as a foreign tourist or for any other purpose not connected with business, profession or employment.

(2) Furnishing of PAN by person domiciled in India at the time of departure [Section 420(3), (4) & (5)]

Furnishing of PAN at the time of departure

(i) Subject to such exceptions as notified by the Central Government, every person domiciled in India at the time of departure from India shall furnish -

(a) Permanent Account Number under section 262;

(b) purpose of his visit outside India; and

(c) estimated period of his stay outside India,

to the income-tax authority or such other authority in the prescribed form.

(ii) In case, no such PAN has been allotted to him, or his total income is not chargeable to income-tax or he is not required to obtain a PAN, a certificate in the prescribed form shall be furnished to the income-tax authority or such other authority, as may be prescribed.

(iii) However, where an income-tax authority opines that there exist circumstances which render an Indian domiciled to obtain a certificate under this section, such person shall not leave the territory of India by land, sea or air unless -

(a) he obtains a certificate from the income-tax authority stating that he has no liabilities under the Income-tax Act, 2025, Income-tax Act, 1961 or the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, or

(b) that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person.

(iv) No income-tax authority shall make it necessary for any person who is domiciled in India to obtain a certificate under this section unless he records the reasons therefor and obtains the prior approval of the Principal Chief Commissioner or Chief Commissioner of Income-tax.

(3) Personal liability of owner or charterer of ship or aircraft carrying such persons [Section 420(7) & (8)]

If the owner or charterer of any ship or aircraft carrying persons from any place in India to any place outside India allows any of the above-mentioned persons to travel by such ship or aircraft without first satisfying that such person is in possession of a certificate as required, he shall be personally liable to pay the whole or any part of the tax payable by such person as the Assessing Officer, may determine. In such a case, the owner or charterer shall be deemed to be an assessee in default for such sum and recovery shall be made in the manner as if it were an arrear of tax.

> ***Note*** *- The expressions "owner" and "charterer" include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.*

(4) Power to make Rules [Section 420(9)]

The CBDT is empowered to make rules for for regulating any matter necessary for, or incidental to, the purpose of carrying out the provisions of this section.

IX. Recovery by suit or under other law [Section 421]

The several modes of recovery specified in this Part shall not affect in any way:

(a) any other law for the time being in force relating to the recovery of debts due to Government; or

(b) the right of the Government to institute a suit for the recovery of the arrears due from the assessee,

and it shall be lawful for the Assessing Officer or the Government, as the case may be, to have recourse to any such law or suit, irrespective of the fact that the tax due is being recovered from the assessee by any mode specified in this Part of the Chapter.

X. Recovery of tax arrears in respect of non-resident from his assets [Section 422]

Irrespective of anything contained in section 304(1) or (5), where the person entitled to the income referred to in section 9(2) is a non-resident, the tax

chargeable thereon, whether in his name or in the name of his agent who is liable as a representative assessee -

(a) may be recovered by deduction under the provisions of Chapter XIX-B; and

(b) any arrears of tax may also be recovered as per the provisions of this Act from any assets of the non-resident which are, or may at any time come, within India.

13.13 REFUNDS

(1) Eligibility [Section 431]

(i) If any person satisfies the Assessing Officer that the amount of tax -

- paid by him or on his behalf; or
- treated as paid by him or on his behalf,

for any tax year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.

(ii) This may usually arise as a result of excess deduction of tax at source from salaries, dividends, interest or as a result of excess payment of advance tax or when the tax originally paid on assessment is reduced upon appeal, revision, rectification or reference.

(2) Persons entitled to claim refund in certain cases [Section 432]

(i) Generally, a claim for a refund can be made only by the person on whose account the tax was already paid.

(ii) However, where the income of one person is included in the total income of another person under any provision of this Act, the latter alone shall be eligible for a refund under this Chapter in respect of such income.



(iii) If any person is not able to claim or receive the refund due to him on account of his death, incapacity, insolvency, dissolution, liquidation, etc., his legal representative or trustee or guardian or receiver is entitled to claim or receive such refund for the benefit of such person or his estate.

(3) Claim for refund [Section 433]

In order to simplify the procedure for a claim of refund, it has been provided that every claim for refund should be made by furnishing a return as per section 263.

(4) Refund on appeal etc. [Section 435]

(i) Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf.

(ii) Where, by the order as referred to in (i) above

(a) an assessment is set aside or cancelled, and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment.

(b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.

(5) Correctness of assessment not to be questioned [Section 436]

In a claim under this Chapter, it shall not be open to the assessee to question the correctness of any assessment, or other matter decided which has become final and conclusive, or ask for a review of the aforesaid assessment or matter; and the assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.

(6) Interest on Refunds [Section 437]

(i) **Applicability and Rate [Section 437(1), (2) & (3)]**: Where a refund is due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the refund, simple interest thereon calculated at the rate of 0.5% for every month or part of a month for the period specified in the following table for each of the cases:

Interest @ 0.5% p.m. or part of a month

Sl. No	Case		Period for grant of interest on refund	
			Beginning from	Ending with
1	Refund out of tax collected at source under section 394, or paid by way of advance tax, or treated as paid under section 390(5), during the financial year.			
	(a)	Where the return of income is filed on or before the due date u/s 263(1)	1st April of the year following the tax year	Date on which refund is granted
	(b)	In any other case	the date of filing of return	
2	Where the refund is out of self-assessment tax paid u/s 266		Date of furnishing return of income or payment of tax, whichever is later	Date on which refund is granted
(c)	In any other case		date or, as the case may be, dates on and from which the amount of tax or penalty specified in the notice of demand issued under section 289 is paid in excess of such demand	Date of grant of refund

Note – ***(A) Minimum Threshold for Interest-*** *No interest shall be payable if the amount of refund due is less than 10% of the tax determined u/s 270(1) or on regular assessment, in case of (a) and (b) above.*

(B) Refund Arising from Rectification Application *-Where refund referred to in Table: Sl. No. 1 arises as a result of an order passed by the Assessing Officer in consequence of an application made by the assessee under section 288(1) (Table: Sl. No. 11), interest shall be calculated at the rate of* ***0.5% per month or part thereof*** *from the* ***date of such application to the date on which the refund is granted****.*

(ii) **Additional interest payable on refund arising out of fresh assessment order giving effect to appellate or revisionary order [Section 437(4) & (5)]:** Where refund arises as a result of giving effect to an order under sections 359, 363, 365(10), 368, 377 or 378, wholly or partly, otherwise than by making a fresh assessment or reassessment:

- The assessee shall be entitled to receive **additional interest**,
- Which shall be **in addition to interest under sub-section (1)**,
- Computed at the rate of **3% per annum**
- For the period beginning from the date following the date of expiry of the time allowed under section 286(1) (Table: Sl. Nos. 9 and 10) *[i.e. Where a refund arises as a result of giving effect to an order under section 359/363/365(10)/368/377/378 wholly or partly, otherwise than by making a fresh assessment or reassessment or fresh order u/s 166 with or without verification of document submitted by assessee]*
- To the date on which the refund is granted

However, if proceedings for assessment or reassessment are pending in respect of an assessee, the period beginning from the date on which such refund is withheld by the Assessing Officer and ending with the date upto which such refund is withheld, will be **excluded** for computing additional interest payable.

(iii) **Interest on refund payable to deductor [Section 437(6)]**: Where the refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XIX-B, such deductor is entitled to receive, in addition to the said amount, simple interest @0.5% for every month or part of a month for the period specified in the following table for each of the cases mentioned in column (1) hereunder –

Case		Period for grant of interest on refund	
		Beginning from	Ending with
(1)		(2)	(3)
(1)	Where refund arises on account of giving effect to an order u/s 359, 363, 365(10) or 368	Date on which tax is paid	Date of grant of refund
(2)	In any other case	Date on which claim for refund is made in prescribed form	

(iv) **Consequence where delay in granting refund is attributable to the assessee or the deductor [Section 437(7) &(8)]**: Where there is a delay in granting refund and the reasons for such delay are attributable to the assessee or the deductor, as the case may be, either wholly or in part, the period of the delay so attributable to the assessee shall be excluded from the period for which interest is payable. In case any question arises as to the period of delay attributable to the assessee, it shall be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

(v) **Increase or reduction of interest of refund as a result of assessment/ rectification/ appellate/ revisionary order [Section 437(9), (10) & (11)]**

(a) Where, as a result of an order under sections 270(10), 271, 279, 287, 288, 359, 363, 365(10), 368, 377 or 378, the amount on which interest was payable under this section is increased or reduced, the interest shall be increased or reduced accordingly.

(b) If the interest is reduced, the Assessing Officer has to serve a notice of demand on the assessee in the prescribed form specifying the amount of excess interest paid and require him to pay such amount.

(c) Such notice of demand shall be deemed to be notice under section 289 and the provisions of the Act shall accordingly apply.

(vi) **Interest under section 437 is income of the tax year in which it is allowed**

Interest allowed under section 437 is the income of the tax year in which it is allowed and should be declared in the return of income furnished for the respective tax year.

(7) Set off of refunds against tax remaining payable or withholding of refund [Section 438]

(i) **Set-off of refunds against any sum payable**: Where a refund becomes due or is found to be due to any person, the Assessing Officer or Commissioner or Principal Commissioner or Chief Commissioner or Principal Chief Commissioner, as the case may be, may, in lieu of payment of the refund, **set-off the amount to be refunded** or any part of that amount, **against the sum**, if any, remaining payable under the Income-tax Act, 1961 or Income-tax Act, 2025 by the person to whom the refund is due, **after giving an intimation in writing** to such person of the action proposed to be taken.



(ii) **Withholding of refund:** Where a part of the refund is set-off as stated above or where no such amount is set-off, and refund becomes due to a person, and the Assessing Officer, having regard to the fact that **proceedings for assessment or reassessment are pending in the case of such person,** he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or the Commissioner, **withhold the refund up to sixty days from the date on which such assessment or reassessment is made**

TEST YOUR KNOWLEDGE

Questions

1. *Mr. Madhusudan is regular in deducting tax at source and depositing the same. In respect of the quarter ended 31st December, 2026, a sum of ₹ 80,000 was deducted at source from the contractors. The statement of tax deducted at source under section 397 was filed on 23rd March, 2027 for the quarter ended 31.12.2026.*

   (i) Is there any delay on the part of Mr. Madhusudan in filing the statement of TDS?

   (ii) If the answer to (i) above is in the affirmative, how much amount can be levied on Mr. Madhusudan for such default under section 427?

   (iii) Is there any remedy available to him for reduction/waiver of the levy of fee?

2. *Smt. Vijaya, proprietor of Lakshmi Enterprises, made a turnover of ₹ 210 lakhs during the tax year 2025-26. Her turnover for the year ended 31.3.2027 was ₹ 90 lakhs.*

   Decide whether provisions relating to deduction of tax at source are attracted for the following payments made during the financial year 2026-27:

   (i) Purchase commission paid to one agent ₹ 25,000 on 13.6.2026 towards purchases made during the year.

   (ii) Payments to a Civil engineer of ₹ 5,00,000 on 23rd August, 2026 for construction of a residential house for self-use.

3. *What is the rate at which the tax is either to be deducted or collected under the provisions of the Act in the following cases?*

   (i) A partnership firm making sales of timber in September 2026, which was procured and obtained under a forest lease.

   (ii) A nationalized bank receiving professional services from a registered society made provision on 31-03-2027 of an amount of ₹ 25 lakh against the service charges bills to be received.

4. *Examine the liability for tax deduction at source in the following cases for the tax year 2026-27:*

   (i) Wings Ltd. has paid amount of ₹15 lakhs during the year ended 31-3-2027 to Airports Authority of India towards landing and parking charges.

   (ii) ₹4,45,000 paid to Mr. X on 01-02-2027 by Karnataka State Government on compulsory acquisition of his urban land. What would be your answer if the land is agricultural land?

5. *"Come Air Ltd." has paid a sum of ₹12 lakhs during the year ended 31-3-2027 to the Airports Authority of India towards landing and parking charges. The company has deducted tax at source @2% under section 393(1) (Table: Sl. No. 6(i)) on the said payment and remitted the tax deducted within the prescribed time. The Assessing Officer contended that landing and parking charges were levied for use of the land of the airport and hence, the payment was in the nature of rent attracting TDS @10% under section 393(1) (Table: Sl. No. 2(ii)). Discuss the correctness or otherwise of the contention of the Assessing Officer.*

6. *Mr. Harish, Vice President of ABC Bank, sold his house property in Chennai as well as his rural agricultural land for a consideration of ₹60 lakh and ₹15 lakh, respectively, to Mr. Suresh, a retail trader of garments, on 10.10.2026. Mr. Harish had purchased the house property and rural agricultural land in December 2024 for ₹40 lakh and ₹10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 10.10.2026, is ₹85 lakh and ₹20 lakh for the house property and rural agricultural land, respectively.*

   (a) Determine the tax implications in the hands of Mr. Harish and Mr. Suresh, if the date of agreement for sale of house property and rural agricultural land is 1.7.2026 and the stamp duty value on the said date was ₹75 lakh and ₹15 lakh, respectively. On the said date, Mr. Suresh made payment of ₹5 lakh by way of an account payee cheque to Mr. Harish for purchase of house property.

   (b) Would your answer be different if Mr. Harish is a property dealer and sold the house property in the course of his business?

7. *Siddharth Hospitals Pvt. Ltd. has recently been accorded recognition by several insurance companies to admit and treat patients on cashless hospitalization basis. Payment to the assessee hospital will be made by Third Party*

Administrators (TPA) who will process the claims of the patients admitted and make payments to the various hospitals, including the assessee. All TPAs are corporate entities. The assessee wants to know whether the TPAs are bound to deduct tax at source under section 393(1) [Table: Sl. No. 6(iii)] or under section 393(1) [Table: Sl. No. 6(i)]. Examine.

8. *Examine in the context of provisions contained in Chapter XIX-B of the Act and also work out the amount of tax to be deducted by the payer of income in the following cases:*

   (i) Payment of ₹ 5 lakh made by JCP & Co. to Pingu Events Co. Ltd. on 4th September, 2026 for organizing a debate competition on the subject "Preservation of Rural Heritage of Rajasthan".

   (ii) KD, a part-time director of DAF Pvt. Ltd., was paid an amount of ₹ 2,25,000 as fees which was actually in the nature of commission on sales for the period 1.7.2026 to 30.9.2026.

9. *Examine the applicability of the provisions relating to deduction of tax at source in the following transactions:*

   (i) Max Limited pays ₹ 1,02,000 to Mini Limited, a resident contractor who, under the contract dated 15th October, 2026, manufactures a product according to the specification of Max Limited by using materials purchased from Max Limited.

   (ii) A company operating a television channel makes payment of ₹ 5 lakh to a former Indian cricketer on 10th March, 2027 for making running commentary of a one-day cricket match.

10. *Examine in the following cases, the obligation of the person paying the income in respect of tax deduction at source:*

    (i) MNO Ltd., the employer, credited salary due for the month of March 2027 amounting to ₹ 15,40,000 to the account of Q, an employee, in its books of account on 31.3.2027. Q has not intimated his intended tax regime.

    (ii) T, an individual whose total sales in business during the year ended 31.3.2026 was ₹ 2.20 crores, paid ₹ 9 lakh by cheque on 1.1.2027 to a contractor (an individual), for construction of his factory building. No amount was credited earlier to the account of the contractor in the books of T.

(iii) *BCD Ltd. credited ₹ 28,000 towards fees for professional services and ₹ 27,000 towards fees for technical services to the account of HG in its books of account on 6.10.2026. The total sum of ₹ 55,000 was paid by cheque to HG on 18.12.2026.*

11. *Examine the liability for tax deduction at source in the following cases for the tax year 2026-27:*

(i) *Mr. Anand has been running a sole proprietary business with turnover of ₹ 202 lakhs for the F.Y.2025-26. He pays a monthly rent of ₹ 15,000 for the office premises to Mr. R, the owner of building and an individual.*

(ii) *By virtue of an agreement with a nationalised bank, a catering organisation receives a sum of ₹ 50,000 per month towards supply of food, water, snacks, etc., during office hours to the employees of the bank.*

(iii) *An Indian company pays gross salary, including allowances and monetary perquisites amounting to ₹ 12,30,000 to its General Manager (aged 45 years). Besides, the company provides non-monetary perquisites to him, whose value is estimated at ₹ 1,20,000. The general manager has not given any declaration regarding opting out of the default tax regime.*

12. *The following issues arise in connection with the deduction of tax at source under Chapter XIX-B. Examine the liability for tax deduction in these cases:*

(a) *An employee of the Central Government receives arrears of salary for the earlier 3 years. He enquires whether he is liable for deduction of tax on the entire amount during the current year.*

(b) *₹ 10 lakh is payable by a T.V. Channel on 1.9.2026 as prize money to the winner of a quiz programme, "Who will be a Millionaire".*

(c) *State Bank of India pays ₹ 55,000 per month as rent to the Central Government for a building in which one of its branches is situated.*

(d) *₹ 80,000 is payable by a television company to a cameraman on 6th January, 2027 for shooting of a documentary film.*

(e) *₹ 22,000 is payable by the Maharashtra State Government on 2.7.2026 as commission to one of its agents on the sale of lottery tickets.*

(f) *A Turf Club awards a jackpot of ₹ 5 lakh to the winner of one of its races on 1.2.2027.*

13. *Examine and compute the liability for deduction of tax at source, if any, in the cases stated hereunder, for the financial year ended 31st March, 2027:*

(i) On 20.6.2026, Mr. X, a resident, made three separate transactions for acquiring house property at Mumbai from Mr. Y for a consideration of ₹ 90 lakhs, an urban plot in Kolkata from Mr. C for a sum of ₹ 49,50,000 and rural agricultural land from Mr. D for a consideration of ₹ 60 lakhs. Stamp duty value of house property, plot and rural agricultural land is ₹ 95 lakhs, ₹ 48 lakhs and ₹ 65 lakhs, respectively.

(ii) On 17.6.2026, a commission of ₹ 50,000 was retained by the consignee 'ABC Packaging Ltd.' and not remitted to the consignor 'XYZ Developers', while remitting the sale consideration. Examine the obligation of the consignor to deduct tax at source.

(iii) Raj (aged 35 years) is working with AB Ltd. He is entitled to a salary of ₹ 85,000 per month w.e.f. 1.4.2026. He has a house property which is self-occupied. He paid an interest of ₹ 1,95,000 on loan during the tax year 2026-27. The loan was taken for construction of house. He has notified his employer AB Ltd. that there will be a loss of ₹ 1,95,000 in respect of this house property for financial year ended 31.3.2027. Raj declared that he has exercised option under section 202(4) to shift out of default tax regime.

Answers

1. (i) Yes, there has been a delay on the part of Mr. Madhusudan in filing the statement of TDS.

As per section 397(3)(*b*) read with Rule 219, the statement of tax deducted at source for the quarter ended 31st December, 2026 has to be filed on or before 31st January, 2027. However, the same was filed only on 23rd March, 2027. Hence, there has been a delay of 51 days on the part of Mr. Madhusudan in filing the statement of TDS.

(ii) As per section 427 of the Income-tax Act, 2025, where a person fails to deliver or cause to be delivered the statement of tax deducted at source within the prescribed time, then, he shall be liable to pay, by way of fee, a sum of ₹ 200 for every day during which the failure continues.

The amount of fee shall not, however, exceed the amount of tax deductible.

In this case, since Mr. Madhusudhan has delayed filing the statement of TDS by 51 days, he would be liable to pay a fee of ₹ 10,200 (₹ 200 x 51 days) under section 427. The said fee does not exceed the tax deductible (₹ 80,000, in this case).

(iii) Under section 239, the CBDT is empowered to issue general or special orders, whether by way of relaxation of any of the provisions of sections 263, 270, 271, 279 etc., or otherwise, in respect of any class of incomes or class of cases. The CBDT may issue such order(s) from time to time, if it considers it expedient to do so, for the purpose of proper and efficient management of the work of assessment and collection of revenue. Section 427 is included in the list of sections in respect of which the CBDT is empowered to issue order for relaxation of the provisions of the Act.

Hence, the remedy available to Mr. Madhusudhan is that he can file an application to the CBDT under section 239 and seek a waiver/reduction of the fee levied/leviable under section 427.

2. Since Smt. Vijaya's turnover from business was ₹ 210 lakhs in the immediately preceding tax year (i.e., T.Y. 2025-26), she is liable to deduct tax at source in the T.Y.2026-27, irrespective of her turnover being only ₹ 90 lakhs in the current tax year.

(i) Tax @2% has to be deducted under section 393(1) (Table: Sl. No. 1(ii)) in respect of purchase commission of ₹ 25,000 to an agent for purchases made during the year, since the same exceeds the threshold limit of ₹ 20,000 for non-deduction of tax at source thereunder.

(ii) Tax has to be deducted under section 393(1) [Table: Sl. No. 6(i)] in case of payment to resident contractors. The rate of tax is 1% if the payee is an individual or HUF and 2% in case of payees, other than individuals and HUFs.

However, as per section 393(4) (Table: Sl. No. 8), no individual or HUF shall be liable to deduct income tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal

purposes of such individual or any member of the HUF. In such case, the provisions of section 393(1) [Table: Sl. No. 6(ii)] would be attracted **if the aggregate payment to the contractor exceeds ₹ 50 lakhs.**

In this case, since Smt. Vijaya, an individual, makes payment of ₹ 5 lakh to a civil engineer for the construction of residential house for self-use, she is **not liable to deduct tax at source** either under section 393(1) [Table: Sl. No. 6(i)] or under section 393(1) [Table: Sl. No. 6(ii)] from such sum.

3. **(i)** As per section 394(1) (Table: Sl. No. 3) read with Section 402, tax has to be collected at source@2% by the partnership firm, being a seller, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount, whichever is earlier.

(ii) Tax has to be deducted at source@10% under section 393(1) (Table: Sl. No. 6(iii)), by the nationalized bank at the time of credit of fees for professional services to the account of the registered society (i.e., on 31.3.2027), even though payment is to be made after that date.

4. **(i)** **TDS on landing and parking charges:** The landing and parking charges which are fixed by the Airports Authority of India are not merely for the "use of the land". These charges are also for services and facilities offered in connection with the aircraft operation at the airport, which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport *[Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)]*. **Thus, tax is <u>not</u> deductible under section 393(1) (Table: Sl. No. 2(ii)), which provides deduction of tax for payment in the nature of rent.**

Hence, tax is deductible @2% under section 393(1) (Table: Sl. No. 6(i)) by the airline company, Wings Ltd., on payment of ₹ 15 lakhs made towards landing and parking charges to the Airports Authority of India for the tax year 2026-27 as contract charges.

(ii) **TDS on compensation for compulsory acquisition:** Tax is deductible at source @10% under section 393(1) [Table: Sl. No. 3(iii)], where

payment is made to a resident as compensation or enhanced compensation on compulsory acquisition of any immovable property (other than agricultural land).

However, no tax deduction is required if the aggregate payments in a year do not exceed ₹ 5,00,000.

Therefore, no tax is required to be deducted at source on payment of ₹ 4,45,000 to Mr. X, since the aggregate payment does not exceed ₹ 5,00,000.

If the land is agricultural land, no tax would be deductible under section 393(1) [Table: Sl. No. 3(iii)], irrespective of the amount of compensation.

5. The issue as to whether the charges fixed by the Airport Authority of India (AAI) for landing and take-off facilities and parking facilities for the aircraft are for the "use of the land" by the airline company came up before the Supreme Court in *Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372*.

The Supreme Court observed that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport, which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

Various international protocols mandate all authorities manning and managing these airports to construct the airport of desired standards, which are stipulated in the protocols. The services that are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as safe landing and parking of aircraft. Therefore, the services are not restricted to merely permitting "use of the land" of airport. On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.

The Supreme Court observed that the charges levied on air traffic include landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger

service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would be tantamount to adopting a totally simplistic approach, which is far away from reality.

The Supreme Court opined that the substance behind such charges has to be considered, and when the issue is viewed from this angle, keeping the larger picture in mind, it becomes very clear that the charges are not for use of the land *per se* and, therefore, it cannot be treated as "rent" within the meaning of section 402(29). The Supreme Court, thus, concurred with the view taken by the Madras High Court in *Singapore Airlines* case and overruled the view taken by the Delhi High Court in *United Airlines/Japan Airlines* case.

Applying the rationale of the Supreme Court ruling to the facts of this case, the contention of the Assessing Officer that landing and parking charges are levied for the use of the land of airport and, hence, the charges are in the nature of rent to attract the provisions of tax deduction at source under section 393(1) (Table: Sl. No. 2(ii)) is ***not*** correct. It is subject to tax deduction at source @2% under section 393(1) [Table: Sl. No. 6(i)] considering as contract charges.

6. (a) Tax implications on sale of rural agricultural land and house property representing a capital asset in the hands of Mr. Harish, a salaried employee

(i)	**Tax implications in the hands of Mr. Harish, a salaried employee**
	Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. Harish. However, capital gains would arise on the sale of house property, being a capital asset. As per section 78(1), the stamp duty value of house property on the date of agreement (i.e., ₹ 75 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, ₹ 35 lakh (i.e., ₹ 75 lakh – ₹ 40 lakh, being the purchase price) would be taxable as **short-term capital gains** in the tax year 2026-27. It may be noted that as the date of the agreement is different

	from the date of registration and part of the consideration was received on or before the date of agreement by way of account payee cheque, the stamp duty value on the date of agreement is to be adopted as the deemed sale consideration.
(ii)	**Tax implications in the hands of the buyer – Mr. Suresh, a retail trader**
	The house property purchased would be a capital asset in the hands of Mr. Suresh, who is a retail trader of garments. The provisions of section 92(2)(m) are attracted in the hands of Mr. Suresh who has acquired the immovable property, being a capital asset, for inadequate consideration. For the purpose of section 92(2)(m), Mr. Suresh can take the stamp duty value on the date of agreement instead of the date of registration since he has paid a part of the consideration by account payee cheque on the date of agreement. Therefore, ₹ **15 lakh,** being the difference between the stamp duty value of the property **on the date of agreement** (i.e., ₹ 75 lakh) and the actual consideration (i.e., ₹ 60 lakh) would be taxable as per section 92(2)(m) under the head "**Income from other sources**" in the hands of Mr. Suresh, since such difference exceeds the higher of ₹ 50,000 or 10% of consideration. As rural agricultural land is not a capital asset, the provisions of section 92(2)(m) are not attracted in respect of acquisition of agricultural land for inadequate consideration, since the definition of "property" under section 92(2)(*m*) includes only **capital assets** specified thereunder.

(b) Tax implications on sale of house property representing stock-in-trade in the hands of Mr. Harish, a property dealer:

(i)	**Tax implications in the hands of Mr. Harish**
	If Mr. Harish is a property dealer who has sold the house property in the course of his business, the provisions of section 53 would be attracted, since the house property represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value. For the purpose of section 53, Mr. Harish can take the stamp

	duty value on the date of agreement instead of the date of registration, since he has received part of the sale consideration by an account payee cheque on the date of agreement and it exceeds 110% of the consideration. Therefore, **₹ 35 lakh**, being the difference between the stamp duty value on the date of agreement (i.e., ₹ 75 lakh) and the purchase price (i.e., ₹ 40 lakh), would be chargeable as **business income** in the hands of Mr. Harish.
(ii)	**Taxability in the hands of Mr. Suresh**
	There would be no difference in the taxability in the hands of Mr. Suresh, whether Mr. Harish is a property dealer or a salaried employee. Therefore, the provisions of section 92(2)(m) would be attracted in the hands of Mr. Suresh who has received house property, being a capital asset, for inadequate consideration.

7. This issue has been clarified by the CBDT *Circular No.8/2009 dated 24.11.2009*. As per provisions of section 393(1) [Table: Sl. No. 6(iii)], any person, who is responsible for paying to a resident any sum by way of fees for professional services, shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to 10% of such sum as TDS.

Further, as per section 402(28) "professional services" includes services rendered by a person in the course of carrying on medical profession.

The services rendered by hospitals to various patients are primarily medical services and therefore, **the provisions of section 393(1) [Table: Sl. No. 6(iii)] are applicable on payments made by TPAs to hospitals,** etc. Further, for invoking provisions of section 393(1) [Table: Sl. No. 6(iii)], there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to the hospital. Therefore, TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/ insurance claims, etc. under various schemes, including Cashless Schemes, are liable to deduct tax at source under section 393(1) [Table: Sl. No. 6(iii)] on all such payments to hospitals, etc.

In view of the above, all such transactions between TPAs and hospitals would fall within the ambit of provisions of section 393(1) [Table: Sl. No. 6(iii)].

8. **(i)** The services of Event Managers in relation to sports activities alone have been notified by the CBDT as "professional services" for the purpose of section 393(1) [Table: Sl. No. 6(iii)]. In this case, payment of ₹ 5 lakh was made to an event management company for organization of a debate competition. Hence, the provisions of section 393(1) [Table: Sl. No. 6(iii)] are not attracted.

However, TDS provisions under section 393(1) [Table: Sl. No. 6(i)] relating to **contract payments** would be attracted and consequently, tax has to be deducted @2% under section 393(1) [Table: Sl. No. 6(i)]. The tax deductible under section 393(1) [Table: Sl. No. 6(i)] would be ₹ 10,000, being 2% of ₹ 5 lakh.

(ii) Section 393(1) [Table: Sl. No. 6(iii)] provides for deduction of tax at source @10% on any remuneration or fees or commission, by whatever name called, paid to a director, which is not in the nature of salary in respect of which tax is deductible at source under section 392.

Hence, tax is to be deducted at source under section 393(1) [Table: Sl. No. 6(iii)] @10% by DAF Pvt. Ltd. on the commission of ₹ 2,25,000 paid to KD, a part-time director. The tax deductible under section 393(1) [Table: Sl. No. 6(iii)] would be ₹ 22,500, being 10% of ₹ 2,25,000.

9. **(i)** The definition of "work" under section 393(1) [Table: Sl. No. 6(i)] read with section 402(47) includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate. In the instant case, Mini Limited manufactures the product as per the specification given by Max Limited by using the raw materials purchased from Max Limited. Therefore, it falls within the definition of "work" for the purpose of section 393(1) (Table: Sl. No. 6(i)). Consequently, tax is to be deducted on the invoice value, excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. If the material component is not mentioned separately in the invoice, tax is to be deducted on the whole of the invoice value.

(ii) Provisions for deduction of tax at source under section 393(1) [Table: Sl. No. 6(iii)] are attracted in respect of payment of fees for professional

services, if the amount of such fees exceeds ₹ 50,000 in the relevant financial year. The service rendered by a commentator in relation to sports activities has been notified by the CBDT as a professional service for the purposes of section 393(1) [Table: Sl. No. 6(iii)] *vide* its *Notification No. 88 dated 21st August, 2008*. Therefore, tax is required to be deducted @10% from the fee of ₹ 5 lakhs payable to the former cricketer.

10. (i) Section 392 requires deduction of tax from salary at the time of payment. Thus, the employer is not required to deduct tax at source when salary has not been paid but is merely credited to the account of the employee in its books of account. MNO Ltd., therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee Q which is not paid.

If salary has been paid during the year to Q, then, MNO Ltd., a deductor, being an employer, shall seek information from each of its employees having income under section 392 regarding their intended tax regime, and each such employee shall intimate the same to the deductor, being his employer, regarding his intended tax regime for each year and upon intimation, the deductor shall compute his total income, and deduct tax at source thereon according to the option exercised.

If intimation is not made by the employee, it shall be presumed that the employee continues to be in the default tax regime and has not exercised the option to opt out of the new tax regime. Accordingly, in such a case, MNO Ltd. shall deduct tax at source, on income under section 392, in accordance with the rates provided under section 202(1).

(ii) An individual who has total sales, gross receipts or turnover from the business carried on by him exceeding ₹ 1 crore in the immediately preceding tax year, i.e., T.Y. 2025-26, is liable to deduct tax at source under section 393(1) [Table: Sl. No. 6(i)] for the tax year 2026-27 in respect of the payment made to contractor exceeding ₹ 30,000 in a single contract and ₹ 1,00,000 in aggregate of contracts during the financial year. Since, turnover of the individual T is ₹ 2.20 crores in T.Y. 2025-26 and as the payment during T.Y.2026-27 to the contractor has

exceeded the limits prescribed in section 393(1) [Table: Sl. No. 6(i)], tax has to be deducted under section 393(1) [Table: Sl. No. 6(i)].

The rate of tax deduction at source is 1% as the contractor is an individual.

(iii) The limit of ₹ 50,000 for non-deduction of tax under section 393(1) [Table: Sl. No. 6(iii)] **would apply separately for fees for professional services and fees for technical services.** This means that if a person has rendered services falling under both the categories, tax need not be deducted if the fee for each category does not exceed ₹ 50,000, even though the aggregate of the amounts credited to the account of such person or paid to him for both categories of services exceed ₹ 50,000. Therefore, BCD Ltd. is not required to deduct tax at source in respect of the fees either at the time of credit or at the time of payment.

11. (i) Where the payer is an individual or HUF whose total sales, gross receipts or turnover from the business carried on by him exceeds ₹ 1 crore during the tax year immediately preceding the tax year in which such rent was credited or paid, is liable to deduct tax at source. Since the turnover from the business of Mr. Anand was ₹ 202 lakhs for the T.Y. 2025-26, he is liable to deduct tax at source under section 393(1) [Table: Sl. No. 2(ii)] in respect of rental payments during the tax year 2026-27, if rent payment per month exceed ₹ 50,000.

Since in the present case the monthly rental payments of ₹ 15,000 to Mr. R during the financial year 2026-27 do not exceed ₹ 50,000, Mr. Anand is not liable to deduct tax under section 393(1) [Table: Sl. No. 2(ii)] from rent paid to Mr. R.

(ii) The definition of "work" under section 402(47) includes catering services and therefore, TDS provisions under section 393(1) [Table: Sl. No. 6(i)] are attracted in respect of payments to a caterer. As the payment exceeds ₹ 30,000, the nationalised bank is required to deduct tax at source at 2% on the payments made to catering organisation. If the catering organization is an individual or HUF, then, the tax deduction shall be made @1%

(iii)

	₹
Gross salary, allowances and monetary perquisites	12,30,000
Non-Monetary perquisites	1,20,000
	13,50,000
Less: Standard deduction under section 19(1)	75,000
	12,75,000
Tax Liability	74,100
Average rate of tax (₹ 74,100 / ₹ 12,75,000 × 100)	5.81%

The company can deduct ₹ 74,100 at source from the salary of the General Manager at the time of payment.

Alternatively, the company can pay tax on non-monetary perquisites as under –

Tax on non-monetary perquisites =5.81% of ₹ 1,20,000 = ₹ 6,972

Balance to be deducted from salary = ₹ 67,128

If the company pays a tax of ₹ 6,972 on non-monetary perquisites, the same is not a deductible expenditure as per section 35(a)(ii). The amount of tax paid towards non-monetary perquisite by the employer, however, is not chargeable to tax in the hands of the employee as per Schedule III (Table: Sl. No. 10).

12. (a) As per section 392, tax is deductible at source by any person who is responsible for paying any income chargeable under the head 'Salaries'. However, as per Section 392(4)(a)(ii), the employee will be entitled to relief u/s 157 and consequently, he will be required to furnish to the person responsible for making the payment, such particulars in the prescribed form (i.e., Form No. 39). The person responsible for making the payment shall compute the relief and take into account the same while deducting tax at source from salary.

(b) Under section 393(3) (Table: Sl. No. 1), the person responsible for paying by way of winnings from any card game and other game in an amount exceeding ₹ 10,000 shall, at the time of payment, deduct

income-tax at 30%. Therefore, tax of ₹ 3 lakh has to be deducted at source from the prize money of ₹ 10 lakh payable to the winner.

(c) Section 393(1) [Table: Sl. No. 2(ii)], which governs the deduction of tax at source on payment of rent, exceeding ₹ 50,000 per month or part of the month, is applicable to all taxable entities except individuals and HUFs, whose total sales, gross receipts or turnover from the business or profession carried on by him does not exceed ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the tax year immediately preceding tax year in which such rent was credited or paid, is liable to deduct tax at source. Section 393(5), however, provides an exemption in respect of payments made to the Government from the application of the provisions of tax deduction at source.

Therefore, **no tax is required to be deducted at source by the State Bank of India from rental payments to the Government.**

(d) If the cameraman is an employee of the T.V. company, the provisions of section 392 will apply. However, if he is a professional, TDS provisions under section 393(1) [Table: Sl. No. 6(iii)] will apply. Tax at 10% will have to be deducted at the time of credit of ₹ 80,000 or on its payment, whichever is earlier.

(e) Under section 393(3) [Table: Sl. No. 4], the person responsible for paying to any person, stocking, distributing, purchasing or selling lottery tickets shall at the time of credit of the commission or payment thereof, whichever is earlier, amounting to more than ₹ 20,000, deduct income-tax at source @2%.

Accordingly, tax @2% under section 393(3) (Table: Sl. No. 4) amounting to ₹ 440 has to be deducted from the commission payment of ₹ 22,000 to the agent of the State Government.

(f) The TDS on payment by way of winnings from horse race is governed by section 393(3) (Table: Sl. No. 3). Under this section, the person responsible for payment shall, at the time of payment, deduct tax at source @ 30%, if the payment exceeds ₹ 10,000.

Accordingly, tax @30% amounting to ₹ 1,50,000 has to be deducted from the winnings of ₹ 5 lakh payable to the winner of the race.

13. Liability for deduction of tax at source

	Reasoning	Amount of TDS (₹)
(i)	Since the consideration and stamp duty value for transfer of house property in Mumbai both are not less than ₹ 50 lakhs, Mr. X, being the transferee, is required to deduct tax @1% under section 393(1) [Table: Sl. No. 3(i)] on ₹ 95 lakhs, being higher of stamp duty value and the amount of consideration for transfer of property, at the time of credit to the transferor account or payment, whichever is earlier.	95,000
	Mr. X is not required to deduct tax at source under section 393(1) [Table: Sl. No. 3(i)] from the consideration of ₹ 49,50,000 paid to Mr. C for transfer of urban plot, since the consideration and stamp duty value, both are less than ₹ 50 lakhs.	Nil
	Mr. X is also not required to deduct tax at source under section 393(1) [Table: Sl. No. 3(i)] for transfer of rural agricultural land, since the same is specifically excluded from the scope of immovable property for the purpose of tax deduction at source under section 393(1) [Table: Sl. No. 3(i)].	Nil
	Note - *Section 393(1) [Table: Sl. No. 3(i)] requires every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to deduct tax, at the rate of 1% of higher of consideration and stamp duty value, at the time of credit of such sum to the account of the resident transferor or at the time of payment of such consideration to the resident transferor, whichever is earlier. However, no tax is required to be deducted where the consideration for transfer of an immovable property and stamp duty value of such property, both are less than ₹ 50 lakhs.*	

(ii)	Section 393(1) [Table: Sl. No. 1(ii)] requires the deduction of tax at source @2% from commission and brokerage payments to a resident. However, no tax is to be deducted at source where the amount of such payment does not exceed ₹ 20,000. In the given case, 'ABC Packaging Ltd.', the consignee, has not remitted the commission of ₹ 50,000 to the consignor 'XYZ Developers' while remitting the sales consideration. Since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission *[CBDT Circular No. 619 dated 4/12/1991]*. Therefore, XYZ Developers has to deduct tax at source on ₹ 50,000 at the rate of 2%.	1,000
(iii)	Section 392 provides that tax is required to be deducted on the payment made as salaries. Tax is to be deducted on the estimated income at the rates specified under section 202(1) or at the average of income tax computed on the basis of the rates in force for the tax year in which payment is made in case the employee submitted a declaration of opt out of the default tax regime under section 202(4). The employee may declare details of his other incomes (including loss under the head "Income from house property" but not any other loss) to his employer. In this case, since Mr. Raj has submitted a declaration of opt out of section 202 and also notified his employer AB Ltd. of loss from self-occupied house property, the employer has to take the same into consideration for deduction of tax at source. Therefore, AB Ltd. is required to deduct tax at source on the salary of ₹ 85,000 per month paid to Mr. Raj,	

	in the following manner:		
	Income under the head salaries (₹ 85,000 x 12)	10,20,000	
	Less: Standard deduction under section 19(1)	50,000	
		9,70,000	
	Income under the head "house property"	(1,95,000)	
	Gross total income	7,75,000	
	Less: Deduction under Chapter VIII	Nil	
	Total Income	7,75,000	
	Tax on ₹ 7,75,000	67,500	
	Add: Health and Education cess@4%	2,700	
	Tax to be deducted at source	**70,200**	**70,200**