

TDS NOT TO BE DEDUCTED ON SERVICE TAX COMPONENT SHOWN SEPARATELY

Circular 01/2014 dated 13.01.2014 reproduced hereunder.

F. No_ 275/59/20124T(B)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Circular No.01/2014
New Delhi, the 13th January-'2014

Subject: TDS under Chapter XVII-,13 of the Income-tax Act, 1961 on service tax component comprised in the payments made to residents - clarification regarding

1. The Board had issued a Circular No.4/2008 dated 28-04-2008 wherein it was clarified that tax is to be deducted at source under Section 194-1 of the Income-tax Act, 1961 (hereafter referred to as 'the Act'), on the amount of rent paid/payable without including the service tax component. Representations/letters has been received seeking clarification whether such principle can be extended to other provisions of the Act also.
2. Attention of CBDT has also been drawn to the judgement of the Hon'ble Rajasthan High Court dated 01.07.2013, in the case of CIT(TDS) Jaipur vs Rajasthan Urban Infrastructure (Income-tax Appeal No.235, 222, 238 and 239/2011), holding that if as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately and was not included in the fees for professional services or technical services, no TDS is required to be made on the service tax component u/s 194J of the Act.
3. The matter has been examined afresh. In exercise of the powers conferred under section 119 of the Act, the Board has decided that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such service tax component.
4. This circular may be brought to the notice of all officers for compliance.
5. Hindi version shall follow.

Under Secretary to Government of India

CIT(TDS) Jaipur vs Rajasthan Urban Infrastructure (Income-tax Appeal No.235, 222, 238 and 239/2011) which is related to payments covered under Section 194J (professional and technical services) of the income Tax.

However after careful reading of para 3 of the Circular 1/2014 dated 13.01.14 ,it has been noticed that though the CBDT has refred the decision of Hon'ble Rajastlian High Court dated 01.07.2013, in the case of CIT(TDS) Jaipur vs Rajasthan Urban Infrastructure (Income-tax Appeal No.235, 222, 238 and 239/2011) ,yet in clarification ,TDS on service tax (if indicated separately has been exempted under all section covered chapter XVII-B of the ACT.

*3. The matter has been examined afresh. In exercise of the powers conferred under section 119 of the Act, the Board has decided **that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such service tax component.***

So the above circular shall apply not only on section 194J but on following section also.

1. 194C(1) Contracts
2. 194C(2) Sub-contracts/ Advertisements
3. 194D Insurance Commission
4. 194G Commission on sale of lottery tickets
5. 194H Commission or Brokerage
6. 194I Rent (Land & building) furniture & fittings) Rent (P & M , Equipment)
7. 194 IA TDS on transfer of immovable property other than agriculture land (wef 01.06.13)
8. 194J Professional/Technical charges/ Royalty & Non-compete f
9. 194J(1)(ba) Any remuneration or commission paid to director of the company (Effective from 1 July 2012)
10. Payment made to **Resident** all other section covered under chapter XVII-B of the Income Tax Act, 1961

Following points/conditions should be noted given under in new circular 01/2014 dated 13.01.14 to get exemption on TDS on service Tax

1. The payment should be made to Resident so all payment made to non residents, tds is to be deducted including service tax amount.
2. Service Tax amount payable shall be indicated separately in term of Agreement/Contract between payer and payee.

If both the above condition are satisfied then no need to deduct TDS on service tax part.

As per our opinion the circular is effective prospectively, however it can be interpreted by courts otherwise also.

This circular has come after judgement of the Hon'ble Rajasthan High Court dated 01.07.2013, in the case of CIT(TDS) Jaipur vs Rajasthan Urban Infrastructure (Income-tax Appeal No.235, 222, 238 and 239/2011), holding that if as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately and was not included in the fees for professional services or technical services, no TDS is required to be made on the service tax component u/s 194J of the Act.

Earlier ,The Central Board of Direct Tax ("the CBDT") vide its Circular No. 4/2008, dated 28.04.2008 held that TDS under Section 194I of the Income Tax Act would be required to be made on the amount of rent paid/payable without including the Service Tax. However, the CBDT vide its Circular No. 275/73/2007-IT(B), dated 30.06.2008 decided not to extend the scope of Circular No. 4/2008 to payment made under Section 194J of the Income Tax Act since it covers any sum paid.