

### **Payment of certain sums by certain Individuals or HUFs – Section 194M**

Finance Bill (No.2) 2019 has inserted a new Section 194M (effective from 01.09.19) which provides deduction of tax at source @ 5% in relation to payment for carrying any work (including supply of labour for carrying out any work) in pursuance of contract or by way of fees for professional services by any Individual or Hindu Undivided Family [HUF] (collectively or individually referred as 'Payer') to a resident in case the payment or payments in aggregate exceeds Rs. 50 Lakhs during the financial year.

Memorandum to Finance Bill (No.2) 2019 provides that the provisions of Section 194M is proposed to introduce to plough the loophole for possible tax evasion where in individual or HUF is carrying on business or profession which is not subjected to audit, since there is no obligation to deduct tax at source on such payment to a resident, even if the payment is for the purpose of business or profession<sup>1</sup>.

Sec 194M would apply in case of individual or HUF who are not required to deduct tax under Section 194C or 194J as the case may be. In other words, the provisions of Section 194M would apply only in situations where the payer is not obliged to deduct tax in terms of Section 194C or Section 194J. Hence, it assumes importance to understand under what circumstances payer is obliged to deduct tax under Section 194C or Section 194J to determine the applicability of Section 194M.

#### **Section 194C – Payments to Contractors:**

Any person responsible for paying any sum to any resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between contractor and specified person is required to deduction tax at source subject to monetary limits of Rs. 30,000/- for single transaction or Rs. 1,00,000/- for aggregate transactions during the financial year.

Section 194C (4) provides that the where sum credited or paid to the contractor ***which is exclusively for personal purpose*** of such an Individual or member of HUF is not obliged to deduct tax when making such payments.

The payer under Section 194C is any person being an individual or HUF who is liable to audit od accounts under Section 44AB during the financial year in which obligation to deduct tax arises.

#### **Section 194J – Fee for Professional or Technical Services:**

Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of fees for professional services (among others) shall at the time of credit or payment deduct tax at source subject to a monetary limit of Rs. 30,000/- subject to certain exceptions.

However an obligation is fixed on individual or HUF, whose total sales, gross receipts or turnover from the business or profession carried on by them exceed the monetary limits specified under Section

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<sup>1</sup> Even though the memorandum states that the insertion of Section 194M is to reduce the possible tax evasion arising from non-deduction of taxes by individuals or HUF when expending for business or profession, the proposed section also covers the expenses incurred by individuals or HUF for personal purposes also.

44AB during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, to deduct tax under Section 194J (second proviso to Section 194J).

Further, the above obligation on individual or HUF is relaxed if such individual or HUF uses the said services **exclusively for personal purposes** (third proviso to Section 194J).

Hence, from the above reading of Section 194C and 194J, it is evident that an individual or HUF will not be obliged to deduct tax under the said sections, if such individual or HUF satisfies any of the following conditions:

- sum referred to there in is for work or fees for professional services exclusively for personal purposes
- In case Individual or HUF is engaged in business or profession whose books of accounts are not subject to tax audit under Section 44AB in the financial year in which obligation arises for deduction

Hence, it is evident that if an individual or HUF who is falling under the exceptions listed above, would be obliged to now deduct tax under Section 194M provided the sum or aggregate of sum exceeds Rs. 50 Lakhs during the financial year.

For the purpose of Section 194M the term 'contract', 'work' and 'professional services' have the same meaning as defined under Section 194C and Section 194J respectively.

'Work' shall include-

- (a) Advertising;
- (b) Broadcasting and telecasting including production of programmes for such broadcasting or telecasting;
- (c) Carriage of goods or passengers by any mode of transport other than by railways;
- (d) Catering;
- (e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

***(clause (iv) of Explanation to Section 194C)***

'Contract' shall include sub-contract

***(clause (iii) of Explanation to Section 194C)***

'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 Board for the purposes of section 44AA or of this section

***(clause (a) of Explanation to Section 194J)***

## **FAQs on Section 194M -**

### ***FAQ #1 Is Section 194M is applicable in case the Payer is a Non-Resident and payee is a resident?***

*Yes, if an individual or HUF becomes non-resident during the financial year, the obligation under Section 194M would continue to apply.*

### ***FAQ #2 Is Payer under Section 194M is required to obtain TAN?***

*No. Payer should have Permanent Account Number (PAN).*

### ***FAQ #3 Whether TDS is required to be made on sum including GST levied there in?***

*TDS is to be made on sum excluding GST in case shown separately.*

### ***FAQ #4 Is deduction required to be made in case payment to transporter having less than 10 goods carriages (Payee)?***

*Yes, no exception is provided in the section and transport of goods by carriage is covered under the definition of 'work' as per Section 194M read with Section 194C.*

### ***FAQ # 5 Can application under Section 197 be made by the payee for no deduction of tax or lower deduction of tax?***

*Yes.*

### ***FAQ #6 Mr. A is getting his house constructed in India. For this purpose, he has taken services of interior decorator and contractor for construction of house. The consideration payable to interior decorator is Rs. 25 Lakhs and to contractor is Rs. 35 lakhs. Is tax to be deducted to be made under Section 194M?***

*No. As the sum payable to each person does not exceed Rs. 50 Lakhs.*