

**Update on**  
**Section 194-IB**  
**of the Income Tax Act, 1961**  
**as inserted by the Finance Act, 2017**

1. The Finance Act, 2017 has **introduced and inserted** a new **section 194-IB** in Chapter XVII-B of the Income Tax Act, 1961 titled **“Payment of rent by certain individuals or Hindu undivided family”**, obliging certain individual and HUFs to deduct tax at source @ 5% of payment of any income to a resident by way of rent for the use of any land, building or both **exceeding** Rs. 50,000/- for a month or part of a month during **the previous year**.
2. The above amendment has been made to **widen the scope of TDS**.
3. **Section 194-IB** reads as follows:

**“194-IB. (1)** Any person, being an individual or a Hindu undivided family (**other than** those referred to in the **second proviso** to **section 194-I**), responsible for paying **to a resident** any income by way of rent **exceeding** fifty thousand rupees **for a month or part of a month during the previous year**, shall deduct an amount equal to **five per cent.** of such income as income-tax thereon.

(2) The income-tax referred to in sub-section (1) shall be deducted on such income **at the time of credit of rent, for the last month of the previous year or the last month of tenancy**, if the property is vacated during **the year**, as the case may be, 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**.

(3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

(4) In a case where the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable **for the last month of the previous year or the last month of the tenancy**, as the case may be.

*Explanation.*— For the purposes of this section, **“rent”** means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.’.

3. The **memorandum** to the Finance Bill, 2017 explains the above provision as follows:

**Deduction of tax at source in the case of certain  
Individuals and Hindu undivided family**

The existing provisions of section 194-I of the Act, *inter alia*, provide for deduction of tax at source at the time of credit or payment of rent to the account of the payee beyond a threshold limit. It is further provide that an Individual or a Hindu undivided family who is liable for tax audit under section 44AB for any financial year immediately preceding the financial year in which such income by way of rent is credited or paid shall be required to deduction of tax at source under this section.

Therefore, under the existing provisions of the aforesaid section, an Individual and HUF, being a payer (other than those liable for tax audit) are **out of the scope** of section 194-I of the Act.

**In order to widen the scope of tax deduction at source**, it is proposed to insert a new section 194-IB in the Act to provide that Individuals or a HUF (other than those covered under 44AB of the Act), responsible for paying to a resident any income by way of rent exceeding fifty thousand rupees for a month or part of month during the previous year, shall deduct an amount equal to five per cent. of such income as income-tax thereon.

It is further proposed that tax shall be deducted on such income **at the time** of credit of rent, **for** the last month of **the** previous year or the last month of tenancy if the property is vacated during the year, as the case may be, 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.

In order to reduce the compliance burden, it is further proposed that the deductor shall not be required to obtain tax deduction account number (TAN) as per section 203A of the Act. It is also proposed that the deductor shall be **liable to deduct tax only once in a previous year**. It is also proposed to provide that where the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable **for** the last month of **the** previous year or the last month of the tenancy, as the case may be.

This amendment will take effect from **1st June, 2017**.

## Comments

1. The analysis of **section 194-IB** is as follows:

“(1) Any **person, being**

- an individual **or**
- a Hindu undivided family

(***other than*** those referred to in the **second proviso** to section 194-I), responsible for paying to **a resident** ***any income by way of rent exceeding*** fifty thousand rupees ( Rs. 50,000) for **a month or part of a month** during ***the previous year***, shall ***deduct*** an amount equal to five per cent. (5%) of ***such*** income as income-tax thereon.

(2) The income-tax referred to in sub-section (1) shall be deducted on ***such*** income ***at the time*** of ***credit*** of ***rent, for the*** last month of ***the previous year or*** the last month of tenancy, if the ***property*** is vacated during the year, as the case may be, 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.

(3) The provisions of **section 203A** ***shall not apply*** to a person required to deduct tax in accordance with the provisions of this section.

(4) In a case where the tax is required to be deducted as per the provisions of **section 206AA**, such deduction ***shall not exceed*** the amount of rent payable for the last month of the previous year ***or*** the last month of the tenancy, as the case may be.

*Explanation.*—For the purposes of this section, **“rent”** means any payment, by whatever name called, under any

- lease,
- sub-lease,
- tenancy **or**
- any other
  - agreement **or**
  - arrangement

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for the use of any

- land **or**
- building **or**
- both.”

### Scope of section 194-IB

#### A. Out of the scope of section 194-IB

2. Under section **194-IB(1)** only to **individuals** and **HUFs** are the persons responsible to deduct tax at source.
3. However, certain individuals and HUF have been kept **out of the scope** of section 194-IB.
4. Under the existing provisions of **section 194-I**, an Individual and a HUF, **being a payer** {**other than** those referred to in the **second proviso** to **section 194-I**} are **out of the scope** of **section 194-I** of the Act.
5. As per the second proviso to **section 194-I**, an Individual **or** a HUF, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limit specified under **clause (a) or clause (b)** of **section 44AB** during the *financial year* immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.
6. As per **clause (a)** of **section 44AB**, every person carrying on business shall , if his total sales, turnover or gross receipts, as the case may be, **in** business exceed **or** exceeds **Rs. one crore** in any previous year, shall get his accounts of **such** previous year audited.
7. As per **clause (b)** of **section 44AB**, every person carrying on profession shall, if his receipts, **in** business exceed **Rs. Fifty lakh** {From financial year 2016-17 relevant for assessment year 2017-18 vide the Finance Act, 2016} {up to financial year 2015-16 relevant for assessment year 2016-17 **Rs. Twenty five lakh**} in any previous year, shall get his accounts of **such** previous year audited.

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8. Therefore, for the purposes of second proviso to **section 194-I**, the monetary limits are as follows:

SN	Clause of Sec. 44AB	Persons covered	Monetary limit for FY 2015-16 (AY 2016-17)	Monetary limit for FY 2016-17 (AY 2017-18)	Monetary limit for FY 2017-18 (AY 2018-19)
1	(a)	Carrying on business	Exceeding Rs. 1 crore	Exceeding Rs. 1 crore	Exceeding Rs. 1 crore
2	(b)	Carrying on profession	Exceeding Rs. 25 Lakh	Exceeding Rs. 50 Lakh	Exceeding Rs. 50 Lakh

9. Thus, in order to widen the scope of tax TDS section **194-IB** has been **inserted** making Individual **or** HUF (**other than** those covered under **clause (a) or clause (b) of section 44AB** of the Act), to deduct tax at source @ 5% of the amount of rent paid or credited to a resident exceeding Rs. 50,000/- for a **month or part of month** during the previous year.
10. The provisions of **section 194-IB** are applicable *w.e.f.* 1.6.2017. Under this section tax is to be deducted during the FY 2017-18 as from 1.6.2017.
11. Therefore, if any individual or HUF, who being in **business**, had total sales, turnover or gross receipts during the financial year 2016-17 exceeding Rs. One crore, **shall be within the scope** of section 194-I *vide* clause (a) of its second proviso, thus shall be **out of the scope** of section 194-IB.
12. Similarly, if any individual or HUF, who being in **profession**, had gross receipt during the financial year 2016-17 exceeding Rs. 50 Lakh, **shall be within the scope** of section 194-I *vide* clause (b) of its second proviso, thus shall be **out of the scope** of section 194-IB.

### **B. Within the scope of section 194-IB**

13. If any individual or HUF, who being in **business**, had total sales, turnover or gross receipts during the financial year 2016-17 of Rs. One crore **or not** exceeding Rs. One crore, **shall be outside the scope** of section 194-I *vide* clause (a) of its second proviso. Such individual or HUF shall be within the scope of section 194-IB.

14. Similarly, if any individual or HUF, who being in **profession**, had gross receipt during the financial year 2016-17 of Rs. 50 Lakh **or not** exceeding Rs. 50 Lakh, **shall be outside the scope** of section 194-I *vide* clause (b) of **its second proviso**. *Such individual or HUF shall be within the scope of section 194-IB.*
15. The individuals or HUFs, who are neither carrying on any business nor profession, **and** were **not** so engaged during the financial year 2016-17, are **out of the scope** of clause (a) **or clause (b)** 44AB, thus **out of the scope** of section 194-I. Therefore, such individuals and HUFs **shall be within the scope** of section 194-IB.

### Point of time when tax is to be deducted

16. “**Point of time of deduction of tax at source**” is very significant in the context of TDS, because it crystallizes the obligation for payment thereof under Rule 30 of the Income Tax Rules, 1962. If any income of the nature specified in section 194-IB(1) is paid, **but** the tax is **not** deducted at the point of time specified in section 194-IB(2), **then** the deductor **as well as** the person responsible shall be exposed to the consequences of late deduction, *viz.*, interest u/s 201(1A), penalty u/s 271C of the Act. Therefore, it is very important to understand the “**Point of time of when tax is to be deducted at source u/s 194-IB(2)**”.
17. **Sub-section (2) of section 194-IB** provides the time for deduction of tax at source. The income-tax referred to in sub-section (1) shall be deducted on such income **at the time** of **credit** of rent, **for** the last month of **the** previous year **or** the last month of tenancy, if the property is vacated during **the** year, as the case may be, 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**.
18. The analysis of section 194-IB(2) is as follows:
- **at the time** of **credit** of rent, -
    - 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.**

for

- the **last month** of the previous year or
  - the **last month** of tenancy if the property is vacated during the year, as the case may be.
19. The memorandum to the Finance Bill, 2017 with reference to clause 63 of the Bill clarifies that the deductor shall be liable to deduct tax only once in the previous year.
20. As per **section 2(34)**, previous year means the **previous year** as defined in section 3 of the Act. As per section 3, “**previous year**” means the **financial year** immediately preceding the assessment year.
21. “**Financial year**” is not defined in Income Tax Act, 1961. However, section 3(21) of the General Clauses Act, 1897 defines “financial year” as the year commencing on the first day of April.
22. The point of time when tax is required to be deducted credit or payment of **such** income by way of rent, whichever is earlier.
23. However, tax is to be deducted when **such** income by way of rent is paid or credited for the **last month** of the previous year.
24. In case the tenancy is terminated during the previous year, than tax is to be deducted when **such** income by way of rent is paid or credited for the **last month** of the **tenancy**.
25. It means that –
- if **such** rent is **paid** on monthly basis, no tax is to be deducted on monthly basis.
    - in such case tax is to be deducted at the time when payment of **such** rent for the **last month** of the **previous year** is made.
  - if **such** rent is not paid on monthly basis, no TDS is to be made on monthly basis;
    - in such case TDS is to be made at the time when credit of **such** rent for the last month of the **previous year**.
  - However, under both the circumstances, tax is to be deducted at the earliest point of time when the **such** rent for the last month of the **previous year** paid or credited.

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- It is also pertinent to note that tax is to be deducted at the point of time when -
    - **such** rent for the last month of the previous year **or for** the last month of the tenancy, as the case may be is credited **or** paid,  
  
**and not**
    - when the **such** rent in the last month of the previous year **or in** the last month of the tenancy, as the case may be, is paid **or** credited.
  - This is because before the expression “the last month of the previous year” word for is used **and** not the word in.
26. Sub-section (2) very clearly provides that the income-tax referred to in sub-section (1) shall be deducted on such income -
- where the property was let during whole of the previous year {for the previous year 2017-18 *w.e.f.* 1.6.2017}, when such income is **credited** for the last month of the previous year;
  - where the property was let but the tenancy terminates before the end of the previous year, when such income is **credited** for the last month of the tenancy;
  - where such income is **paid** before it is credited as mentioned above, at the time of payment thereof. Here word “thereof” has been used after the word payment, which just not refers to the “payment by way of rent exceeding Rs. 50000/- or more for a month or part of the month“, but refers to “payment by way of rent exceeding Rs. 50000/- or more for month or part of the month for the last month of the previous year or the tenancy period, as the case may be”.
27. Therefore, whenever during the previous year rent for the last month of the previous year **or for** the **last month** of the tenancy period is credited **or** paid, whichever is earlier, tax shall be required to be deducted at that point of time, and shall be paid as may be prescribed.
28. **Section 200(1)** provides that any person deducting any sum in accordance with the provision from 190 to 199 of Chapter XVII-B of the Act shall pay within the **prescribed** time, the sum so deducted to the credit of the Central Government or as the Board directs.

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29. **“Prescribed”** is defined in **section 2(33)** of the Act to mean “prescribed” by rules made under the Act. Rules are made by CBDT in accordance with the provisions of section 295 of the Act. Rule 30(1) and 30(2) provides the time within which any sum deducted under XVII-B is to be deposited, which is as follows:

*“(1) All sums deducted in accordance with the provisions of **Chapter XVII-B** by an office of the Government shall be paid to the credit of the Central Government—*

- (a) on the same day where the tax is paid without production of an income-tax challan; **and***
- (b) on or before seven days from the end of the month in which the deduction is made or income-tax is due under sub-section (1A) of section 192, where tax is paid accompanied by an income-tax challan.*

*(2) All sums deducted in accordance with the provisions of **Chapter XVII-B** by deductors other **than an** office of the Government shall be paid to the credit of the Central Government—*

- (a) on or before 30<sup>th</sup> day of April where the income or amount is credited or paid in the month of March; **and***
- (b) in any other case, on or before seven days from the end of the month in which*
  - (i) the deduction is made; or*
  - (ii) .....*

*(2A) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), any sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of thirty days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QB.*

30. The above rule does not provides rule for payment of TDS u/s 194-IB. The deduction of tax and payment thereof u/s 194-IB are PAN based from both deductor and deductee side. Therefore, Rule 30 needs to be amended for proving time and mode of payment of Tax to be deducted w.e.f. 1.6.2017 u/s 194-IB.

31. The occasion of **credit or paid** shall arise in the case of those individuals and HUFs who **are** required to maintain books of accounts u/s 44AA of the Act **and are not** covered by the thresholds provided for tax audit under clause (a) or (b) of section 44AB.

32. The occasion of ***only payment*** shall arise in the case of those individuals and HUFs who ***not are*** required to maintain books of accounts u/s 44AA of the Act.
33. It may be pertinent to mention that “credit” does not mean “due”, and in section 194-IB word “credit” is used and not “due”.

### Amount on which tax is required to be deducted

34. Tax is to be deducted on the amount of rent of whole of the previous year or of whole of the tenancy period, because tax is to be deducted @ 5% of ***such income***, and ***such income*** refers to ***any income*** by way of rent, exceeding Rs. 50000/- for a month or part of a month credited or paid during the **previous year**.
35. The word **any** signifies ***any amount*** paid or credited during the **previous year** by way of rent, as defined in the explanation.

### No need to obtain TAN No. u/s 203A

36. **In order to reduce the compliance burden**, it is further provided that the deductor **shall not be required** to obtain tax deduction account number (TAN) as per **section 203A** of the Act.
37. It means that payment of TDS shall be required to be made on **PAN to PAN basis**.
38. It is also provided that where the tax is required to be deducted as per the provisions of **section 206AA**, such deduction **shall not exceed** the amount of rent payable **for** the last month of the previous year or the last month of the tenancy, as the case may be.
39. *It means that wherever the payee (deductee) does not have PAN, then the amount TDS shall not exceed the amount of one month's rent.*
40. This amendment will take effect from 1st June, 2017. It means that TDS is to be made u/s 194-IB when after 1.6.2017 **such** rent is paid or credited.

### Disclaimer

This document has been prepared for academic use only, to understand the scope and implications of the provisions of the newly inserted section 194-IB of the Income Tax Act, 1961 and to share the same with the fellow professionals and all concerned. Though every effort has been made to avoid errors or omissions in this document yet any error or omission may creep in. Therefore, it is notified that I shall not be responsible for any damage or loss to any one, of any kind, in any manner there from. I shall also not be liable or responsible for any loss or damage to

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any one in any matter due to difference of opinion or interpretation in respect of the text. On the contrary it is suggested that to avoid any doubt the user should cross check the correct law and the contents with the published / notified / Gazetted materials including the referred amended section and the relevant Acts.

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Dated : 1.5.2017