

Clarification on deduction of tax at source (TDS) on service tax component on rental income under section 194-I of the Income-tax Act

Representations / letters have been received in the Board seeking clarification as to whether TDS provisions under section 194-I of the Income-tax Act will be applicable on the gross rental amount payable (inclusive of service tax) or net rental amount payable (exclusive of service tax).

The matter has been examined by the Board. As per the provisions of 194-I, tax is deductible at source on income by way rent paid to any resident. Further rent has been defined in 194-I as rent means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,-

- a. land; or
- b. building (including factory building); or
- c. land appurtenant to a building (including factory building); or
- d. machinery; or
- e. plant; or
- f. equipment; or
- g. furniture; or
- h. fittings,

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

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 Government for collection of service tax. Therefore it has been decided that tax deduction at source (TDS) under sections 194-I of Income-tax Act would be required to be made on the amount of rent paid/payable without including the service tax.

These instructions may be brought to the notice of all officers working in your region for strict compliance.

These instructions should also be brought to the notice of the officers responsible for conducting internal audit and adherence to these should be checked by the auditing parties.