

Tax Alert | Delivering clarity

18 October 2019

Tax withholding by banks on cash withdrawals – Provisions and Clarifications

Coverage and exemptions from application of Section 194N

Background

In order to discourage cash transactions and move towards a cashless economy, the Finance (No.2) Act, 2019 inserted new section 194N in the Income-tax Act, 1961 (the Act), to provide for levy of tax deduction at source (TDS) on cash withdrawals above a certain threshold. The provisions as introduced in the Parliament on 5 July 2019 as part of the Finance (No.2) Bill 2019 underwent changes before being finally enacted. Subsequently, the Central Board of Direct Taxes (CBDT) has clarified on the exemptions granted to various entities who are required to handle large cash withdrawals for specified purposes.

This Alert traces the various changes to this provision and the clarifications issued by CBDT on the same up to date.

Provisions of Section 194N

- Section 194N as introduced in the Finance (No.2) Bill, 2019 proposed TDS by a banking company or cooperative bank or post office at the rate of two percent on cash payments in excess of INR 10 million in aggregate made during the year, to any person from an account maintained by the recipient.

Changes were made to the proposed section 194N in the Finance (No.2) Bill, 2019 passed by the Lok Sabha and finally enacted in the Finance (No.2) Act, 2019, to cover payments/ withdrawals from one or more bank account maintained by the recipients.

- Section 194N exempts payment made to certain recipients from the application of this provision, such as
 - the government,
 - banking company,
 - cooperative society engaged in carrying on the business of banking,
 - post office,
 - business correspondent of a banking company or cooperative society engaged in carrying on the business of banking, and
 - white label ATM operators,

who are involved in the handling of substantial amounts of cash as a part of their business operation. The section further empowers the Central Government to exempt other recipients, through a notification in the official Gazette in consultation with the Reserve Bank of India (RBI).

- The provisions of Section 194N are effective from 1 September 2019.
- Further, though the Finance (No.2), Bill 2019, had proposed an amendment to section 198 of the Act to treat TDS under section 194N as income, but the final enactment did not include this amendment to section 198. Subsequently, the Finance (No.2) Act 2019 inserted the proviso to the effect that the TDS under section 194N shall not be deemed to be income received.

Subsequent clarifications issues on Section 194N

Press Release dated 30 August 2019

Any cash withdrawal prior to 1 September 2019 will not be subjected to TDS under section 194N. However, for the purpose of calculation of the minimum threshold amount of Rs 10 million for triggering application of deduction under section 194N, cash withdrawals / payments shall be counted from 1 April 2019.

Notification No. 68/2019/F. No. 370142/12/2019-TPL dated 18 September 2019

- Payment in cash made to the following persons shall not be subject to TDS under section 194N:
 - Cash Replenishment Agencies (CRA's); and
 - Franchise agents of White Label Automated Teller Machine Operators (WLATMO's) maintaining 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.
- The WLATMO is required to 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 has been reconciled with the amount of cash deposited in the ATM's of the WLATMO's.
- This notification shall be deemed to have come into force with effect from 1 September 2019.

Notification No. 70/2019/F. No. 370142/12/2019-TPL dated 20 September 2019

- Relaxation from the provisions of section 194N granted to the registered commission agent or trader, operating under Agriculture Produce Market Committee (APMC) of the concerned state, who has intimated to the banking company, his account number through which he wishes to withdraw cash in excess of INR 10 million in the previous year along with his Permanent Account Number (PAN) and the details of the previous year and has certified that the withdrawal of cash from the account in excess of INR 10 million during the previous year is for the purpose of making payments to the farmers on account of purchase of agriculture produce.
- The banking company is required to ensure that the PAN quoted is correct and the commission agent or trader is APMC-registered collect necessary evidences for record.
- This notification shall be deemed to have come into force with effect from 1 September 2019.

Notification No. 74/F. No. 370142/18/2019-TPL dated 27 September 2019

- Rule 37BA amended to provide that for the purposes of section 194N, credit for TDS shall be given to the person from whose account tax is deducted and paid to the Central Government account for the assessment year relevant to the previous year in which such TDS is made.
- This rule shall be deemed to have come into force with effect from 1 September 2019.

Notification No. 80/2019/F. No. 370142/12/2019-TPL (Part 2) dated 15 October 2019

- The following entities are exempt from application of section 194N:
 - the authorised dealer and its franchise agent and sub-agent; and
 - RBI-licensed Full-Fledged Money Changer (FFMC) and its franchise agent;maintaining a separate bank account from which withdrawal is made only for the purposes of,

- 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 RBI directions or guidelines; or
 - disbursement of inward remittances to the recipient beneficiaries in India in cash under RBI's Money Transfer Service Scheme (MTSS).
- The above entities are required to furnish a certificate to the Bank to that effect.
 - This notification shall be deemed to have come into force with effect from 1 September 2019.

Comments

Section 194N has been introduced as a deterrent for cash transactions. The government has adopted a collaborative approach and heard the submissions of key stakeholders, and granted relief from time to time to cases where significant amount of cash is handled due to the peculiar nature of business carried out by the entities in India.

Clarifications on certain areas are still awaited that could bring tax certainty e.g., meaning of certain terms used in the section, whether exemption can be given to cash withdrawals made by embassy/consular offices, rate of TDS applicable where the recipient / payee does not have/ is exempted from having Permanent Account Number (PAN); operation modalities for tax deducted at source from the account of the payee post payment / withdrawal, application of TDS on issue / redemption of foreign currency, etc.



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