

BUDGET 2024 & CHANGES FOR LLP AND PARTNERSHIP FIRMS

Dear Friends,

The BUDGET -2024 has brought various changes in Direct and Indirect Taxation in India. The Government has changes various provisions detrimental to the ease of doing business in India. The Government has provided benefits to all sectors through Budget-2024. The aim of government is through these changes and benefits to construct an environment and path that leads India to developed path. The India is now going to be developed country till 2030.

The Budget-2024 has changed various provisions of the Direct Taxes affecting LLPs/Partnership Firms, Individuals and HUFs. In this article we are going to discuss important changes made related to LLPs and Partnership Firms.

1. A NEW SECTION 194T (PAYMENTS TO PARTNERS OF FIRMS)

A new Section 194T (Payments to partners of firms) for TDS deduction proposed as per Clause 62 of the Finance (No. 2) Bill, 2024, which expands the scope of TDS to include payments made by firms to its partners.

As you are aware that Firms and LLPs are treated a taxable person under provisions of Income Tax Act, 1961. Two more or more persons are required to come together to form a Partnership/LLP and body corporates are also partner in LLP. Since LLP has some features of Limited Liability Companies and liability of partners of LLP are to the extent of Capital Contributed by them except some exceptional circumstances.

Partners of Firm/LLPs are entitled to get remuneration, bonus, commission, interest on capital /loan introduced or provided etc. Partners' remuneration, salary, commission etc. are not treated as salary and will be treated as their "Income from Business or profession" and taxed accordingly in hands of partners.

There are no provisions of TDS on payment made by firm/LLP to its partners. Before presentation of Budget 2024 and corresponding implementation of Finance Act, 2024, TDS was not applicable on partner's remuneration, interest, commission etc.

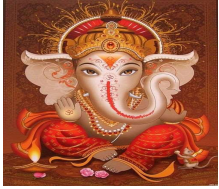
FCS DEEPAK P. SINGH

(B.Sc., LLB, FCS, FIII, CIAFP)

Mobile No. +91 9920830041/7506904961

Email ID: cs.deepakpsingh@gmail.com

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PLEASE NOTE THAT: TDS was applicable on payments made to employees by firms.

Applicability of TDS u/s 194T Effective from 1st April 2025, Section 194T mandates TDS deduction on various payments made by firms (Partnership firms or LLP) to its partners.

These payments include.

- i) Salary,
- ii) Remuneration,
- iii) Commission,
- iv) Bonus, and
- v) Interest on any account.

Important Note: TDS is not applicable on the drawings or capital repayment to partners. But TDS applicable on interest on capital or loan from partner.

TDS RATE AND THRESHOLD LIMIT SECTION TDS RATE THRESHOLD LIMIT 194T:

Payments to partners by firm (Partnership firm or an LLP) 10% Rs. 20000 per financial year
-Firms are required to deduct TDS at a rate of 10% on payments made to partners if the aggregate amount exceeds Rs. 20,000 in a financial year.

Please note that TDS will be applicable on whole amount if aggregate exceeds the threshold limit.

For instance, if a partnership firm/LLP pays Rs. 5,00,000 to a partner as remuneration in a financial year, the TDS under Section 194T would amount to Rs. 50,000 (i.e., 10% of Rs. 5,00,000).

WHEN TO DEDUCT TDS U/S 194T?

The TDS is to be deducted at the earliest of the following dates:

- i) Credit to the account (including capital account) of partner in the books of the firm or
- ii) Payment to the partner.

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WHETHER TDS U/S 194T APPLICABLE ON AN LLP?

Yes, Section 194T is applicable to firms, including partnership firms and LLPs.

As per Section 2(23)(i) the Income Tax Act, 1961, “firm” shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009).

As per Section 2(23)(ii) the Income Tax Act, 1961, “partner” shall have the meaning assigned to it in the Indian Partnership Act, 1932 (9 of 1932), and shall include, —

*(a) any person who, being a minor, has been admitted to the benefits of partnership; and
(b) a partner of a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009).*

WHY TDS U/S 192 NOT APPLICABLE ON PARTNERS SALARY OR REMUNERATION?

As per Explanation 2 of Section 15 of Income Tax act for Salaries: Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as “salary” for the purposes of this section. Because Salary, Remuneration, Bonus and Commission received by a partner from firm /LLP is treated as “Income from business and profession”, in the hand of partners.

Hence, no TDS liability was there on partner’s salary or remuneration u/s 192.

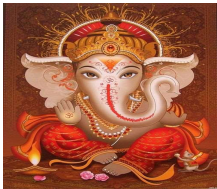
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2. CHANGES IN PROVISIONS OF SECTION 40(b) RELATED TO SALARY TO PARTNERS/DESIGNATED PARTNERS.

Budget 2024 - Increase in Limit for Partner's Remuneration u/s 40(b)

The limit for the partner's remuneration as provided in Section 40(b) were last updated in the year 2010. This budget proposes to amend the limit on the partner's remuneration as per the below table:

Book Profit	Limit
On the first Rs.6,00,000 of book profit or loss	Rs.3,00,000 or 90% of the book profit, whichever is higher
On the remaining balance of book-profit	60% of the book-profit

Maximum Permissible Limit under Section 40(b) before Union Budget 2024;

Book Profit	Limit
On the first Rs.3,00,000 of book profit or loss	Rs.1,50,000 or 90% of the book profit, whichever is higher
On the remaining balance of book-profit	60% of the book-profit

PLEASE NOTE THAT this limit applies to the total salary of all partners, not per partner.

What is Partner's Remuneration?

A partner's remuneration is the **salary, bonus, or commission** paid to a partner by a partnership firm. Similar to regular employees, partners receive monthly payments for their contribution to the firm.

Partners receive the following compensation for their work:

- Remuneration
- Interest on Capital Invested
- Share of Profit

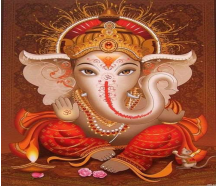
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Deduction of Partners Remuneration

Partnership Firms are **allowed to deduct** the Interest and Remuneration paid to Partners as expenses when arriving at their 'Profits and Gains from Business and Profession' (PGBP). However, **Section 40(b)** has specified a **maximum limit** up to which the deduction can be claimed on interest and remuneration amounts.

PLEASE NOTE THAT: this is not allowed if partnership firms choose to pay tax on a presumptive basis under section 44AD or section 44ADA. Since Presumptive Taxation is not allowed for LLPs.

Conditions for Claiming Deduction of Partners Remuneration

Remuneration in a partnership firm consists of salary, bonus, and commission. To qualify for deduction of Partners Remuneration, the following conditions must be satisfied:

- Remuneration is only **paid to working partners**
- Remuneration should be **authorized by the partnership deed**. The deed should mention the amount of salary or the method of calculation. If the deed does not include such provisions, no deduction is allowed. Practically, people specify in the deed that the salary is allowed to partners within the maximum limit defined under this section, which satisfies the deduction requirement.
- The remuneration should be for a period starting from the date on which such partnership came into existence (i.e., the date of the partnership deed) and not from any period prior.
- The remuneration should be **within the permissible limits** as defined u/s. 40(b).
- Interest on partner's capital is allowed maximum at a **maximum rate of 12% p.a** simple interest.

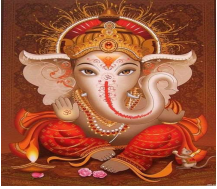
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- *It should be related to the period of the partnership deed. If the partnership deed is renewed, then such renewed provisions will be considered for that period.*
- *Sleeping partners are not liable to claim salary/remuneration but interest on capital and share in profit will be available for sleeping partners.*

Conditions for Claiming Deduction of Interest Paid to Partner Interest on Partner's Capital:

In order for interest to be eligible for deduction, the following conditions must be met:

- *Interest payment must be authorized/approved in the partnership deed.*
- *The rate of interest paid should not exceed 12%. If the amount of interest exceeds 12% of the capital, the excess amount is disallowed.*
- *It is not allowed if the partnership firm chooses to pay tax on a presumptive basis under section 44AD or section 44ADA.*
- *The remuneration should be for a period starting from the date on which such partnership came into existence (i.e., the date of the partnership deed) and not from any period prior.*

SOME IMPORTANT POINTS TO BE NOTED;

1. Partner Remuneration & Interest: Important Points to Note

When it is stated that remuneration or interest is not allowed, it means that it is not allowed as a deduction for calculating the net taxable profit. The firm can still pay it to the partner in cash, as there are no restrictions on it under the Partnership Act.

The amounts that are deductible as remuneration or interest in the hands of the firm under Section 40(b) are taxable for the partner receiving those amounts under the head "Profit from Business/Profession."

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PLEASE NOTE THAT: if the amount is disallowed in the hands of the firm, it is exempt in the hands of the partner.

TDS ON PAYMENT: the Union Budget-2024 has introduced Section 194T -which provides that any sum equal or more than Rs. 20000/- paid by firm/llp to its partners/designated partners as Salary, Remuneration, Commission or Interest will be subject to TDS @10%.

2. Share of Profit

Share of Profit is the percentage of profit distributed among partners, regardless of whether they are working or sleeping partners. The partners mutually decide on the ratio in which they will share profits. If the Partnership Deed does not specify the ratio, the profits can be distributed equally among them.

This ratio applies not only to profit sharing but also when partners need to divide losses. The entire profit need not be distributed among partners. A part of the profit can be kept separate for reserve and surplus.

Irrespective of whether you are a working or sleeping partner, the share of profit received is exempt from tax under Section 10(2A) of the Income Tax Act.

DISCLAIMER: the case law presented here is only for sharing information with readers. In case of necessity do consult with professionals.

SOURCE:

1. <https://www.taxmann.com/budget/budget-story/55/budget-2024-%E2%80%93-treatment-of-partnership-firms->
2. <https://cleartax.in/s/partner-remuneration-taxation>

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