TDS on remuneration to partners of a firm

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Section 194T of the Income-tax Act, 1961 has come into effect from 1-4-2025. This amendment is a matter of discussion amongst professionals and different interpretations are being made. Sub-section (1) of the section read as under:

> "Any person, being a firm, responsible for paying any sum in the nature of **salary, remuneration, commission, bonus or interest** to a partner of the firm, shall at the time of credit of such sum to the account of the partner (including the capital account) or at the time of payment thereof, whichever is earlier shall, deduct income-tax thereon at the rate of ten per cent"
>
> Sub-section (2) provides that no deduction to be made if such sums does not exceed ₹ 20000/- during the financial year.

Before coming to the specific queries being made, I wish to draw attention to the provisions of section 2(24)(ve) which says "any sum chargeable to tax under clause (v) of section 28". Section 28(v) is as under:

> "any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm:
>
> Provided that where any interest, salary, bonus, commission, or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted."

From the reading of above provisions, it becomes clear that the receipt by partner is income because it is included in the definition of 'income' in section 2(24) by making reference to provisions of section 28(v). Had it not been included, it was not income at all in the hands of the partner as one cannot make income from himself and secondly, one income cannot be taxed twice. The five terms used in section 194 T are the same terms as used in section 28(v). These terms in

section 194T will take its meaning and colour from the provisions of section 28(v). Section 28(v) specifically provides that the amount to the extent allowed for deduction u/s 40(b) will be the income for the purposes of section 28(v) or section 2(24).

The following questions are being raised:

1. Is TDS required every month from drawings being made by the partner?

2. Is TDS required to be made even from remuneration to a non-working partner?

3. If tax is deducted on an amount which turned out to be excess at the end of the year, what will happen?

Section 190 which mandates deduction of tax reads as under:

"(1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, **the tax on such income** shall be payable by deduction or collection at source or by advance payment or by payment under sub-section (1A) of section 192, as the case may be, in accordance with the provisions of this Chapter."

It is clear from reading the provisions of section 190, TDS is a mode of recovery of tax on 'income'. So, in my considered view, for any deduction of tax at source, it has to be income at the first instance. The sum received from firm is not income unless it takes the character of such nature as enumerated in section 28(v) and is deducted within the limits of section 40(b) while making computation of income of the firm.

Now I try to answer specific questions raised:

1. Is TDS required every month from drawings being made by the partner?
   No. In my considered view, no tax is required to be deducted from drawings unless the payment is made 'in the nature of' those items enumerated therein. The payment will be 'in the nature of' only when the liability to pay the sum is determined and the head of account is debited. The drawings may be for being a partner, it may be even from his capital.
2. Is TDS required to be made even from remuneration to a non-working partner?

No. As the remuneration paid to non-working partner is not allowed as deduction, it is not chargeable in the hands of the partner and hence, it is not an income in the hands of the partner and no TDS is required.

3. If tax is deducted on an amount which turned out to be excess at the end of the year, what will happen?

   This situation will arise only when we characterize the monthly payment as ‘payment of remuneration’ and make deduction every month and finally such remuneration works out to be excessive and allowed as deduction a lesser amount and the amount taxable in the hands of the partner will be less. In my view, in such cases adjustment be made in the last quarter return and even if tax has been deducted on higher amount than the actual income, it is explainable and can be explained. No doubt mismatch notice may come. Professional bodies may represent that such matching be done from firms returns instead of matching from form 26AS.