

General Manager (S & M - CM)

Sales & Marketing - Consumer Mobility

3rd Floor, New CTS Building

16, Greams Road, Chennai – 600 006

Phone: 044-28297878 Fax: 044-28297979



भारत संचार निगम लिमिटेड

(भारत सरकार का उद्यम)

BHARAT SANCHAR NIGAM LIMITED

(A Government of India Enterprise)



No. GM (S&M-CM) /272/10-11 /vol-1 /Chl partners-Discount/comm structure/ dt 17.03.2011

To

All Heads of SSAs,
TN circle.

SUB: Applicability of TDS on discount scheme of the BSNL sales & distribution policy 2006

Under section 194H of Income Tax Act, 1961

REF:DGM(CA),TN circle Ir no.tAX/Commission /2011-12/5 dted 15/03/2011

Kindly refer to the letter cited under reference wherein information and guidelines for the applicability of TDS on discount scheme of BSNL sales & distribution Policy 2006 has been communicated.

In this regard, following instructions must be followed by the SSAs.

1. Instructions contained in the letter under reference from Sl.No.1 to Sl.No. 9 must be implemented from 1/4/2011 .For any clarification regarding the above , this office or DGM(CA),O/o CGM,TN circle may be contacted.

2.So far as sales to DSAS/OSSs ,Business associates, etc., are concerned the instructions contained in the above reference from Sl.no 1 to Sl.no 9 need to be followed.

3.For channel partners like DSA/OSSs, Business associates etc., AO(sales) must individually take a letter from each of the channel partners stating that 'Taxable services of aggregate value is not exceeding Rs.10,00,000 in any financial ' in order to exempt from whole of the service tax leviable.

4.If the channel partner is not in a position to furnish the above details , they must be clearly informed that they must take PAN Number for deduction of TDS as well as service TAX registration number.

All the SSAs must implement the above procedure in consultation with IFAs of SSAs.

It is also intimated that the sales of product through sales team is also to be processed by the new account procedure relating to the deduction of TDS ,Service TAX etc. wherever applicable and SSA must review this also.

Compliance with respect to all these instructions must be informed to SSA Heads /IFAs by the AGM(sales) with a copy to this office.

(C.V.vinod)

General Manager (S&M-CM)

Chennai, Tamil Nadu Circle.

Copy to:1.GM(TR),Ch,TN circle,

2.DGM(CA,CH,TN circle

3.All AGM(sales)/AO (sales),TN circle

BHARAT SANCHAR NIGAM LIMITED

(A Govt of India Enterprise)

Office of the Chief General Manager Telecom, BSNL, TN Circle, Chennai 600 002.

To

Sr. General Manager (S&M), Tamil Nadu Circle, Chennai.

No: TAX/Commission/2011-12/5

dated 15.03.2011.

Sub: Applicability of TDS on discount scheme of the BSNL Sales and Distribution Policy 2006

Under Section 194 H of Income Tax Act, 1961 – Reg.

Ref: (1) BSNL CO New Delhi Lr no. 1001-01/09/Taxation/BSNL/742 dated 04.03.2011.

(2) BSNL CO New Delhi Lr No. 1001-01/09/Taxation/BSNL/ dated 14.03.2011.

---XXX---

Copy of the BSNL Corporate Office Letters cited above on the above subject are enclosed for information, guidance and necessary action.

Following points may also be considered while implementing the orders on the subject:

1. Date of effect on the above said instructions is 01.04.2011.
2. TDS on commission under Sec. 194 H is 10% at present.
3. Terms and conditions with franchisee should be suitably modified so as to make this Commission subject to applicable TDS and Service Tax.
4. As a consequence to change of nature of the transactions between BSNL and its Franchisees, Service Tax will be applicable on the commission paid to franchisee under category of business auxiliary services.
5. By virtue of this, the franchisees are entitled to raise service tax on BSNL by raising proper invoice based on which BSNL may claim Cenvat Credit.
6. The invoice for commission should have the Service Tax Registration Number of the Franchisee and also service tax amount.
7. To enable TDS deduction and E-filing by BSNL, the franchisee should have the PAN number invariably.
8. Each month Commission paid to each Franchisee may be considered, accounted and incorporated in the TB.
9. Model calculation for payment of commission and Service Tax payable along with TDS enclosed.

This has been issued with the approval of GM (Finance)


Dy. General Manager (CA)

Copy to:

1. Sr. GM (TR) Circle Office Chennai – for kind information.
2. IFAs of all SSAs/CMTS Trichy. – for information and necessary action.

MODEL CALCULATION EFFECTING THE COMMISSION:

First Model: TDS on Commission and Service Tax on Commission:

Face Value of the Product : Rs. 100.00

Service Tax 10.3% on the above : Rs. 10.30

Less: Commission Payable to Franchisee:

Commission, say 5% on Face Value Rs. 5.00

Service Tax 10.3% Rs. 0.52

Invoice to be raised by Franchisee Rs. 5.52

Less: TDS @ 10% on both Rs. 0.55

Net Commission Payable to Franchisee Rs. 4.97 : Rs. 4.97

Therefore, net amount payable by the Franchisee : Rs. 105.33

For Easy understanding of the above said concept, the following formulae may be used:

For Rs. 100 Face Value of the Product, Rs. 105.33 is the amount payable by the Franchisee.

For Rs. 100 Face value of the product, Rs. Rs. 4.97 is the net commission payable to the Franchisee.

For Rs. 100 Face Value of the product, Rs. 5.52 is the invoice to be raised by the Franchisee.

Second Model: TDS on commission but without Service Tax on Commission:

Face Value of the Product : Rs. 100.00

Service Tax 10.3% on the above : Rs. 10.30

Less: Commission Payable to Franchisee:

Commission, say 5% on Face Value Rs. 5.00

Invoice to be raised by Franchisee Rs. 5.00

Less: TDS @ 10% on both Rs. 0.50

Net Commission Payable to Franchisee Rs. 4.50 : Rs. 4.50

Therefore, net amount payable by the Franchisee : Rs. 105.80



For Easy understanding of the above said concept, the following formulae may be used:

For Rs. 100 Face Value of the Product, Rs. 105.80 is the amount payable by the Franchisee.

For Rs. 100 Face value of the product, Rs. Rs. 4.50 is the net commission payable to the Franchisee.

For Rs. 100 Face Value of the product, Rs. 5.00 is the invoice to be raised by the Franchisee.

Note: As per Service Tax Rules vide Notification No.6/2005-ST dated 01.02.2005, the taxable services of aggregate value not exceeding Rs. 10,00,000 in any financial year is exempt from whole of the service tax leviable thereon.

Spencer

MOST URGENT

CORPORATE OFFICE, TAXATION SECTION
1ST FLOOR, BHARAT SANCHAR BHAWAN,
JANPATH, NEW DELHI-110001
Ph.No.011-23037306/23734087
Fax: 011 23718886
e-mail: tax@bsnl.com



BHARAT SANCHAR NIGAM LIMITED
[A Government of India Enterprise]

No.1001-01/2009/Taxation/BSNL/774

Dated:14th March,2011

To,


Heads of All Telecom Circles / Metro Districts.

Sub: Applicability of TDS on discount scheme of the BSNL Sales and Distribution Policy 2006 u/s 194H of the Income Tax Act-1961.

Ref: 1. This office letter no.1001-01/2009/Taxation/BSNL/742 dated 04.03.2011

In continuation of this office letter of even no. dated 04.03.2011 on the subject cited above. As per the feedback from circles, some of the circles have already implemented deduction of TDS on discount/commission. But those circles wherever TDS deduction on discount/commission is yet to be implemented for whatever reasons may also take necessary action so as to implement TDS deduction on discount/commission w.e.f. 01.04.2011.

This issues with the approval of competent authority.



(K.Jothi)

DGM(Taxation)

Copy to :

1. Sr.GM(S&M-CM)/Sr.GM(S&M-CFA/Sr.GM(S&M-EN) for information and n/a.
2. GM (F-CM)/GM (F-CFA)/GM (F-Ent.) for information and n/a.
3. GM (CA), C.O., BSB, BSNL, C.O., New Delhi for issue of Accounting instructions.
4. GM(F) O/o CGM, ITPC, Pune for information and necessary action.

MOST URGENT

<p>CORPORATE OFFICE, TAXATION SECTION 1ST FLOOR, BHARAT SANCHAR BHAWAN, JANPATH, NEW DELHI-110001 Ph.No.011-23037306/23734087 Fax : 011-23718886 e-mail: www.bsnltax@gmail.com</p>	 <p>BHARAT SANCHAR NIGAM LTD.</p>	<p>BHARAT SANCHAR NIGAM LIMITED [A Government of India Enterprise]</p>
--	--	--

No.1001-01/2009/Taxation/BSNL/742

Dated:4th March, 2011

To,

Heads of All Telecom Circles / Metro Districts.

Sub: Applicability of TDS on discount scheme of the BSNL Sales and Distribution Policy 2006 u/s 194H of the Income Tax Act-1961.

**Ref: 1. This office letter no.1001-01/2009/Taxation/BSNL/219 dated 27.04.2010.
2. This office letter no.1001-01/2009/Taxation/BSNL/261 dated 17.05.2010.**

As per BSNL C.O. letter no.27-21/04-Mtkg. Dated 13.12.2007 various clauses of BSNL Sales and Distribution Policy 2006 have been amended. According to this amendment, for selling of cash cards e.g. recharge coupons, ITC cards etc. shown in Annexure-C of the Policy, the franchisee is not acting as an agent and rather the transaction is on a principal to principal basis.

Income tax authority of different circles like Rajasthan, Chennai, AP, UP(W), Uttarakhand, Kolkata Telephone etc. have issued show cause notices regarding non-recovery of TDS on discount alleging that discount allowed by BSNL is actually commission in nature and therefore Tax should have been deducted at source as per provisions of section 194H of the IT act on the entire amount whatever nomenclature given to it citing the judgments of ITAT Cochin, Kolkata and Delhi High Court. The circles have already been instructed to file necessary appeals to the competent authority against such notices/orders received by them. The same may be pursued and progress be intimated to this office.

The issued was reviewed in the 50th and 81st meeting of the Management Committee of the Board. The decision of the competent authority in the matter is as follows:

1. BSNL may change the terms and condition of the Sales and Distribution Policy 2006 so as the nature of transaction is commission based. BSNL may revert to the earlier terms and conditions of Sales and Distribution Policy existing prior to 13-12-2007 as regards commission.

Contd...page2-

2. BSNL may deduct TDS at applicable rate under sec 194H on commission earned by the franchisee for purchase of all BSNL products.
3. As a consequence to change of nature of the transactions between BSNL and its franchisees, service tax will be applicable on the commission paid to franchisees under category of business auxiliary services. By virtue of this, franchisees are entitled to raise service tax on BSNL which BSNL may claim as Cenvat Credit.

In view of above you are requested to deduct TDS at applicable rate under section 194H for franchisees as per above.

This issues with the approval of competent authority.


(Smita Choudhary)
GM(Taxation)

Copy to :

1. Sr.GM(S&M-CM)/Sr.GM(S&M-CFA/Sr.GM(S&M-EN) for information and n/a .
2. GM(F-CM)/GM(F-CFA)/GM(F-Ent.) for information and n/a .
3. GM(CA),C.O.,BSB,BSNL,C.O.,New Delhi for issue of Accounting instructions .