Hi Friends,

We are a software company and working for implementation of readymade ERP software provided by Some company. On behalf of that company we are implementing ERP software to the clients of that company on contract basis.

For this we collects implementation charges only. Cost of software is charged by that company only. On this implementation charges TDS is applicable or not. If so under which section and what is the rate of TDS.

Thanks.
It is a service contract covered under 194C.

Maintenance contracts - Routine maintenance contracts including supply of spares would be covered under section 194C. However, where technical services are rendered, the provisions of section 194J will apply in regard to tax deduction at source—Circular : No. 715, dated 8-8-1995.

Fees for professional or technical services. 54

55194J. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of—

(a) fees for professional services, or
(b) fees for technical services, 56(c) royalty, or (d) any sum referred to in clause (va) of section 28, shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to 56a[ten] per cent of such sum as income-tax on income comprised therein : Provided that no deduction shall be made under this section— (A) from any sums as aforesaid credited or paid before the 1st day of July, 1995; or (B) where the amount of such sum or, as the case may be, the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed— (i) twenty thousand rupees, in the case of fees for professional services referred to in clause (a), or (ii) twenty thousand rupees, in the case of fees for technical services referred to in 57(clause (b), or (iii) twenty thousand rupees, in the case of royalty referred to in clause (c), or (iv) twenty thousand rupees, in the case of sum referred to in clause (d). 59[Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section.] 60[Provided also that no individual or a Hindu undivided family referred to in the second proviso shall be liable to deduct income-tax on the sum by way of fees for professional services in case such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.] (2) 61[***] (3) 61[***] Explanation.—For the purposes of this section,— (a) “professional services” means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notifyed by the Board for the purposes of section 44AA or of this section; (b) “fees for
technical services” shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9; 62[(ba) “royalty” shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;] (c) where any sum referred to in sub-section (1) is credited to any account, whether called “suspense account” or by any other name, in the books of account of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

Hi Jasmine, 
As it is a service contract which involves professional and technical skill, TDS is applicable under section 194J 
Professional and Technical Services @ 11.33%.

hello jasmine the nature of software implementation falls under the technical services and will attract TDS u/s/194J. @ 5%+10% surcharge & 3% education cess there on. sec-194J says any professional fee or tecnical services would be liable to deduct tax @ 5% Abid

hello Mr. teja u said that the TDS will be 11.33% but that is not right because the rate of tds is 5% + 10% surcharge and 3% education cess therefore 5+10%=5.5%+3%=5.665% Abid

Hello Abid please update your knowledge..The rates have been changed for AY.2008-09

Thanx for ur suitable reply.In this connection some are having conflicting ideas in our industry as to whether service tax is applicable on implementation charges? Wat is ur answer to the same and if so the reason for applicability plz.

Abid (accountant)
Hello jasmine & girish Actually current rate of tds is applicable from 31.05.2007 onward and before that they were as in financial year 2006-2007. So the payment made before 31.05.2007 will attract tds @ 5.665% and after that 11.33% Abid