

MOST URGENT

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BHARAT SANCHAR NIGAM LIMITED
[A Government of India Enterprise]

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:

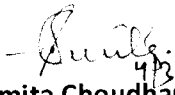
1. BSNL may change the terms and condition of the Sales and Distribution Policy 2006 so as the nature of transaction is commission based. BSNL may revert to the earlier terms and conditions of Sales and Distribution Policy existing prior to 13-12-2007 as regards commission.

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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 .