



INCOME TAX



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A. Introduction

The Finance Act 2021 inserted a new section, Section 194Q, providing for Tax Deducted at Source (“TDS”) on purchase of goods with effect from July 1, 2021. This section is similar in structure to Section 206C(1H) which was introduced through Finance Act 2020, to collect tax at source on consideration received from the buyer. While Section 206C(1H) imposes a liability on the seller to collect tax from the buyer (i.e., the tax incidence falls on the buyer); Section 194Q, on the other hand imposes a liability on the buyer to deduct tax while paying to the seller (i.e., tax incidence falls on the seller).

B. Key elements of section 194Q

Key elements of New TDS Section 194Q TDS on Purchase of Goods



- The provisions of section 194Q would apply to a buyer, whose total sales, gross receipts or turnover from the business carried on by him exceeds INR 10 Crore during the financial year immediately preceding the financial year, in which the goods are purchased.
- It further provides that such tax is to be deducted on purchase of goods only from a seller, who is a resident of India under the provisions of the Act. The rate prescribed for deduction of tax is 0.1% of the value or aggregate value of the goods that exceeds INR 50 Lakh in the financial year.
- Tax would be required to be deducted at higher rate of 5%, if the seller does not hold a PAN in India. Enabling amendment has been carried out to the provisions of section 206AA of the Act.

- As applicable in case of other TDS provisions, liability to deduct tax would arise at the time of credit or payment, whichever is earlier and would include any sum credited to any account, whether called by name “suspense account” or by any other name.
- The above provision of deduction of tax at source on purchase of goods is not applicable in the following cases:
 1. where tax is deductible under any of the provisions of the Act; and
 2. where tax is collected under section 206C of the Act except to transaction covered under section 206C(1H);
- It is also to be noted that this section is applicable on sale of goods only and services have presently been kept out of the ambit of the section. Therefore, the limit of Rs. 50 lakhs for each financial year have to be taken for the purchase of goods alone.

C. Extract of the new section 194Q from Finance Act, 2021

After section 194P of the Income-tax Act, the following section shall be inserted with effect from the 1st day of July, 2021, namely:—

' 194Q. (1) Any person, being a buyer who is responsible for paying any sum to any resident (hereafter in this section referred to as the seller) for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, deduct an amount equal to 0.1 per cent. of such sum exceeding fifty lakh rupees as income-tax.

Explanation - For the purposes of this sub-section, “buyer” means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

(2) 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 income, such credit of income shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(4) Every guideline issued by the Board under sub-section (3) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and the person liable to deduct tax.

(5) The provisions of this section shall not apply to a transaction on which -

- a. tax is deductible under any of the provisions of this Act: and*
- b. tax is collectible under the provisions of section 206C other than a transaction to which sub section (1H) of section 206C applies.’.*

D. Frequently Asked Questions

1. Who is liable to deduct tax under Section 194Q?

The tax shall be deducted under Section 194Q by a buyer carrying on a business whose total sales, gross receipts or turnover from the business exceeds Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased. This provision shall be applicable from 1st July 2021.

Thus, the liability to deduct tax under this provision in the financial year 2021-2022 shall arise if the turnover of the purchaser was more than Rs. 10 crores in the financial year 2020-21.

2. Is this applicable for all types of assesses like individuals and firms?

The provisions are applicable to all types of assesseees whoever satisfies the definition of buyer. At present, there are no exclusions made.

3. Is it applicable for the goods alone or includes services also?

The new provision is applicable on purchase of goods only and not services.

4. When tax shall be deducted under this provision?

The tax shall be deducted from the purchases made by a buyer if the following conditions are satisfied:

- (a) There is a purchase of goods from a resident person;*
- (b) Goods are purchased for a value or aggregate of value exceeding Rs. 50 lakhs in any previous year; and*

(c) The buyer should not be in the list of persons excluded from the provision for deduction of tax.

The tax shall not be deducted under this provision if the tax is deductible or collectible under any other provision except Section 206C(1H). Thus, if a transaction is subject to TCS under Section 206C(1H), the buyer shall have the first obligation to deduct the tax. If he does so, the seller will not have any obligation to collect the tax under Section 206C(1H). {Also, refer to FAQ 5.}

5. What shall be the timing of deduction of tax?

Tax is required to be deducted at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier. The tax shall be deducted even if the sum is credited to the 'Suspense Account'.

6. Once the consideration for purchase of goods exceeds INR 50 Lakh, is the TDS required to be made on the entire consideration or only on the consideration that exceeds INR 50 Lakhs?

Sub-section (1) of section 194Q requires the buyer to deduct tax at source on purchase of goods. It provides for deduction of tax at 0.1% of the sum exceeding INR 50 lakh in a financial year. Thus, the tax shall be deducted at source on the consideration that exceeds INR 50 lakh. Let us say, in case where the first purchase was made for INR 35 lakh and the second purchase was made for INR 40 lakh, the TDS should be made only on the second purchase and only on the amount of INR 25 lakh (i.e. 35 lakh + 40 lakh – 50 lakh). The threshold of INR 50 lakh shall apply year-wise.

7. At what rate tax is to be deducted?

The tax shall be deducted by the buyer of goods at the rate of 0.1% of the purchase value exceeding Rs. 50 lakhs if the seller has furnished his PAN, otherwise, the tax shall be deducted at the rate of 5%. The applicable rate of 0.1% is subject to fulfilment of conditions mentioned in the newly inserted section 206AB, in the Finance Act, 2021.

8. What are the conditions of section 206AB?

The Finance Act, 2021 has introduced a special provision of TDS in the Income Tax Act, 1961. Section 206AB has been inserted which will be applicable from July 01, 2021.

This new section requires deduction of TDS at the higher rate while making payment to the 'Specified person'. TDS rates would be higher of the following :

1. At twice the rate specified in the relevant provision of the Act; or
2. At twice the rate or rates in force; or
3. At the rate of 5%

Meaning of Specified person – A specified person is a person who has

- a. not filed the returns of income for both of the immediately preceding two years relevant to the year in which tax is required to be deducted or collected, as the case may be and due date prescribed under Section 139(1) to file such return has expired.

AND

- b. whose aggregate of tax deducted at source and tax collected at source in his case is INR **50,000** or more in each of these immediately preceding two years.

However, a specified person shall not include a non-resident who does not have a permanent establishment in India.

This provision is not applicable to deduction of tax at source under –

1. Section 192 - TDS on salary
2. Section 192A - TDS on payment towards accumulated balance due to an employee participating in a recognised provident fund ('PF')
3. Section 194B - TDS on income from lottery or crossword puzzle
4. Section 194BB - TDS on income from horse races
5. Section 194LBC - TDS on income in respect of investment in securitization trust
6. Section 194N - TDS on cash withdrawal in excess of INR 20 Lakhs

9. Where a transaction is covered by both the provisions - TDS under Section 194Q and TCS under Section 206C(1H), who shall be liable for deduction/collection of tax?

- Second Proviso to Section 206C(1H) provides that if the buyer is liable to deduct tax under any other provision on the goods purchased by him from the seller and has deducted such amount, no tax shall be collected on the same transaction.
- Section 194Q(5) provides that no tax is required to be deducted by a person under this provision if tax is deductible under any other provision or tax is collectable under section 206C [other than a transaction on which tax is collectable under Section 206C(1H)].
- Though Section 206C(1H) excludes a transaction on which tax is actually deducted under any other provision (which will cover Section 194Q as well), but Section 194Q(5) does not create a similar exception for a transaction on which tax is collectable under Section 206C(1H).
- Thus, the buyer shall have the primary and foremost obligation to deduct the tax and no tax shall be collected on such transaction under Section 206C(1H). However, if the buyer makes a default, the liability to collect the tax gets shifted to the seller.

Both these provisions are distinguished in the below table:

Example

Particulars	Scenario	Scenario	Scenario
	1	2	3
Turnover of Seller (In cr.)	12	6	12
Turnover of Buyer (In cr.)	6	12	12
Sale of goods (In cr.) (A)	2	2	2
Sales consideration paid during the year (In cr.) (B)	1	1	1
Who is liable to deduct or collect tax?	Seller	Buyer	Buyer
Rate of Tax (Seller/Buyer has provided PAN and has satisfied section 206AB)	0.1%	0.1%	0.1%
Amount on which tax to be deducted or collected (In Cr.) [Amount in excess of Rs. 50,00,000 is the taxable amount]	0.5 [(B) – 0.5]	1.5 [(A) – 0.5]	1.5 [(A) – 0.5]
Tax to be deducted or collected	5,000	15,000	15,000

The buyer and the seller might be in an uncertain condition as to who should deduct the tax. The primary responsibility lies on the purchaser to deduct the tax. To avoid the ambiguous situation, the buyer may provide the declaration to the seller stating that he would be deducting the taxes at the time of booking the invoice or at the time of making the advance payment, wherever applicable.

The seller should also provide a declaration stating that he has filed the ITR for the two relevant previous years as mentioned in section 206AB.

10. Is a buyer importing goods from outside India required to deduct tax at source under this section?

Section 194Q provides that any person, being a buyer who is responsible for paying any sum to any resident, being a seller, is required to deduct tax at source under this provision. Thus, the obligation to deduct tax under this provision arises only when the payment is made to a resident seller.

As in the case of import, the seller is a non-resident, the buyer will not have any obligation to deduct tax under this provision. The buyer may take a declaration regarding the residential status of the

seller. However, the TDS under Section 195 or payment of Equalisation Levy may be required in respect of such transaction. In the case of purchase of goods through High Seas sales transaction, this exception may not be applicable as the High seas seller may be a resident.

11. Whether tax is required to be deducted under Section 194Q from the goods exported abroad?

Liability to deduct tax under this provision arises only when the payment is made to a resident seller. Residential status of the buyer, who is making payment, is not relevant under this provision. As in the transaction of export of goods, the seller is a resident but the buyer is a non-resident. Thus, the liability to deduct tax under this provision may arise on the non-resident buyer. However, it is a cumbersome exercise of determining the satisfaction of all the conditions of section 194Q, section 206AB, availability of PAN, etc. Hope the CBDT/Government come up with necessary clarifications so as to augment the ease of doing business in India.

12. In the absence of any definition of 'goods', what shall be construed as a purchase of goods?

The term 'goods' is not defined in the Income-tax Act. The term 'goods' has wide meaning. Anything which comes to the market can be treated as goods. However, this term 'Goods' has been defined under the Sale of Goods Act, 1930 and Central Goods and Services Tax Act, 2017.

Below is the list of goods as defined under various legislations.

Particulars	CGST Act, 2017	Customs Act, 1962	Sale of goods Act, 1930
Definition of Goods	Every kind of movable property other than services	Inclusive definition to cover all goods	Every kind of movable property
Inclusions	Actionable claims, crops, grass and things attached to land	Vessels, stores, baggage, currency, negotiable instrument & other kind of movable property	Stocks & shares, Crops, Grass and things attached to Land
Exclusions	Money & Securities	-	Actionable claims & money

13. Whether a transaction in securities through stock exchanges shall be subject to TDS under this provision?

When the Finance Act, 2020 introduced Section 206C(1H) to provide for the collection of tax on the sale of goods, concerns have been raised about the applicability of such provision in respect

of transactions through stock exchanges (or commodity exchange) as there is no one-to-one contract between the buyers and sellers.

In respect of the above, the CBDT vide Circular No. 17 of 2020, clarified that provisions of Section 206C(1H) shall not be applicable in relation to transactions in securities (and commodities) which are traded through recognised stock exchanges or cleared and settled by the recognised clearing corporation, including recognised stock exchanges or recognised clearing corporations located in International Financial Service Centre (IFSC).

Applying the rationale behind such clarification, it is inferred that the CBDT may allow a similar exemption from TDS under Section 194Q as well.

14. Whether TDS to be deducted on purchase of capital goods?

As referred to in Question 10, 'goods' means every kind of movable property subject to certain exceptions and inclusions, irrespective of whether it is capital goods or not. Hence TDS to be deducted on purchase of capital goods also.

15. Whether TDS to be deducted if the buyer is in service industry and he purchases goods from a seller?

The explanation of section 194Q describes the meaning of buyer. Buyer means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is made.

Section 2(13) of the Income Tax Act, 1961, contains an inclusive definition of the term "business". "Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture." Hence we can infer that business includes services also and if the buyer is a service provider, he has to deduct TDS on purchase of goods, if other conditions are satisfied.

16. Whether TDS to be deducted on the purchase of immovable property by a developer?

As referred to Question 12, 'goods' means every kind of movable property subject to certain exceptions and inclusions. Thus, the immovable property shall not be treated as 'goods'. Consequently, the TDS under section 194Q shall not be deducted from the purchase of immovable property by a developer.

It can be noted that purchase of immovable property attracts TDS u/s 194-IA for transaction above Rs. 50 lakhs. Hence TDS under section 194Q is not applicable.

17. Whether TDS is required to be deducted on the transaction in electricity?

A transaction in electricity can be undertaken either by way of direct purchase from the company engaged in generation of electricity or through power exchanges. The CBDT has clarified that the transaction in electricity, renewable energy certificates and energy-saving certificates traded through power exchanges registered under Regulation 21 of the CERC shall be out of the scope of TCS under the provision of Section 206C(1H).

Applying the rationale behind such clarification, it is inferred that the CBDT may allow a similar exemption from TDS under Section 194Q as well.

18. Whether TDS should be deducted on the purchase of software?

Taxation of software has always been a subject of debate under the Income-tax Laws. In absence of any guidelines in the Income-tax, such classification has always been a subject matter of litigation. The Finance Act, 2012, has made the clarification amendments in Section 9 to broaden the scope of taxation of royalty. This has been clarified by the amendment that the consideration for the use or right to use of computer software is a royalty. The factors of the medium, ownership, use or right to use and location have been clarified as immaterial. The amendments have, thus, given a new dimension to tax administration in the sphere of royalty taxation. The payment towards royalty is subject to TDS under Section 194J or Section 195. The provision of Section 194Q would not apply where tax is deductible under any other provision.

In another landmark judgement, in case of **Engineering Analysis Centre of Excellence Private Limited**, the Supreme Court has held that payments made for software are not covered under Article 12 of Double Taxation Avoidance Agreements and Indian payers were not liable to withhold tax u/s 195 as no income chargeable to tax arose in India. This is only in the case of non-resident payments and to this extent we may have to check whether Section 194Q would be applicable on this. As clarified elsewhere TDS u/s 194Q is not applicable for payments made to non-residents.

As far as payments made to residents are concerned Section 194J is still applicable and once Section 194J is applicable, Section 194Q will not be applicable.

Hence, based on the above analysis it is concluded that section 194Q will not be applicable for software payments where sections 194J and 195 are applicable.

19. When goods are purchased by a customer from an e-commerce participant, would section 194Q apply or 194-O?

Section 194-O was introduced requiring deduction of tax by e-commerce operator while making payment to e-commerce participants. So far as the condition to trigger section 194-O satisfies, tax should be deducted by the e-commerce operator under section 194-O of the Act for the following reasons:

- Section 194Q specifically exempts transactions that are subject to tax withholding under any other provisions of the Act; and
- Section 194-O starts with a non-abstente clause and therefore overrides section 194Q

20. Whether TDS is liable to be deducted on purchase of Jewellery not connected with business?

Tax is required to be deducted by a buyer carrying on business whose total sales, gross receipts or turnover from the business exceeds Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased. There is no condition that the purchases should be connected with the business only. Thus, if a person is falling within the definition of the buyer, tax is required to be deducted even if such purchase is not connected with the business carried on by him.

Jewellery, being a movable property, is covered within the term goods. There is no specific exclusion under Section 194Q for deduction of TDS on purchase of jewellery. Thus, the tax shall be deductible on purchase of jewellery if other conditions are also fulfilled.

However, there might be practical difficulty in deducting the TDS by the purchaser as the purchaser might contend that the jewellery is being purchased for personal use and not for business use. To avoid the difficulty and confusion, clarification from CBDT is awaited.

21. If the buyer has purchased goods from seller worth Rs. 45 lakhs in one financial year and Rs. 40 lakhs in the preceding financial year, and the seller has received Rs. 60 lakhs with respect to the two purchases made by the buyer, whether TDS has to be deducted or TCS has to be collected? (assuming other conditions of section 194Q and section 206C(1H) are satisfied)

Since the buyer has not crossed the threshold limit of Rs. 50 lakhs and the seller has received the amount exceeding the threshold limit of Rs. 50 lakhs, the seller has to collect the tax, if all the conditions of section 206C(1H) are satisfied.

22. Whether additional, allied and out-of-pocket expenses form part of the purchase value of goods?

It is imperative to accurately determine the purchase value as it is relevant both for the applicability of the provision and amount from which tax should be deducted. Where these expenses have been reflected in the purchase invoice itself, it should form part of purchase value. However, more clarity from CBDT is awaited in this regard.

23. From which date the threshold limit of Rs. 50 lakhs will be computed?

- The Finance Act, 2021, has inserted Section 194Q, with effect from 01-07-2021, to provide for the deduction of tax on certain purchases. The TDS has to be deducted if the value or aggregate purchase value exceeds Rs. 50 lakhs during the previous year. Whether this limit of Rs. 50 Lakh for deducting TDS shall be reckoned from 01-04-2021 or 01-07-2021?
- Similar confusion arose when Section 206C(1H) was introduced by the Finance Act, 2020, with effect from 01-10-2020. In respect of which the CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of sale consideration for triggering TCS under this provision shall be computed from 01-04-2020. Hence, if a seller has already received Rs. 50 lakhs or more up to 30-09-2020 from a buyer, TCS under this provision shall apply on all receipts of sale consideration on or after 01-10-2020.
- Applying the same principle, it can be concluded that threshold of Rs. 50 lakhs shall be computed from 01-04-2021. Thus, if a buyer has already purchased goods of value Rs. 50 lakhs or more up to 30-06-2021 from a seller, TDS under this provision shall apply on all purchases on or after 01-07-2021.

24. Which is the base year for the threshold limit of Rs.50 lakhs?

Limit of 50 lakhs is considered in each financial year. The 50 lakhs exemption is for one financial year for a single seller.

25. Whether TDS is to be deducted on the total invoice value including the GST?

- A similar issue has been raised in respect of Section 194J, to which the CBDT vide Circular No. 23/2017, dated 19-7-2017, has clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component. However, such clarification was issued in respect of GST on services only. No such clarification has been issued for GST on goods.

- However, in respect of Section 206C(1H), the CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the collection is made with reference to receipt of the amount of sale consideration, no adjustment on account of indirect taxes including GST is required to be made for the collection of tax under this provision.
- Since deduction under Section 194Q is to be made with reference to the purchase value, applying the same principle it can be concluded that GST shall form part of the purchase value, therefore, the TDS is deductible on the purchase value inclusive of GST.
- A clarification in this regard from the CBDT would be much appreciated.

26. Whether TDS has to be deducted on advance payment made to the seller?

- Section 194Q provides that tax is required to be deducted in the transaction relating to the purchase of goods. It does not mention whether such purchase needs to be affected immediately or at a future date. As the tax is required to be deducted at the time of payment or at the time of credit, whichever is earlier, it should be reasonable to conclude that the provision may get attracted even if such purchase happens in future.
- As long as the intention is to adjust the advance payment against the future purchase of goods, the tax should be deducted at the time of payment or credit, whichever is earlier. If the advance payment is not made with an intention to adjust it against future purchase (deposit or loan) but eventually it is adjusted against the future purchase, no tax is required to be deducted at the time of payment of such advance.
- In such case liability to deduct tax will arise the moment such advance is adjusted against the purchase value of goods. In most of the cases the payment of advance would be made only for the purchase of goods, hence it would be appropriate to deduct TDS under section 194Q at the time of payment of advance itself.

27. Whether payment of advance before 01-07-2021 for purchase of goods will be subject to TDS?

- The Finance Act, 2021, has inserted Section 194Q with effect from 01-07-2021. Thus, provisions of this Section shall not apply on any payment made or credit made in the books of accounts before 01-07-2021. Consequently, it would apply to all purchases made on or after 01-07-2021.
- In simple words, the tax should be deducted where the payment is made or amount is credited on or after 01-07-2021. Thus, where any of the trigger event (i.e., payment or credit) has occurred before the date of applicability of provision, no liability to deduct tax will arise.

- However, while booking the actual invoice, if the threshold limit has crossed, and other conditions are satisfied, the buyer has to deduct the tax on the amount exceeding the threshold limit as on the date of booking the actual invoice.

28. Whether the amount advanced as a loan to the seller shall come within the ambit of this provision?

- The requirement to deduct TDS under this provision arises if the purchase value exceeds the threshold limit during the previous years. The deduction is to be made at the earliest of payment or credit for the purchase of goods. Since the loan advanced by buyers is not a payment towards the purchase of goods, it shall remain outside the purview of this provision.
- Hence, there is no requirement to deduct TDS on loan advanced by the buyer.
- However, if at any future date, such loan amount is settled against purchased value, the liability to deduct TDS shall arise. The tax shall be deducted on the date on which parties agreed to adjust the loan amount against the outstanding liability.

29. Whether TCS is applicable for the amount collected against invoices raised before 01st July 2021, if all the conditions of section 206C (1H) are satisfied?

Since TDS is applicable only after 01st July 2021, TCS is applicable for the amount collected before 1st July 2021.

30. Whether tax to be deducted on the purchase of goods by one branch from another?

The TDS under this section is required to be deducted by any person, being a buyer, responsible for making payment to the seller for the purchase of goods. Thus, the existence of two distinct parties as 'seller' and 'buyer' is a pre-requisite to construe a transaction as a purchase. The condition of purchase is not fulfilled in the context of branch transfer. Therefore, the provisions of this section shall not apply in the case of branch transfers.

31. What shall be the treatment of debit note for computation of TDS?

As the tax has to be computed on the purchase value, the adjustment made to the ledger of the seller by issuing the debit note will not have an impact on the tax to be deducted. The position would remain the same if, after the deduction of tax, the seller repays some consideration to the buyer. In such a situation, the amount of purchase value shall not be reduced with the amount so refunded or the debit note so adjusted for calculation of TDS.

32. Whether purchase returns should be adjusted for computing the threshold of INR 50 lakh in a financial year?

The threshold of INR 50 lakh is to be computed considering the consideration paid for 'purchase' of goods and thus, where the goods are returned, the value of such goods shall be reduced for arriving at the threshold of INR 50 lakh. However, such purchase returns ought to have been made on or before the point of tax deduction as the threshold of INR 50 lakh has to be checked at the point of time when liability to deduct at source arises. Any subsequent returns cannot be considered.

33. Applicability of TDS on works contract if single invoice issued?

- A construction contract involving supply of goods, labour and other services is now classified as a service under the GST Regulations. However, if a single invoice is issued with no bifurcation into value of goods and services, a question then arises whether the provisions of TDS & TCS applicable on the single invoice?
- Section 194Q (5)(a) provides that the provisions of 194Q shall not be applicable if tax has been deducted under any other provisions of the Act.
- Hence if TDS is deducted under any other section on the full invoice amount, (e.g. 194C), then TDS under 194Q is not applicable.

34. If the seller has multiple units, whether purchases made from different units need to be aggregated?

Where tax is required to be deducted at source, the deductee is required to furnish his PAN to the deductor failing which the tax is required to be deducted at higher rates. If the PAN is available, the threshold limit of Rs. 50 lakhs shall be computed in respect of each PAN. In other words, if different units of the seller are under the same PAN, the amount paid or payable to all such units shall be aggregated to compute the limit of Rs. 50 Lakhs.

35. Transfer of goods on testing purpose.

Section 194Q provides that buyer shall deduct TDS on purchase of goods. Considering that the goods are transferred for the purpose of testing and no purchase made, this provision will not apply.

36. Can a seller apply for the certificate for lower deduction of TDS?

- An assessee can apply to the Assessing Officer to issue a certificate for deduction of tax at lower rates, where TDS is applicable under other provisions like 194C, 194J, 194I, etc. Such certificate shall be issued if existing and estimated tax liability of assessee justifies deduction of tax at a lower rate. Further, certain assessees have an option to file a declaration for nil deduction of tax.
- However, the Finance Act, 2021, has not extended the benefit to apply for a certificate for deduction of tax at lower rates or to file declaration for nil deduction in respect of transactions covered under Section 194Q. Hence, the assessee does not have the option to approach the assessing officer to issue a certificate for a lower tax deduction or to file declaration for nil deduction in respect of transactions covered under section 194Q.

37. How to deposit the TDS?

- A corporate assessee and other assessees will have to make payment of tax (including TDS) electronically through internet banking facility or by way of debit cards. To deposit the tax, the deductor has to fill the Challan No. ITNS 281.
- Other deductors can deposit the tax so deducted into any branch of the RBI or the State Bank of India or any authorized bank.

38. What is the due date to deposit TDS?

Tax deducted during the month shall be deposited on or before the following due date:

Type of Deductor	Mode of payment of TDS	Due Date for deposit of TDS
Office of Government	Without Income-tax Challan	On the same day on which tax is deducted
	With Income-tax Challan ITNS 281	Within 7 days from the end of the month in which tax is deducted
Other Deductor	With Income-tax Challan ITNS 281	<ul style="list-style-type: none"> ➤ For April-February Month: Within 7 days from the end of the month in which tax is deducted ➤ For March Month: On or before April 30

39. What shall be consequences for failure to deduct or pay TDS?

- If any person, responsible for deduction of tax at source, fails to deduct the whole or any part of the tax or after deduction fails to deposit the same to the credit of the Central government, then he shall be deemed to be an assessee-in-default.
- If deductor fails to deduct tax at source, he shall be liable to pay interest at the rate of 1% for every month or part thereof on the amount of tax he failed to deduct. However, if he fails to deposit the tax deducted at source, he shall be liable to pay interest at the rate of 1.5% for every month or part thereof on the amount of tax he failed to deposit to the credit of the Central Govt.
- In addition to the above by way of Section 40(a)(ia) of the Act, 30% of the purchase value which was liable for TDS would be disallowed while computing the taxable income of the buyer.

40. Whether buyer shall be treated as assessee in default if the seller pays the tax due on the income declared in the return of income?

Section 201 of the Income-tax Act provides that a deductor, who fails to deduct tax at source, is not deemed to be in default if the payee has considered such amount while computing income in the return and has paid the tax due on such declared income. The deductor will have to obtain a certificate to this effect from a Chartered Accountant in Form No. 26A and submit it electronically. Thus, the buyer shall not be deemed as assessee-in-default if the seller has taken into account the purchase amount while computing his income and has paid the tax due on the income declared in the return.

41. What is the due date for filing of TDS return?

The statement of tax deducted at source under this provision shall be filed with the Income-tax Department on or before the following due date:

Quarter	Due Date
April- June	31 st July of the Financial Year
July- September	31 st October of the Financial Year
October- December	31 st January of the Financial Year
January- March	31 st May of the financial year immediately following the financial year in which deduction is made

42. What shall be consequences of non-filing of TDS return?

- If there is a delay in filing of TDS return, the late filing fee shall be payable under Section 234E. The fee for default in furnishing the TDS/TCS Statement shall be levied at the rate of Rs. 200 per day during which such failure continues. However, the amount of fee shall not exceed the total amount deductible or collectable, as the case may be. The fee shall be payable before submission of the belated TDS/TCS Statement.
- If a person fails to file the TDS return or does not file it by the due dates, he shall be liable to pay penalty under Section 271H. The penalty under Section 271H is also levied in case of furnishing of inaccurate information under TDS return. The minimum amount of penalty for failure to furnish TDS return or providing inaccurate information therein is Rs. 10,000 which can go up to Rs. 1,00,000.

43. What are the consequences of being assessee in default as per Income Tax Act, 1961?

The consequences of being assessee in default are as under:

- **Levy of Interest under section 220**

Simple interest @ 1% per month is payable on the amount not paid within the time allowed in the notice under section 156. Further, this interest can be charged only till the date the ROI is filed by the Purchaser of the goods. However, the Principle Chief Commissioner / Chief Commissioner / Principle Commissioner/Commissioner can reduce the interest if being satisfied with all the three following conditions that:

- a. Payment of such amount has/ would cause genuine hardship to the assessee;
- b. Default was due to the circumstances beyond the control of the assessee, and
- c. The assessee has co-operated in the inquiry relating to assessment/recovery proceedings

- **Penalty under section 221**

Assessing Officer may direct payment of a penalty which can be any amount or amounts not exceeding the tax in arrears. The AO may, if satisfied that the default was for good and sufficient reasons, not direct the penalty.

- **Recovery Proceedings under sections 222, 227, 229 and 232**

Apart from penalties, recovery proceedings shall be initiated against the assessee /person responsible under section 222 (Certificate to Tax Recovery Officer), 227 (Recovery through

State Government), 229 (Recovery of penalties, fine, interest and other sums) or 232 (Recovery by suit or under other law not affected) of the Act.

➤ **Prosecution Proceedings**

The consequences do not stop at mere imposition of penalties and steps to recover arrears but include the risk of being prosecuted under Chapter XXII of the Income Tax Act, 1961 sections including 276BB, 276C depending upon the nature and gravity of the default. If a person fails to pay to the credit of the Central Government, the tax collected by him he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine (Section 276BB).

44. When and how does seller's responsibility to collect tax arises?

- The primary onus to deduct tax is on the buyer, however if the buyer does not deduct tax, the onus to collect the tax shifts on the seller. The seller has to collect the tax when he receives the amount as sales consideration. Hence at the point of receipt of sales consideration, the seller has to ensure from the buyer, that the buyer has deducted the tax. If the buyer has not deducted the tax, seller has to collect the tax. The seller can obtain a declaration from the buyer regarding the status of tax deduction at source.
- It is to be also noted that since 194Q is applicable from 1st July 2021, the seller has to collect tax on the sales consideration received prior to 1st July 2021.

E. Interplay between TDS u/s 194Q and TCS u/s 206C (1H)

We have so far discussed the newly added TDS provisions introduced vide Finance Act 2021 u/s 194Q in detail which is going to be applicable with effect from 01.07.2021.

As narrated above, the provisions of TCS u/s 206C(1H) added vide Finance Act 2020 which came into effect from 01.10.2020 is similar in all respects which applicable on sale of goods and to be collected by the seller. Hence both TDS u/s 194Q and TCS u/s 206C(1H) will become applicable to the same transaction where value of sale/ purchase is more than Rs.50 lakhs in a financial year.

However, the section 206C(1H) gives a clear exclusion for the TCS applicability in cases where TDS is already deducted by the buyer while making the payment for purchase of goods. Therefore, considering these two provisions of TDS & TCS we are trying to bring out the possible practical scenarios where the TDS/TCS provisions will become applicable for a business concern. The interplay between TDS & TCS on purchase/ sale of goods are discussed in the subsequent paragraphs.

Comparison between 194Q and 206C(1H)

Basis of comparison	TDS on purchase of goods [Section 194Q]	TCS on Sale of goods [Section 206C(1H)]
Who is liable for deduction/collection	Buyer is liable to deduct the tax	Seller is liable to collect the tax
Turnover limit of deductor or collector	The total sales, gross receipts or turnover of the buyer from the business should exceed Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased	The total sales, gross receipts or turnover of the collector from the business should exceed Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are sold
Effective date	1 st July 2021	1 st October 2020
Rate	0.1%	0.1% (0.075% for FY 2020-21)
Amount on which tax to be deducted/collected	On the amount of purchase in excess of Rs. 50 lakhs	On the amount of sale consideration received in excess of Rs. 50 lakhs
PAN not available	5%	1%
Time of deduction/collection	At the time of credit or payment, whichever is earlier	At the time of receipt
Exclusions	Not applicable if Tax is deductible under other provisions of the act Tax is collectible under 206C other than 206C (1H)	If Buyer is 1. Importer of goods 2. Central/State Government, Local Authority 3. An embassy, High Commission, legation, commission, consulate and trade representation of a foreign state
Preference to be given	Purchaser is first liable to deduct the tax if the transaction could be subject to both provision	Seller shall be liable to collect the tax only if the purchaser is not liable to deduct the tax or purchaser failed to deduct tax
When to deposit/collect	Tax so deducted shall be deposited with government by 7th day of subsequent month	Tax so collected shall be deposited with government by 7th day of subsequent month

Quarterly statement to be filed	26Q	27EQ
Certificate to be issued to seller/buyer	FORM 16A	FORM 27D

Example 1

Particulars (assumed that the transactions have occurred after 01 st July 2021)	Scenario 1	Scenario 2	Scenario 3
Turnover of Seller (In cr.)	12	6	12
Turnover of Buyer (In cr.)	6	12	12
Sale of goods (In cr.) (A)	2	2	2
Sales consideration paid during the year (In cr.) (B)	1	1	1
Who is liable to deduct or collect tax?	Seller	Buyer	Buyer
Rate of Tax (Seller/Buyer has provided PAN and has satisfied section 206AB)	0.1%	0.1%	0.1%
Amount on which tax to be deducted or collected (In Cr.) [Amount in excess of Rs. 50,00,000 is the taxable amount]	0.5 [(B) – 0.5]	1.5 [(A) – 0.5]	1.5 [(A) – 0.5]
Tax to be deducted or collected	5,000	15,000	15,000

Example 2

Seller's Turnover	Buyer's Turnover	Sale or purchase consideration for goods (after 1st July 2021)	Taxable amount	Seller / Buyer PAN	TDS	TCS	Obligated Person to deduct or collect tax	Relevant Section
(in Crores)	(in crores)	(in lakhs)						
7	15	55	5	Yes	0.10%	NA	Buyer	Section 194Q
15	6	59	9	Yes	NA	0.10%	Seller	Section 206C(1H)
18	16	65	15	Yes	0.10%	NA	Buyer	Section 194Q
5	11	53	3	No	5%	NA	Buyer	Section 194Q/ 206AA
16	7	56	6	No	NA	5%	Seller	Section 206C(1H)/ 206AA

About Us:

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Started in the year 1994 as audit firm in Bangalore with an ambition to provide services in the area of accountancy and audit our legacy of vast experience and exposures to different types of industries made us rapidly adaptable to the changing needs of the time and technology by not only increasing our ranges of services but also by increasing quality of service. With diversification, our professional practice is not only limited to Bangalore but has crossed over to the other parts of India with a motto to provide "One Stop Solutions" to all our clients.

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