

## Part-I - TDS on Purchase vs. TCS on Sales

### 1. TDS on Purchase of Goods – 194Q

#### • **Basic Provisions:**

- Applicable W.e.f.01<sup>st</sup> July 2021;
- Buyer's turnover should exceed Rs.10Cr.in the preceding previous year;
- Seller who is Resident in India as per provision of the Income-tax Act;
- Purchase of Goods from a person (i.e., Seller) with aggregate value exceeding Rs.50 lakhs in a Financial Year.

#### • **Liable to deduct TDS:**

Buyer is liable to deduct TDS u/s 194Q – where:

- Turnover/sales/gross receipts from business of the buyer exceeds Rs.10 crores in the immediately preceding financial year; and
- the aggregate value of Goods Purchased exceeds Rs.50 lakhs during the financial year.

#### • **Triggering Point:**

- **Earlier of** time of **credit** of such sum to the account of the seller of credit or time of **Payment**.

#### • **Rate of TDS:**

- 0.1% of the purchase value exceeding Rs.50 lakhs;
- 5% if the seller does not furnish PAN;
- TDS to be deducted on the amount which is in excess of Rs.50 Lakhs.

#### • **Non-applicability:**

- On services purchased/availed;
- Seller is not resident in India;
- Aggregate purchases of goods from a seller in financial year does not exceed Rs.50 Lakhs;
- On purchases of goods made upto 30<sup>th</sup> June 2021;
- TDS/TCS [except u/s 206C(1H)] on such transaction, under any other Section of Income-tax, is applicable.

#### • **Aggregate Purchase – Threshold Limit:**

Applicable on aggregate purchase exceeding Rs.50 lakhs in a financial year. For the Financial year 2021-22, the quantum of purchases to be calculated w.e.f. 1.4.2021 for the purpose of arriving at figure of purchases of Rs.50 Lakh.

## Other points to be noted:

1. **Purchase of goods can be of Revenue Nature and/or Capital Goods/immovable properties.**
  - 'Goods' means every kind of movable property as per Sale of goods Act. Therefore, TDS is to be deducted on purchase of capital goods also. Immovable property is not covered under definition of 'goods'. Further TDS u/s 194IA is specifically present for deduction of TDS on value of Immovable property exceeding Rs 50 lakhs. Therefore, no TDS liability u/s.194Q.
2. **Advance payment made to the seller:**
  - Advance for payment of goods will also attract TDS U/s 194Q since the said section requires TDS obligation for *“any sum for purchase of any goods”* and not *“any sum for goods purchased”*.
3. **Import of Goods:**
  - In the case of Import, Seller is a Non-resident and Buyer is a Resident. Thus, the obligation to deduct tax under this provision arises only when the payment is made to a resident seller. Therefore, no TDS liability in the case of import of Goods.
4. **Export of Goods:**
  - In the case of Export, Seller is a Resident and Buyer is a Non-Resident. Thus, the liability to deduct tax under this provision may arise on the non-resident buyer subject to satisfaction of other provisions under the Act (i.e., PAN, Permanent Establishment etc.,) Therefore, TDS liability will arise in the case of export of Goods.
5. **Purchase of Software:**
  - Purchase of Canned/Readymade software is purchase of 'goods' and will be liable to TDS under section 194Q even if buyer-entity capitalises the same in its books.
  - Purchase of customised or tailor-made software - The Finance Act, 2012 clarified that the consideration for the use or right to use of computer software is a royalty. Therefore, the payment towards royalty is subject to TDS under Section 194J or Section 195. In this regard, the payments made to customised software are liable to deduct TDS u/s. 194J/195 and once Section 194J/195 is applicable, Section 194Q will not be applicable.
6. **Out-of-Pocket / Reimbursement of expenses:**
  - Where these expenses have been reflected in the purchase invoice itself, it should form part of purchase value and will also be liable for TDS u/s 194Q. But if they are charged through a separate invoice, it should not form part of purchase value for deduction of TDS and for computing the Rs. 50 Lakhs threshold limit.

## 7. Tax deduction including the GST:

- As per the clarification from CBDT vide Circular No. 23/17 dated 19 July 2017, the amount of GST levied as part of the invoice shall not be considered for TDS. However, such clarification was issued in respect of GST on services only. No such clarification has been issued for GST on goods.
- Further, in case of Section 206C(1H), vide Circular No. 17 dated 29.09.2020, CBDT has clarified that since TCS has to be 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 (i.e 206C(1H)). Therefore, TCS to be collected on the entire invoice value including GST
- Considering the above two points it is possible that there may be two views with regard to deduction of TDS on GST portion (i.e., TDS may be deducted excluding the GST portion as per circular No.23/2017 and applying the same principle laid out in circular no.17/2020, TDS may deducted inclusive of the GST portion.)
- There shall be more clarity on this aspect on clarification from the Central Board of Direct taxes.

## 8. Debit Note/Purchase returns:

- CBDT vide Circular No. 17/2020 dated 29.09.2021 mentioned that 'no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax u/s. 206C(1H) since the collection is made with reference to receipt of amount of sale consideration.'
- Similarly, as per Sec.194Q, tax has to be deducted on the purchase value, thus 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.

## 9. Seller has multiple registration:

- The threshold limit of Rs.50 lakhs shall be computed yearly on PAN India basis and not GSTIN basis. Also, the section is not applicable on inter branch transfers.

## 10. Purchase of Stocks and Securities:

- 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.

## 11. Consequences of non-deduction of TDS:

- If buyer fails to deduct and deposit TDS u/s,194Q, expenditure to the extent of 30% will be disallowed under Section 40(a)(ia) of the Act.

## 12. Lower deduction Certificates:

- As per Finance Act,2021 no amendment made in section 197/197A, as such, therefore, the seller 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.

## 13. Mutually Exclusive:

- It may be seen that an issue may arise as to applicability of TDS u/s. 194Q or TCS u/s.206C(1H) on a transaction/payment/ receipt. Except in certain circumstances, from 01<sup>st</sup> July 2021, TDS u/s. 194Q will prevail over TCS u/s. 206(1H).
- Provisions of section 194Q and the provisions of section 206C(1H) are mutually exclusive. i.e., either of the one is applicable. In case TDS is deducted, then TCS is not applicable and vice-a versa.

### ❖ Thumb rule:

- Turnover exceeds Rs.10 crore in previous year- 194Q & 206C(1H) applicable;
- 194Q and 206C(1H) are applicable on GOODS only;
- Provision of Section 194Q and 206C(1H) are mutually exclusive and;
- Normally provisions of Section 194Q will prevail over the provisions of Sec.206C(1H) in view of 2<sup>nd</sup> proviso to Section 206C(1H).

## 2. TCS on Sale of Goods:

### • **Basic Provisions**

- Applicable W.e.f.01<sup>st</sup> Oct 2020;
- Seller's turnover should exceed Rs.10 Crore in the preceding previous year;
- Sale of Goods to a person (i.e., Buyer) with aggregate value exceeding Rs.50 lakhs in a Financial Year.

### • **Liable to deduct TCS:**

Seller is liable to collect TCS u/s 206C(1H)– where:

- Turnover/sales/gross receipts from business of seller exceeds Rs. 10 crores in immediately preceding financial year; and
- the aggregate value of Goods sold exceeds Rs.50 lakhs during the financial year.

### • **Triggering Point:**

- At the time of **Receipt.**

### • **Rate of TDS:**

- 0.1% of the sale value exceeding Rs.50 lakhs;

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- 5% if the buyer does not furnish PAN;
- TDS to be deducted on the amount which is in excess of Rs.50 Lakhs.
- **Non-applicability:**
  - On services purchased/availed;
  - Buyer is not resident in India;
  - TDS/TCS on such transaction, under any other Section of Income-tax, is applicable.
- **Interplay between 194Q and 206C(1H):**

Turnover of buyer exceeds the said threshold limit of Rs.10 crore, but the seller will be under obligation to collect tax at source on receipts in excess of Rs.50 Lakh against sale of goods under Section 206C(1H) in the following circumstances:

  - Relating to purchases made by the buyer before 1<sup>st</sup> July 2021;
  - Relating to purchases made by the buyer on or after 1<sup>st</sup> July 2021, but the buyer has failed to deduct TDS u/s. 194Q;
  - Relating to purchases made by the buyer on or after 1<sup>st</sup> July 2021, but the buyer has not deducted TDS u/s 194Q since his purchases during the financial year is yet to exceed Rs.50 Lakhs.

## Understanding the provisions

Particulars	Scenario 1	Scenario 2	Scenario 3
Turnover of the Seller	8 crores	12 crores	15 crores
Turnover of the Buyer	15 crores	6 crores	15 crores
Invoice Value	85 lakhs	70 lakhs	80 lakhs
Invoice value received by Seller	65 Lakhs	55 Lakhs	55 Lakhs
Applicable Section	194Q	206C(1H)	194Q
Who is liable to deduct TDS/ TCS	Buyer	Seller	Buyer
Amount on which tax is to be deducted/collected	35 lakhs (85 L - 50 L)	5 lakhs (55 L – 50 L)	30 lakhs (80 L – 50 L)
Time of deduction	Credit or payment – Whichever is earlier	Receipt	Credit or payment
Amount of TDS/TCS @0.1%	3500	500	3000

### **To do List:**

- Intimate the sellers that the buyer is liable to deduct TDS u/s 194Q and that the said TDS will be deducted on purchase made on or after 01<sup>st</sup> July 2021.
- Intimate the seller that buyer should not collect TCS u/s. 206C(1H) on payments made to them on or after 01<sup>st</sup> July 2021 for purchase made on or after the aforementioned date, since the buyer will be deducting TDS u/s. 194Q subject to satisfaction of conditions.

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- Seller should obtain declaration from their buyer, whether the turnover of the buyer exceeds Rs.10 crore in the immediately preceding year.
- New TDS/TCS ledger/code to be created and mapped to eligible sellers/buyers periodically, when they cross Rs.50 lakhs limit.

## Part II - Non-filers of Income-tax – TDS/TCS rate

Particulars	Sec.206AB	Sec.206CCA
W.e.f.	01 <sup>st</sup> July 2021	01 <sup>st</sup> July 2021
Purpose	TDS rate for Specified persons	TCS rate for Specified persons
Specified person	A person who has <b>not filed the returns</b> of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; <b>and</b> the aggregate of TDS and TCS in his case is <b>Rs.50,000/-</b> or more in <b>each of</b> these two previous years.	
TDS Rate	<b>Higher of:</b> (a) at twice the rate specified in the relevant provision of the Act; or (b) at twice the rate or rates in force; or (c) at the rate of five per cent.	<b>Higher of:</b> (a) at twice the rate specified in the relevant provision of the Act; or (b) at the rate of five per cent.
Not applicable	TDS is deductible under Sec.192, 192A, 194B, 194BB, 194LBC, 194N.	Buyer is not a Specified person u/s. 206CCA

### **Common Points for Sec.206AB and 206CCA:**

- Specified person shall not include a non-resident who does not have a permanent establishment in India.
- In case the specified person fails to furnish his PAN to the deductor/collector (Section 206AA and 206CC) and section 206AB/206CCA is also applicable, the tax shall be deducted at higher of the two rates provided in section 206AA/206CC and in Section 206AB/206CCA.

### **Compliance Check for Sec.206AB and 206CCA - CBDT Cir.No.11/2021 dt. 21-06-21:**

- To ease the compliance burden the Central Board of Direct Taxes has issued a new functionality 'Compliance Check for Sections 206AB & 206CCA'. This functionality is made available through reporting portal of the Income-tax Department.
- The tax deductor or the collector can feed the single PAN (PAN search) or multiple PANs (bulk search) of the deductee or collectee and can get a response from the functionality if such deductee or collectee is a specified person.

- The deductor or the collector may check the PAN in the functionality at the beginning of the financial year and then he is not required to check the PAN of non-specified person during that financial year.
- The 'Tax Deductor/Tax Collector', will have to registered in the reporting portal through valid TAN to identify the 'Specified Persons' for the purposes of section 206AB and 206CCA of the Act through the functionality 'Compliance Check for Section 206AB & 206CCA'.
- The Director General of Income-tax (Systems) would notify the procedure and format regarding the functionality 'Compliance Check for Section 206AB & 206CCA' after taking approval from the CBDT.

**To do List:**

- Obtain declaration for not imposing TDS/TCS Rate as per Section 206AB/206CCA.
- Obtain declaration on status of PAN-Aadhaar linking, since non-compliance of Aadhar linking ends in PAN becoming inoperative.

## **Part III - Due dates for return filing for AY 2021-22**

The following are the extended due dates for return filing and filing of audit report for AY 2021-22 as per *Circular 9 of 2021 dated 20<sup>th</sup> May,2021*.

Sl.No.	Particulars of return/audit report	Original Date	Extended Date
1	Income-tax returns for non-tax audit cases	31/07/2021	30/09/2021
2	Income Tax returns for tax audit cases & companies	31/10/2021	30/11/2021
3	Income Tax returns for transfer pricing cases	30/11/2021	31/12/2021
4	Tax audit report	30/09/2021	31/10/2021
5	Transfer Pricing Report	31/10/2021	30/11/2021

The different scenarios are analysed in the attached Annexure for better understanding of the Circular.

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