

## **Section 194Q – TDS on purchase of goods & some practical aspects**

### **Introduction –**

As per Income Tax Act, 1961, certain persons are required to deduct TDS on the specified services. In the current budget, new section 194Q has been introduced. As per this, a buyer needs to deduct TDS on purchase of goods. In the Finance Act 2020, section 206C (1H) has been inserted. On the basis of this section seller needs to collect TCS on the sale consideration more than Rs 50 Lakhs. As sale and purchase is the flip side of a transaction, the applicability of two provisions on the same transactions may create a lot of confusion. In this article we will understand detailed provision & some practical aspects related to this provision.

### **Section 194Q – TDS on purchase of Goods**

**Applicability** – Section is applicable from 1<sup>st</sup> July 2021 only after satisfying both of the following conditions-

1. Turnover or gross receipts or total sales from the business carried on by buyer exceeds ten crore rupees during the financial year immediately preceding the financial year.
2. Purchase consideration should be more than Rs 50 Lakh from seller during previous year.

**Non applicability** – This section is not applicable –

1. On the transactions on which tax is deductible under any of provisions of this Act
2. On which tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies

Let's understand the above with the help of below examples –

<b>Sr No.</b>	<b>Financial Year</b>	<b>Buyer's T/o</b>	<b>Seller's T/O</b>	<b>Section attracts</b>	<b>Reasons</b>
1	FY 20-21	Rs 11 Cr	Rs 9 Cr	194Q	Buyer is liable to cut TDS as turnover is more than Rs 10Cr
2	FY 20-21	Rs 9 Cr	Rs 11 Cr	206C (1H)	Seller needs to collect TCS as per section 206C (1H) as turnover is more than Rs 10Cr
3	FY 20-21	Rs 12 Cr	Rs 11 Cr	194Q	In the given case turnover of both is more than Rs 10 Cr. But if we look at the non-applicability of the both sections then we understand that in such case buyer is primarily responsible to cut TDS on the transaction.

**Please note that as this section is applicable from 1<sup>st</sup> July 2021, till 30<sup>th</sup> June 2021 only seller is responsible to collect the TCS on the transaction even though turnover of buyer is more than Rs 10 Cr.**

**Rate –**

3. TDS is to be deducted at rate of 0.1% on purchase consideration paid to seller in excess of Rs 50 lakh.
4. If seller does not furnish PAN or Aadhaar no. then TDS is to be deducted at 5%.

**Due date of payment and filling the return –**

Period	Due date of payment
April to Feb	7 <sup>th</sup> of the next month
March	30 <sup>th</sup> April

Period	Due date of filling the return
April to June	31 <sup>st</sup> July
July to Sep	31 <sup>st</sup> October
Oct to Dec	31 <sup>st</sup> January
Jan to March	31 <sup>st</sup> May

**Consequences for failure to deduct or pay TDS or to file TDS return –**

1. **Failure to deduct or pay the TDS –**
  - a. 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.
  - b. 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.
  - c. The 30% of purchase value will be disallowed as per section 40 (a) (ia).
2. **Failure to file the return –**
  - a. If there is a delay in filing of TDS return, the late filing fee shall be payable under Section 234E. As per this section fees of Rs. 200 per day is levied till the failure continues. However, the amount of fee shall not exceed the total amount deductible. The fee shall be payable before submission of the belated TDS/TCS Statement.
  - b. 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.

### **Some practical aspects –**

1. Whether purchase between 1<sup>st</sup> April to 30 June is to be included while calculating the threshold of Rs 50 Lakh –
  - Similar confusion arose when section 206C (1H) was introduced. But 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 should 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.
2. Whether TDS is to be deducted on GST component in the value?
  - In respect of the 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.
3. Whether additional, allied and out of pocket expenses form part of the purchase value of goods?
  - Additional, allied or out-of-pocket charges recovered from the customers may or may not form part of purchase value. Where these expenses have been reflected in the purchase invoice itself, it should form part of purchase value. If they are charged through a separate invoice, it should not form part of purchase value.
4. If the seller has multiple units, whether purchases made from different units need to be aggregated?
  - The calculation of threshold should be made PAN wise. It means if the different units of the seller are under the same PAN or Aadhaar number, the amount paid or payable to all such units shall be aggregated to compute the limit of Rs. 50 Lakhs.
5. What shall be the treatment of debit note/purchase return for the computation of TDS?
  - In respect of the section 206C (1H), the CBDT vide circular No. 17, dated 29.09.2020 has clarified that credit note or sales return will not have any impact while calculating the taxable value to calculate TCS.
  - Applying the same rule, the purchase value shall not be reduced with the debit note or any amount refunded by seller for calculation of TDS.

6. 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.

7. Whether TDS is to be deducted on the following transactions –

a. Purchase of securities through stock exchange –

In respect of section 206C (1H), 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 recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporations located in International Financial Service Centre (IFSC).

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

b. Purchase of immovable property by a developer –

As per the definition of '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 shall not be deducted from the purchase of immovable property by a developer

c. Transaction in electricity –

Goods include all the movable property whether they are tangible or intangible. Hence electricity is be treated as Goods and can deduct the TDS. 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 apprehended that the CBDT may allow a similar exemption from TDS under Section 194Q as well.

d. Purchase of software –

Taxation of software in the Income Tax Laws has always been a subject of debate. The Supreme Court in its landmark decision of Tata Consultancy Services v. State of A.P [2004] 141 Taxman 132 (SC) held that canned software (off the shelf computer software) are

'goods' and as such assessable to sales tax. Hence, the requirement to deduct TDS shall be decided on the basis whether the purchase of software has been treated as 'purchase of goods' or 'purchase of service'.

If the same has been treated as a purchase of service, it shall not be subject to TDS under Section 194Q but the provisions of TDS under section 194J or 195, as the case may be, may apply. However, if the purchase of software has been treated as a purchase of goods then the buyer shall be liable to deduct TDS subject to the fulfillment of other conditions of Section 194Q.

8. 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.
  
9. 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, which may not be practically possible. Thus, the Central Government may exempt such transactions in view of the powers given by the Explanation to Section 194Q.