

NOTE ON RECENT AMENDMENTS TO TAX DEDUCTED AT SOURCE/TAX COLLECTED AT SOURCE PROVISIONS

Tax Collection/ Tax deduction at source on sale/purchase of goods

Up to FY 2019-20 the provisions of tax deduction or collection at source were not applicable on purchase/sale of goods. By the Finance Act, 2020; provisions of TCS were amended by insertion of section 206(1H) with effect from 1 October 2020 and the seller of goods became liable to collect TCS from the buyer on satisfaction of certain conditions.

Similar amendments were made by the Finance Act, 2021 by inserting section 194Q which provides that the buyer purchasing any goods from a resident seller, above a certain threshold is required to deduct tax at source.

TCS on sale of goods under section 206C(1H): Effective from 1 October 2020, a seller of goods whose turnover in the preceding financial year exceeds INR 10 crore, is liable to collect TCS at the rate of 0.1% on the **sale consideration received** in excess of INR 50 Lakh qua each buyer per financial year.

TDS on sale of goods under section 194Q: The newly inserted section 194Q (applicable from 1 July 2021) provides for deduction of tax by a buyer of goods, whose turnover in the preceding financial year exceeds INR 10 crore, from amounts paid to a resident seller. The liability to deduct TDS arises when the value or aggregate value of goods purchased qua each seller exceeds INR 50 lakh per financial year. Tax is to be deducted at 0.1% from the amount in excess of INR 50 lakh, at the time of payment or credit, whichever is earlier.

The table below summarizes the provisions of the sections.

Table 1		
Particulars	Section 194Q	Section 206C(1H)
Provision	Any Buyer who purchases any goods from a resident seller shall be liable to deduct tax at source.	Any Seller who sells any goods shall be liable to collect tax on source from any buyer.
Applicable to	Buyer whose total sales / gross receipts or turnover from the business exceeds INR 10 crore in the preceding financial year.	Seller whose total sales / gross receipts or turnover from the business exceeds INR 10 crore in the preceding financial year.
Threshold criteria	Tax to be deducted on purchases exceeding INR 50 lakh from a seller.	Tax to be collected on receipt of sale consideration exceeding INR 50 Lakh from a buyer
Incidence	Payment or credit whichever is earlier	Receipt of sale consideration
Applicable date	1 July 2021	1 October 2020
Rate of TDS/TCS	<ul style="list-style-type: none"> – 0.1% from purchases exceeding INR 50 lakh – 5% from purchases exceeding INR 50 lakh (in case of non-furnishing of PAN by seller) 	<ul style="list-style-type: none"> – 0.1% of receipts exceeding INR 50 lakh – 1% of receipts exceeding INR 50 lakh (in case of non-furnishing of PAN/Aadhaar by buyer)

Table 1

Particulars	Section 194Q	Section 206C(1H)
Exception	<ul style="list-style-type: none"> - Transaction liable to TDS under other sections - Transactions liable to TCS (other than TCS on sale of goods under section 206C(1H)) - Any other exceptions that may be notified by CBDT 	<ul style="list-style-type: none"> - Transactions liable to TDS under other sections <i>including</i> section 194Q - Buyer is government/ local authority - Buyer is an importer or any person notified by government - Seller exporting goods out of India - Sale of motor car covered under section 206C (1F) - Sale of tour package or currency by authorized dealer under section 206C(1G)
Quarterly Statement to be filed	Form 26Q – Non-salary returns	Form 27EQ
When to deposit	7 th of the subsequent month (30 April for the month of March)	

Interplay between TCS and TDS on sale of goods

Generally, the duty of deduction and payment of tax is fixed on the payer of the income. However, in case of sale of goods, the duty to collect tax was fastened on the seller (i.e. recipient) under section 206C(1H). This position has been partially changed by introducing the provisions of section 194Q in Finance Act, 2021. Now the primary provision is to deduct tax by the buyer of goods.

Therefore, in cases, where the provisions of section 194Q as well as section 206C(1H) apply simultaneously, the provisions of section 194Q shall prevail and buyer will be liable to deduct tax (refer situation 3 in Table 2 below). However, if the buyer makes a default in deduction of tax or is not required to deduct tax under section 194Q (e.g. since his turnover was less than INR 10 crore in the preceding financial year), the liability to collect tax shifts to the seller if the requirements of section 206C(1H) are satisfied.

The above interplay can be understood in a better manner from the following examples:

	Amounts in INR			
Particulars	<u>Situation 1</u>	<u>Situation 2</u>	<u>Situation 3</u>	<u>Situation 4</u>
Turnover of the seller in preceding FY	7 Crores	15 Crores	13 crores	9 crores
Turnover of the buyer in preceding FY	13 Crores	7 crores	13 crores	8.5 crores
Value of sale transaction	85 Lakhs	70 Lakhs	75 Lakhs	80 Lakhs
Sales consideration received by the seller	70 Lakhs	60 Lakhs	60 Lakhs	65 lakhs
Applicable section (Assumed that the sales transaction as well as payment for the same is undertaken after 1 July 2021)	194Q	206C(1H)	194Q	None
Liability of TCS/TDS	Buyer to deduct and deposit TDS	Seller to collect and deposit TCS	Buyer to deduct and deposit TDS	Not Applicable
Amount subject to TDS/TCS	35 Lakhs (85 Lakh -50 Lakh)	10 Lakhs (60 Lakh -50 Lakh)	25 Lakhs (75 Lakh -50 Lakh)	Nil

CNK Comments:

The various issues which may arise while applying the above sections have been discussed as under:

1. Definition of Goods

Goods are not defined under the Income-tax Act, 1961. Therefore, reference may be taken from the Sale of Goods Act, 1932 (SOGA). As per SOGA, goods mean "Every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale".

However, the CBDT vide circular No, 17/2020 dated 29 September 2020, clarified that the following shall not be subject to application of section 206C(1H) i.e. at the time collection of tax at source by seller:

- Transaction in electricity, renewable energy certificates and energy saving certificates traded through registered power exchanges in accordance with Regulation of the CERC (Central Electricity Regulatory Commission).
- Transactions in securities and commodities traded through recognized stock exchanges or cleared and settled by recognized clearing corporation, including located in IFSC (International Financial Service Centre).
- Sale of a single motor vehicle to consumer exceeding INR 10 lakhs
- No adjustments on account of sales return, discount or indirect taxes including GST to be made for TCS.
- Fuel supplied to non-resident airlines at Indian airports.

A similar clarification in respect of section 194Q is expected/awaited.

2. **Investments in shares and units of Mutual Funds**

Goods (as defined in SOGA) includes stocks and shares. It was clarified by CBDT vide circular No. 17/2020 dated 29 September 2020 that provisions of section 206C(1H) of the Act shall not apply to transactions in securities and commodities carried out on recognized stock exchange. While one may be able to take a position that TDS shall not apply in respect of transaction in listed securities on a stock exchange, as one does not know the seller of the securities when one is undertaking a transaction through an exchange, it is advisable to deduct TDS on purchase of unlisted shares or securities from resident sellers if the other conditions such as the threshold limits are satisfied.

3. **Applicability of provisions of section 194Q in cases where:**

- **Purchases are made prior to 30th June and the amount due is paid after 30 June 2021.**
- **Advance payment made towards purchases prior to 30 June 2021 and goods are received after 30 June 2021 (Assuming credit in the books of accounts is made at the time of receipt of goods)**

Subject to the clarification from CBDT, CNK view is that where amount payable is appearing as outstanding as on 30 June 2021 the credit towards such purchases in books would have been made before 30 June 2021. Accordingly, the provisions of section 194Q should not apply, since tax is deductible at the time of payment or credit whichever is earlier, and the credit entry was passed prior to 30 June 2021 when provisions of section 194Q were not applicable. Therefore, even though payment is made after 30 June 2021 the provisions of section 194Q should not get triggered.

Similarly, in case advance payment is made against purchase of goods before 30 June 2021, the TDS provision again should not apply on these advances even though purchases are booked after 30th June 2021. However, TDS may apply on the balance payment if the credit as well as the payment is made after 30th June 2021.

Further, TCS in the above scenarios may apply wherever TDS is not applicable, as it gets triggered on receipt of sale consideration, subject to the threshold limits provided in section 206C(1H).

4. **Calculation of threshold limit for value of purchase under section 194Q for FY 2021-22**

The limit of INR 50 lakh is to be applied qua each seller and qua each financial year. For FY 2021 22, even though the section is made applicable from 1 July 2021, the limit of INR 50 lakh shall be calculated from 1 April 2021. Therefore, cases where:

- Value of purchases exceeded INR 50 lakh on or before 30 June 2021, then TDS shall be deducted on all subsequent purchases on or after 1 July 2021 even though prior to 30 June 2021 these were subjected to TCS.
- Value of purchases does not exceed INR 50 lakh up to 30 June 2021, then TDS on purchase value (calculated from 1st April), once it exceeds INR 50 lakh shall be applicable.

5. **GST on purchase of goods**

The CBDT vide circular No. 23/2017 dated 19 July 2017 clarified that tax shall not be deducted on the GST component in the invoice for services. While this circular specifically pertains to services and not to goods, in our view, the same principle can be applied for TDS on purchase of goods under section 194Q as well. In other words, one may consider not deducting tax at source on the GST component.

6. Sellers having multiple GST numbers

If the seller has multiple registrations, the threshold limit shall be computed on basis of PAN and not on GSTIN.

7. Incidental charges on purchase of goods

In case the incidental charges form part of the purchase invoice and is intrinsically linked with the purchase, it is advisable that the tax is also deducted on these incidental charges such as freight.

8. Non-deduction of tax under section 194Q

In case tax is not deducted under section 194Q, the same would result in disallowance of 30% of the purchases under section 40a(ia) of the Act. Further, proceedings under section 201 of the Act can also be initiated against the payer.

9. Practical application of section 206C(1H) and section 194Q

The provisions of TCS applies on receipt of consideration in case the buyer has not deducted TDS under section 194Q. Accordingly, a seller whose turnover in the immediately preceding financial year exceeds INR 10 crore, should obtain a declaration from the buyer to evaluate whether the buyer would be deducting tax at source under section 194Q. In the absence of such a declaration received, the seller can include TCS in the invoice and collect such TCS if the buyer does not deduct TDS under section 194Q.

Further, the buyer need not obtain any declaration from the seller as the onus of deduction of TDS is on the Buyer.

Tax Deduction/ Collection at higher rates in certain cases:

In case, where the deductee/ collectee has not furnished PAN to the deductor/collector, higher rates of TDS/TCS shall apply as mentioned in section 206AA and section 206CC respectively.

Further in order, to promote compliance of return filing, a new section **206AB** has been inserted vide Finance Act 2021, whereby in case there is default in filing return of income by the deductee in 2 years preceding the year in which income is subject to TDS, then higher rates of TDS shall apply, even if PAN is furnished by deductee. Similarly, a new section **206CCA** has also been inserted to provide TCS at higher rates where there is default in return filing by collectee.

The higher rate of TDS and TCS under section 206AB and section 206CCA apply to a specified person i.e. a person:

- a. who has not filed return of income for **both the years** preceding the year in which tax is liable to be deducted or collected & time limit for return filing under section 139(1) has expired; *and*
- b. aggregate of TCS and TDS in his case **exceeds INR 50,000** or more in each of the two preceding years.

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

How these two sections namely 206AA/206AB for ascertaining TDS liability and section 206CC/206CCA for ascertaining TCS liability, will apply is enumerated in table 3 herein below:

Table 3

Particulars	Tax Deducted at Source		Tax Collected at source	
	Section 206AA	Section 206AB	Section 206CC	Section 206CCA
Applicability	PAN is not furnished by deductee	Deductee is a specified person (subject to exceptions*)	PAN/Aadhar is not furnished by Collectee	Collectee is a specified person
Rates	Higher of: <ul style="list-style-type: none"> - rate specified in relevant section; or - rates in force; or - 20% (However, for section 194Q and 194O rate is reduced to 5%) 	Higher of: <ul style="list-style-type: none"> - Twice of rate specified in relevant section; or - Twice the rates in force or - 5% Note: In case the specified person has not furnished his PAN, TDS will be made at higher of – <ul style="list-style-type: none"> - rate determined as above under section 206AB or - rates specified in section 206AA. 	Higher of: <ul style="list-style-type: none"> - Twice of rate specified in relevant section; or - 5% (However, for section 206C(1H) rate is reduced to 1%) 	Higher of: <ul style="list-style-type: none"> - Twice of rate specified in relevant in section; or - 5% Note: In case the specified person has not furnished his PAN, TCS will be at higher of <ul style="list-style-type: none"> - rate determined as above under section 206CCA or - rate specified in section 206CC.
Exceptions	*Provisions of section 206AB shall not apply to TDS on: <ul style="list-style-type: none"> • Salary (section 192) • Accumulated PF balance (section 192A) • winnings from lottery / crossword puzzle (section 194B) • winnings from horse races (section 194BB) • income in respect of investment in securitization trust (section 194LBC) • cash withdrawals (section 194N). 			

CNK Comments

1. At present, since the due dates for return filing of FY 2020-21 have not expired, one would have to ascertain whether the deductee/collectee has filed return of income for FY 2018-19 and FY 2019-20, to determine whether the deductee/collectee is a specified person.
2. In order to ease the compliance burden on the deductor/ collector, the CBDT has set-up a compliance portal through which a deductor,/ collector having a valid TAN can verify the following on providing the PAN of the recipient:
 - a. Whether the recipient is a specified person; and
 - b. Whether the PAN of the recipient is operative i.e., linked to Aadhaar
3. One can verify the above details by registering and logging on the portal <https://report.insight.gov.in/reporting-webapp/portal/homePage>
4. In case the person is a specified person, the higher of the following TDS or TCS rate shall apply:
 - a. Twice the rate specified in the relevant TDS/TCS provision; or
 - b. Twice the rate or rates in force; or
 - c. At the rate of 5%

Linking of PAN with Aadhaar

All individuals, eligible to have an Aadhaar number, are required to link their PAN and Aadhaar by 30 September 2021. In case such linking has not been done, the PAN would be considered as inoperative and it shall be deemed that he has not intimated, furnished or quoted his PAN.

In case PAN is inoperative, the provisions of section 206AA as provided in the above table would apply.

One can check the status of the PAN by logging in to the reporting portal on <https://report.insight.gov.in/reporting-webapp/portal/homePage>

Disclaimer and Statutory Notice

This e-publication is published by CNK & Associates, LLP Chartered Accountants, India, solely for the purposes of providing necessary information to employees, clients and other business associates. This publication summarizes the recent amendments to the TDS and TCS provisions under the Income Tax Act, 1961. Whilst every care has been taken in the preparation of this publication, it may contain inadvertent errors for which we shall not be held responsible. The information given in this publication provides a bird's eye view on the recent important select developments and should not be relied solely for the purpose of economic or financial decision. Each such decision would call for specific reference of the relevant statutes and consultation of an expert. This document is a proprietary material created and compiled by CNK & Associates LLP. All rights reserved. This newsletter or any portion thereof may not be reproduced or sold in any manner whatsoever without the consent of the publisher.

This publication is not intended for advertisement and/or for solicitation of work.

MUMBAI

www.cnkindia.com

3rd Floor, Mistry Bhavan, Dinshaw Vachha Road,
Churchgate, Mumbai. 400 020, India.
Tel: +91 22 6623 0600

501/502, Narain Chambers, M.G. Road,
Vile Parle (East), Mumbai 400 057, India.
Tel: +91 22 6250 7600

Bengaluru: +91 80 2535 1353

Chennai: +91 44 4384 9695

Vadodara: +91 265 234 3483

Ahmedabad: +91 79 2630 6530

Gandhinagar: +91 79 2630 6530

Delhi: +91 11 2735 7350

Dubai: +971 04 355 9533

Sharjah: +971 4 3559544