

Applicability clarification issued on TDS/TCS provision under Section 194O, Section 194Q and Section 206C

[Circular No. 20/2021 dated 25 November 2021](#)

The CBDT vide Circular No. 17 of 2020 dated 29 September 2020 had issued guidelines on Section 194O and Section 206C(1H) of the Act to remove difficulties and provide clarity for certain transactions. Further, guidelines were issued by the CBDT vide Circular no. 13 of 2021 dated 30 June 2021 in relation Section 194Q of the Act through to remove the difficulties.

The CBDT has issued further guidelines in respect of Section 194O, Section 194Q, and Section 206C (1I) of the Act. Key issues addressed by the CBDT in the said Circular are summarized as under:

Applicability of TDS under Section 194O- E-auction services carried out through an electronic portal

Payment of certain sum by e-commerce operator to e-commerce participant is subject to TDS as per Section 194O, where e-commerce operator is facilitating the sale of goods or provision of services of an e-commerce participant through its digital or electronic facility or platform.

In an e-auction, the e-auctioneer is only responsible for the price discovery, and the transaction of purchase/sale is carried out directly by the purchase & seller. Further, the price so discovered can be negotiated between parties without the knowledge of the e-auctioneer.

In such scenario, the CBDT has clarified that Section 194O would not apply to e-auction activities carried out by e-auctioneers. However, the buyer and seller would still be liable to deduct/ collect tax as per the provisions of Section 194Q and 206C(1H) of the Act.

Applicability of TDS under Section 194Q- Adjustment of various state levies and taxes other than GST.

Any buyer, who is responsible for paying any sum to a resident seller for the purchase of any goods exceeding Rs. 50 lakhs in any previous year is required to deduct tax under Section 194Q.

The CBDT, vide Circular 13 of 2021, dated 30 June 2021, has clarified that where the GST component is indicated separately in the invoice, tax is to be deducted under Section 194Q only on the amount credited in the account of the seller without including GST.

The CBDT has clarified that where VAT, sales tax, excise duty, CST, etc. are indicated separately in the invoice, then TDS under Section 194Q is to be deducted without including such taxes.

Applicability of Section 194Q in case of department of Government, not being a public sector undertaking or corporation.

A government department that is not carrying on any business or commercial activity is not regarded as a 'buyer' for Section 194Q. Such organizations are not required to deduct TDS on goods purchased by them.

The CBDT has clarified that the Central Government or a State Government shall not be considered as a 'seller' and therefore, no tax is to be deducted under Section 194Q, if the seller of goods is Central Government or a State Government.

The CBDT has however clarified that any other person, such as a Public Sector Undertaking or

corporation established under Central or State Act or any other such body, authority, or entity, shall be required to comply with the provisions of Section 194Q.

Applicability of section 194Q of the Act in cases where exemption falls under section 206C(1A) of the Act.

As per Section 206C(1A) of the Act, TCS provisions under Section 206C(1) of the Act on sale of goods do not apply in cases where the Indian resident buyer furnishes a declaration that the goods are to be utilised for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

The CBDT has now clarified that the provisions of Section 194Q of the Act will apply to transactions, where Section 206C(1) exempts collection of TCS, where conditions specified under Section 194Q are satisfied.



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