



# Grappling with Increasing TDS Compliances

## Interplay between Section 194Q and 206C(1H) and Related Controversies

Finance Act, 2021 had introduced a new Section 194Q in the Income tax Act, effective from 1st July 2021, related to tax deduction at source by a buyer on purchase of goods. Prior to this, Finance Act, 2020 had introduced the provisions related to Tax collection at source (TCS) in respect of sale of goods by a seller and the said provision was effective from 1st October 2020. Thus, at present, there are two provisions of tax deduction and tax collection on the same transaction. Erstwhile, the transactions of purchase and sale of goods were not within the ambit of tax deduction or collection at source (TDS/ TCS) except for a few specific transactions related to sale of alcoholic liquor, scrap, tendu leaves etc. which was within the purview of TCS.

However, as law evolved, more and more transactions got included within the purview of TDS/ TCS, thereby, increasing compliances. In fact, the amendments and the compliances related thereto, are against the Government's commitment via the **'Taxpayers Charter' to reduce cost of compliances and treating taxpayer as honest.**

### **Provisions of Tax Deduction at Source on Purchase of Goods [Section 194Q]: Applicable w.e.f. 1st July 2021**

The provisions of section 194Q provides that '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'.

The section defines "Buyer" as 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.

#### **Provisions of Tax Collection at Source on Sale of Goods [Section 206C(1H)]: Applicable w.e.f. 1st October 2020**

As stated aforesaid, vide Finance Act 2020, the Government already had included the provisions of TCS [by inserting sub-section (1H) in section 206(C)] effective from 1st October 2020 on the same nature of transaction (i.e., sale of goods) as under:

'Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax'.

The section defines "seller" as 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 sale of goods is carried out.

#### **Interplay between Section 194Q and section 206C(1H)**

Section 194Q specifically provides that if tax is deductible under any other provisions of the Act or is collectible under section 206C {other than the transaction on which 206C(1H) is applicable}, provisions of 194Q shall not be applicable. In other words, if a transaction is subject to both section 194Q and section 206C(1H), tax will be deductible under section 194Q.

On the other hand, Section 206C(1H) provides that if the buyer is liable to deduct tax at source under any other provision of the Act on the goods purchased by him from the seller and has deducted such amount, then section 206C(1H) shall not be applicable.

The language of the exceptions under these two sections are worded in a way that section 194Q is given precedence, however section 206C(1H) imposes a condition that only if section 194Q is applicable and the buyer has also deducted the tax at source, only then section 206C(1H) is not applicable. This would have led to a situation whereby in case of a purchase on which section 194Q is applicable and the buyer



defaulted on deduction of tax at source, both TDS and TCS could have become applicable. To address this interplay and also to address the situations wherein TCS has already been collected due to the fact that the provisions of section 206C(1H) came into force prior to the applicability of section 194Q & sellers have already made modifications to their accounting software to this effect, the Board vide Circular No. 13 dated 30th June 2021 has clarified that “if, for any reason, tax has been collected by the seller under sub-section (1H) of section 206C of the Act, before the buyer could deduct tax under section 194Q of the Act on the same transaction, such transaction would not be subjected to tax deduction again by the buyer”. Though the clarification is a welcome move to address such situation, however, for the cases where buyer has defaulted in deducting tax as per law or the parties to the transaction mutually agree that only the seller collects the tax at source, can the buyer be relieved from his statutory obligation under law by taking shelter of a circular. Can a circular override the provisions of law!

#### **Other issues relating to application of Section 194Q**

- **What is included in Goods** – The term 'Goods' is not defined in the Act and hence, has a wide meaning.

Taking import from various other laws (including Sale of Goods Act as well as in GST law and Customs law) and as per general parlance, the term 'Goods' would mean and include every kind of property, more particularly, movable property and including crops, shares, stocks, etc. So, one has to keep in mind the provisions of section 194Q while buying any type of goods and not necessarily traded goods, raw material etc. It will include even stationary, consumables, fixed assets, off-market transactions in security and any other goods bought during the course of business if the threshold is achieved.

- **Credit of TDS in case of advance/purchase return** – TDS under section 194Q is applicable on payment or credit, whichever is earlier. In case TDS under section 194Q is done on an advance payment during the year or tax has been deducted at source and thereafter a purchase return is made which is not adjusted during a particular financial year, there could be a challenge in claiming credit of TDS under section 199 because the income pertaining to the transaction, on which tax has been deducted, is not included in taxable income of that year. This will impact the cash flow of the seller.



- **Issues pertaining to threshold for computing turnover** – Though the circular addresses certain aspects related to the threshold of turnover of the immediately preceding year, however, there is still not much clarity:
  - Circular clarifies that turnover from non-business activity will not be included, but interpretation of the term 'non-business activity' could be a subject matter of litigation.
  - Whether GST is to be considered while computing the turnover/gross receipts.
- **Company having various branches, different accounting software but common vendors** – If a taxpayer has multitude of branches across the country with different TAN and the accounting is not centralised, but there is a common vendor, the aggregation of transactions for effecting the compliance of TDS provisions would be a dreary task.
- **Strenuous checking by Tax Auditor** – With almost the entire debit side of the profit & loss account of the taxpayer under the ambit of TDS (given the wide meaning of the term goods), it would be a taxing job for a tax auditor for absolving his duties.

With such commotion around the application of these sections, the consequences of non-compliance are tremendous. A bonafide non-deduction of tax at source, because of manifold interpretations, would lead to a 30% disallowance of the expenditure and will also result in treating the taxpayer as an assessee-in-default resulting in levy of interest, penal consequences & prosecution. To add on to this, another burden on the deductor is the compliance of newly inserted section 206AB/ 206CCA which provides for an even higher rate of tax deduction/ collection if the deductee/ collectee is a defaulter in filing tax returns. The burden of ensuring this compliance is

also on the deductor/ collector. Even though the government has come up with a functionality to check the list of such defaulters, the said task is onerous owing to frequent procedural checks.

The concept of deduction and collection of tax at source was introduced to reduce certain acts of tax evasion to ensure that some portion of tax is collected by the government in advance. However, law has evolved in such a way that it is causing undue difficulty to honest taxpayers and the Government has exonerated itself from this. Mere issuance of a Circular, clarifying certain questions, has in fact added to the confusion and some still remain unanswered. Evidently, the Government did not anticipate the practical difficulties in implementing and compliance of the current TDS provisions and therefore, one hopes that the Government takes the Taxpayers Charter seriously and remedial steps are taken to ease the doing of business rather than increasing cost of compliance for businesses.



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