

TDS on Purchase of Goods w.e.f. 1st July, 2021

Deduction of TDS under Section 194Q

Background:

The Finance Act, 2020 introduced a new section for collection of TCS on sale of goods. The TCS is to be collected on value of sale of goods subject to certain conditions. The section was effective from 1st October, 2020.

The Finance Act, 2021 similarly has introduced new section 194Q which is effective from **1st July 2021**. The provisions of new **section 194Q** require the specified buyer to deduct TDS on the purchase of goods from the resident seller.

I. Point of TDS under section 194Q:

As per provisions of section 194Q of the Income Tax Act, TDS is deductible if-

- The buyer is responsible for making payment of a sum to the resident seller; and
- Such payment is to be done for the purchase of goods of the value/ aggregate of the value exceeding INR 50 lakhs in a Financial Year. (Thus, services get excluded)

Explanation of the term 'buyer'-

As per explanation to section 194Q, the term 'buyer' means as under-

- A person having total sales/ gross receipts/ turnover exceeding INR 10 crores in the immediately preceding Financial Year in which the specified purchase of goods took place;
- Buyer will not include any person notified by the Central Government.

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II. Time of tax deduction on the purchase of goods under Section 194Q

TDS on purchase of goods is to be deducted by the buyer at the earliest point in time with respect to the following -

- At the time of credit of the sum into the account of the seller; or
- At the time of payment of the sum thereof.

III. Rate of TDS deduction under Section 194Q

The buyer is liable to deduct TDS at the rate of 0.1% of the purchase value above INR 50 lakhs.

However, in case the Permanent Account Number (PAN) of the seller is not available. Then, the buyer would be liable to deduct tax @5%.

IV. Non applicability of TDS u/s 194Q :

This section is not applicable in the following cases:

- (a) tax is deductible under any other provisions of the Income Tax Act,1961; and
- (b) tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.
- (c) Transactions in securities and commodities through defined recognised stock exchanges and recognised Clearing Corporation located in IFSC
- (d) Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges.

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V. Examples:

Examples 1: -

X & Co. has purchased goods from Y & Co. for an aggregate amount of INR 40 lakhs during the period 1st April 2021 to 30th June, 2021. Further, X & Co. has purchased goods worth INR 30 lakhs on 1st July, 2021 from Y & Co. The limit of INR 50 lakhs is per seller per financial year. Since X & Co. has not crossed the limit of INR 50 lakhs until 30th June, 2021, we will have to determine the portion of purchases made on or after 1st July, 2021 on which 194Q will be applicable.

X & Co will have to deduct TDS on INR 20 lakhs out of INR 30 lakhs purchases made on 1st July,2021 (INR 40 lakhs+INR 30 lakhs – INR 50 lakhs =INR 20 lakhs).

TDS is required to be deducted on the purchases made on or after 1st July, 2021.

Example 2: -

X & Co. has purchased goods worth INR 70 lakhs from Y & Co. during the period 1st April, 2021 to 30th June, 2021. Further, X & Co. has purchased goods worth INR 30 lakhs on 1st July, 2021 from Y & Co. Since the limit of INR 50 lakhs is per seller per financial year which is already exhausted on purchase of goods made before 1st July, 2021. X & Co. shall now comply deduct tax on the entire amount of purchases made on or after 1st July, 2021.

Please note that liability in the aforesaid examples have arisen because the buyer has exceeded the threshold prescribed in these provisions i.e. INR 10 crores.

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VI. Other Points to be remembered:

1. This section is similar to section 206C(1H) which is applicable for collection of tax at source which provides for collection of TCS at 0.10% (in PAN cases) and 1% (in Non-PAN cases) for sale consideration received in excess of INR 50 lakhs in a Financial Year.
2. Post budget 2021, since now there will be two sections which will deal with the same kind of transaction of sales/purchase above INR 50 lakhs from party whose turnover in previous year exceeds INR 10 crores
 - (i) TDS u/s 194Q to deduct TDS of 0.1% on purchase above INR 50 lakhs
 - (ii) TCS u/s 206C (1H) to collect TCS @ 0.1% on sales above INR 50 lakhs

CBDT has clarified that considering the above situation that if on a transaction TCS is required under section 206C(1H) as well as TDS under section 194Q, then in respect of that transaction only TDS under section 194Q shall only be carried out.

It has to be also noted that if tax has been collected by the seller under sub-section (I H) of section 206C of the Act, before the buyer could deduct tax under section 194-Q of the Act on the same transaction, such transaction would not be subjected to tax deduction again by the buyer. This concession is provided to remove difficulty, since tax rate of deduction and collection are same in section 194Q and subsection (IH) of section 206C of the Act.

3. Any sum paid/ credited by buyer from 1st April to 30th June 2021 (both days inclusive) shall not be counted for tax deduction u/s 194Q.
4. Since the threshold of INR 50 lakhs is with respect to the previous year, calculation of sum for triggering TDS under section 194Q shall be computed from 1st April, 2021. Hence, if a person being buyer has already credited or paid INR 50 lakhs or more up to 30th June, 2021 to a seller, the TDS under section 194Q shall apply on all credit or payment during the previous year, on or after 1st July, 2021 to such seller.

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5. CBDT has clarified that the TDS under section 194Q should be deducted net of GST, if charged separately. However, for section 206C(1H) GST is to be included.

In case, tax is deducted on advance payment or on paid basis, tax has to be withheld on the amount including GST since at that point of time; it is not possible to segregate the GST from invoice for goods

6. In case of purchase return, which takes place after TDS has already been deducted u/s 194Q, the excess tax which is deducted is allowed to be adjusted against future supply of goods by the same seller.

In case the goods are replaced by the seller for the same value, there is no need of any further adjustment.

7. Non-residents having no permanent establishments are not covered under the ambit of section 194Q. Thus, no TDS deduction on import of goods from such persons.

8. The provisions of Section 194Q and Section 206C(1H) of the Act shall not apply if the seller's/buyer's income is exempt from income tax under the Income Tax Act or under any other Act passed by the Parliament.

The above point is applicable only if the full income is exempt. So, if only part of income is exempt, then the provisions of section 194Q and section 206C(1H) shall apply as it is. (Refer para 4.5 of the CBDT Circular no.13 dated 30th June, 2021.)

9. If buyer is a newly incorporated entity which has established during the year, then considering the fact that there is no turnover/gross receipt in the previous year, provisions of this section are not applicable. (Refer para 4.7 of the CBDT Circular no.13 dated 30th June, 2021.)

10. Turnover/ Gross receipts of INR 10 crores will mean Turnover/ Gross receipts as per business carried on by him. Thus, amount of income received under other heads of income shall not be considered.

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11. It is quite possible that in case of E-commerce Operators, all the sections such as 194O, 194Q and 206(1H) are applicable. In such an event, 194O shall prevail over all other two sections.

12. **To enforce this law**, Buyer shall communicate to the seller, by preparing '**Intimation Letter**', on its letterhead stating that the buyer is liable to deduct Tax under section 194Q, and that the seller need not collect TCS under Sec 206C(1H). This Intimation letter should be sent to the seller alongwith a request to send copy of the PAN card of the seller and acknowledgment copy of the return filed by the seller.

(Refer Annexure A enclosed below – for Draft "**Intimation Letter**" to be sent by Buyer to Seller if his turnover is more than INR 10 crores).

13. As there might be confusion as to who shall comply with the provisions, the seller shall also communicate with the buyer, through "**Confirmation Letter**" asking whether the buyer is liable to deduct tax under section 194Q, if the buyer's response is positive (i.e., he is liable to deduct tax) then the seller shall not collect tax and if the reply is negative then the seller shall collect tax accordingly.

(Refer Annexure B enclosed below – for Draft "**Confirmation Letter**" to be sent by Seller to Buyer if his turnover is more than INR 10 crores).

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14. Comparison of Sec 194Q and 206C(1H) of Income Tax Act, 1961

Particulars	194Q	206C(1H)
Purpose	Tax to be DEDUCTED	Tax to be COLLECTED
Applicable to	Buyer/Purchaser	Seller
With effect from	01/07/2021	01/10/2020
When deducted or collected	Payment or credit, whichever is earlier	At the time of receipt
At the time of receipt	TDS shall be deducted on advance payments made	TCS shall be collected on advance receipts
Rate of TDS/TCS	0.1%	0.1% (0.075% for FY 20-21)
PAN not available	5%	1%
Triggering point	<p>Turnover / Gross Receipts / Sales from the business of BUYER should exceed INR 10 crores during previous year (Excluding GST).</p> <p>Purchase of goods of aggregate value exceeding INR 50 lakhs in Previous Year (The value of goods includes GST)</p>	<p>Turnover / Gross Receipts / Sales from the business of SELLER should exceed INR 10 crores during previous year (Excluding GST).</p> <p>Sale consideration received exceeds INR 50 lakhs in Previous Year (The value of goods includes GST)</p>
Exclusions	Yet to be notified by government	If Buyer is- <ul style="list-style-type: none"> • Importer of goods • Central/State Government, Local Authority • An embassy, High Commission, legation,

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		commission, consulate and trade representation of a foreign state.
When to deposit/collect	Tax so deducted shall be deposited with government by 7 th day of subsequent month	Tax so collected shall be deposited with government by 7 th day of subsequent month
Quarterly statement to be filed	26Q	27EQ
Quarterly statement to be filed	FORM 16A	FORM 27D

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ANNEXURE A

INTIMATION LETTER

(Draft "Intimation Letter" to be sent by Buyer to Seller if his turnover is more than INR 10 crores to be printed on the letter head of the Buyer, who is liable to Deduct TDS under section 194Q)

Date:

To,

Name and Address of Supplier

(From whom goods are bought/might be bought more than INR 50 lakhs)

Subject: Intimation of applicability of TDS under Sec 194Q on purchases made from you.

Dear Sir/Madam,

We _____(Name).....(address)..... having PAN_____, hereby inform you that Our total sales, gross receipts or turnover from the business exceeded INR 10 crores during the FY 2020-21 and therefore we are liable to deduct Tax as per the new section 194Q on purchases made by us from you. This provision is applicable from 1st day of July, 2021.

Accordingly, you are requested not to collect Tax under section 206C(1H).

For _____

Authorised Signatory

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ANNEXURE B

CONFIRMATION LETTER

(Draft "Confirmation Letter" to be sent by Seller to Buyer if his turnover is more than INR 10 crores. To be printed on the letter head of the seller, who is liable to collect TCS under section Sec 206C(1H))

To,

Name and Address of Buyer

(To whom goods are sold/might be sold more than INR 50 lakhs)

Subject: Confirmation requested from you on applicability of TDS under Sec 194Q to you, else we will be collecting TCS on Sale made to you

Dear Sir/Madam,

As per the newly inserted section 194Q of Income Tax Act 1961, Buyer (who is satisfying the conditions of said provision) is liable to deduct TDS. At the same time, on supply made by us to you, we are also required to collect Tax under Sec 206C(1H). However, at the same time, there cannot be two tax on same transaction.

Therefore we _____(Name).....(address)..... having PAN _____, hereby request for your confirmation, that whether you are liable to deduct TDS u/s Section 194Q or not, on purchases made by you from us. Please choose from the below options and let us know.

a) We confirm that we are liable to deduct TDS, on purchase made by us, from you, u/s 194Q.

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b) We confirm that we are not liable to deduct TDS on purchase made by us from you, u/s 194Q.

Please note that, if we don't receive your reply within one week, then our accounts department will collect TCS u/s 206(1H).

For _____

Authorised Signatory

P.S. Assessors liable to deduct tax under this section are also required to comply with the provisions of section 206AB/206CCA while making payment to the '*specified person.*'

Please refer to the following link for detailed note on 206AB and 206CCA:

<https://www.bdjokhakar.com/wp-content/uploads/Note-Section206ABand206CCA.pdf>