

ANALYSIS OF SECTION 194Q--PROPOSED IN BUDGET 2021-22

Team TRD

Whether TCS u/s 206C (1H) of Income Tax is to be collected on sales of goods above 50 lakhs as amended by Budget 2020 or TDS u/s 194Q is to be deducted by the buyer as proposed in Budget 2021?

As per Budget 2021, New Section 194Q has been proposed to be inserted which reads as under: -

'194Q. (1) 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.

Explanation. For the purposes of this sub-section, "buyer" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed Rs. 10 crores during the financial year immediately preceding the financial year in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person **liable to pay such income**, such credit of income shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(4) Every guideline issued by the Board under sub-section (3) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income tax authorities and the person liable to deduct tax.

This section is similar to section 206C(1H) which is applicable for collection of tax at source. The features of the proposed provisions are listed below:

Rate of TDS under section 194Q

- i. Buyer of all goods will be liable to deduct tax at source
 - @ 0.1% of sale consideration
 - exceeding INR 50 Lakhs in a Financial Year
- ii. Tax to be deducted @ 5%
 - if the seller does not provide PAN/Aadhar(as per Memorandum explaining the provisions in the Finance Bill, 2021).

Turnover for applicability of section 194Q

TDS obligation will be on buyers who have gross receipts/turnover exceeding INR 10 Crores in preceding financial year

Conditions for applicability of section 194Q

- i. TDS obligation will arise
 - if the payment is made to a resident seller
- ii. No requirement of TDS u/s 194-Q on a transaction:
 - if TDS is deductible under any other provision or
 - TCS is collectible under section 206C [excluding 206C(1H)]

- iii. On a given transaction
 - either TDS u/s 194Q will apply
 - or
 - TCS u/s 206C(1H) will apply

Both TDS u/s 194Q and TCS u/s 206C(1H) will not apply on the same transaction
- iv. In case of potential overlap between the two provisions
 - TDS u/s 194Q will apply
 - and
 - TCS u/s 206C(1H) will not apply

Date of Applicability-

This provision will be applicable with effect from 1st July 2021.

Time Limit for deduction of TDS under section 194Q-

Tax to be deducted at the earliest of the following dates:

- time of credit of such sum to the account of the seller
- or
- time of payment

In case Seller provided PAN card details, Rate will be 0.1% otherwise it will be deducted @5 % as per Sec206 AA (as per Memorandum explaining the provisions in the Finance Bill, 2021).

However, section 206C (1H) which is already part of Income Tax Act which deals which TCS on sales of goods above 50 lakhs @ 0.1% casts responsibility of seller of goods to collect TCS at the time of collection above 50 lakhs.

Section 206C(1H) reads as under: -

Section 206 C (1H) 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:

Provided that if the buyer has not provided the Permanent Account Number or the Aadhar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words "five per cent", the words "one per cent" had been substituted:

Provided further that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

Post budget 2021 since now there will be two sections which will deals on same transaction of sales/purchase above 50 lakhs from party whose turnover in P.Y exceeds Rs 10 crore

- (1) TDS u/s 194Q to deduct TDS of 0.10% on purchase above 50 lakhs
- (2) TCS u/s 206C (1H) to collect TCS @ 0.10% on sales above 50 lakh

The confusion is whether TCS u/s 206C (1H) of Income Tax Act is to be collected on sales of goods above 50 lakh or TDS u/s 194Q is to be deducted by the buyer?

It is proposed to provide that the provisions of section 194Q shall not apply to,-

- (i) a transaction on which tax is deductible under any provision of the Act; and
- (ii) a transaction, on which tax is collectible under the provisions of section 206C other than transaction to which sub-section (1H) of section 206C applies.

This means if on a transaction a TDS or tax collection at source (TCS) is required to be carried out under any other provision, then it would not be subjected to TDS under this section. In the Memorandum explaining the provisions in the Finance Bill, 2021 it is clarified 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.

Illustration: -

Turnover of Seller (in crore)	Turnover of Buyer (in crore)	Amt. recd. or paid for sale or purchase of Goods in previous year (in lakhs)	Taxable amt.	Whether PAN is available	TDS or TCS	Liabe Person	Applicable Section	Excluded Section	Explanation
11	9	55	5	Buyers PAN available	TCS @0.1%	Seller	206C(1H)	194Q	Buyer Turnover less than 10 Cr.
11	9	55	5	Buyers PAN not available	TCS @5%	Seller	206C(1H)	194Q	Buyer Turnover less than 10 Cr.
9	11	55	5	Sellers PAN available	TDS @ 0.1%	Buyer	194Q	206C(1H)	Sellers Turnover less than 10 Cr
9	11	55	5	Sellers PAN not available	TDS @ 5%	Buyer	194Q and 206AA	206C(1H)	Sellers Turnover less than 10 Cr and PAN not available
11	11	55	5	Sellers PAN available	TDS @ 0.1%	Buyer	194Q	206C(1H)	Exclusion Provided under Sec 206C(1H)
11	11	55	5	Sellers PAN not available	TDS @ 5%	Buyer	194Q and 206AA	206C(1H)	Exclusion Provided under Sec 206C(1H)

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

Particulars	194Q	206C(1H)
Purpose	Tax to be <i>DEDUCTED</i>	Tax to be <i>COLLECTED</i>
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
Advances	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 2020-21)
PAN not available	5%	1%
Triggering point	Turnover/Gross Receipts/Sales from the business of BUYER should exceed Rs.10cr during previous year (Excluding GST) Purchase of goods of aggregate value exceeding Rs.50Lakhs in P.Y. (The value of goods includes GST)	Turnover/Gross Receipts/Sales from the business of SELLER should exceed Rs.10cr during previous year (Excluding GST) Sale consideration received exceeds Rs.50Lakhs in P.Y. (The value of goods includes GST)
Exclusions	Yet to be notified by government	If Buyer is- Importer of goods Central/State Government, Local Authority An embassy, High Commission, legation, commission, consulate and trade representation of a foreign state.
When to deposit/collect	Tax so deducted shall be deposited with government by 7th day of subsequent month	Tax so collected shall be deposited with government by 7th day of subsequent month
Quarterly statement to be filed	26Q	27EQ
Certificate to be issued to seller/buyer	FORM 16A	FORM 27D