

Section 194 Q – Deduction of tax at source on Purchase of Goods

This section is applicable from **01.07.2021** and provides for deduction of tax at source on the payment made by the assessee towards the purchase of goods. It is similar to section 206C(1H) which is applicable for collection of tax at source.

- It is applicable to a resident buyer for purchase of goods of the value or aggregate value exceeding **Rs.50 lakhs** in any previous year.
- The assessee at the time of credit of such sum to the account of the seller or at the time of payment whichever is earlier shall deduct an amount equal to **0.1%** of such sum exceeding **Rs.50 lakhs** by way of income-tax.
- The buyer would mean a person whose total sales, gross receipts or turnover from the business carried on by him exceeded **Rs.10 crores** during the financial year preceding the financial year in which the purchase of goods is carried out.



This provision **shall not apply** where

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

In other words, the seller covered by **section 206C(1H)** would collect **0.1% (w.e.f. 01.04.2021)** and the buyer would deduct **0.1% w.e.f. 01.07.2021.**

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.**

Reduced rate of TDS under section 194Q when PAN not furnished. [further proviso to section 206AA(1)]

When the person entitled to receive any sum or income on which tax is deductible under Chapter XVII-B does not furnish Permanent Account Number to the person responsible for deducting tax at source, the person making payment must deduct tax at source at the higher of the following rates viz.

- (i) rate as specified in the relevant provision of this Act; or
- (ii) at the rate or rates in force; or
- (iii) at the rate of 20%.

The Finance Bill, 2021 proposes to insert **section 194Q** for deduction of tax at source **w.e.f. 01.07.2021**. If the supplier of goods referred to in **section 194Q** does not furnish his PAN then the buyer must deduct tax at source **@ 5%** instead of **20%** given above. This is enabled by inserting a further proviso to section 206AA to be effective from **1st July, 2021**.

Sub-Section (1H) as has been inserted in Sec.206C :

The tax shall be collected by the seller from buyer, if following conditions are satisfied:

- (a) There is a sale of goods to such buyer.
- (b) The seller receives any amount as consideration for the sale of any goods of the value or aggregate of such value exceeding INR 50 lakhs in any previous year from such buyer.

It is pertinent to note that the threshold limit of **INR 50 lakhs** is per buyer per year. Additionally, the threshold limit of **INR 10 crore** in the preceding financial year shall be considered to determine the applicability of the provisions upon seller. This means that entities having turnover/ gross receipts/ sales of less than **INR 10 crore** are kept outside the ambit of the above section.

Further, the government has made certain exclusions of buyers from the purview of the said section:

- (a) The Central Government, a State Government, an Embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state; or
- (b) A local Authority defined in the Explanation to section 10(20); or
- (c) Importer of goods or any other person notified by the Central Government. Till date no notification covering any exclusion of parties from the above said provision has been introduced by the government.

Threshold limit of turnover: Including supply of service or not?

The issue for consideration is that whether the sale of service shall also be included in computing the threshold limit of turnover for seller or should the same be excluded from the ambit of this section. It shall be noted that the definition of the term "seller" provides that total sales, gross receipts or turnover **from the business** carried on by such seller shall be considered. In view that the sales/turnover from the business is considered, the same should include both sale of goods and services.

Turnover of 10 Crores: With GST or without?

The government has elucidated vide circular mentioned above that no adjustment on account of GST is required to be made to calculate sales consideration of **INR 50 Lakhs**, since the collection of tax is made with reference to receipt of amount of sale consideration.

Therefore, one is not required to bifurcate the amount of sale consideration received between that to sale price and GST component. The moment composite amount of sale consideration received exceeds **INR 50 lakhs**, the seller will be required to apply the provisions of **section 206C(1H)**.

However, there is an uncertainty on the computation of threshold limit for seller's turnover i.e. whether the turnover shall be inclusive or exclusive of GST. This is especially in view that the circular clarifies the position with regards to sales consideration and not turnover.

First year of incorporation/formation: TCS applicable or not?

The definition of the term 'seller' provides as follows, mean a person whose **total sales** 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.

Therefore, TCS provisions should not apply in the year of incorporation/formation as there were no sales, gross receipts or turnover in the preceding financial year.

PARTICULARS	SECTION 194Q	SECTION 206C(1H)
Purpose	Tax to be deducted	Tax to be collected
Applicability	Buyer/Purchaser	Seller
Counter party	Resident Seller	Resident Buyer
Trigger point	<ul style="list-style-type: none"> Turnover/ Gross Receipt/ Sales from the business of BUYER should exceed Rs 10 crore during the year (FY 20-21) (excluding GST) 	<ul style="list-style-type: none"> Turnover/ Gross Receipt/ Sales from the business of SELLER should exceed Rs 10 crore during the year (FY 19-20) (excluding GST)
W.E.F	1st July, 2021	1st October, 2020
Timing of tax deduction	Payment or credit whichever is earlier	At the time of receipt
Advances	TDS shall be deducted on advance payment made	TCS shall be collected on advance receipts

Rates	<ul style="list-style-type: none"> • 0.1% • 5% (If PAN not available) • on amount exceeding Rs 50 Lakhs 	<ul style="list-style-type: none"> • 0.1% (0.075% for FY 2020-21) • 1% (If PAN not available) • On amount exceeding Rs 50 Lakhs
Not applicable to	<ul style="list-style-type: none"> • Transactions on which TDS is applicable under other provisions of the act • Transactions on which TCS is applicable under 206C other than 206C(1H) 	<ul style="list-style-type: none"> • Transaction on which TDS/TCS is applicable under other provisions of the act and the same has been complied with (Meaning thereby; in a situation where TDS has been deducted u/s 194Q this section will not apply)

Over-riding the other TDS/TCS Sections of the Act	Section 194Q(5) provides: <i>The provisions of this section shall not apply to a transactions on which- a) Tax is deductible under any provisions of this Act: and b) tax is collectible under the provisions of Section 206C, other than a transaction to which sub-section (1H) of Section 206C applies</i>	Second proviso to Section 206C(1H) provides “ <i>the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provisions of this Act on the goods purchased by him from the seller and has deducted such amount</i>
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Exclusion	Yet to be notified by Government	<ul style="list-style-type: none"> • If buyer is – • Importer of goods • Center/State Govt., Local Authority • An embassy, High Commission, consulate and trade representation of a foreign state
TAN requirement	YES	YES
When to deposit/collect	<ul style="list-style-type: none"> • Tax so deducted shall be deposited with government by 7th day of subsequent month 	<ul style="list-style-type: none"> • Tax so deducted shall be deposited with government by 7th day of subsequent month
Form	26Q	27EQ
Certificate to be issued to seller/buyer	Form – 16A	Form – 27D

Why it was required?

Last year government implemented **TCS provision for Seller** on Receipt of Sales of Goods, more than Rs. 50 Lakhs as sale consideration, during the current financial year. The TCS is payable on the amount of receipt which is greater than 50 Lakhs and received after 1st. Oct. 2020. The rate of TCS is 0.1% and Due to COVID-19 Pandemic Rate of TCS reduce by 25 % until 31 March 2021 and its effective rate is 0.075%. Other Condition for its applicability was “**seller**” means 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.

There were instances where Seller Turnover is less than 10 Crore but his receipt from sales of goods to particular buyer exceeding Rs.50 Lakhs. Therefore, there was no liability of TCS on seller. To handle this situation Government come up with similar type of provision for Purchaser (Buyer) via **TDS applicability**.

ILLUSTRATION

Example:

Sr No.	Buyers Turnover	Sellers Turnover	Transaction Value	Section Applicable
1	5Cr	11Cr	55Lakhs	206C(1H)
2	15Cr	7Cr	58Lakhs	194Q
3	12Cr	13Cr	54Lakhs	194Q
4	7Cr	5Cr	58Lakhs	NA
5	12Cr	15Cr	45Lakhs	NA

TRICKY SITUATIONS

Situations	SECTION 194Q	SECTION 206C(1H)
Buyer has purchased goods or made advance payment	Buyer would be deducting the TDS @ 0.1% on the payment/advance made for purchase of goods after -01/07/2021	As TDS has already been deducted u/s 194Q, seller would not collect any TCS from the buyer
Buyer has paid the dues out of the payable balance as on 30/06/2021	Buyer would not deduct TDS	Seller would collect the TCS on such amount received
Buyer has bought the goods but returned later on without crediting in the Seller's Account	No obligation to deduct TDS	No amount received
Buyer was liable but did not deduct TDS		Seller would be liable to collect TCS as second proviso to Section 206C(1H) fails to operate.

Section 206AB – Special provision for deduction of tax at source for non-filers of ITR

- This provision would apply notwithstanding anything contained in any other provisions of this Act where tax is required to be deducted under Chapter XVII-B of the Act.
- However, this overriding applicability would not arise where the provisions of **sections 192, 192A, 194B, 194BB, 194LBC or 194N** is applicable. In other words, for these provisions this **206AB** will not have overriding authority.
- This provision would apply to a specified person to whom the payment is made but who has not filed the return of income for both the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted and for which the time limit for filing the return of income **under section 139(1)** has expired.
- The aggregate amount of tax deducted at source and collected at source in the case of such payee is **Rs.50,000 or more** in each of these two preceding previous years.



- If the provisions of **section 206AA** are applicable to the person from whom tax is deductible at source, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA.
- The rate of tax deduction in such cases shall be higher of the following rates –
 - a) **at twice the rate specified in the relevant provision of the Act; or**
 - b) **at twice the rate or rates in force; or**
 - c) **at the rate of 5 percent.**
- This provision is not applicable to a non-resident who does not have a permanent PE in India. This provision is applicable from 1st July, 2021 in respect of all TDS provisions except those listed above