TDS on Certain payment by e-commerce operator to e-commerce participant [Section 194-O]

(1) Applicability and rate of TDS

Section 194-O provides that where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform, such e-commerce operator is liable to deduct tax at source **1%** of the **Gross Amount** of such **Sales or Services** or both.

(2) Time of deduction

The deduction is to be made at the **Time of credit** of amount of such sale or services or both to the account an e-commerce participant or at the **Time of payment** thereof to such e- commerce participant by any mode,

whichever is **Earlier.**

(3) Deemed credit

Any payment made by a purchaser of goods or recipient of services **Directly to an E- Commerce Participant** for the sale of goods or provision of services or both, facilitated by an e-commerce operator, would be deemed to be amount credited or paid by the e-commerce operator to the e-commerce participant. Accordingly, such payment would be included in the gross amount of such sales or services for the purpose of deduction of income-tax under this section.

(4) Non-applicability of TDS under section 194-O

No tax is required to be deducted under section 194-O in case of any sum credited or paid to an e-commerce participant, being an **individual or HUF**, where the **gross amount of such sale or services or both during the previous year does not exceed Rs 5 lakh** and such e- commerce participant has furnished his PAN/ Aadhaar number to e-commerce operator.

(5) Non-applicability of TDS under any other section

A transaction in respect of which tax has been deducted by the e-commerce operator under this section or which is not liable to tax deduction under this section on account of the exemption discussed in point (4) above, would not be liable to tax deduction at source under any other provision of this Chapter

However, this exemption from TDS under this would not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale of goods or services referred to in point (1) above.

(6) Power of CBDT to issue guidelines

In case any difficulty arises in giving effect to the provisions of this section, the CBDT may issue guidelines for the purpose of removing the difficulty with the approval of the Central Government.

Every guideline issued by the CBDT shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the e-commerce operator.

In exercise of the power to issue guidelines, CBDT has, with the approval of Central Government, vide **Circular no. 17/2020 dated 29.9.2020,** issued the following guidelines for removing certain difficulties-

1. **Applicability on transactions carried through various Exchanges:**

In order to remove practical difficulties in implementing section 194-O in case of certain exchanges and clearing corporations, it has been provided that section 194-O shall **not be applicable** in relation to-

- transactions in **securities and commodities which are traded through recognized stock exchanges** or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre;
- **transactions in electricity, renewable energy certificates** and **energy saving certificates** traded through power exchanges registered in accordance with Regulation 21 of the CERC (Central Electricity Regulatory Commission).

2. **Applicability on Payment Gateway:**

In e-commerce transactions, the payments are generally facilitated by payment gateways. Consequently, it is possible that there may be applicability of section 194-O twice i.e., once on the main e-commerce operator who is facilitating sale of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service. To illustrate, a buyer buys goods worth Rs. 1 lakh on e-commerce website "XYZ". He makes payment of Rs. 1 lakh through digital platform of "ABC". On these facts, liability to deduct tax under section 194-O may fall on both "XYZ" and "ABC".

In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-O of the Act on a transaction, if the tax has been deducted by the e- commerce operator under section 194-O of the Act, on the same transaction. Hence, in the above example, if "XYZ" has deducted tax under section 194-O on Rs. 1 lakh, "ABC" will not be required to deduct tax under section 194-O of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from XYZ" regarding deduction of tax.

3. **Applicability on insurance agent or Insurance Aggregator:**

Insurance agents or insurance aggregators in many cases have no involvement in transactions between the insurance company and the buyer for subsequent years. Therefore, in subsequent years, the liability to deduct tax may arise on the insurance agents or insurance aggregators, even if the transactions have been completed directly with the insurance company. This may result into hardship for the insurance agents/aggregators.

In order to remove difficulty, it is provided that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between the insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 194-O for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.

(7) Person responsible for paying

For the purpose of this section, e-commerce operator shall be deemed to be the person responsible for paying to e-commerce participant.

(8) Meaning of certain terms

S. No.	Term	Meaning
(i)	Electronic commerce	The supply of goods or service or both, including digital products, over digital or electronic network.
(ii)	E-commerce operator	A person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
(iii)	E-commerce participant	A person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.
(iv)	Services	It includes fees for technical services and fees for professional services as defined in section 194J.

Deduction of tax at source on purchase of goods [Section 194Q] [w.e.f. 1.7.2021]

(1) Applicability and rate of TDS

Section 194Q requires any person, being a **buyer who is responsible for paying any sum to any resident-seller for purchase of goods** of the value or aggregate of such value exceeding Rs. 50 lakhs in a previous year, to deduct tax at source **@ 0.1% of such sum exceeding Rs. 50 lakhs**.

(2) Time of deduction

The deduction is to be made at the time of credit of such sum to the account of the resident- seller or at the time of payment thereof by any mode, whichever is earlier.

Where such sum is credited to any account in the books of account of the person liable to pay such income, such credit of income is deemed to be credit of such income to the account of the payee and tax has to be deducted at source. The account to which such sum is credited may be called "Suspense account" or by any other name.

(3) Power of the CBDT to issue guidelines

In case of any difficulty arises in giving effect to the provisions of this section, the CBDT is empowered to issue guidelines, with the approval of the Central Government, for the purpose of removing the difficulty.

Every guideline issued by the CBDT 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 on the person liable to deduct tax.

In exercise of the power to issue guidelines, the CBDT has, with the approval of Central Government, vide **Circular no. 13/2021 dated 30.6.2021,** issued the following guidelines for removing certain difficulties-

1. **Applicability on transactions carried through various Exchanges**

There are practical difficulties in implementing the provisions of TDS contained in section 194-Q in case of certain exchanges and clearing corporations. In these transactions, sometimes, there is no one to one contract between the buyers and the sellers.

In order to remove such difficulties, it is provided that the provisions of section 194Q shall **not** be applicable in relation to,-

(i) transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre (IFSC)

(ii) transactions in electricity, renewable energy certificates and energy

saving certificates traded through registered power exchanges.

2. **Calculation of threshold for the F.Y. 2021-22**

Section 194Q has come into effect from 1st July, 2021. Accordingly, as regards the manner of computation of threshold of Rs. 50 lakh specified under this section, it is clarified that since the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of sum for triggering TDS u/s 194Q shall be computed from 1st April, 2021. Hence, if a person being buyer has already credited or paid Rs. 50 lakhs or more up to 30th June 2021 to a seller, TDS u/s 194Q shall apply on all credit or payment during the previous year, on or after 1st July 2021, to such seller.

As regards whether tax is required to be deducted in respect of advance paid before 1st July 2021 and sum credited thereafter, it is clarified that since section 194Q mandates buyer to deduct tax on credit of sum in the account of seller or on payment of such sum, whichever is earlier, the provisions of this section shall **not** apply on any sum credited or paid before 1st July 2021. If either of the two events had happened before 1st July 2021, that transaction would **not** be subjected to the provisions of section 194Q.

3. **Adjustment for GST, purchase returns**

As regards whether adjustment is required to be made for GST or purchase returns for the purpose of tax deduction u/s 194Q vide Circular No.17/2020 dated 29.9.2020, it was clarified that no adjustment on account of GST is required to be made for collection of tax under section 206C(1H), since the collection is made with reference to receipt of amount of sale consideration.

However, the situation is different so far as TDS is concerned. It has been clarified in Circular No.23/2017 dated 19th July 2017 as under –

"Wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B on the amount paid or payable without including such 'GST on services' component. GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax."

Accordingly, with respect to TDS u/s 194Q, it is clarified that when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of GST comprised in the amount payable to the seller is indicated separately, tax shall be deducted u/s 194Q on the amount credited without including such GST. However, if the tax is deducted on payment basis because the payment is earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identify that payment with GST component of the amount to be invoiced in future.

Further, with respect to purchase return it is clarified that the tax is required to be deducted at the time of payment or credit, whichever is earlier. Thus, before purchase return happens, the tax must have already been deducted u/s 194Q on that purchase. If that is the case and against this purchase

return, the money is refunded by the seller, then, this tax deducted may be adjusted against the next purchase against the same seller. No adjustment is required if the purchase return is replaced by the goods by the seller as in that case the purchase on which tax was deducted under section 194Q has been completed with goods replaced.

4. **Whether non-resident can be buyer under section 194Q?**

As regards whether the provisions of section 194Q would apply to a buyer being a non-resident, it is clarified that the provisions of section 194Q shall **not** apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such non-resident in India. For this purpose, "permanent establishment" shall mean to include a fixed place of business through which the business of the enterprise is wholly or partly carries on.

5. **Whether tax is to be deducted when the seller is a person whose income is exempt?**

As regards whether the provisions of section 194Q would apply to a seller whose income is exempt, it is clarified that the provisions of section 194Q would **not** apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).

Similarly, with respect to section **206C(1H)**, it is clarified that the provisions thereof would not apply to sale of goods to a person, being a buyer, who as a person is exempt from income-tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (like RBI Act, ADB Act etc.).

The above clarifications would not apply if only part of the income of the person (being a seller or being a buyer, as the case may be) is exempt.

6. **Whether tax is to be deducted on advance payment?**

As regards whether the provisions of section 194Q would apply to advance payment made by the buyer, it is clarified that since the provisions apply on payment or credit whichever is earlier, the provisions of section 194Q shall apply to advance payment made by the buyer to the seller.

7. **Whether provisions of section 194Q shall apply to buyer in the year of incorporation?**

As regards whether the provisions of section 194Q shall apply to a buyer in the year of its incorporation, it is clarified that u/s 194Q, a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding Rs. 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Since this condition would not be satisfied in the year of incorporation, the provisions of section **194Q shall not apply** in the year of incorporation.

8. **Whether provisions of section 194Q shall apply to buyer if the turnover from business is Rs. 10 crore or less?**

As regards whether the provisions of section 194Q would apply to a buyer who has turnover or gross receipts exceeding Rs. 10 crore but total sales or gross receipts or turnover from business is Rs. 10 crore or less, it is clarified that, for the purposes of section 194Q, a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding Rs. 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Hence, the sales or gross receipts or turnover from business carried on by him must exceed Rs. 10 crore. **His turnover or receipts from non-business activity is not to be counted for this purpose.**

9. **Cross application of section 194-O, section 206C(1H) and section 194Q**

Clarification of how section 194-O, section 206C(1H) and section 194Q apply on the same transaction.

Under section 194-O(3), a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), shall **not** be liable to tax deduction at source under any other provision of Chapter XVII of the Act. Under the second proviso to section 206C(1H), 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 tax.

Under section 194Q(5), the provisions of this section would **not** apply to a transaction on which- tax is deductible under any of the provisions of this Act; and

(i) tax is collectible under the provisions of section 206C, other than a transaction on which section 206C(1H) applies

After conjoint reading of all these provisions, it is clarified that:

(i) If tax has been deducted by the e-commerce operator on a transaction u/s 194-O [including transactions on which tax is not deducted on account of section 194-O (2)], that transaction shall not be subjected to tax deduction u/s 194Q.

(ii) Though section 206C(1H) provides exemption from TCS if the buyer has deducted tax at source on goods purchased by him, to remove difficulties, it is clarified that this exemption would also cover a situation where, instead of the buyer, the e-commerce operator has deducted tax at source on that transaction of sale of goods by seller to buyer through e-commerce operator.

(iii) If a transaction is both within the purview of section 194-O as well as section 194Q, tax is required to be deducted u/s 194-O and not u/s 194Q.

(iv) Similarly, if a transaction is both within the purview of section 194-O as well as section 206C(1H), tax is required to be deducted u/s 194-O. The transaction shall come out of the purview of section 206C(1H) after tax has been deducted by the e-commerce operator on that transaction. Once the e- commerce operator has deducted the tax on a transaction, the seller is not required to collect the tax u/s 206C(1H) on the same transaction. It is clarified that here primary responsibility is on e-commerce operator to deduct the tax u/s 194-O and that responsibility cannot be condoned if the seller has collected the tax u/s 206C(1H). This is for the reason that the rate of TDS u/s 194-O is higher than rate of TCS u/s 206C(1H).

(v) If a transaction is both within the purview of section 194Q as well as section 206C(1H), then, tax is required to be deducted u/s 194Q. The transaction shall come out of the purview of section 206C(1H) after tax has been deducted by the buyer on that transaction. Once the buyer has deducted the tax on a transaction, the seller is not required to collect the tax u/s 206C(1H) on the same transaction. However, if, for any reason, tax has been collected by the seller u/s 206C(1H), before the buyer could deduct tax u/s 194Q 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 section 206C(1H).

(4) Non-applicability of TDS under section 194Q

Tax is **not** required to be deducted under this section in respect of a transaction on which -

(a) tax is deductible under any of the provisions of this Act; and

(b) tax is collectible under the provisions of section 206C, other than section 206C(1H).

***** In case of a transaction to which both section 206C(1H) and section 194Q applies, tax is required to be deducted under section 194Q.**

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ILLUSTRATION

Mr. Gupta, a resident Indian, is in retail business and his turnover for F.Y.2020-21 was Rs. 12 crores. He regularly purchases goods from another resident, Mr. Agarwal, a wholesaler, and the aggregate payments during the F.Y.2021-22 was Rs. 95 lakhs (Rs. 20 lakhs on 1.6.2021, Rs. 25 lakhs on 12.8.2021, Rs. 22 lakhs on 23.11.2021 and Rs. 28 lakhs on 25.3.2022). Assume that the said amounts were credited to Mr. Agarwal's account in the books of Mr. Gupta on the same date. Mr. Agarwal's turnover for F.Y.2020-21 was Rs. 15 crores.

(1) Based on the above facts, examine the TDS/TCS implications, if any, under the Income-tax Act, 1961.

(2) Would your answer be different if Mr. Gupta's turnover for F.Y.2020-21 was Rs. 8 crores, all other facts remaining the same?

(3) Would your answer to (1) and (2) change, if PAN has not been furnished by the buyer or seller, as required?

SOLUTION

(1) Since Mr. Gupta's turnover for F.Y.2020-21 exceeds Rs. 10 crores, and payments made by him to Mr. Agarwal, a resident seller exceed Rs. 50 lakhs in the P.Y.2021-22, he is liable to deduct tax @ 0.1% of Rs. 45 lakhs (being the sum exceeding Rs. 50 lakhs) in the following manner –

No tax is to be deducted u/s 194Q on the payments made on 1.6.2021 and 12.8.2021, since the aggregate payments till that date i.e., 45 lakhs, has not exceeded the threshold of Rs. 50 lakhs.
Tax of Rs. 1,700 (i.e., 0.1% of Rs. 17 lakhs) has to be deducted u/s 194Q from the payment/ credit of Rs. 22 lakh on 23.11.2021 [Rs. 22 lakh – Rs. 5 lakhs, being the balance unexhausted threshold limit].

Tax of Rs. 2,800 (i.e., 0.1% of Rs. 28 lakhs) has to be deducted u/s 194Q from the payment/ credit of Rs. 28 lakhs on 25.3.2022.

Note – In this case, since both section 194Q and 206C(1H) applies, tax has to be deducted u/s 194Q.

(2) If Mr. Gupta's turnover for the F.Y.2020-21 was only Rs. 8 crores, TDS provisions under section 194Q would not be attracted. However, TCS provisions under section 206C(1H) would be attracted in the hands of Mr. Agarwal, since his turnover exceeds Rs. 10 crores in the F.Y.2020-21 and his receipts from Mr. Gupta exceed Rs. 50 lakhs.

No tax is to be collected u/s 206C(1H) on 1.6.2021 and 12.8.2021, since the aggregate receipts till that date i.e. Rs. 45 lakhs, has not exceeded the threshold of Rs. 50 lakhs.

Tax of Rs. 1,700 (i.e., 0.1% of Rs. 17 lakhs) has to be collected u/s 206C(1H) on 23.11.2021 (Rs. 22 lakh – Rs. 5 lakhs, being the balance unexhausted threshold limit).

Tax of Rs. 2,800 (i.e., 0.1% of Rs. 28 lakhs) has to be collected u/s 206C(1H) on 25.3.2022.

(3) In case (1), if PAN is not furnished by Mr. Agarwal to Mr. Gupta, then, Mr. Gupta has to deduct tax@5%, instead of 0.1%. Accordingly, tax of Rs. 85,000 (i.e., 5% of Rs. 17 lakhs) and
Rs. 1,40,000 (5% of Rs. 28 lakhs) has to be deducted by Mr. Gupta u/s 194Q on 23.11.2021 and 25.3.2022, respectively.

In case (2), if PAN is not furnished by Mr. Gupta to Mr. Agarwal, then, Mr. Agarwal has to collect tax@1% instead of 0.1%. Accordingly, tax of Rs. 17,000 (i.e., 1% of Rs. 17 lakhs) and
Rs. 28,000 (1% of Rs. 28 lakhs) has to be collected by Mr. Agarwal u/s 206C(1H) on 23.11.2021 and 25.3.2022, respectively.