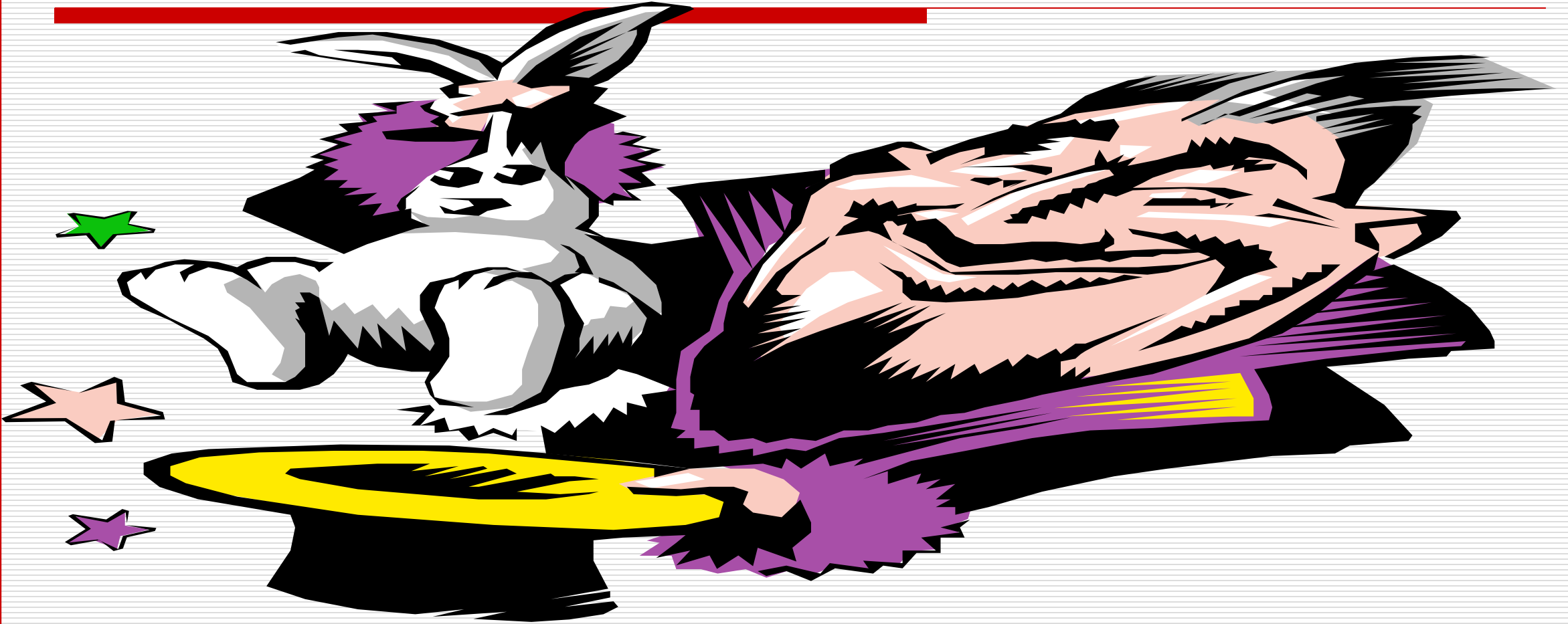


TDS u/s 194,194B,194BB, 194O 194Q and TCS u/s 206C(1H) of IT Act

CMA Niranjan Swain. B.Com,CS,FCMA, LLB



Section 194B and Section 194BB – TDS

- ❑ **Section 194B** – TDS on winnings from lottery or crossword puzzle
- ❑ **Section 194BB** - TDS on winning from a horse race.

- ❑ **Scope of Section 194B** is summarized hereunder –
 - ❖ Any person making payment of winning amount to any person is responsible for deducting TDS thereon.
 - ❖ Winnings from a lottery, crossword puzzle, card game, and any other game is covered within the scope of section 194B.
 - ❖ TDS is to be deducted if the aggregate amount exceeds INR 10,000.
 - ❖ When the winning amount is payable in kind or is partly payable in cash and partly in kind. Then, in that case, it is the Deductor's responsibility to ensure that the TDS has been paid before releasing the winning amount.

Section 194B and Section 194BB – TDS

□ Understanding the scope of Section 194BB –

- Any bookmaker or the person to whom Government has granted a licence for horse racing in any race course or for arranging for gambling or betting in any race course is liable to deduct TDS while making payment of the winning amount.
- TDS is to be deducted if the aggregate amount exceeds INR 10,000.

□ Time of TDS deduction: The Deductor liable to deduction TDS under section 194B and / or Section 194BB is required to deduct TDS at the time of payment.

□ Basic Threshold Limit: The basic threshold limit applicable to both the section 194B and 194BB is INR 10,000 i.e. if the aggregate amount exceeds INR 10,000 only then TDS is to be deducted.

□ Rate of TDS under Section 194B and Section 194BB

The Deductor would be liable to deduct TDS @ 30% under both the sections.

Section 194 – TDS on dividend

☐ Basic provisions of section 194 of the Income Tax Act –

❖ As per the provisions of **section 194 of the Income Tax Act**, the Principal officer of an Indian Company or a Company making prescribed arrangements for declaration and payment of the dividend within India is required to deduct **TDS on dividend**, if the following conditions are satisfied –

- ❖ 1. The dividend is paid to the shareholder who is resident in India; and
- ❖ 2. The dividend covered within the meaning of Clause (a) to (e) **section 2(22)**.

☐ It is important to note that the dividend referred above covers the dividends on preference shares also i.e., TDS is to be deducted on dividends on preference shares if provisions of section 194 gets attracted. Further, payment of **TDS on dividend to non-resident** is not covered within the provisions of section 194.

Section 194 – TDS on dividend

❑ **Meaning of Dividend:**

- ❖ Distribution of profits by a company to its shareholders (out of current or previous Yrs profit).
- ❖ Section 2(22) of the Income-tax Act, the dividend shall also include the following:
 - (a) Distribution of accumulated profits to shareholders entailing release of the company's assets;
 - (b) Distribution of debentures /deposit certificates to shareholders out of the accumulated profits and issue of bonus shares to preference shareholders out of accumulated profits;
 - (c) Distribution made to shareholders of the company on its liquidation out of accumulated profits;
 - (d) Distribution to shareholders out of accumulated profits on the reduction of capital by the company; and
 - (e) Loan or advance made by a closely held company to its shareholder out of accumulated profits.

Section 194 – TDS on dividend

❑ Up to Assessment Year 2020-21:

- ❖ if a shareholder gets dividend from a domestic company, then he shall not be liable to pay any tax on such dividend as it is exempt from tax under section 10(34) of the Act.
- ❖ the domestic company was liable to pay a Dividend Distribution Tax (DDT) u/s 115-O.
- ❖ Dividend is distributed on or after 01-04-2020 the domestic companies shall not be liable to pay DDT and, consequently, shareholders shall be liable to pay tax on such dividend income.

Taxability of dividend received on or after 01-04-2020

☐ *Obligation of the domestic companies*

- ❖ shall not be liable to pay DDT on dividend distributed to shareholders on or after 01-04-2020.
- ❖ shall be liable to deduct tax under Section 194.
- ❖ TDS U/S 194 shall be applicable to dividend distributed, declared or paid on or after 01-04-2020, an Indian company
- ❖ TDS tax at the rate of 10% from dividend distributed to the resident shareholders if the aggregate amount of dividend distributed or paid during the FY year to a shareholder exceeds Rs. 5,000.
- ❖ where the dividend is payable to a non-resident or a foreign company, the tax shall be deducted under Section 195 in accordance with relevant DTAA
- ❖ in case the shareholder fails to furnish the PAN, then, the Company would be liable to deduct TDS at the maximum marginal rate.

Section 194 – TDS on dividend – **Exemption from deduction of TDS on dividends–**

❑ Dividends on which TDS is not required to be deducted as per section 194 –

- ❖ 1. Dividend paid to an individual where the aggregate amount of dividend, paid by the company to the individual, during the financial year does not exceed INR 5000 and such dividend is paid by an account payee cheque.
- ❖ 2. Dividend paid to the LIC of India in respect of shares owned by it or have a full beneficial interest.
- ❖ 3. Dividend paid to the GIC of India in respect of shares owned by it or have a full beneficial interest.
- ❖ 4. Dividend paid to any other insurer in respect of shares owned by it or have a full beneficial interest.
- ❖ 5. Declaration has been filed either in Form 15G or Form 15H.

Taxability OF Dividend in hands of shareholders

- ❖ Section 10(34), which provides an exemption to the shareholders in respect of dividend income, is withdrawn from Assessment Year 2021-20.
- ❖ Dividend received during the FY 2020-21 and onwards shall now be taxable in the hands of the shareholders.
- ❖ Consequently section 11 5BBDA which provides for taxability of dividend in excess of Rs. 10 lakh has no relevance as the entire amount of dividend shall be taxable in the hands of the shareholder.
- ❖ The taxability of dividend and tax rate thereon shall depend upon many factors like residential status of the shareholders, relevant head of income.
- ❖ In case of a non-resident shareholder, the provisions of Double Taxation Avoidance Agreements (DTAAs) and Multilateral Instrument (MLI) shall also come into play.

Taxable of dividend in the hands of resident shareholder

- ☐ if shares are held for trading purposes then the dividend income shall be taxable under the head business or profession.
- ☐ if shares are held as an investment then income arising in nature of dividend shall be taxable under the head other sources.
- ☐ income, taxable under the head PGBP, is computed in accordance with the method of accounting regularly followed by the assessee - either mercantile system of accounting or cash basis of accounting.
- ☐ method of accounting employed by the assessee does not affect the basis of charge of dividend income as Section 8 of the Act provides that final dividend including deemed dividend shall be taxable in the year in which it is declared, distributed or paid by the company, whichever is earlier.
- ☐ interim dividend is taxable in the previous year in which the amount of such dividend is unconditionally made available by the company to the shareholder - receipt basis.

Deductions from dividend income in the hands of shareholders

- ❑ Where dividend is assessable to tax as business income, the assessee can claim the deductions of all those expenditures which have been incurred to earn that dividend income such as collection charges, interest on loan etc.
- ❑ Whereas if dividend is taxable under the head other sources, the assessee can claim deduction of only interest expenditure which has been incurred to earn that dividend income to the extent of 20% of total dividend income.
- ❑ No deduction shall be allowed for any other expenses including commission or remuneration paid to a banker or any other person for the purpose of realising such dividend.

Taxability in case of non-resident shareholders including FPIs

- A non-resident generally invests in India either directly as private equity investors or as Foreign Portfolio Investors (FPIs).
- ❖ As regards FPIs, securities held by them are always treated as a capital asset and not as stock-in-trade.
- ❖ Thus, in case of FPIs also, the dividend income shall always be taxable under the head other sources.
- A non-resident person can also be a promoter of an Indian Company.
- ❖ any income derived by way of dividend is taxable under the head other sources except where such income is attributable to Permanent Establishment of such non-resident in India.

Tax rate on dividend income – in the hands of non resident

| <i>Section</i> | <i>Assessee</i> | <i>Particulars</i> | <i>Tax Rate</i> |
|----------------|-------------------------------------------------|----------------------------------------------------------------------------------------------------|-----------------|
| Section 115AC | Non-resident | Dividend on GDRs of an Indian Company or Public Sector Company (PSU) purchased in foreign currency | 10% |
| Section 115AD | FPI | Dividend income from securities (other than units referred to in section 115AB) | 20% |
| | Investment division of an offshore banking unit | Dividend income from securities (other than units referred to in section 115AB) | 10% |
| Section 115E | Non-resident Indian | Dividend income from shares of an Indian company purchased in foreign currency. | 20% |
| Section 115A | Non-resident or foreign co. | Dividend income in any other case | 20% |

Withholding Tax – Dividend to Non resident

| <i>Section (chargeability of income)</i> | <i>Section (withholding of tax)</i> | <i>Nature of Income</i> | <i>Rate of TDS (Payee is any other non- resident)</i> | <i>Rate of TDS (Payee is a foreign company)</i> |
|--------------------------------------------------|---------------------------------------------|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|-------------------------------------------------------------|
| Section 115AC | Section 196C | Dividend on GDRs of an Indian Company or Public Sector Company (PSU) purchased in foreign currency | 10% | 10% |
| Section 115AD | Section 196D | Dividend income of FPIs from securities Investment division of an offshore banking unit | 20% 10% | 20% 10% |
| Section 115E | Section 195 | Dividend income of non-resident Indian from shares of an Indian company purchased in foreign currency. | 20%* | – |
| Section 115A | Section 195 | Dividend income of a non-resident in any other case | 30%* | 40%* |

Taxability of Dividend – Misc Provisions

- ❑ *Domestic co. receives dividend from a foreign co.*
- ❑ Dividend received by a domestic company from a foreign company, in which such domestic company has 26% or more equity shareholding, is taxable at a rate of 15% *plus* Surcharge and Health and Education Cess under Section 115BBD. Such tax shall be computed on a gross basis without allowing deduction for any expenditure.
- ❑ Dividend received by a domestic company from a foreign company, in which equity shareholding of such domestic company is less than 26%, is taxable at normal tax rate. The domestic company can claim deduction for any expense incurred by it for the purposes of earning such dividend income.

Taxability of Dividend – Misc Provisions

☐ No MAT on dividend income of a foreign company

❖ Provisions relating to MAT apply to a foreign company only when it is a resident of a country with which India has DTAA and it carries on business through a PE situated in India. However, it should not be taxable under the presumptive taxation schemes of Section 44B, Section 44BB, Section 44BBA or Section 44BBB. Once it is determined that the foreign company is liable to pay MAT, certain adjustments are made from its profits.

❖ However, the following incomes (and expenses claimed in respect thereof) are added back to (or reduced from) the net profit if same is credited (or debited) in the profit and loss account, if such income is taxable at a rate lower than the rate of MAT:

❖ (a) Capital gain from securities; (b) Interest; (c) Royalty; (d) FTS

☐ Thus, a foreign company is not liable to pay MAT on the aforesaid incomes.

Taxability of Dividend – Misc Provisions

❑ No MAT on dividend income of a foreign company

❖ Considering the taxability of dividend in the hands of the foreign company, the Finance Bill, 2021 has amended section 115JB to provide that dividend income and expenses claimed in respect thereof to be added back or reduced from the net profit if such income is taxed at lower than MAT rate due to DTAA.

❖ It should be noted that the dividend income shall be taxable in the hands of a foreign company in accordance with the provisions of the Act or relevant DTAA, whichever is more beneficial.

❑ Advance tax liability on dividend income

❖ If the shortfall in the advance tax instalment or the failure to pay the same on time is on account of dividend income, no interest under section 234C shall be charged provided the assessee has paid full tax in subsequent advance tax instalments. However, this benefit shall not be available in respect of the deemed dividend as referred to in Section 2(22)(e).

Taxability of Dividend – Misc Provisions

☐ **No MAT on dividend income of a foreign company**

☐ Provisions relating to MAT apply to a foreign company only when it is a resident of a country with which India has DTAA and it carries on business through a PE situated in India. However, it should not be taxable under the presumptive taxation schemes of Section 44B, Section 44BB, Section 44BBA or Section 44BBB. Once it is determined that the foreign company is liable to pay MAT, certain adjustments are made from its profits.

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☐ (a) Capital gain from securities;

☐ (b) Interest;

Taxability of Dividend – Misc Provisions

- ☐ **No MAT on dividend income of a foreign company**
- ☐ Provisions relating to MAT apply to a foreign company only when it is a resident of a country with which India has DTAA and it carries on business through a PE situated in India. However, it should not be taxable under the presumptive taxation schemes of Section 44B, Section 44BB, Section 44BBA or Section 44BBB. Once it is determined that the foreign company is liable to pay MAT, certain adjustments are made from its profits.
- ☐ However, the following incomes (and expenses claimed in respect thereof) are added back to (or reduced from) the net profit if same is credited (or debited) in the profit and loss account, if such income is taxable at a rate lower than the rate of MAT:
 - ☐ (a) Capital gain from securities;
 - ☐ (b) Interest;

Section 194O-TDS on Payments Made to e-commerce Participants

❑ Provisions introduced in the Union Budget 2020.

- ❖ According to Section 194O, an e-Commerce operator is required to deduct TDS for facilitating any sale of goods or providing services through an e-Commerce participant.
- ❖ TDS on e-commerce operators under section 194-O is applicable from 1 October 2020.

❑ Who are e-Commerce operators and participants?

❖ E-Commerce Operator:

- An e-Commerce operator is a person who owns, operates, or manages a digital/electronic facility for the sale of goods and services. He is responsible for making payments to the e-Commerce participant on such sales.

Section 194O-TDS on Payments Made to e-commerce Participants

❑ Who are e-Commerce operators and participants?

❖ E-Commerce Participant

➤ An e-Commerce participant is a person who sells goods, services, or both through an electronic facility provided by an e-Commerce operator. He must be a resident of India.

❑ Scope of Section 194O

❖ E-Commerce operators should deduct TDS @1% at the time of credit of the amount of sale of goods, services, or both to the account of an e-commerce participant or at the time of making payment to an e-Commerce participant by any other mode, whichever is earlier.

Section 194O-TDS on Payments Made to e-commerce Participants

☐ E-commerce participant being a resident individual or HUF

❖ E-commerce operator is not required to deduct TDS if the gross amount of sale of goods, services, or both during the previous year does not exceed Rs 5 lakh and if the e-Commerce participant has furnished his PAN or Aadhaar.

❖ If the e-Commerce participant does not furnish his PAN or Aadhaar, TDS must be deducted at the rate of 5%, as per provisions of Section 206AA.

☐ E-Commerce participant being a non-resident

☐ As stated earlier, an e-Commerce participant must be a resident of India. Thus, no TDS will be deducted if the participant is a non-resident.

Section 194O-TDS on Payments Made to e-commerce Participants

❑ EXAMPLE:

❖ For example, a proprietary firm XYZ (e-commerce participant) is selling its products through Flipkart (e-commerce operator). Mr A buys this product online from XYZ for Rs 50,000 on 1 October 2020. Flipkart credits the account of XYZ on 1 October 2020, but the customer makes the payment directly to XYZ on 15 October 2020.

Here, Flipkart is required to deduct TDS @1% on Rs 50,000 at the time of credit to the party or making payment, whichever is earlier. In this case, TDS should be deducted on 1 October 2020.

Section 194O-TDS on Payments Made to e-commerce Participants

☐ Purpose of Section 194O

❖ The purpose of the introduction of Section 194O is to widen the TDS base by bringing e-Commerce participants under the tax. Of late, customers prefer digital platforms for buying or selling of goods and services because:

☐ From the sellers' perspective

❖ It requires less cost for creating the setup and less effort for the search of buyers.

☐ From the buyers' perspective

☐ Many options are available at one platform and the comparison of products becomes very easy WHICH resulted in an increase in the number of e-Commerce users over a period of time. It is difficult to identify small sellers (e-Commerce participants) who don't file their income tax returns. Thus, the government has enlarged the tax base to bring such e-Commerce participants under the tax base.

Section 194O-TDS on Payments Made to e-commerce Participants

❑ Exceptions to Section 194O, if any

- ❖ Non-resident e-Commerce participants are exempted from the scope of this section.
- ❖ A ceiling limit of Rs 5 lakh is set only for resident individuals and HUF. Thus, an e-Commerce operator is not required to deduct TDS if the amount, paid or credited to individuals/HUF during a financial year, does not exceed Rs 5 lakh.

❑ Law before Section 194O

- ❖ Earlier, there was no tax deduction on payments made to e-Commerce participants. They were required to independently file their income tax returns. Therefore, many small e-Commerce participants didn't file their income tax returns and escaped the tax liability.

Section 194Q – Tax deduction on the purchase of goods

-
- ❑ Finance Act, 2021 has introduced section 194Q - is effective from 1st July 2021.
 - ❑ **Section 194Q** require the specified buyer to deduct TDS on the purchase of goods from the resident seller.
 - ❖ Provisions relating to deduction of TDS on purchase of goods u/s 194Q
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.
 - ❑ **Explanation of the term ‘buyer’- 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 FY in which the specified purchase of goods took place;
 - Buyer will not include any person notified by the Central Government.

Section 194Q – Tax deduction on the purchase of goods

- Time of tax deduction on the purchase of goods under Section 194Q
 - ❖ TDS on purchase of goods is to be deducted by the buyer within earlier of the following dates-
 - • At the time of credit of the sum into the account of the seller; or
 - • At the time of payment of the sum thereof.
- 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.
 - ❖ In case the PAN of the seller is not available, then the buyer would be liable to deduct tax @5%.
- Section 194Q will be effective from 1st July 2021.

Section 194Q – Tax deduction on the purchase of goods

- ❑ Exemption available under section 194Q-
- ❖ TDS provisions covered under section 194Q are not applicable under the following cases-
 - • Transactions on which TDS is already deductible under other provisions of the Income Tax Act; or
 - • Transactions on which TCS is collectable as per provisions of section 206C [other than a transaction on which TCS is collectable under section 206C(1H)].

Section 194Q – Tax deduction on the purchase of goods

- ❑ Other important points related to Section 194Q
- ❖ TDS is also deductible against any amount credited to ‘**suspense account**’ or **any other account under the books of accounts** of the person liable to make payment of such income.
- ❖ Transactions, wherein, TDS is deductible under both the provisions i.e., section 206C(1H) and section 194Q, under such cases, TDS would be deductible only u/s 194Q.
- ❖ Provisions of section 194Q are not applicable when the seller is a non-resident.
- ❖ In case the buyer fails to comply with the tax deduction provisions covered u/s 194Q, as per the provision of section 40a(ia), there would be disallowance of expenditure up to 30% of the value of the transaction.
- ❖ As not specifically mentioned, provisions of section 194Q apply to the purchase of both the types of goods i.e. capital as well as revenue.

Examples relating to section 194Q– Example -1

□ Mr. A, a buyer, having a total turnover of INR 50 Crores. Mr. A purchases goods from Mr. B, a seller, worth INR 52 Lakhs.

□ Analysis of applicability of **sec- 194Q** in the given transaction is narrated hereunder-

- ❖ Since buyer's turnover is above INR 10 Crores, provisions of **sec- 194Q** get applicable.
- ❖ Further, the buyer has purchased goods having a value of more than INR 50 Lakhs.
- ❖ TDS under **sec- 194Q** will be deductible by the buyer in the following manner-

| Particulars | Amount |
|-------------------------------------------------|-------------|
| Taxable amount (INR 52 Lakhs – INR 50 Lakhs) | INR 2 Lakhs |
| Rate at which TDS deductible under section 194Q | 0.1% |
| Amount of TDS deductible | INR 200 |

Examples relating to section 194Q– Example -1

□ Mr. X, a buyer, is having gross receipts of INR 40 Crores. Mr. X buys goods from Mr. Y worth INR 60 Lakhs. Mr. Y, a seller, is having a turnover of INR 15 Crores.

❖ **Applicability of provisions of sec- 194Q in the above transaction is narrated hereunder-**

- **Provisions of sec- 194Q get attracted as the buyer is having gross receipts above INR 10 Crores.**
- **However, provisions of section 206C(1H) also get applicable as a seller is having a turnover above INR 10 Crores.**
- **Since both the provisions i.e., section 194Q and sec- 206C(1H) gets applicable. TDS would be deductible only under section 194Q as per the table below-**

| Particulars | Amount |
|--------------------------------------------------------|--------------|
| Taxable amount (INR 60 Lakhs – INR 50 Lakhs) | INR 10 Lakhs |
| Rate at which TDS deductible under section 194Q | 0.1% |
| Amount of TDS deductible | INR 1000 |

Section 206C(1H) TCS on sale of goods W.E.F. 01-10-2020

-
- 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.”
 - Seller means a person whose total sales, gross receipts or turnover from the business carried on by him exceed Rs.10 Crores during the previous year ended on 31st March.

Section 206C(1H) TCS on sale of goods W.E.F. 01-10-2020

☐ Explanation :-

- ☐ Sale of goods of aggregate value > 50 lakhs in a year to a buyer
- ☐ Goods does not include exports and goods covered u/s 206C(1), 206C(1F) and 206C(1G) viz., alcoholic liquor for human consumption, tendu leaves, timber, scrap, coal, lignite, iron ore, sale of motor vehicle, foreign remittances and overseas tour program package etc.
- ☐ If buyer has not deducted TDS on purchase of goods then the Seller shall collect TCS @ 0.1%¹ at the time of receipt of consideration in excess of Rs.50 lakhs.
- ☐ However, due to [Covid-19](#), the rate of TCS has been reduced from 0.1% to 0.075% till 31/03/2021 as per GOI Press Release dated 13 May 2020.
- ☐ Applicable with effect from 01stOctober 2020
- ☐ If the buyer does not provide PAN/Aadhar number then the TCS shall be collected at 1%, instead of 0.1%. In such situation, Covid-19 related concession is also not available.

Section 206C(1H) TCS on sale of goods W.E.F. 01-10-2020

☐ **Seller:**

- Seller means a person having turnover/total sales from business exceeding Rs.10 Crores during the financial year (FY) preceding the FY in which goods are sold.

☐ **Buyer:**

- No TCS is required when the buyer is from the following category:
 - Central Government
 - State Government
 - Embassy
 - Commission/High Commission
 - Legation
 - Consulate
 - Trade Representation of Foreign state
 - Local Authority

Section 206C(1H) TCS on sale of goods W.E.F. 01-10-2020

❑ Services:

- ❖ These provisions are applicable only in respect of transaction of sale of goods and do not apply to sale of services.

❑ Exempted transactions:

- ❖ If the buyer is liable to deduct tax at source on goods purchased by him and the buyer has deducted the amount then the seller is not required to collect TCS on such transactions.
- ❖ Both the conditions need to be fulfilled i.e., the buyer should be liable for deduction of tax at source and has deducted such amount.

Section 206C(1H) TCS on sale of goods W.E.F. 01-10-2020

❑ 5. Exports and other provisions relating to TCS:

- ❖ TCS is not required to be collected in respect of Export sales as the consideration for sale of goods excludes consideration towards goods exported out of India and even the definition of buyer excludes a person importing goods from India.
- ❖ Further, this provision will also be not applicable if TCS is required to be collected by the seller under section 206(1) or 206C(1F) or 206C(1G) viz., for sale of alcoholic liquor for human consumption, tendu leaves, timber, scrap, coal, lignite, iron ore, sale of motor vehicle, foreign remittances and overseas tour program package etc.
- ❖ Thus, if a seller is receiving consideration of 1 Crores from a buyer for sale of scrap or sale of motor vehicle, then provision u/s 206C (1) and 206C (1F) would be applicable

Section 206C(1H) TCS on sale of goods W.E.F. 01-10-2020

☐ 6. Qualifying amount:

- ☐ The amount on which the tax needs to be collected shall be limited only to the consideration for sale of goods actually received.
- ☐ The liability is triggered at the point of receipt of amount once the **threshold of Rs.50 Lakhs is crossed.**
- ☐ In the absence of sale of goods and amount received, the liability does not exist.
- ☐ The sale consideration can be interpreted as amount received in advance or in arrears. In case, if there is some change in valuation say under GST law then too the requirement of TCS will be qua actual consideration and not qua valuation under the GST law.

Applicability of section 194Q with Examples:

- ❑ Seller's Turover : Rs. 9 Crores
- ❑ Buyer's Turover : Rs. 15 Crores
- ❑ Receipt or Payment for sale or purchase of Goods in previous year : Rs. 55 lakhs

Taxability:

- ❖ Buyer's Turnover is more than Rs. 10 Crores
- ❖ Taxable amount : Rs. 5 lakhs (Rs. 55 lakhs-Rs.50 lakhs)
- ❖ TDS u/s194Q : 0.1% on Rs. 5* lakhs
- ❖ TCS u/s 206C(1H): not applicable as Seller's turnover is less than 10 Crores.

Applicability of section 194Q with Examples:

- ❑ **Seller's Turover : Rs. 15 Crores**
- ❑ **Buyer's Turover : Rs. 9 Crores**
- ❑ **Receipt or Payment for sale or purchase of Goods in previous year : Rs. 55 lakhs**
- ❑ **Taxability:**
 - ❖ **Buyer's Turnover is less than Rs. 10 Crores**
 - ❖ **Seller's Turover is more than Rs. 10 Crores**
 - ❖ **Taxable amount : Rs. 5 lakhs (Rs. 55 lakhs-Rs.50 lakhs)**
 - ❖ **TDS u/s194Q : Not applicable**
 - ❖ **TCS u/s 206C(1H): 0.1% on Rs. 5 lakhs**.**

Applicability of section 194Q with Examples:

- ☐ Seller's Turover : Rs. 15 Crores
- ☐ Buyer's Turover : Rs. 15 Crores
- ☐ Receipt or Payment for sale or purchase of Goods in previous year:Rs.55 lakhs
- ☐ Taxability:
 - ❖ Buyer's Turnover is more than Rs. 10 Crores
 - ❖ Seller's Turover is more than Rs. 10 Crores
 - ❖ Taxable amount : Rs. 5 lakhs (Rs. 55 lakhs-Rs.50 lakhs)
 - ❖ TDS u/s194Q : 0.1% on Rs. 5 lakhs*
 - ❖ TCS u/s 206C(1H): Not applicable (see exception).



Both these provisions are distinguished in the below table:

| <i>Basis of distinction</i> | <i>TDS on purchase of goods [Section 194Q]</i> | <i>TCS on Sale of goods [Section 206C(1H)]</i> |
|----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Who is liable for deduction/collection | Buyer is liable to deduct the tax | Seller is liable to collect the tax |
| Turnover limit of deductor or collector | The total sales, gross receipts or turnover of the buyer from the business should exceed Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased | The total sales, gross receipts or turnover of the collector from the business should exceed Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are sold |
| Threshold limit of purchase/sale | If the value of purchase exceeds Rs. 50 lakhs | If the value of sales exceeds Rs. 50 lakhs |
| Rate | 0.10% | 0.10% |
| Amount on which tax to be deducted/collected | On the amount of purchase in excess of Rs. 50 lakhs | On the amount of sale consideration in excess of Rs. 50 lakhs |
| Time of deduction/collection | At the time of credit or payment, whichever is <i>earlier</i> | At the time of receipt |
| Preference to be given | Purchaser is first liable to deduct the tax if the transaction could be subject to both provision | Seller shall be liable to collect the tax only if the purchaser is not liable to deduct the tax or purchaser failed to deduct tax |

| ■ Particulars | Scenario 1 | Scenario 2 | Scenario 3 |
|----------------------------------------------------------|------------|------------|------------|
| Turnover of Seller (In cr.) | 12 | 6 | 12 |
| Turnover of Buyer (In cr.) | 6 | 12 | 12 |
| Sale of goods (In cr.) | 2 | 2 | 2 |
| Sales consideration paid during the year (In cr.) | 1 | 1 | 1 |
| Who is liable to deduct or collect tax? | Seller | Buyer | Buyer |
| Rate of Tax | 0.10% | 0.10% | 0.10% |
| Amount on which tax to be deducted or collected (In Cr.) | 0.5 | 1.5 | 1.5 |
| Tax to be deducted or collected | 5,000 | 15,000 | 15,000 |

Is a buyer importing goods from outside India required to deduct tax at source under this section?

- ❖ Section 194Q provides that any person, being a buyer who is responsible for paying any sum to any resident, being a seller, is required to deduct tax at source under this provision.
- ❖ Thus, the obligation to deduct tax under this provision arises only when the payment is made to a resident seller.
- ❖ As in the case of import, the seller is a non-resident, the buyer will not have any obligation to deduct tax under this provision.
- ❖ **However, the TDS under Section 195 or payment of Equalisation Levy may be required in respect of such transaction.**

Whether tax is required to be deducted under Section 194Q from the goods exported abroad?

- ☐ Liability to deduct tax under this provision arises only when the payment is made to a resident seller.
- ☐ Residential status of the buyer, who is making payment, is not relevant under this provision.
- ☐ As in the transaction of export of goods, the seller is a resident but the buyer is a non-resident. Thus, the liability to deduct tax under this provision may arise on the non-resident buyer, which may not be practically possible.
- ☐ **Thus, the Central Government may exempt such transactions in view of the powers given by the Explanation to Section 194Q.**

In absence of any definition of 'goods', what shall be construed as a purchase of goods?

☐ The term '**goods**' is not defined in the Income-tax Act.

Sale of Goods Act, 1930

'Goods' means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale"

Central Goods and Services Tax Act, 2017

'Goods' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"

In absence of any definition of 'goods', what shall be construed as a purchase of goods?

- ☐ Sale of Goods Act, 1930 is a specific statute which deals with the 'sale of goods' whereas the CGST Act, 2017 deals with tax on 'supply of goods'.
- ☐ Definition of term 'goods' can be referred to from the Sale of Goods Act, 1930 for the purpose of Section 194Q.
- ☐ Therefore, the tax is to be deducted under this provision from the purchase value of the following:
 - ☐ (a) Movable property; (b) Any commodity; (c) Shares or Securities; (d) Electricity;
 - ☐ (e) Agriculture produce; (f) Fuel; (g) Motor vehicle; (h) Liquor; (i) Jewellery or bullion; (j) Art or Drawings; (k) Sculptures; (l) Scraps; (m) Forest produce, etc.

Whether a transaction in securities through stock exchanges shall be subject to TDS under this provision?

- ❑ **Section 206C(1H) to provide for the collection of tax on the sale of goods,** concerns have been raised about the applicability of such provision in respect of transactions through stock exchanges (or commodity exchange) as there is no one-to-one contract between the buyers and sellers.
- ❑ **CBDT vide Circular No. 17 of 2020, clarified that provisions of Section 206C(1H)** shall not be applicable in relation to transactions in securities (and commodities) which are traded through recognised stock exchanges or cleared and settled by the recognised clearing corporation, including recognised stock exchanges or recognised clearing corporations located in International Financial Service Centre (IFSC).
- ❑ **Applying the rationale behind such clarification, it is apprehended that the CBDT may allow a similar exemption from TDS under Section 194Q as well.**

Whether TDS to be deducted on the purchase of immovable property by a developer?

- ❑ As referred to above, 'goods' means every kind of movable property subject to certain exceptions and inclusions.
- ❑ Thus, the immovable property shall not be treated as 'goods'.
- ❑ Consequently, the TDS shall not be deducted from the purchase of immovable property by a developer.

Whether TDS is required to be deducted on the transaction in electricity?

- ❑ State of Andhra Pradesh v. National Thermal Power Corporation (NTPC) (2002) 5 SCC 203, held that electricity is a movable property though it is not tangible. It is 'good'. Further, the Custom Tariff Act has covered 'Electricity' under heading 2716 00 00, which also clarifies that Electricity is a good. Thus, it may be concluded that the tax should be deducted from the payment made in respect of the transaction in electricity.
- ❑ A transaction in electricity can be undertaken either by way of direct purchase from the company engaged in generation of electricity or through power exchanges. The CBDT has clarified that the transaction in electricity, renewable energy certificates and energy-saving certificates traded through power exchanges registered under Regulation 21 of the CERC shall be out of the scope of TCS under the provision of Section 206C(1H).
- ❑ Applying the rationale behind such clarification, it is apprehended that the CBDT may allow a similar exemption from TDS under Section 194Q as well.

Whether TDS should be deducted on the purchase of software?

- ❑ Taxation of software has always been a subject of debate under the Income-tax Laws & was also litigative under the erstwhile indirect tax laws (VAT, Service Tax etc.)
- ❑ **Finance Act, 2012, has made the clarificatory amendments in Section 9 to broaden the scope of taxation of royalty - consideration for the use or right to use of computer software is a royalty.**
- ❑ Payment towards royalty is subject to TDS u/s 194J or 195.
- ❑ Provision of Section 194Q would not apply where tax is deductible under any other provision (section 194J or 195).

Contd.

Whether TDS should be deducted on the purchase of software?

Tata Consultancy Services v. State of A.P [2004] 141 Taxman 132 (SC) held that “Canned software (off the shelf computer software) are 'goods' and as such assessable to sales tax.

- ❖ Hence, the requirement to deduct TDS shall be decided on the basis whether the purchase of software has been treated as 'purchase of goods' or 'purchase of service'.
- ❖ If the same has been treated as a purchase of service, it shall not be subject to TDS u/s 194Q but the provisions of TDS u/s 194J or 195, as the case may be, may apply.
- ❖ If the purchase of software has been treated as a purchase of goods then the buyer shall be liable to deduct TDS subject to the fulfilment of other conditions of Section 194Q.

Whether TDS is liable to be deducted on purchase of Jewellery not connected with business?

- ❑ Tax is required to be deducted by a buyer carrying on business whose total sales, gross receipts or turnover from the business exceeds Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased.
- ❑ There is no condition that the purchases should be connected with the business only.
- ❑ Thus, if a person is falling within the definition of the buyer, tax is required to be deducted even if such purchase is not connected with the business carried on by him.
- ❑ Jewellery, being a movable property, is covered within the term goods.
- ❑ There is no specific exclusion u/s 194Q for deduction of TDS on purchase of jewellery and subject to TDS if other conditions are also fulfilled.

Whether additional, allied and out-of-pocket expenses form part of the purchase value of goods?

- ❑ It is imperative to accurately determine the purchase value as it is relevant both for the applicability of the provision and amount from which tax should be deducted.
- ❑ Additional, allied or out-of-pocket charges recovered from the customers may or may not form part of purchase value.
- ❑ Where these expenses have been reflected in the purchase invoice itself, it should form part of purchase value.
- ❑ If they are charged through a separate invoice, it should not form part of purchase value.

From which date the threshold limit of Rs. 50 lakhs will be computed?

- ❑ TDS has to be deducted if the value or aggregate purchase value exceeds Rs.50 lakhs during the previous year (Section 194Q, with effect from 01-07-2021)
- ❑ How this limit of Rs. 50 Lakh for deducting TDS shall be reckoned for the financial year 2021-22? Should it be from 01-04-2021 or 01-07-2021?
- ❑ **CBDT vide Circular No. 17, dated 29-09-2020 (ref: section 206C(1H))**, has clarified that since the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of sale consideration for triggering TCS under this provision shall be computed from 01-04-2020. Hence, if a seller has already received Rs. 50 lakhs or more up to 30-09-2020 from a buyer, TCS under this provision shall apply on all receipts of sale consideration on or after 01-10-2020.
- ❑ Applying the same principle it should be concluded that threshold of Rs. 50 lakhs shall be computed from 01-04-2021. Thus, if a buyer has already purchased goods of value Rs. 50 lakhs or more up to 30-06-2021 from a seller, TDS under this provision shall apply on all purchases on or after 01-07-2021.

Whether TDS is to be deducted on the total invoice value including the GST?

- ❑ **Circular No. 23/2017, dated 19-7-2017:** clarified that 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 on the amount paid or payable without including such 'GST on services' component. However, such clarification was issued in respect of GST on services only. No such clarification has been issued for GST on goods.

- ❑ **In respect of Section 206C(1H), the CBDT vide Circular No. 17, dated 29-09-2020 -** clarified that since the collection is made with reference to receipt of the amount of sale consideration, no adjustment on account of indirect taxes including GST is required to be made for the collection of tax under this provision. Since deduction under Section 194Q is to be made with reference to the purchase value, applying the same principle it can be concluded that GST shall form part of the purchase value, therefore, the TDS is deductible on the purchase value inclusive of GST.

Whether TDS has to be deducted on advance payment made to the seller?

□ Section 194Q provides that tax is required to be deducted in the transaction relating to the purchase of goods. It does not mention whether such purchase needs to be effected immediately or at a future date. As the tax is required to be deducted at the time of payment or at the time of credit, whichever is *earlier*, it should be reasonable to conclude that the provision may get attracted even if such purchase happens in future.

□ As long as the intention is to adjust the advance payment against the future purchase of goods, the tax should be deducted at the time of payment or credit, whichever is *earlier*. If the advance payment is not made with an intention to adjust it against future purchase (deposit or loan) but eventually it is adjusted against the future purchase, no tax is required to be deducted at the time of payment of such advance. In such case liability to deduct tax will arise the moment such advance is adjusted against the purchase value of goods.

Whether payment of advance before 01-07-2021 for purchase of goods will be subject to TDS?

- ❑ The Finance Bill, 2021, has proposed to insert Section 194Q with effect from 01-07-2021.
- ❑ Thus, provisions of this Section shall not apply on any payment made or credit made in the books of accounts before 01-07-2021.
- ❑ Consequently, it would apply to all purchases made on or after 01-07-2021.
- ❑ In simple words, the tax should be deducted where the payment is made or amount is credited on or after 01-07-2021. Thus, where any of the trigger event (i.e., payment or credit) has occurred before the date of applicability of provision, no liability to deduct tax will arise.

Whether the amount advanced as a loan to the seller shall come within the ambit of this provision?

- The requirement to deduct TDS under this provision arises if the purchase value exceeds the threshold limit during the previous years. The deduction is to be made at the *earliest* of payment or credit for the purchase of goods.
- **Since the loan advanced by buyers is not a payment towards the purchase of goods, it shall remain outside the purview of this provision. Hence, there is no requirement to deduct TDS on loan advanced by the buyer.**
- However, if at any future date, such loan amount is settled against purchased value, the liability to deduct TDS shall arise. The tax shall be deducted on the date on which parties agreed to adjust the loan amount against the outstanding liability.

Whether tax to be deducted on the purchase of goods by one branch from another?

□ TDS under this section is required to be deducted by any person, being a buyer, responsible for making payment to the seller for the purchase of goods. Thus, the existence of two distinct parties as 'seller' and 'buyer' is a pre-requisite to construe a transaction as a purchase. The condition of purchase is not fulfilled in the context of branch transfer and this section shall not apply in the case of branch transfer

What shall be the treatment of debit note for computation of TDS?

□ As the tax has to be computed on the purchase value, the adjustment made to the ledger of the seller by issuing the debit note will not have an impact on the tax to be deducted. The position would remain the same if, after the deduction of tax, the seller repays some consideration to the buyer. In such a situation, the amount of purchase value shall not be reduced with the amount so refunded or the debit note so adjusted for calculation of TDS.

If the seller has multiple units, whether purchases made from different units need to be aggregated?

- ☐ Where tax is required to be deducted at source, the deductee is required to furnish his PAN or Aadhaar number to the deductor failing which the tax is required to be deducted at higher rates.
- ☐ If the PAN or Aadhaar number is available, the threshold limit of Rs. 50 lakhs shall be computed in respect of each PAN or Aadhaar number.
- ☐ In other words, if different units of the seller are under the same PAN or Aadhaar number, the amount paid or payable to all such units shall be aggregated to compute the limit of Rs. 50 Lakhs.

Can a seller apply for the certificate for lower deduction of TDS?

❑ An assessee can apply to the AO to issue a certificate for deduction of tax at lower rates. Such certificate shall be issued if existing and estimated tax liability of assessee justifies deduction of tax at a lower rate. Further, certain assessees have an option to file a declaration for *nil* deduction of tax.

❑ However, the Finance Bill, 2021, has not proposed to extend the benefit to apply for a certificate for deduction of tax at lower rates or to file declaration for nil deduction in respect of transactions covered under Section 194Q. Hence, the assessee does not have the option to approach the assessing officer to issue a certificate for a lower tax deduction or to file declaration for nil deduction in respect of transactions covered **under section 194Q.**

❑ **In fact, Section 206C(1H)** also does not allow the buyer to apply for the lower or *nil* TCS certificate.

Will TDS under section 194Q apply to redemption of preference shares by a company?

- ❑ Preference shares are movable property and goods.
- ❑ **Anarkali Sarabhai v. CIT [1997] 90 Taxman 509 (SC)**, the Court held that redemption of preference shares is clearly 'sale' by the shareholder to the company and would come within the purview of 'transfer' in view of the following
 - ❖ A reading of sections 77, 80, and 85 of the Companies Act, 1956 [now sections 67, 55, and 43 of the Companies Act, 2013] makes it clear that when a preference share is redeemed by a company, what a shareholder does is, to sell the shares to the company. Such a transaction is nothing but the sale of the preference shares by the shareholder to the company.

Will TDS under section 194Q apply to redemption of preference shares by a company?

- ❖ That is why after specifically laying down in section 77(1) of the said Act [now section 67(1) of the 2013 Act] that no company shall have the power to buy its own shares, it was necessary to specify in sub-section (5) thereof [sub-section (4) of section 67 of the 2013 Act] that this provision shall not affect the rights of a company to redeem any preference shares issued by it.
- If redemption of preference shares did not amount to sale, it would not have been necessary to specifically provide that the restriction imposed upon a company in respect of buying its own shares will not apply to the redemption of preference shares issued by the company.
- **Therefore, it would appear that if redemption proceeds to any preference shareholder exceeds Rs. 50,00,000 limit, TDS under section 194Q would apply as it amounts to purchase of goods.**

Will TDS under section 194Q apply to buyback of shares by a company? Will such buyback amount to purchase of goods?

- ❑ It would clearly amount to purchase of goods in view of Supreme Court decision in *Anarkali Sarabhai v. CIT* [1997] 90 Taxman 509.
- ❑ Besides section 68 of the Companies Act, 2013 dealing with buyback of shares refers to it as purchase in the section heading as well as text of the provisions. However, buyback of shares by domestic companies are subject to 20% tax under section 115QA of the Act and the consideration is exempt from tax in the hands of the shareholders under section 10(34A). So it will be a case of fully tax-free income being subjected to TDS. Besides, section 115QA(4) says that the tax paid by the company under that section shall be treated as final payment of tax in respect of distributed income on buyback of shares. In view of the above, it appears no tax under section 194Q shall be deductible on buyback of shares. It is better for CBDT to clarify this in removal of difficulties guidelines.

Company whose turnover is Rs.12 crores in immediately preceding financial year buys Rs.75,00,000 capital goods from a supplier. The agreement with the supplier is 1,00,000 shares of the company whose fair market value is Rs.75,00,000 shall be allotted to the supplier as consideration? Is TDS deductible u/s 194Q ?

- ❑ Doubtless, if we go by the plain meaning of **“purchase of goods”**, there is purchase of goods.
- ❑ And the words **“payment thereof by any mode”** do not exclude payment in kind.
- ❑ Issue of shares in consideration for capital goods is clearly payment in kind and clearly **“payment thereof in any mode”**.
- ❑ **TDS will have to be deducted at the time of credit of Rs.75,00,000 to supplier's account or at the time of payment thereof by any mode (i.e. mode of allotment of shares), whichever is earlier.**

Is section 194Q applicable to barter exchange of goods?

- ❑ It appears so in view of the words “payment thereof in any mode” used in section 194Q

Will section 194Q apply to loan of material?

- ❑ It so happens, for example, Builder A takes building material on loan from Builder B. Builder A commits to replace to Builder B the quantity taken when his own stocks arrive. This is loan of material. **Section 194Q applies to purchase of goods and not loan of material.**

How does a loan of material differ from barter?

- ❑ In barter, it is not exactly the same item in same quantity that is given back. In loan of material same quantity of same material taken is given back.

Will TDS under section 194Q apply to the redemption of units by Mutual Fund exceeding Rs.50,00,000 in a financial year to a unitholder? Can it be said to be “purchase of goods” by the Mutual Fund?

- Consequent on abolition of Dividend Distribution Tax, the Finance Act, 2020 inserted section 194K with effect 1-4-2020 to levy TDS at the rate of 10% on the dividend/income paid by the Company/Mutual Fund to its share/unit holder if the amount of such dividend/income exceeds five thousand rupees in a financial year.

Is section 194Q applicable to barter exchange of goods?

- ❑ CBDT had clarified, vide Press Release, dated 4-2-2020 that “a Mutual Fund shall be required to deduct TDS @ 10% only on dividend payment and no tax shall be required to be deducted by the Mutual Fund on income which is in the nature of capital gains. Necessary clarification, if required, shall be proposed in the relevant provision of the law”.
- ❑ Accordingly, section 194K, as finally enacted, clarifies that no TDS will be deductible by Mutual Funds on payment of income in the nature of capital gains. There has been no amendment to section 194K by Finance Act, 2021 so as to require deduction of TDS by Mutual Fund on deduction of units.
- ❑ **Therefore, it appears that though units can be considered as goods, TDS under section 194Q will not be attracted on redemption of units by Mutual Fund. One hopes CBDT will clarify this aspect in removal of difficulties guidelines under section 194Q.**

M/s ABC & Co., a partnership firm, settled retiring partner's accounts by transferring stock-in-trade of FMV Rs.60 lakhs on 15.07.2021 to his sole proprietorship concern A & Co. The turnover of A & Co. was Rs.12 crores in Financial Year 2020-21. ABC & Co., turnover in Financial Year 2020-21 was Rs.70 crores. Is ABC & Co. liable to collect tax at source u/s 206C(1H)? Is A & Co. liable to deduct TDS u/s 194Q?

☐ As the firm has given stock-in-trade to retiring partner to settle his capital account balance, it is clearly “in connection with reconstitution of specified entity” and is thus a deemed transfer under section 9B newly inserted in the Act by Finance Act, 2021. This would amount to a deemed sale by firm and deemed purchase by A & Co. If on a transaction TCS is required under sub-section (1H) of section 206C as well as TDS under this section, then on that transaction only TDS under this section shall be carried out. Since both provisions apply in present situation, ABC & Co. will not collect TCS and only A & Co. will deduct TDS under section 194Q. Purchase account will be debited and proprietor A's capital account will be credited by A & Co. At this point of time TDS of 0.1% would have to be deducted on 0.1% of Rs.10,00,000 (assuming that A & Co. and ABC & Co. do not have any other purchase-sale dealings during the financial year).

☐ **A & Co. would need to deduct tax at source here @ 0.1% of Rs.60 lakhs.**

ILLUSTRATIONS

Case 1. Transaction Covered by Section 206C(1H)

Case 2. Transaction Covered by Section 194Q

Case 3. Transaction Covered by both the provision Section 194Q and 206C(1H)

| Particulars | Case -I | Case-II | Case-III |
|-----------------------------------------------------------------|----------------|----------------|-----------------|
| Turnover of Seller (In cr.) | 15 | 9 | 15 |
| Turnover of Buyer (In cr.) | 9 | 15 | 15 |
| Sale of goods (In cr.) | 3 | 3 | 3 |
| Sales consideration paid during the year (In cr.) | 1.5 | 1.5 | 1.5 |
| Who is liable to deduct or collect tax? | Seller | Buyer | Buyer |
| Rate of Tax | 0.1% | 0.1% | 0.1% |
| Amount on which tax to be deducted or collected (In Cr.) | 1 | 2.5 | 2.5 |
| Tax to be deducted or collected | 10000 | 25000 | 25000 |

Applicability of Section 206(1H) or Section 194Q w.e.f 1st July, 2021

| Buyer's Turnover in FY 20-21 | Seller's Turnover in FY 20-21 | Transaction Value (Total from 01.04.2021 to date) | Applicability |
|---------------------------------------------|----------------------------------------------|--------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| 8Cr | 12Cr | Rs. 57 Lakhs | 206C(1H) |
| 16 Cr | 9 Cr | Rs. 60 Lakhs | 194Q |
| 14 Cr | 15 Cr | Rs. 70 Lakhs | 194Q (Note) |
| 8 Cr | 6 Cr | Rs. 58 Lakhs | None of the Sections are applicable because neither the seller nor the buyer's Turnover in FY 20-21 exceeded Rs. 10 Crore |
| 13 Cr | 18 Cr | Rs. 45 Lakhs | None of the Sections are applicable because Rs.50 lakhs threshold was not crossed. (Note) |

Comparative study of Section 194Q and 206C(1H)

| Section 194Q TDS on purchase of goods W.e.f 1 July,2021 | Section 206C(1H) TCS on Sale of goods W.e.f 1 Oct, 2020 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Deductor :- Buyer carrying on a business whose total sales, gross receipts or turnover from the business exceeds Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased | Collector: – Seller whose total, gross receipts or turnover from the business exceeds exceeds Rs 10 crore during the financial year immediately preceding the financial year in which the sale of sale of goods is carried out. |
| Threshold Limit :- 50 Lakh | Threshold Limit :- 50 Lakh |
| Deductee:- Resident Seller | Collectee :- Resident Buyer |
| Time of Deduction:- At the time of Credit to the account of seller or Payment ,Whichever is Earlier. The tax shall be deducted even if the sum is credited to the 'Suspense Account'. | Time of Collection:- At the time of receipt of consideration from buyer exceeding Rs. 50 Lakh |
| Rate of Tax:- TDS shall be collected 0.1 per cent of such sum exceeding 50 Lakh rupees if seller furnished his Pan/Aadhar, otherwise 5% | Rate of Tax:- TCS shall be collected @0.1% of the amount in excess of Rs 50 lakh if purchaser furnished his Pan/Aadhar, otherwise 1% |

Comparative study of Section 194Q and 206C(1H)

| Section 194Q TDS on purchase of goods W.e.f 1 July,2021 | Section 206C(1H) TCS on Sale of goods W.e.f 1 Oct, 2020 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Non Applicability:-</p> <p>a) Tax is deductible under any of the provisions of this Act and</p> <p>b) tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.</p> <p>c) Amount of Purchase does not exceeds 50 Lakh</p> | <p>Non Applicability:-</p> <p>a) Tax is deductible under any of the provisions of this Act</p> <p>b) Amount of Sale Consideration received by seller from buyer does not exceed 50 Lakh</p> |
| <p>From which date the threshold limit of Rs. 50 lakhs will be computed</p> <p>Threshold of Rs. 50 lakhs shall be computed from 01-04-2021. Thus, if a buyer has already purchased goods of value Rs. 50 lakhs or more up to 30-06-2021 from a seller, TDS under 194Q shall apply on all purchases on or after 01-07-2021.</p> | <p>From which date the threshold limit of Rs. 50 lakhs will be computed</p> <p>Section 206C(1H) was introduced by the Finance Act, 2020, with effect from 01-10-2020. threshold of Rs. 50 lakhs shall be computed from 01-04-2020. Thus, if Seller already received consideration of 50Lkh or more upto 30-9-20 from buyer, TCS under 206C(1H) shall apply on all consideration received on and after 1-10-2021</p> |

Comparative study of Section 194Q and 206C(1H)

| Section 194Q TDS on purchase of goods W.e.f 1 July,2021 | Section 206C(1H) TCS on Sale of goods W.e.f 1 Oct, 2020 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>What shall be the treatment of debit /credit note for computation of TDS</p> <p>As the tax has to be computed on the purchase value, the adjustment made to the ledger of the seller by issuing the debit note will not have an impact on the tax to be deducted</p> | <p>What shall be the treatment of debit /credit note for computation of TCS</p> <p>No such requirement, because buyer will make payment after adjusting debit/credit note.</p> |
| <p>Whether TDS is to be deducted Inclusive of GST</p> <p>No such clarification from CBDT, But if we take into account the old provisions of TDS like 194J & 194C ,if component of GST comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable exclusive of GST component</p> | <p>Whether TCS is to be collected Inclusive of GST</p> <p>YES,CBDT vide <u>Circular No. 17, dated 29-09-2020</u>, has clarified that TCS is to be collected inclusive of GST value, Since buyer always make payment inclusive of GST</p> |

Comparative study of Section 194Q and 206C(1H)

| Section 194Q TDS on purchase of goods W.e.f 1 July,2021 | Section 206C(1H) TCS on Sale of goods W.e.f 1 Oct, 2020 |
|------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Buyer does not includes a) A person, as the Central Government may, by notification in the Official Gazette, | Buyer does not includes a) CG,SG,An Embassy,A High Commission and Consulate and the trade representation of a foreign state b) Local Authority c) A person importing goods into india d) Buyer purchasing goods which was already covered by the provision of section 206C(sale of scrap) or cover under the provision of TDS |
| When to deposit Tax so deducted shall be deposited with government by 7th day of subsequent month | When to deposit Tax so collected shall be deposited with government by 7th day of subsequent month |
| Quarterly statement to be filed:- 26Q | Quarterly statement to be filed:-27EQ |
| Certificate to be issued to seller :- Form 16A | Certificate to be issued to buyer:- Form 27D |
| Can a Seller apply for the certificate for lower/Nil deduction of TDS :- NO | Can a Buyer apply for the certificate for lower/Nil Collection of TCS :- NO |

Comparative study of Section 194Q and 206C(1H)

| Section 194Q TDS on purchase of goods W.e.f 1 July,2021 | Section 206C(1H) TCS on Sale of goods W.e.f 1 Oct, 2020 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Consequences of Non-Compliance of Section 194Q</p> <p>a) Disallowances of expenses to the extent 30% u/s 40a(ia) of Income Tax Act 1961</p> <p>b) If Tax not deducted: Interest @1% pm or part of the month from the date on which the tax was to be deducted to deposit</p> <p>c) If after deduction fails to pay TDS: to pay simple interest @1.5% per month or part of the month from the date of deduction to date of actual payment.</p> | <p>Consequences of Non-Compliance of Section 206C(1H)</p> <p>If Tax not collected: Interest @1% pm or part of the month from the date on which the tax was to be deducted to deposit</p> <p>c) If after tax collected fails to pay TDS: to pay simple interest @1.5% per month or part of the month from the date of deduction to date of actual payment.</p> |
| <p>Preference to be given if transaction is covered by both the provisions (TDS u/s 194Q and TCS u/s 206C(1H) -</p> <p><u>Purchaser is first liable to deduct the tax if the transaction could be subject to both provision</u></p> | <p>Preference to be given if transaction is covered by both the provisions provisions (TDS u/s 194Q and TCS u/s 206C(1H)</p> <p>Seller shall be liable to collect the tax only if the purchaser is not liable to deduct the tax or purchaser failed to deduct tax</p> |

Q&A

