

# TDS Provisions

By

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# Provisions Discussed

- **Sec.194**
- **Sec.194B**
- **Sec.194BB**
- **Sec.194Q**
- **Sec.194-O**
- **Sec.206C(1H)**

# Issues

- Overview of Tax Deducted at Source
- What is TDS
- Who is supposed to deduct tax at source
- When TDS required to be made
- TDS Rates
- Time of TDS Needs to Deposited to Govt.
- What are the TDS Returns
- Due Dates
- What are the consequences in case of non-compliance (interest and penalty) with TDS provisions.

# Why TDS

- The concept of TDS was introduced with an aim to collect tax at the very source of income.
- As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government.
- The deductee from whose income tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS or TDS certificate issued by the deductor.

# Tax Collection by Government

- Tax Deducted at Source or TDS forms a major part of direct taxation mechanism
- The Government used TDS as a tool to collect tax at very source of income in order to minimize tax evasion and also relieves the taxpayer from the burden of paying taxes as a lump sum at the end of the financial year (FY).
- Under this, the responsible person is supposed to deduct a certain percentage of tax before making the payment to the receiver, such payments include rent, commission, professional fees, salary, interest, etc. The recipient of income will receive the net amount (after reducing TDS)
- TDS Provisions covered u/s.192 to Sec.196

# Sec.194

- Who is liable to deduct:
- The ***principal officer of an Indian company*** or a company which has made the prescribed arrangements for the declaration and payment of any dividend (including dividends on preference shares) ***to a shareholder, who is resident in India***, is required to deduct tax at source.
- Finance Act, 2021 added two additional categories

# Exemption

- w.e.f 01.04.2021 which will be exempted from deduction of tax source from dividends:
  - – A business trust as defined in clause (13A) of section 2, by special purpose vehicle referred to in Explanation to clause (23FC) of Section 10
  - – any other person notified by the Central Government in the Official Gazette in this behalf.

# Threshold Limit – Sec.194

- No deduction upto Rs. 5000, if dividend is paid by any mode, other than cash.
  - Aggregate of all amounts of such dividend distributed or paid or likely to be distributed does not exceed Rs.5000
- Rate = 10% and it is 20% wherever PAN is not submitted by the recipient.
- Only Individual Shareholder can furnish Form No. 15G or 15H, as the case may be.



# Non Applicability of Sec.194

- Shall not apply to it is paid/credited to
  - LIC of India
  - GIC of India or to any of its subsidiary companies
  - Any other insurer in respect of any shares owned or has full beneficial interest.

# Sec.194B

- Any person responsible for paying to any person,
- any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort in an amount ***exceeding ten thousand rupees shall,***
- at the time of payment thereof, deduct income-tax thereon at the rates in force

# Prize in kind

- In a case where the winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.
  - Payer shall release the prize only if either-
    - 1. He has collected the amount equivalent to TDS amount from the payee.
    - 2. He insists the payee to make the payment of TDS on his own & submit the proof to the payer.

## When to Deduct TDS u/s 194B?

- At the time of payment of such income.
  - Where lottery or prize money, etc. is paid in installments, the deduction of tax is to be made at the time of actual payment of each such installment.
  - No Deduction/Expenditure is allowed from such Income.
  - No deduction under section 80C or 80D or any other deduction/allowance is allowed from such income.

# Example

- A T.V. channel pays ₹ 8 lakh as prize money to the winner of a quiz programme, “Kaun Banega Crorepati”?
- Whether T.V. channel is responsible to deduct tax at source on the prize money so distributed?
- The prize money so distributed falls within the meaning of “winning from any card game and other game of any sort” and therefore, under section 194B, the person responsible for paying the same, shall at the time of payment; **deduct tax at 30%** provided prize money exceeds ₹ 10,000.
- Considering the above, T.V. channel is responsible to deduct tax at source on the prize money so distributed under section 194B of the Act.

# Other issues

- Where a certain percentage has to be forgone either in favour of Government or an agency conducting lotteries, then such portion is not subject to deduction of tax at source.
- Where an agent receives the prize money on unsold ticket or becomes entitled to an unclaimed prize,
  - *it shall form part of his business income and therefore not liable for tax deduction u/s 194B*
- If prize money is paid in installments, then tax shall be deducted at the time of payment of each installment.
- Tax shall be deducted on payment of commission, etc. to the lottery agent u/s 194G and not u/s 194B.

# Effective rate

- Cess would also have to be added to the tax rate which brings the total tax rate to **31.2%**.
- This rate would be independent of the tax slab rate of the individual.
- This means that even if the individual's income falls below 30% slab rate, winnings from awards and prizes would still be taxed @31.2%

# Refund

- Income tax deducted from lottery winning can be claimed as refund?
- **Yes, provided total income including the lottery amount is less than the exemption limit, i. e. No taxable income then one can claim the refund.**



# Example

- Say, a person win a car with a market value of Rs 7 lakh and the conditions require to bear the tax liability.
- The winner will have to cough up Rs 2.1 lakh tax, and Rs 8,400 education cess. Then there are registration charges, road tax, octroi and insurance, which must be borne by the winner. The only alternative: Forego award.
- Guidelines for valuing prizes, including holiday trips, insurance products and even contracts awarded by channels to winners, are unclear.
- The valuation will be largely circumstantial. For instance, to value a holiday, you may have to consider how much it costs an unrelated third party.

# Prize - Example

- X wins a motor car in a lucky draw held by Y Ltd. The market price of the car is `3,00,000. In this case before giving car to X, Y Ltd. will ensure that Rs. 90,000 of tax has been paid by X or recovered from him before the car is given to him. In case Y. Ltd. does not do so, then Y. Ltd. shall have to pay TDS itself calculated as under.
- Gross up the draw amount which shall be
- $3,00,000 \times 100/70 = \text{Rs. } 4,28,571$
- The tax to be deducted shall be  $= 4,28,571 \times 30/100 = \text{Rs. } 1,28,571$ .
- Y Ltd. shall deposit Rs. 1,28,571 as tax and the gross income of R shall be Rs. 4,28,571.

# Non Compliance – Sec.194

## Penalty and Prosecution

The person responsible for the tax deduction as discussed, if fails to deduct tax then as per section 271C, he needs to pay a penalty equal to the amount of tax deducted will be levied on him/her.

Secondly, as per section 276B, only deduction of such tax is not enough, It should be deposited with the government. Non-doing this can result into imprisonment of minimum 3 months up to 7 years fine can be imposed.

# Sec.194BB

- TDS on Winnings from Horse Race
  - Any person, who is responsible for paying to any person any income by way of **winnings from any horse race** an amount exceeding ₹10,000 shall deduct income-tax at the rates in force.
  - In a horse race, the winner of the race,
    - the jockeys, trainers and owners will win monetary rewards.
  - Any person
    - Means a book maker or a person to whom a license has been granted by the Government under any law for the time being in force for horse racing in any race course or for arranging for wagering or betting in any race course.

# Rate

- At 30%. No surcharge or HEC
- Any payment without TDS or TDS at lower rate
  - No
- Point
  - Race-income other than horse races like camel races etc. is not covered by this section.

# Sec.194-O – TDS – E-Commerce

- An e-Commerce operator is required to deduct TDS for facilitating any sale of goods or providing services through an e-Commerce participant.
- **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.
- **E-Commerce Participant/Seller**  
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

- 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.
- **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.

# Non Resident – E-Commerce

- **E-Commerce participant being a non-resident**
- E-Commerce participant must be a resident of India.
- No TDS will be deducted if the participant is a non-resident.
- If E-commerce operator is Non-resident, Equalisation Levy will be applicable.



# 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 June 2022.

Flipkart credits the account of XYZ on 1 June 2022, but the customer makes the payment directly to XYZ on 15 June 2022.

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 June 2022.

# Why Sec.194-O

- The purpose of the introduction of Section 194O is to widen the TDS base by bringing e-Commerce participants under the tax.
- 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.
- This has 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.
- ***Hence, the government has enlarged the tax base to bring such e-Commerce participants under the tax base.***

# Exception

- 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.

# Conclusion

- 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.
- The introduction of Section 194O will result in an increase in the revenue for the government by reducing tax evasion.

# Sec.194-O - Example

- S is a registered e-commerce seller on Amazon(e-commerce operator).
- The details of sales.
  - Gross sales = Rs. 5,20,000
  - GST @ 18% included in the above sales = Rs. 93,600
  - Amazon commission @ 3% = Rs. 15,600
- **TDS Calculation according to Section 194O**
  - E-Commerce Operator – Amazon
  - E-Commerce Seller – S
  - TDS = 1% of 5,20,000 = Rs. 5,200
- Amazon is required to, deduct TDS of Rs. 5,200 at the time of credit fulfillment or making payment, whichever is earlier.
- File TDS return via Form 26Q & issue form 16A to S.
- If S fails to furnish the PAN or Aadhar, then TDS should be deducted @ 5% irrespective of gross sales amount.

# Sec.194-Q

- Provision shall apply only if the following conditions are met:
  - The vendor of the products must be a resident of India.
  - The buyer of products shall be construed in accordance with the definition of Buyer stated in the explanation to Section 194Q.
  - In any previous year, the amount or sum of values must have exceeded 50 lakhs.
  - TDS will be levied at a rate of 0.1% on amounts in excess of 50 lakhs. The requirements of this section do not apply if the transaction is subject to TDS and TCS under any other section of the Income Tax Act of 1961.
- *If provisions under Section 194Q and Section 206C (1H) attract at the same time, the provisions under Section 194Q take precedence.*

*This section is exactly the opposite of section 206C(1H), where TCS must be collected.*

# Scope of Sec.194Q

- According to the new provision – 194Q of the Income Tax Act, the *buyer of the goods is obliged to deduct the TDS* of the seller of the goods if the products purchased by the buyer from a specific seller have an annual value of Rs.50,00,000/- or more.
- Purchases exceed Rs.50,00,000/-, TDS on purchases above the Rs.50,00,000/- limit is to be made
- This will take effect on July 1, 2021.

# Obligation

- Any individual (deductor) who purchases goods from another person (deductee) and the value of those goods exceeds Rs.50,00,000/- in a calendar year.
- However, the following individuals are not deductors and are not obligated to deduct TDS:
  - New business — This does not apply to the year the business is founded or incorporated.
  - Turnover limit — This will not apply to individuals who had a gross turnover of less than Rs. 10 crores in the year before the year in which items are purchased.
  - Non-resident — This does NOT apply to non-resident purchasers. However, if the buyer has a Permanent Establishment (PE) in India, this may apply.



# Not applicable

- Securities and commodity transactions are conducted through recognised stock exchanges and clearing organisations.
- Power exchanges facilitate the trading of electricity, renewable energy certificates, and energy-saving certificates.
- Other sections of the Income Tax Act apply to transactions on which TDS is deducted.

# Sec.194Q Not applicable

- No liability under section 194Q in following scenarios:
  - TDS is deducted under any other provisions or TCS is collectible except u/s 206C(1H). There is still reporting requirement under Form 26Q
  - In relation to transactions involving purchase of immovable property
  - If seller is Central/State Government, Reserve Bank of India, corporations established by Central Act which are exempt from Income Tax and Mutual Funds covered under section 10(23D)
  - Any other person as Government may notify

# Deductor – TO Limit

- The turnover limit to the deductor for this TDS provisions is Rs. 10 crores.
- This shows that must have total sales or gross revenues of Rs. 10 crores or more in the year before the buying transaction.
- If there is interest income, capital gains income, or rental revenue in a given year, they may be considered receipts, but they are not considered “business turnover”.
- A “business turnover” is required for these requirements to be applicable. As a result, until business revenue exceeds Rs. 10 crores, not required to deduct tax on purchases of items.

# Transaction Limit

- TDS on purchases of goods is levied only when the total amount of such transactions exceeds Rs. 50 lakhs in a calendar year.
- TDS is to be deducted on purchases above Rs. 50 lakhs.
- These rules are effective on 01/07/2021; however, if transaction limit exceeded Rs.50 lakhs before 01/07/2021, person must begin TDS on 01/07/2021, since the transaction limitations will be applicable on a yearly basis, beginning on 01/04/2021.

# Issues

- The following factors may be taken into account while calculating the Rs.50 lakh limit:
  - The amount of GST may be deducted from the total amount of bills paid.
  - If the amount is paid in advance or before crediting the purchasing party's accounts in books of account, TDS may be needed on the entire amount, including GST, because it is not practicable to separate GST from the number of purchases.
  - TDS must be deducted on a payment basis in the event of advance payments because TDS is applicable at the time of crediting the amount in books or payment, whichever comes first.

# Deposit of TDS

- TDS must be deposited on or before the 7th day of the month following the month in which TDS is deducted.
- TDS for the month of March, on the other hand, must be submitted on or before April 30th of the next fiscal year.
- TDS returns have the same due dates as other TDS requirements.

# Penalties – Applicable to all TDS Provisins

- If the deductor (E-commerce operator) fails to file and pay the TDS, they will bear the following penalties.
- Interest at the rate of 1% per month or part thereof for non-deduction of TDS
- Interest at the rate of 1.5% per month or part thereof for non-payment of TDS by 7th of every month
- Rs 200/per day for non-filing of TDS return on a quarterly basis

# Comparison

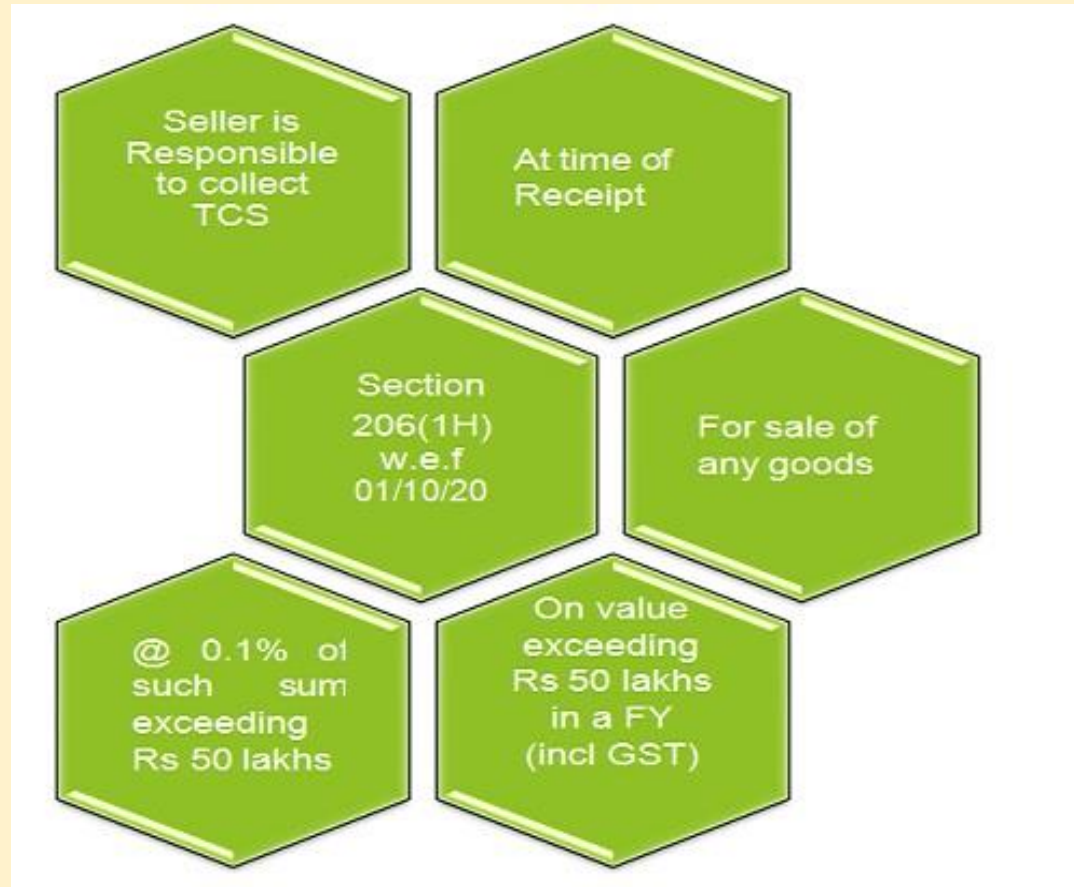
194Q Vs. 206C(1H)



# Sec.194Q - TDS on Purchase of Goods



# Sec.206C(1H) – TCS on Sale of Goods



# Difference between the two

Sec.194Q	Sec.206C(1H)
<p>Section 194Q is a newly added section in Finance Act 2021.</p> <p>It imposes TDS on the purchase of goods @0.1% on the amount of purchase done by a single supplier over RS 50 lakhs.</p> <p>Section 194Q is applicable when the buyer's gross receipts/ turnover of the previous year exceeds Rs 10 crore.</p> <p>In case Sellers PAN is not available the applicable TDS rate will be 5%.</p>	<p>Section 206C(1H) was introduced in the year 2020 was made effective from 01st October 2020.</p> <p>It imposes TCS for the sale of goods on the value exceeding Rs 50 Lakhs @0.1%.</p> <p>Applicable when the seller's gross receipts/ turnover of the previous year exceeds Rs 10 crore.</p> <p>In the case of buyers, PAN is not available the applicable TCS rate will be 1%</p>

# Overlap

- Primarily both the sections seem similar.
- What will happen if both the seller and buyer's previous year's gross receipt exceeds Rs 10 Cr and the transaction between both the parties exceeds Rs 50 Lakh in the current year.
- In such a case both section 194Q and Section 206C(1H) are applicable.
- It is not possible that the buyer deducts TDS and the supplier collects the TCS at the same time on the same transaction.

# Law

- In such a case, it is stated that whenever Section 194Q becomes applicable, Section 206C(1H) is not made applicable.
- Therefore,
  - ***Section 194 Q is applicable. Hence Section 194Q is a priority section over Section 206C(1H).***
  - ***Sec.194Q overrides Sec.206C(1H)***

# Case 1

- Suppose the turnover of the previous year of the buyer and seller are
  - Buyer: Rs 8 Crore
  - Seller: Rs 15 Crore

The transaction entered between both parties is Rs 55 lakh in the current financial year. In such a case, Section 194Q is not applicable because the turnover of the buyer in the previous FY does not exceed Rs 10 Crore.

However, Section 206C(1H) is applicable. TCS @0.1% on the amount of Rs 5 lakhs (in excess of Rs.50 lakhs) will be collected by the seller. (Provided the buyer's PAN is available).

In the case Buyer's PAN is not available, then TCS will be collected by the seller @1% on Rs 5 Lakhs.

# Case 2

- Suppose the turnover of the previous year of the buyer and seller are
  - Buyer: Rs 18 Crore
  - Seller: Rs 7 Crore
- The transaction entered between both parties is Rs 58 lakh in the current financial year.
- In such a case, Section 194Q is applicable because the turnover of the buyer in the previous FY exceeds Rs 10 Crore.
- Section 206C(1H) is not applicable. TDS @0.1% on the amount of Rs 8 lakhs will be deducted by the buyer. (Provided the seller's PAN is available).
- In the case seller's PAN is not available, then TDS will be deducted by the buyer @5% on Rs 8 Lakhs.

	Sec.194Q	Sec.206C(1H)
Applicable on	Purchase of Goods	Receipt of Consideration on sale of goods
Effective Date	1-7-2021	1-10-2020
Person Responsible for TDS or TCS	Deductor Buyer will deduct TDS on Seller	Collector Seller will collect TCS from Buyer



	Sec.194Q	Sec.206C(1H)
Meaning of Buyer	Buyer means a person 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. (For FY 2021-22, turnover of buyer for the FY 2020-21 is to be considered)	Buyer means a person who purchases any goods, but does not include,- a) Government, Embassy, High Commission, legation, consulate, trade representation of foreign state b) Local Authority c) Importer of the goods
Meaning of Seller	Not Relevant	Seller means a person 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 the sale of goods is carried out (For FY 2021-22, turnover of seller for the FY 2020-21 is to be considered)
05/06/2022	ICMAI	

	Sec.194Q	Sec.206C(1H)
When TDS / TCS Applicable	When payment (paid or payable) to a seller for purchase of any goods of the value or aggregate of such value exceeds Rs.50 Lakhs during the year.	Seller shall at the time of receipt of such amount, collect from the buyer, a sum equal to 0.10% of the sale consideration exceeding Rs.50 Lakhs.
Rate	TDS at 0.1% of such amount exceeding Rs.50 lakhs	TCS at 0.1% of the sales consideration received exceeding Rs.50 lakhs

	Sec.194Q	Sec.206C(1H)
If No PAN or Aadhaar is furnished	TDS 5%	TCS 1%
Time	TDS at the time making payment or credit to the account of the seller. Whichever is earlier	At the time of receipt of such amount

Overriding Effect or Non Applicability	194Q is not applicable if TDS is made under any other provisions of the act	206C)1H) No TCS when goods are exported. No TCS on sale of goods viz., Motor Vehicle, Tend leaves, scrap, liquor, minerals, etc.
Adjustment for DN/CN	Adjustment Allowed	No Adjustment
GST Implication	No TDS on GST, if amount is credited in the books of account. If TDS on payment basis, TDS is to be made including GST	TCS is applicable on Sales Consideration as per CBDT Clarification. TCS required to be collected on whole amount including GST
Multiple GSTNs by Buyer or Seller	Threshold Limit of both Rs.10 Crores and Rs.50 lakhs is calculated on PAN Basis not onGSTN	Threshold Limit of both Rs.10 Crores and Rs.50 lakhs is calculated on PAN Basis not onGSTN

Return	Quarterly Form 26Q	Quarterly Form 27EQ
Issue of TDS/TCS Certificate	Form 16A	Form 27D
Penalty for failure to make TDS or TCS	In addition to late fee as prescribed U/s 234E, Assessing Officer can levy penalty U/s 274H (which ranges from minimum Rs.10,000/- to maximum Rs.1,00,000/-) for late / incorrect furnishing of TDS statement.	In addition to late fee as prescribed U/s 234E, Assessing Officer can levy penalty U/s 274H (which ranges from minimum Rs.10,000/- to maximum Rs.1,00,000/-) for late / incorrect furnishing of TCS statement.
Failure to deposit tax	Sec.276B RI 3 months to 7 years	Sec.276BB RI 3 months to 7 years

# Non Deduction/Non Payment

- Sec.194Q, Since TDS on purchases
  - As per the provisions of Section 40a(ia) – If buyer fails to deduct and deposit TDS at applicable rates, expenditure to the extent of 30% will be disallowed in computing the Business Income.
- Sec.206C(1H) – Not applicable

# Other Issues

- If the buyer is liable to TDS under other provisions, Sec.206C(1H) is not applicable.
- Non-Resident Buyer under section 194Q
  - Clarification :- Section 194Q shall not apply to a Non-Resident Buyer where purchase of goods is from Seller Resident in India & such Purchase is not effectively connected with the Permanent Establishment of such non resident.
- If the seller's income is exempted, no TDS u/s.194Q
- If the buyer's income is exempted, no TCS u/s.206C(1H)
- Sec.194-O is applicable to E-Commerce Operator, hence provisions of Sec.194Q and Sec.206C(1H) is not applicable to E-Commerce Operator.
- If a transaction is within the purview of both sections, Sec.194Q will prevail upon.
- Same Transaction

**Primary liability is on the buyer to deduct TDS.**

If the buyer is liable to deduct TDS, then the seller shall not collect TCS on the same,  
but if the buyer is not liable for TDS deduction, then the seller must collect TCS u/s 206C(1H).

**the seller should seek a declaration from the purchaser on whether TDS u/s 194Q applies to the buyer**

# Thank You

Questions ?