

TAX FLASH NEWS

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CBDT issues guidelines on the applicability of TDS provisions under Section 194Q on purchase of goods

The Finance Act, 2021 introduced new set of provisions [Section 194Q in the Income-tax Act 1961 (the Act)] with effect from 1 July 2021. Section 194Q is applicable to any buyer¹ who is responsible for paying any sum to any resident seller for the purchase of any goods of value exceeding INR 50 lakh. The buyer, at the time of credit of such sum to the account of the seller or at the time of payment, whichever is earlier, is required to deduct an amount equal to 0.1 per cent of such sum exceeding INR 50 lakh.

Various representations were made to the Central Board of Direct Taxes (CBDT) to issue guidelines to removing certain difficulties.

Recently, CBDT has issued guidelines² to provide clarity on the applicability of such TDS provisions on purchase of goods. Key clarifications are as follows:

Transaction / issue	Clarification
Transactions carried out through various Exchanges	<p>It has been clarified that the provisions of Section 194Q are not applicable to:</p> <ul style="list-style-type: none"> Transaction in securities and commodities which are traded through recognised stock exchanges or cleared and settled by the recognised clearing corporation or recognized clearing corporation located in International Finance Service Centre (IFSC). Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges³.
Calculation of threshold for the financial year 2021-22	<ul style="list-style-type: none"> Since Section 194Q mandates buyer to deduct tax on credit of sum in the account of seller or on payment of such sum, whichever earlier, these provisions will not apply on any sum credited or paid before 1 July 2021. If either of the two events had happened before 1 July 2021, that transaction would not be subjected to the provisions of Section 194Q. Since the threshold of INR 50 lakh is with respect to the previous year, calculation of sum for triggering TDS under Section 194Q shall be computed from 1 April 2021. Hence, if a person being a buyer has already credited or paid INR 50 lakh or more up to 30 June 2021 to a seller, the TDS under Section 194Q shall apply on all credit or payment during the previous year, on or after 1 July 2021, to such seller.

¹ Buyer is defined to be person whose total sales or gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of good is carried out

² CBDT Circular No. 13 of 2021, dated 30 June 2021

³ Registered in accordance with Regulation 21 of the CERC

Adjustment for GST	<ul style="list-style-type: none"> 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 under Section 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.
Purchase returns	<ul style="list-style-type: none"> 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 under Section 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. However, 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.
Whether non-resident can be a buyer under Section 194Q	<ul style="list-style-type: none"> The provisions of Section 194Q shall not apply to a non-resident whose purchase of goods from a seller resident in India is not effectively connected with the Permanent Establishment (PE) of such non-resident in India. For this purpose, PE has been defined to include a fixed place of business through which the business of the enterprise is wholly or partly carries on.
Whether tax is to be deducted when the seller is a person whose income is exempt	<ul style="list-style-type: none"> Section 194Q shall not apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax under the Act (i.e. exemption provided under Section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.). Similarly, Section 206C(1H) shall not apply to sale of goods to a person, being a buyer, who as a person is exempt from income tax under the Act (i.e. exemption provided 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.
Whether tax is to be deducted on advance payment	<ul style="list-style-type: none"> Since the provisions of Section 194Q apply on payment or credit whichever is earlier, such provisions shall apply to advance payment made by the buyer to the seller.
Whether provisions of Section 194Q shall apply to buyer in the year of incorporation	<ul style="list-style-type: none"> Under Section 194Q a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding INR 10 crore rupees during the financial year immediately preceding the financial year in which the purchase of good 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.
Whether provisions of Section 194Q shall apply to buyer if the	<ul style="list-style-type: none"> 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 INR 10 crore during the financial year immediately preceding the financial year in which the purchase of good is carried out. Hence,

turnover from business is INR 10 crore or less	the sales or gross receipts or turnover from business carried on by him must exceed INR 10 crore. His turnover or receipts from non-business activity is not to be counted for this purpose.
Cross application of TDS on ecommerce operator [Section 194-O], TDS on purchase of goods [Section 194Q] and TCS on sale of goods [Section 206C(1H)]	<ul style="list-style-type: none"> • If tax has been deducted by the e-commerce operator on a transaction under Section 194-O [including transactions on which tax is not deducted on account of Section 194-O(2)], that transaction shall not be subjected to TDS under Section 194Q. • 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. • If a transaction is covered within the purview of both Section 194-O as well as Section 194Q, tax is required to be deducted under Section 194-O and not under Section 194Q. • Similarly, if a transaction is covered within the purview of both Section 194-O as well as TCS provisions under Section 206C(1H), tax is required to be deducted under Section 194-O⁴. • The primary responsibility is on e-commerce operator to deduct the tax under Section 194-O and that responsibility cannot be condoned if the seller has collected the tax under Section 206C(1H). This is for the reason that the rate of TDS under Section 194-O (1 per cent) is higher than the rate of TCS under Section 206C(1H) (0.1 per cent). • If a transaction is covered within the purview of both Section 194Q as well as Section 206C(1H), the tax is required to be deducted under Section 194Q⁵. However, if, for any reason, tax has been collected by the seller under Section 206C(1H), before the buyer could deduct tax under Section 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).

Our comments

The guidelines issued by CBDT is a welcome move and it is in continuation of government's effort to provide clarity on specific issues raised by various stakeholders. These guidelines provide much-needed clarity on various issues like calculation of threshold, applicability of provisions to transactions carried out through various exchanges, adjustment for GST, purchase return, applicability to a non-resident, etc.

These guidelines also remove some of the difficulties arising due to overlapping TDS provisions of Section 194Q with the provisions applicable to e-commerce operators under Section 194-O and TCS provisions under Section 206C(1H).

However, some more clarity is required from the transactions discussed in the guidelines for eg. with respect to clarification on 'purchase return' it has been assumed that there are recurring transactions. If it was a one-time non-recurring transaction of above 50 lakh and if the goods are returned, then whether the deductor will get the refund?

It has also been clarified that Section 194Q applies to a non-resident buyer only if it has a PE in India. To determine whether a non-resident is having a PE in India itself is an extensive fact-based exercise. Thus, there could possibly be litigation on determining withholding obligations under Section 194Q on this aspect. Further with respect to non-residents, the clarification refers to having a fixed place PE in India. Therefore, it raises some interpretation issues for other types of PEs like service PE, dependent agent PE, etc.

There are still some open issues where clarity is required such as TDS on reimbursement of expenditure, stock transfer from one branch to another branch, etc.

⁴ 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 under Section 206C(1H) on the same transaction.

⁵ 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 under Section 206C(1H) on the same transaction.

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