

TAX FLASH NEWS

29 November 2021



CBDT issues guidelines on the applicability of TDS provisions on purchase of goods, on e-commerce operators and TCS provisions on certain payments

Executive Summary

The Finance Act, 2020 introduced a new provision i.e., Section 194-O in the Income-tax Act 1961 (the Act) with effect from 1 October 2020 which provides that an ecommerce operator shall deduct tax at the rate of 1 per cent of the gross amount of sale of goods or provision of service or both, facilitated through its digital or electronic facility or platform.

Further, Section 206C(1H) was introduced with effect from 1 October 2020, where a seller receiving an amount as consideration for sale of any goods of the value or aggregate of such value exceeding INR 50 lakh in any previous year shall collect tax from the buyer a sum equal to 0.1 per cent.

Subsequently, the Finance Act, 2021 introduced new set of provisions [Section 194Q in the Act] with effect from 1 July 2021. Section 194Q is applicable to any buyer 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.

From time to time, Central Board of Direct Taxes (CBDT) has been issuing guidelines¹ to remove difficulties arising from the application of Section 194-O, Section 206C(1H) and Section 194Q.

On 25 November 2021, CBDT has issued further guidelines² to remove difficulties under the provisions of Sections 194-O, 194Q and 206C(1H) of the Act. The guidelines are summarised as follows:

Transaction/issue	Clarification
E-auction services carried out through electronic portal	<p>The provisions of Section 194-O shall not apply in relation to e-auction activities carried out by e-auctioneers if all the following specified conditions are satisfied:</p> <ul style="list-style-type: none"> • The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible for the price discovery only which is reported to the client. • The price so discovered through e-auction process is not necessarily the price at which the transaction takes place and it is up to the discretion of the client to accept the price or to directly negotiate with the counter-party. • The transaction of purchase/sale takes place directly between the buyer and the seller party outside the electronic portal maintained by the e-auctioneer and price discovery only acts as the starting point for negotiation and conclusion of purchase/sale. • The e-auctioneer is not responsible for facilitating the purchase and sale of goods for which e-auction was conducted on its electronic portal except to the extent of price discovery. • Payments for the transaction are carried out directly between the buyer and

¹ CBDT Circular No. 17/2020, dated 29 September 2020 and CBDT Circular No. 13/2021, dated 30 June 2021

² CBDT Circular No. 20/2021, dated 25 November 2021

	<p>the seller outside the electronic portal and the e-auctioneer does not have any information about the quantum and the schedule of payment which is decided mutually by the client and the counterparty.</p> <ul style="list-style-type: none"> For payment made to e-auctioneer for providing e-auction services, the client deducts tax under the relevant provisions of the Act other than Section 194-O. <p>This clarification shall not apply if any of the above conditions is not satisfied. Further, it is clarified that the buyer and the seller would still be liable to deduct/collect tax as per the provisions of Section 194Q and 206C(1H).</p>
<p>Adjustment of various indirect tax levies other than GST</p>	<p>In the case of purchase of goods which are not covered within the purview of GST³, 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 VAT/Sales tax/ excise duty/CST, has been indicated separately in the invoice, then the tax is to be deducted under Section 194Q on the amount credited without including such VAT/excise duty/sales tax/CST.</p> <p>However, if the tax is to be deducted on payment basis, if it is earlier than the credit, the tax is to be deducted on the whole amount as it will not be possible to identify the payment with VAT/Excise duty/Sales tax/CST component to be invoiced in the future.</p> <p>Further, in case of purchase returns, the clarification with respect to 'purchase returns' provided in earlier guidelines under Circular 13/2021⁴ shall also apply to purchase return relating to non-GST products liable to VAT/excise duty/sales tax/ CST etc.</p>
<p>Applicability of Section 194Q in cases where exemption has been provided under Section 206C(1A)</p>	<p>It is seen that the provisions of Section 194Q does not apply in respect to those transactions where tax is collectible under Section 206C [except sub-section (1H) thereof].</p> <p>Since by virtue of sub-section (1A)⁵ of Section 206C, the tax is not required to be collected for goods covered under Section 206C(1), it has been clarified that in such cases, the provisions of Section 194Q will apply and the buyer shall be liable to deduct tax under the said section if the conditions specified therein are fulfilled.</p>
<p>Applicability of the provisions of Section 194Q in case of department of Government not being a public sector undertaking or corporation</p>	<p>In case of any Department of the Government which is not carrying out any business or commercial activity, the primary requirement for being considered as a buyer will not be fulfilled. Accordingly, such an organisation will not be considered as 'buyer' for the purposes of Section 194Q and will not be liable to deduct tax on the goods so purchased by them. However, if the said department is carrying on a business/commercial activity, the provision of Section 194Q shall apply subject to the fulfillment of other conditions.</p> <p>Further for the purposes of Section 194Q, Central Government or State Government shall not be considered as 'seller' and no tax is to be deducted by the buyer, in cases where any Department of Central or State Government are seller of goods.</p> <p>Any other person, such as a Public Sector Undertaking or corporation established under Central or State Act or any other such body, authority or entity shall be required to comply with the provisions of Section 194Q, and tax shall be deducted accordingly.</p>

³ Clarity with respect to GST has already been provided under Circular 13 of 2021

⁴ 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.

⁵ No collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing to the effect that the goods referred in Section 206C(1) are to be utilised for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

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.

CBDT has clarified on practical difficulties faced by e-auctioneers while complying with the TDS provisions under Section 194-O. Relief provided under the guidelines is subject to specified conditions. Taxpayers should consider such conditions strictly to avail the benefit of the clarification provided in the guidelines.

The clarification on non-applicability of TDS on VAT/Sales tax/ excise duty/CST will provide relief to deductors. However, such exemption is not available to seller while collecting TCS on sales.

These guidelines provide much-needed clarity on various issues. However, certain issues are still open and will require clarifications from CBDT like TDS on reimbursement of expenditure, stock transfer from one branch to another branch, definition of 'goods', etc.

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