

ICAI-HYD

# Discussion on Sec 194Q

CA Ramprasad T  
Ramprasad & Associates

## Sec 194Q

- Applicable from 01.07.2021
- Applicable on Purchase of goods from resident seller of the value or aggregate value exceeding Rs. 50 lakhs in any previous year;
- TDS @0.1% of the sum exceeding Rs. 50 lakhs;

## Sec 194Q

- Not applicable to Transaction :-
  - on which tax is deductible under any provisions of this Act;
  - Tax is collectible U/S 206C, other than S206C(1H).

(S194Q(5))

## Goods

- Term 'Goods' is not defined.
- Reference may be made to Sale of Goods Act/GST Act.
- Usage of goods in the business of the buyer is of no significance (SIT/FA).
- Exclusions:-
  - Securities and Commodities traded through stock exchange;
  - Transactions in electricity, renewable energy certificates and energy saving certificate traded through power exchanges.

## Buyer/ Deductor

---

Any person, being buyer who is responsible for *paying* any sum to resident seller of goods for purchase of goods of value or aggregate of such value > Rs. 50 lakhs;(Sec 194Q(1))

---

Any person whose total sales/gross receipts/turnover from business carried on by him > Rs. 10 crore during the financial year immediately preceding the year of purchase of goods; (Explanation to Sec 194Q(1))

## Timing of deduction of tax

- Deduct tax at the earliest of:-
  - Credit of such sum to the account of the seller;
  - At the time of payment thereof by any mode.
- Sum credited to suspense account or by another name in the books of account of the person liable to pay such income is deemed to be credit of such income to the account of the payee.

(Sec 194Q(2))

## Removal of Difficulties- Guidelines

- Any difficulty arises in giving effect to the provisions of S194Q, Board may, with the previous approval of the CG issue guidelines for the purpose of removing difficulty. (S194Q(3)).
- Any guidelines issued shall be binding on income tax authorities and person responsible to deduct tax. (S194Q(4))

# Amount subject to TDS

---

Whether TDS is required on the amount which is not in the nature of income (excluding taxes)?

---

Whether TDS required on amount collected in excess of sale consideration like penal interest for late payment?

---

Ref:-CBDT Circular No.715 dated 08.08.1995

# Amount subject to TDS

---

Whether TDS is required on the amount of GST?

---

Where tax is deducted on credit basis and as per agreement/contract b/w seller and buyer the amount of GST indicated separately TDS will be on amount excluding GST. (Para 4.3.2 of circular 13 of 2021)

# Amount subject to TDS

---

Whether TDS is required on the amount of GST?

---

Where tax is deducted on payment basis TDS will be on amount including GST. (Para 4.3.2 of circular 13 of 2021)

# Applicability-NR

---

- S194Q will apply to Non-Resident buyer where the purchase of goods from seller resident in India is effectively connected with its PE in India.
- PE shall mean to include fixed place of business through which the business of the enterprise wholly or partly carried on.  
(Para 4.4.1 of Circular 13 of 2021).

- During PY 2020-21 Mr. A is a non resident and turnover from his business for the said year was Rs. 12. 5 cr. During the PY 2021-22 he become resident in India and bought goods worth Rs. 65 lakhs from M/S ABC enterprise. Is Mr. A is required to deduct tax during the PY 2021-22?

# Exempted Income

- Provisions of S194Q are not applicable in case seller as a person is exempt from income tax under the Act or under any Act passed by the Parliament (Para 4.5.1 of Circular 13 of 2021).
- TDS U/S 194Q shall apply in case only a part of income of the seller is exempt.

# Exempted Income

- M/S ABC and CO is engaged in the business of growing and manufacturing tea in India. It has sold tea leaves worth of Rs. 67.5 lakhs to M/S PQR Ltd during PY 2021-22. Is M/S PQR Ltd required to deduct tax U/S 194Q?

# Turnover- Year of Reference

- The year of reference is financial year immediately preceding the financial year in which goods are purchased.
- In the year incorporation provisions of S194Q are not applicable since no turnover/gross receipts preceding the year of incorporation. (Para 4.7.1 of Circular 13 of 2021)

# Turnover-Calculation

- Sec 194Q shall not apply on sum credited or paid before 01.07.2021.
- If either of two events had happened before 01.07.2021 such transaction would not be subject to Sec 194Q.
- For computing the threshold limit of Rs. 50 lakhs transactions carried on from 1<sup>st</sup> April 2021 to 30<sup>th</sup> June 2021 to be considered.

# Turnover/Gross Receipts

- M/S ABC &Co engaged in trading of goods. It's turnover during PY 2020-21 was Rs. 12.5 cr. It sold goods worth Rs. 72 lakhs to Mr. A for use in his business during the PY 2021-22 (Rs. 45 lakhs up to 30<sup>th</sup> June and Rs. 27 lakhs for the later period). Turnover of Mr. A during PY 2020-21 was 9.5 cr. However, Mr. A become bankrupt and it was agreed to settle the transaction for Rs. 48 lakhs. Implications on above transaction?

# Turnover/Gross Receipts

- M/S ABC & Co engaged in selling of textiles and allied services. It's turnover during PY 2020-21 was Rs. 18.5 cr. It undertook a contract for supply of uniforms to M/S PQR Ltd (Buyer for the purpose of S194Q) for Rs. 52 lakhs. For this purpose M/S ABC & Co supplied cloth and rendered stitching services. The invoice shown Rs. 42 lakhs for supply of cloth and Rs. 10 lakhs for stitching. What are the implications?

# Return of goods

- TDS U/S 194Q is at the earliest of credit or payment.
- Where TDS was made U/S 194Q and subsequently goods were returned to the seller and seller refunded the money the TDS so deducted may be adjusted against next purchase with same seller.
- No adjustment is required if goods are replaced.

(Para 4.3.3 of Circular 13 of 2021)

## Online Sale of goods- 194 O

- Sale of goods or services or both by a resident seller (e com participant) through digital or e-commerce facility or platform owned or managed by other person(e com operator).
- E-com operator deduct tax @1% on the gross amount of sale of goods or services.
- Tax be deducted at the earliest of credit or payment.

## Online Sale of goods- 194 O

- Amount paid by the buyer of goods or recipient of services directly to e-com participant is included in the gross amount.
- No TDS in case of e-com participant being individual or HUF where the gross amount of sale of goods or services or both during the previous year is less than or equal to Rs. 5 lakhs.
- E-com participant is required to furnish PAN/AADHAR no to the e-com operator.

# Lower/Non deduction of tax

- Application for lower or non deduction of tax U/S 194 O can be made.
- No claim for lower or non deduction of tax U/S 194 Q.

# PAN / AADHAR

- Where Tax is required to be deducted U/S 194Q seller has to intimate PAN to the buyer.
- Failure to furnish PAN will result in deduction of tax @5% U/S 194 O / 194 Q- S 206AA first/second proviso.
- Sec 206AA has over riding effect on other provisions of the Act.

# Return Filing

ITR not filed for the both of two AY immediately prior to the PY in which Tax required to be deducted;

AND

Time Limit for filing ITR U/S 139(1) is expired;

AND

The Aggregate of TDS and TCS is Rs. 50k or more in each of the these two py



Highest of :-

Twice the rate specified in the relevant provision;

Twice the rate or rates specified in force;

5%

Sec 206AB

# Return Filing

- In case of sec 206AA is applicable then TDS U/S 194Q be deducted at highest of rates mentioned in sec 206AA and 206AB.
- Sec 206AB is not applicable in case of NR who does not PE in India.

# Compliance Check

- Facility to check compliance for sec 206AB & 206CCA is available <https://report.insight.gov.in/>.
- This facility is available to the Principal Officer of the registered TAN on reporting portal.
- Compliance can be checked for single PAN or PANs in bulk (not more than 10k).

Circular 11 of 2021

# Compliance Check

- ITDREIN a 16 character identification no allotted to the entity registered on reporting portal.
- List of specified persons is prepared taking PY 2018-19 and 2019-20.
- List of specified persons is prepared as on 01.04.2021

Circular 11 of 2021

# Compliance Check

- No new names be added in the list of specified persons during FY 2021-22.
- If any specified person files valid return (filed and verified) for AY 2019-20 or 2020-21 during FY 2021-22 his name would be removed from the list of specified person on the date of filing of valid return of income.

Circular 11 of 2021

# Compliance Check

- If any specified person filed valid return (filed and verified) for AY 2021-22 his name would be removed from the list of specified person on the due date of filing ITR or the date on which valid ITR was filed, which ever is later.
- The deductor or collector may check PAN in the functionality at the beginning of the FY. He is not required to check PAN of non-specified persons during the PY.

Circular 11 of 2021

# Compliance Check

Reply for search:-

2. The information to be furnished shall be:

- a) **Name:** Name as per PAN Record (Masked)
- b) **PAN Allotment date:** XX-XX-XXXX
- c) **PAN Aadhaar Link Status:** Status of linking of PAN and Aadhaar for individual PAN Holders as below:
  - i. **Linked:** PAN and Aadhaar are linked.
  - ii. **Not Linked:** PAN & Aadhaar are not linked.
  - iii. **Exempt:** PAN is exempted from PAN-Aadhaar linking requirements as per CBDT's Notification No. 37/2017 dated 11<sup>th</sup> May 2017.
  - iv. **Not - Applicable:** PAN belongs to non-individual person.
- d) **Specified person u/s 206AB & 206CCA:** (Yes/No)

# Cross Application-TDS/TCS

Transactions subject to	Priority of section applicability
Sec 194 O and sec 194Q	Sec 194 O
Sec 194 O and sec 206C(1H)	Sec 194 O
Sec 194 Q and 206C(1H)	Sec 194 Q

- Transaction shall be outside purview of sec 206C(1H) after tax has been deducted U/S 194 O.
- The responsibility on e-com operator to deduct tax cannot be condoned if seller has collected tax U/S 206C(1H)

# Cross Application-TDS/TCS

- where the transaction on which tax is not deducted U/S 194 O (including exemption Rs. 5 lakh limit) shall not be subject to TDS U/S 194 Q.

RAMPRASAD AND ASSOCIATES

THANK YOU