

Guidelines on TDS under Section 194Q of Income Tax Act, 1961

Guidelines under Section 194Q of the Income Tax Act, 1961- **Circular No. 13 of 2021 dated 30th June, 2021**

The Finance Act, 2021 inserted a new **section 194Q** in the Income tax Act 1961 (Act) which takes effect from **1st day of July, 2021**.

Applicability of Section 194Q-

“Buyer” means a person whose **total sales, 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 goods is carried out. It means Section 194Q is applicable only to those buyers **whose total sales, gross receipts or turnover in the previous year was more than Rs.10 crores** i.e. in the financial year ended on 31st March 2021. More clearly, buyers **whose total sales, gross receipts or turnover in the previous year was more than Rs.10 crores**, they have to deduct **TDS @ 0.1%** on the **purchase of above Rs.50 lakh** in the current financial year 2021-22 from their **resident seller**. You can say that if the turnover of a buyer is less than Rs.10 crore in the year ended March 31,2021, he does not have to comply with this provision in current financial year.

Analysis-

1. Applicable w.e.f. 01.07.2021.
2. Applicable only on those buyers whose total sales, gross receipts or turnover in the previous year was more than Rs.10 crores.
3. Goods are purchased for a value or aggregate of value exceeding Rs. 50 lakhs in the current financial year or any subsequent financial year.
4. Seller should be resident person.
5. Prime liability on buyer to deduct TDS @ 01%.
6. TDS @ 0.1% shall be deducted on the amount exceeding Rs. 50 lakh i.e. no TDS u/s 194Q up to Rs. 50 lakhs.
7. TDS shall be deducted at the time of credit of such sum to the account of the seller or at the time of payment, whichever is earlier.
8. Other Sections of TDS **[except 206C(1H)]** shall prevail over Section 194Q. Thereofre, TDS will not be deducted u/s 194 Q where TDS had been deducted under any other section.
9. TDS provision of section 194Q shall prevail over Section 206C(1H), therefore, when TDS is deducted u/s 194Q, seller shall not charge any TCS u/s 206C(1H).

Circular No. 13 of 2021 dated 30th June, 2021.- Guidelines under Section 194Q

Sub-section (3) of section 194Q of the Act empowers the Board (with the approval of the Central Government) to issue guidelines for the purpose of removing difficulties.

Various representations have been received by the Board for issuing guidelines for removing certain difficulties. In exercise of power contained under sub-section (3) of section 194Q of the Act, the Board, with the approval of the Central Government, has issued the guidelines through **Circular No. 13 of 2021 dated 30th June, 2021**. These guidelines at some places have also tried to remove difficulties in implementing the provisions of section 194-O and sub-section (1H) of section 206C of the Act using power contained in sub-section (4) of section 194-O of the Act and sub-section (II) of section 206C of the Act.

Calculation of threshold for the financial year 2021-22.

Since section 194Q of the Act would come into effect from 1st July, 2021, it was requested to clarify how the threshold of fifty lakh rupees specified under this section shall be computed and whether the tax is required to be deducted in respect of advance paid before 1st July, 2021 and sum credited thereafter.

It clarified in the above guidelines that,-

(i) Since section 194Q of the Act mandates buyer to deduct tax on credit of sum in the account of seller or on payment of such sum, whichever earlier, **the provision of this sub-section shall not apply on any sum credited or paid before 1st July 2021**. If either of the two events had happened before 1st July 2021, that transaction would not be subjected to the provisions of section 194Q of the Act.

(ii) Since the threshold of fifty lakh rupees is with respect to the previous year, calculation of sum for triggering TDS under section 194Q shall be computed from 1st April, 2021. Hence, if a person being buyer has already credited or paid fifty lakh rupees or more up to 30th June 2021 to a seller, the TDS under section 194Q shall apply on all credit or payment during the previous year, on or after 1st July 2021, to such seller.

Adjustment for GST and Purchase Return

It clarified in the above guidelines that 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 of the Act 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.

Further, with respect to purchase return it clarified that 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 of the Act 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**. 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 of the Act has been completed with goods replaced.

Whether non-resident can be buyer under section 194Q of the Act?

It clarified in the above guidelines that **the provisions of section 194Q of the Act shall not apply to a non-resident** whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such non-resident in India. For this purpose, **“permanent establishment”** shall mean 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?

It clarified in the above guidelines that the provisions of Section 194Q of the Act 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 (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.). Similarly, with respect to sub-section (1H) of section 206C of the Act, it is clarified that the provisions of this sub-section 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 (like person exempt 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?

It clarified in the above guidelines that since the provisions apply on payment or credit whichever is earlier, the provisions of section 194Q of the Act shall apply to advance payment made by the buyer to the seller.

Whether provisions of section 194Q of the Act shall apply to buyer in the year of incorporation?

It clarified in the above guidelines that under section 194Q of the Act a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding ten 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 of the Act shall not apply in the year of incorporation.**

Whether provisions of section 194Q of the Act shall apply to buyer if the turnover from business is 10 crore or less?

It clarified in the above guidelines that for the purposes of section 194Q of the Act, a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding ten crore rupees during the financial year immediately preceding the financial year in which the purchase of good is carried out. Hence, the sales or gross receipts or turnover from business carried on by him must exceed Rs 10 crore. **His turnover or receipts from non-business activity is not to be counted for this purpose.**

Cross application of section 194-O, sub-section (1H) of section 206C and section 194Q of the Act.

It is requested to clarify how section 194-O, sub-section (1H) of section 206C and section 194Q of the Act, apply on the same transaction.

Under sub-section (3) of section 194-O of the Act, a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), shall not be liable to tax deduction at source under any other provision of chapter XVII of the Act.

Under second proviso to sub-section (1H) of section 206C of the Act, provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provisions of this Act on the goods purchased by him from the seller and has deducted such tax.

Under sub-section (5) of section 194Q of the Act, the provision of this section shall not apply to a transaction on which-

- (a) tax is deductible under any of the provisions of this Act; and
- (b) tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.

After conjoint reading of all these provisions the following is clarified:

(i) If tax has been deducted by the e-commerce operator on a transaction under section 194-O of the Act [including transactions on which tax is not deducted on account of sub-section (2) of section 194-O], that transaction shall not be subjected to tax deduction under section 194Q of the Act.

(ii) Though sub-section (1H) of section 206C of the Act 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.

(iii) If a transaction is both within the purview of section 194-O of the Act as well as section 194Q of the Act, tax is required to be deducted under section 194-O of the Act and not under section 194Q of the Act.

(iv) Similarly, if a transaction is both within the purview of section 194-O of the Act as well as sub-section (1H) of section 206C of the Act, tax is required to be deducted under section 194-O of the Act. The transaction shall come out of the purview of subsection (1H) of section 206C of the Act 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 sub-section (1H) of section 206C of the Act on the same transaction. It is clarified that here primary responsibility is on e-commerce operator to deduct the tax under section 194-O of the Act and that responsibility cannot be condoned if the seller has collected the tax under sub-section

(1H) of section 206C of the Act. This is for the reason that the rate of TDS under section 194-O is higher than rate of TCS under sub-section (1H) of section 206C of the Act.

(v) If a transaction is both within the purview of section 194-Q of the Act as well as sub-section (1H) of section 206C of the Act, the tax is required to be deducted under section 194-Q of the Act. The transaction shall come out of the purview of sub-section (1H) of section 206C of the Act 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 sub-section (1H) of section 206C of the Act on the same transaction. However, if, for any reason, tax has been collected by the seller under sub-section (1H) of section 206C of the Act, before the buyer could deduct tax under section 194-Q of the Act 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 subsection (1H) of section 206C of the Act.

Applicability on transactions carried through various Exchanges.

It has been represented that there are practical difficulties in implementing the provisions of Tax Deduction at Source (TDS) contained in section 194-Q of the Act in case of certain exchanges and clearing corporations. It has been stated that sometime in these transactions there is no one to one contract between the buyers and the sellers.

In order to remove such difficulties, it is provided that the provisions of section 194Q of the Act shall not be applicable in relation to,-

(i) transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre;

(ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC; and

For this purpose,-

(i) “recognized clearing corporation” shall have the meaning assigned to it in clause (i) of the Explanation to clause (23 EE) of section 10 of the Act;

(ii) “recognized stock exchange” shall have the meaning assigned to it in clause (ii) of the Explanation I to sub-section (5) of section 43 of the Act; and

(iii) “International Financial Services Centre” shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005.

Extract of Section 194Q of Income Tax Act, 1961

TDS on purchase of goods

194Q. (1) Any person, being a buyer who is responsible for paying any sum to any resident (hereafter in this section referred to as the seller) for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, deduct an amount equal to 0.1 percent of such sum exceeding fifty lakh rupees as income-tax.

Explanation. —For the purposes of this sub-section, “buyer” means a person whose total sales, 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 goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called “suspense account” or by any other name, in the books of account of the person liable to pay such income, such credit of income shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(4) Every guideline issued by the Board under sub-section (3) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and the person liable to deduct tax.

(5) The provisions of this section shall not apply to a transaction on which—

(a) tax is deductible under any of the provisions of this Act; and

(b) tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.