

Frequently Asked Questions (FAQs) about the requirement to deduct TDS on purchase of goods with effect from 01-07-2021 u/s 194Q with a distinction between the new Section and Section 206C(1H).

FAQ 1. Who is liable to deduct tax under Section 194Q?

The tax shall be deducted under Section 194Q by a buyer carrying on a 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. This provision shall be applicable from 01-07-2021.

Thus, the liability to deduct tax under this provision in the financial year 2021-22 shall arise if the turnover of the purchaser was more than Rs. 10 crores in the financial year 2020-21.

FAQ 2. When tax shall be deducted under this provision?

The tax shall be deducted from the purchases made by a buyer if the following conditions are satisfied:

- (a) There is a purchase of goods from a resident person;
- (b) Goods are purchased for a value or aggregate of value exceeding Rs. 50 lakhs in any previous year; and
- (c) The buyer should not be in the list of persons excluded from the provision for deduction of tax.

The tax shall not be deducted under this provision if the tax is deductible or collectible under any other provision except Section 206C(1H). Thus, if a transaction is subject to TCS under Section 206C(1H), the buyer shall have the first obligation to deduct the tax. If he does so, the seller will not have any obligation to collect the tax under Section 206C(1H).

FAQ 3. What shall be the timing of deduction of tax?

Tax is required to be deducted 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*. The tax shall be deducted even if the sum is credited to the 'Suspense Account'.

FAQ 4. At what rate tax is to be deducted?

The tax shall be deducted by the buyer of goods at the rate of 0.1% of the purchase value exceeding Rs. 50 lakhs if the seller has furnished his PAN or Aadhaar, otherwise, the tax shall be deducted at the rate of 5%.

FAQ 5. Where a transaction is covered by both the provisions - TDS under Section 194Q and TCS under Section 206C(1H), who shall be liable for deduction/collection of tax?

Second Proviso to Section 206C(1H) provides that if the buyer is liable to deduct tax under any other provision on the goods purchased by him from the seller and has deducted such amount, no tax shall be collected on the same transaction. Section 194Q(5) provides that no tax is required to be deducted by a person under this provision if tax is deductible under any other provision or tax is collectable under section 206C [other than a transaction on which tax is collectable under Section 206C(1H)].

Though Section 206C(1H) excludes a transaction on which tax is actually deducted under any other provision (which will cover Section 194Q as well), but Section 194Q(5) does not create a similar exception for a transaction on which tax is collectible under Section 206C(1H).

Thus, **the buyer shall have the primary and foremost obligation to deduct the tax** and no tax shall be collected on such transaction under Section 206C(1H). However, if the buyer makes a default, the liability to collect the tax gets shifted to the seller.

FAQ 6. Is a buyer importing goods from outside India required to deduct tax at source under this section?

Section 194Q provides that any person, being a buyer who is responsible for paying any sum to any resident, being a seller, is required to deduct tax at source under this provision. Thus, the obligation to deduct tax under this provision arises only when the payment is made to a resident seller. As in the case of import, the seller is a non-resident, the buyer will not have any obligation to deduct tax under this provision. However, the TDS under Section 195 or payment of Equalisation Levy may be required in respect of such transaction.

FAQ 7. Whether tax is required to be deducted under Section 194Q from the goods exported abroad?

Liability to deduct tax under this provision arises only when the payment is made to a resident seller. Residential status of the buyer, who is making payment, is not relevant under this provision.

As in the transaction of export of goods, the seller is a resident but the buyer is a non-resident. Thus, the liability to deduct tax under this provision may arise on the non-resident buyer, which may not be practically possible. Thus, the Central Government may exempt such transactions in view of the powers given by the *Explanation* to Section 194Q.

FAQ 8. In absence of any definition of 'goods', what shall be construed as a purchase of goods?

The term 'goods' is not defined in the Income-tax Act. The term 'goods' is of wide import. Anything which comes to the market can be treated as goods. However, this term 'Goods' has been defined under the Sale of Goods Act, 1930 and Central Goods and Services Tax Act, 2017.

Sale of Goods Act, 1930

'Goods' means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale"

Central Goods and Services Tax Act, 2017

'Goods' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply"

The Sale of Goods Act, 1930 is a specific statute which deals with the 'sale of goods' whereas the CGST Act, 2017 deals with tax on 'supply of goods'. Thus, the definition of term 'goods' can be referred to from the Sale of Goods Act, 1930 for the purpose of Section 194Q.

Therefore, the tax is to be deducted under this provision from the purchase value of the following:

- (a) Movable property;
- (b) Any commodity;
- (c) Shares or Securities;
- (d) Electricity;
- (e) Agriculture produce;
- (f) Fuel;
- (g) Motor vehicle;
- (h) Liquor;
- (i) Jewellery or bullion;
- (j) Art or Drawings;
- (k) Sculptures;
- (l) Scraps;
- (m) Forest produce, etc.

FAQ 9. Who are exempted from deduction u/s 194Q and u/s 206C(1H) of the Income-tax Act, 1961

As per **Section 196** of Income tax act, 1961, no deduction of tax shall be made by any person from any sums payable to—

- (i) Government (i.e. State and Central Government)
- (ii) RBI
- (iii) Corporation established under central act which is, under any law for the time being in force, exempt from income-tax on its income.

To understand what is covered under point (iii) i.e. corporations established under central act, let us try and understand **Circular No. 18/2017** which defines the scenario when an institution is considered to be exempted.

As per **Circular No.18/2017**, The Central Board of Direct Taxes (the Board) had earlier issued **Circular No. 4/2002** dated 16.07.2002 and **Circular No. 7/2015** dated 23 .04.2015 which laid down that in case of such entities, whose income is unconditionally exempt under Section 10 of the Income-tax Act (the Act) and who are also statutorily not required to file return of income as per Section 139 of the Act, there would be no requirement for tax deduction at source (TDS) from the payments made to them since their income is anyway exempted from tax under the Act.

Thus, as per CBDT, no tax is required to be deducted in case following points are satisfied by the institution:

1. Such institutions income is unconditionally exempt under Section 10 of Income tax Act, **and**
2. They are also statutorily not required to file returns under section 139 of the Act.

The institutions are covered under **Circular 18/2017** and Section 10 of Income-tax Act, 1961, are as under:

- (i) "local authority", as referred to in the Explanation to clause (20)
- (ii) (ii) Regimental Fund or Non-public Fund established by the armed forces of the Union referred to in clause (23AA);
- (iii) (iii) Fund, by whatever name called, set up by the Life insurance Corporation of India on or after 1st August, 1996, or by any other insurer referred to in clause (23AAB);
- (iv) (iv) Authority (whether known as the Khadi and Village Industries Board or by any other name) referred to in clause (23BB);
- (v) (v) Body or authority referred to in clause (23BBA);
- (vi) (vi) SAARC Fund for Regional Projects set up by Colombo Declaration referred to in clause (23BBC);
- (vii) (vii) Insurance Regulatory and Development Authority (IRDA) referred to in clause (23BBE);
- (viii) (viii) Central Electricity Regulatory Commission (CERC) referred to in clause (23BBG);
- (ix) (ix) Prasar Bharati referred to in clause (23BBH);
- (x) (x) Prime Minister's National Relief Fund
- (xi) Provident fund to which the Provident Funds Act, 1925
- (xii) (xii) Employees' State Insurance Fund referred to in clause (25A);
- (xiii) (xiii) Agricultural Produce Marketing Committee referred to in clause (26AAB);
- (xiv) (xiv) Corporation, body, institution or association established for promoting interests of members of Scheduled Castes or Scheduled Tribes or backward classes referred to in clause (26B);
- (xv) (xv) Corporation established for promoting interests of members of a minority community referred to in clause (26BB);
- (xvi) (xvi) Corporation established for welfare and economic upliftment of ex-servicemen referred to in clause (26888);
- (xvii) (xvii) New Pension System Trust referred to in clause (44)

FAQ 10. Whether TDS to be deducted on the purchase of immovable property by a developer?

As referred to above, 'goods' means every kind of movable property subject to certain exceptions and inclusions. Thus, the immovable property shall not be treated as 'goods'. Consequently, the TDS shall not be deducted from the purchase of immovable property by a developer.

FAQ 11. Whether TDS is required to be deducted on the transaction in electricity?

Section 194Q provides for the deduction of tax on the payment made for the purchase of goods. The Apex Court in the case of *State of Andhra Pradesh v. National Thermal Power Corporation (NTPC) (2002) 5 SCC 203*, held that electricity is a movable property though it is not tangible. It is 'good'. Further, the Custom Tariff Act has covered 'Electricity' under heading 2716 00 00, which also clarifies that Electricity is a good.

Thus, it may be concluded that the tax should be deducted from the payment made in respect of the transaction in electricity.

A transaction in electricity can be undertaken either by way of direct purchase from the company engaged in generation of electricity or through power exchanges. The CBDT has clarified that the transaction in electricity, renewable energy certificates and energy-saving certificates traded through power exchanges registered under Regulation 21 of the CERC shall be out of the scope of TCS under the provision of Section 206C(1H).

Applying the rationale behind such clarification, it is apprehended that the CBDT may allow a similar exemption from TDS under Section 194Q as well.

FAQ 12. Whether TDS should be deducted on the purchase of software?

Taxation of software has always been a subject of debate under the Income-tax Laws. The issue was also litigative under the erstwhile indirect tax laws (VAT, Service Tax etc.) where states were levying VAT on the sale of goods and Centre were levying service-tax on the provision of services. With the passage of time, the Judiciary has laid down some principles, which enable the taxpayers, to determine when the supply of software would qualify as a supply of goods and when it would be a supply of services. The issue is not much litigative under the GST regime as the tax rate in both cases is the same.

However, in absence of any guidelines in the Income-tax, such classification has always been a subject matter of litigation. The Finance Act, 2012, has made the clarificatory amendments in Section 9 to broaden the scope of taxation of royalty. This has been clarified by the amendment that the consideration for the use or right to use of computer software is a royalty. The factors of the medium, ownership, use or right to use and location have been clarified as immaterial. The amendments have, thus, given a new dimension to tax administration in the sphere of royalty taxation. The payment towards royalty is subject to TDS under Section 194J or Section 195. The provision of Section 194Q would not apply where tax is deductible under any other provision.

The Supreme Court in its landmark decision of *Tata Consultancy Services v. State of A.P [2004] 141 Taxman 132 (SC)* held that Canned software (off the shelf computer software) are 'goods' and as such assessable to sales tax. Hence, the requirement to deduct TDS shall be decided on the basis whether the purchase of software has been treated as 'purchase of goods' or 'purchase of service'. If the same has been treated as a purchase of service, it shall not be subject to TDS under Section 194Q but the provisions of TDS under section 194J or 195, as the case may be, may apply. However, if the purchase of software has been treated as a purchase of goods then the buyer shall be liable to deduct TDS subject to the fulfilment of other conditions of Section 194Q.

FAQ 13. Whether additional, allied and out-of-pocket expenses form part of the purchase value of goods?

It is imperative to accurately determine the purchase value as it is relevant both for the applicability of the provision and amount from which tax should be deducted. Additional, allied or out-of-pocket charges recovered from the customers may or may not form part of purchase value. Where these expenses have

been reflected in the purchase invoice itself, it should form part of purchase value. If they are charged through a separate invoice, it should not form part of purchase value.

FAQ 14. From which date the threshold limit of Rs. 50 lakhs will be computed?

The Finance Bill, 2021, has inserted Section 194Q, with effect from 01-07-2021, to provide for the deduction of tax on certain purchases. The TDS has to be deducted if the value or aggregate purchase value exceeds Rs. 50 lakhs during the previous year. How this limit of Rs. 50 Lakh for deducting TDS shall be reckoned for the financial year 2021-22? Should it be from 01-04-2021 or 01-07-2021?

Similar confusion arose when Section 206C(1H) was introduced by the Finance Act, 2020, with effect from 01-10-2020. In respect of which the CBDT *vide* Circular No. 17, dated 29-09-2020, has clarified that since the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of sale consideration for triggering TCS under this provision shall be computed from 01-04-2020. Hence, if a seller has already received Rs. 50 lakhs or more up to 30-09-2020 from a buyer, TCS under this provision shall apply on all receipts of sale consideration on or after 01-10-2020.

Applying the same principle it should be concluded that threshold of Rs. 50 lakhs shall be computed from 01-04-2021. Thus, if a buyer has already purchased goods of value Rs. 50 lakhs or more up to 30-06-2021 from a seller, TDS under this provision shall apply on all purchases on or after 01-07-2021.

FAQ 15. Whether TDS is to be deducted on the total invoice value including the GST?

A similar issue has been raised in respect of Section 194J, to which the CBDT *vide* Circular No. 23/2017, dated 19-7-2017, has clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component. However, such clarification was issued in respect of GST on services only. **No such clarification has been issued for GST on goods.**

However, in respect of Section 206C(1H), the CBDT *vide* Circular No. 17, dated 29-09-2020, has clarified that since the collection is made with reference to receipt of the amount of sale consideration, no adjustment on account of indirect taxes including GST is required to be made for the collection of tax under this provision.

Since we are awaiting further clarification from CBDT, with regard to Section 194Q, therefore, TDS should not be deductible on the GST element, if mentioned separately, in line with Circular No 23/2017.

FAQ 16. Whether TDS has to be deducted on advance payment made to the seller?

Section 194Q provides that tax is required to be deducted in the transaction relating to the purchase of goods. It does not mention whether such purchase needs to be effected immediately or at a future date. As the tax is required to be deducted at the time of payment or at the time of credit, whichever is *earlier*, it should be reasonable to conclude that the provision may get attracted even if such purchase happens in future.

As long as the intention is to adjust the advance payment against the future purchase of goods, the tax should be deducted at the time of payment or credit, whichever is *earlier*.

FAQ 17. Whether payment of advance before 01-07-2021 for purchase of goods will be subject to TDS?

The Finance Bill, 2021, has proposed to insert Section 194Q with effect from 01-07-2021. Thus, provisions of this Section shall not apply on any payment made or credit made in the books of accounts before 01-07-2021. Consequently, it would apply to all purchases made on or after 01-07-2021.

In simple words, the tax should be deducted where the payment is made or amount is credited on or after 01-07-2021. Thus, where any of the trigger event (*i.e.*, payment or credit) has occurred before the date of applicability of provision, no liability to deduct tax will arise.

FAQ 18. Whether the amount advanced as a loan to the seller shall come within the ambit of this provision?

The requirement to deduct TDS under this provision arises if the purchase value exceeds the threshold limit during the previous years. The deduction is to be made at the *earliest* of payment or credit for the purchase of goods. Since the loan advanced by buyers is not a payment towards the purchase of goods, it shall remain outside the purview of this provision. Hence, there is no requirement to deduct TDS on loan advanced by the buyer.

However, if at any future date, such loan amount is settled against purchased value, the liability to deduct TDS shall arise. The tax shall be deducted on the date on which parties agreed to adjust the loan amount against the outstanding liability.

FAQ 19. Whether tax to be deducted on the purchase of goods by one branch from another?

The TDS under this section is required to be deducted by any person, being a buyer, responsible for making payment to the seller for the purchase of goods. Thus, the existence of two distinct parties as 'seller' and 'buyer' is a pre-requisite to construe a transaction as a purchase. The condition of purchase is not fulfilled in the context of branch transfer. Therefore, the provisions of this section shall not apply in the case of branch transfers.

FAQ 20. What shall be the treatment of debit note for computation of TDS?

As the tax has to be computed on the purchase value, the adjustment made to the ledger of the seller by issuing the debit note will not have an impact on the tax to be deducted. The position would remain the same if, after the deduction of tax, the seller repays some consideration to the buyer. In such a situation, the amount of purchase value shall not be reduced with the amount so refunded or the debit note so adjusted for calculation of TDS.

FAQ 21. If the seller has multiple units, whether purchases made from different units need to be aggregated?

Where tax is required to be deducted at source, the deductee is required to furnish his PAN to the deductor failing which the tax is required to be deducted at higher rates. Where PAN is available, the threshold limit of Rs. 50 lakhs shall be computed in respect of each PAN or Aadhaar number. In other words, if different units of the seller are under the same PAN, the amount paid or payable to all such units shall be aggregated to compute the limit of Rs. 50 Lakhs.

FAQ 22. Can a seller apply for the certificate for lower deduction of TDS?

An assessee can apply to the Assessing Officer to issue a certificate for deduction of tax at lower rates. Such certificate shall be issued if existing and estimated tax liability of assessee justifies deduction of tax at a lower rate. Further, certain assessee have an option to file a declaration for *nil* deduction of tax.

However, the Finance Bill, 2021, has not proposed to extend the benefit to apply for a certificate for deduction of tax at lower rates or to file declaration for nil deduction in respect of transactions covered under Section 194Q. Hence, the assessee does not have the option to approach the assessing officer to issue a certificate for a lower tax deduction or to file declaration for nil deduction in respect of transactions covered under section 194Q. In fact, Section 206C(1H) also does not allow the buyer to apply for the lower or *nil* TCS certificate.

FAQ 23. What shall be consequences for failure to deduct or pay TDS?

If any person, responsible for deduction of tax at source, fails to deduct the whole or any part of the tax or after deduction fails to deposit the same to the credit of the Central government, then he shall be deemed to be an assessee-in-default.

If deductor fails to deduct tax at source, he shall be liable to pay interest at the rate of 1% for every month or part thereof on the amount of tax he failed to deduct. However, if he fails to deposit the tax deducted at source, he shall be liable to pay interest at the rate of 1.5% for every month or part thereof on the amount of tax he failed to deposit to the credit of the Central Govt.

FAQ 24. Whether buyer shall be treated as assessee in default if the seller pays the tax due on the income declared in the return of income?

Section 201 of the Income-tax Act provides that a deductor, who fails to deduct tax at source, is not deemed to be in default if the payee has considered such amount while computing income in the return and has paid the tax due on such declared income. The deductor will have to obtain a certificate to this effect from a Chartered Accountant in Form No. 26A and submit it electronically.

Thus, the buyer shall not be deemed as assessee-in-default if the seller has taken into account the purchase amount while computing his income and has paid the tax due on the income declared in the return.