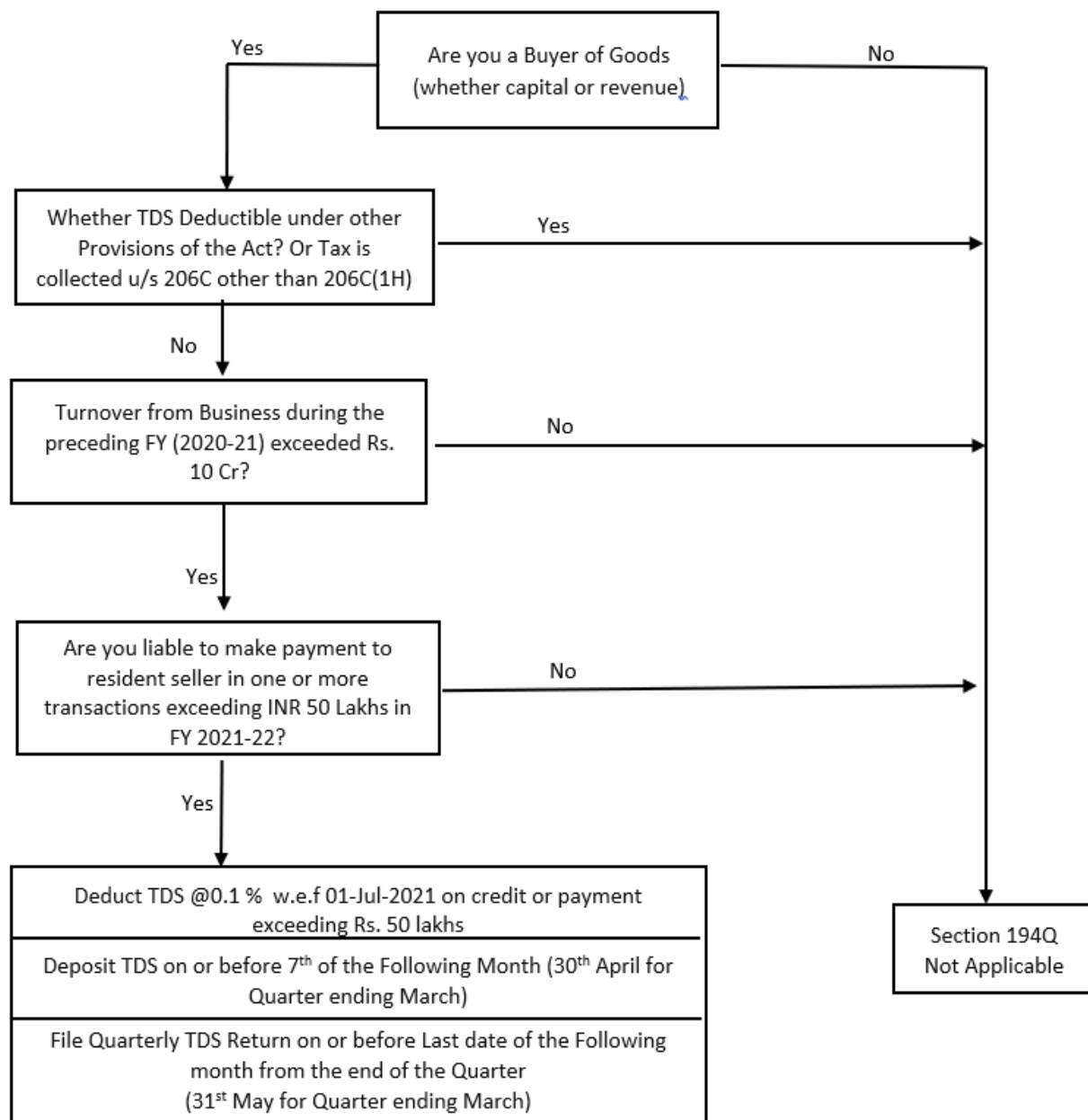


TAX DEDUCTION AT SOURCE ON PURCHASE OF GOODS (SECTION 194 Q)

The Finance Bill, 2021 has introduced a new section 194Q to the Income Tax, 1961 for deduction of tax at source in case of purchase of goods.



• FAQ's:

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

A person whose turnover from the business carried on by him during the immediately preceding FY (turnover of FY 2020-21 to be considered for ensuring applicability for FY 2021-22) exceeded Rs 10 crores.

2. When is buyer liable to deduct TDS?

A buyer responsible for making payment to a resident seller for purchase of goods is liable to deduct TDS when the value or aggregate value of goods purchased in previous year exceeds Rs 50 Lacs.

3. From when are the provisions of Section 194Q applicable?

The provisions of Section 194 Q are made applicable with effect from July 1st, 2021.

Point of Taxation: TDS shall be deducted (i) at the time of credit of such sum to the account of the seller or (ii) at the time of payment thereof by any mode; whichever is earlier.

TDS is to be deducted even if such amount is credited to "Suspense Account".

4. What is the rate of TDS?

TDS is to be deducted @ 0.1% of such sum exceeding fifty lakh rupees.

5. What if the seller does not furnish PAN details?

In case seller fails to furnish Permanent Account Number, TDS @ 5% shall be deducted (as per the proviso to Section 206AA inserted by Finance Act, 2021)

6. Are there any exceptions to Section 194Q?

The provisions of Section 194Q are not applicable if

- tax is deductible under any other Section
- tax is collectible under the provisions of Section 206C other than a transaction on which 206C (1H) applies.

7. What if both the sections 194Q and 206C (1H) are applicable to a transaction?

Both the sections are mutually exclusive i.e.; if one will apply other will not be applicable.

Section 206C (1H) states that TCS will not be applicable if buyer is liable to deduct TDS under any other provisions of the Act. On the contrary, Section 194Q does not create any such exception for the transactions on which tax is collectible under Section 206C (1H).

The provisions of Section 194Q supersedes Section 206C (1H) and imposes primary liability on buyer to deduct tax. In such a situation, Buyer will have to convey to Seller to refrain from collecting TCS as Buyer will deduct TDS u/s 194Q.

Let's understand this with the help of an example: Suppose there is a transaction of purchase or sale of goods for during the previous year.

Particulars	Scenario 1	Scenario 2	Scenario 3
Turnover of the Seller	8 crores	12 crores	11 crores
Turnover of the Buyer	12 crores	8 crores	11 crores
Sales Consideration	75 lakhs	60 lakhs	60 lakhs
Sales Consideration Received by Seller	65 Lakhs	55 Lakhs	55 Lakhs
Applicable Section	194Q	206C(1H)	194Q
Who is liable to deduct TDS/ TCS	Buyer	Seller	Buyer
Amount on which tax is to be deducted/ collected	25 lakhs (75 L - 50 L)	5 lakhs (55 L – 50 L)	10 lakhs (60 L – 50 L)
Amt of TDS/TCS @0.1%	2500	500	1000

8. What will be implication of payment of outstanding balance as on 30th June, 2021 or an advance payment made before 30th June, 2021?

Point of Taxation is date of payment or date of credit whichever is earlier. In referred scenario, one of the triggering event occurred before the point of taxation and ideally Tax should not be deductible on such sum.

However, department may want to take a contrary view. Therefore, as a prudence measure to avoid litigation, it is advisable to deduct TDS on such sum. A clarification from CBDT would be much appreciated in this regard.

9. What constitutes goods?

Goods are not defined under Income Tax Act, 1961. Therefore, we have to refer to most appropriate definition as per other Act or as per General Clauses Act, 1897. Sale of Goods Act, 1932 defines goods as follows:

"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"

10. What are the consequences of non-deduction of TDS under the provisions of Section 194Q?

If buyer fails to deduct and deposit TDS at applicable rates, expenditure to the extent of 30% will be disallowed under Section 40a (ia) of the Act.

11. Do we have to deduct TDS on payment to a seller residing abroad?

If a person being a buyer has to make payment for the goods imported in India, then TDS is not required to be done as this Section is applicable on payments made to **resident seller**.

12. Is buyer liable to deduct TDS on advance payment made?

Since the advance payment is made against purchase of goods, TDS on same shall be deductible subject to fulfilment of other conditions.

13. Whether the threshold for TDS is to be reckoned for each seller separately?

TDS is to be deducted on payment made to a resident seller for purchase of goods in excess of Rs. 50 lakhs in a year. The limit is to be calculated separately for each seller and for every financial year.

For current Financial Year, even though the section is made applicable from 1st July, 2021, it is interpreted that the threshold limit of Rs. 50 lakhs shall be computed from 1st of April, 2021.

Hence, following conditions shall be verified for deducting TDS under this section:

- i. Whether the buyer has made payment or credited an amount exceeding Rs. 50 lakhs in a year to the account of the seller.
- ii. If answer to above is **Yes**, then TDS shall be deducted on payment made after 1st July, 2021.
 - a. If purchase value exceeded Rs. 50 lakhs before such date, then TDS is deducted on all purchases made after 01-07-2021.
 - b. If purchase value have not exceeded Rs. 50 lakhs in a Year, then TDS on purchase value (Calculated from 1st April) exceeding ` 50 lakhs shall be deducted.

For ex:

Particulars	Amount(Rs.)
Purchases up to 30/06/2021	45,00,000/-
Purchases in July	15,00,000/-
Less: Threshold Limit	-50,00,000/-
Amount on which TDS is to be deducted	10,00,000/-

14. Whether TDS u/s 194Q is required to be deducted on the total invoice amount inclusive of GST or only on the value of goods excluding GST?

The provisions of Section 194Q are silent on applicability of TDS on amount of GST. However, on perusal of the Circular 17/2020 dated 29.09.2020, CBDT clarifies TCS under Section 206C (1H) is applicable on amount of sales consideration and no adjustments on account of indirect taxes (including GST) is required to be done.

However, position for TDS was clarified earlier vide Circular No. 23/2017 as follows:

The Board hereby clarifies 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 under Chapter XV II-B of the Act on the amount paid or payable without including such 'GST on services' component

Even though above circular was issued for GST on Services, ratio of the said Circular can be extended to provisions of section 194Q as well.

However, applying the principles of recently issued circular for TCS, since 194Q is to be deducted on purchase value, it is advisable to deduct TDS on GST inclusive amount till a clarification is issued by CBDT to avoid litigation.

15. What if the seller has multiple GST Registrations?

If the seller has multiple registrations, the threshold limit shall be computed yearly on PAN India basis and not GSTIN basis. It would mean that if amount is paid/ payable to a seller having multiple units, the aggregate amount payable to all such units shall be considered for the limit of Rs. 50 lakhs.

Needless to mention that section is not applicable on inter branch transfers.

16. Whether Loading & Unloading Charges, Packaging Charges, Freight Charges and other incidental charges form part of consideration for "goods"?

As long as such incidental charges are mentioned in the same invoice, it forms part of intrinsically linked with goods and TDS shall be applicable on total invoice value including such incidental charges.

However, if a separate invoice is issued for the same, no TDS would be applicable as Packing Charges alone would not constitute goods.

17. Whether effect of Credit Notes or Debit Notes is required to be given to identify deductible amount?

Before we advert to answer that, let's look at provisions of 206C(1H) and corresponding clarification issued by CBDT vide Circular No. 17/2020 in respect of 206C(1H). TCS is collectible on "any amount as consideration for sale of any goods of the value or aggregate of such value..." CBDT mentioned that "no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax u/s 206C(1H) since the collection is made with reference to receipt of amount of sale consideration."

In above case, CBDT assumed that sales return or post sale discount are provided after receipt of sales consideration. Many a times, sales consideration is adjusted by such discounts and returns and only net sales consideration is received by Seller. However, such fact was clearly ignored while clarifying and gross invoice value was liable for collection of TCS.

TDS u/s 194Q is deductible on any sum payable "for purchase of any goods of the value or aggregate of such value..." Ideally, purchase value should be adjusted to give effect to debit and credit notes issued for purchase return, discount, rate changes, etc. to arrive at actual transaction value. However, after referring above circular, a logical conclusion may not always be correct. A clarification from CBDT would be welcome here.

18. Goods includes Stocks and Shares. Whether TDS will be required in case of investment in Units of Mutual Funds?

Goods includes every kind of movable property including stocks and shares. Hence, mutual fund units would also be covered under the definition of goods and would be liable for TDS. It is worthwhile to mention here that CBDT had issued a Circular No 17/2020 dated 29th September, 2020 to exclude transaction in securities and commodities carried out on recognized stock exchange from purview of TCS u/s 206C(1H). Similar exemption in case of TDS u/s 194Q can be expected.

19. TDS would be required on Electricity Bill provided other conditions are satisfied ?

The Supreme 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. Hence, it is 'goods'. Further, the Customs Tariff Act has covered 'Electricity' under heading 2716 00 00, which also clarifies that Electricity is a good. Thus, it can be inferred that the tax is required to 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 (for clarifying provisions of 206C(1H)) has directed 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). A similar clarification can be expected for transaction in electricity through power exchanges from TDS levability u/s 194Q.

