

Recent changes: Income Tax

Discussion on key changes in withholding tax provisions

Background

- ▶ Three new provisions of the Income-tax Act, 1961 ('the Act'), which will come into effect from 1st July 2021, will tremendously increase compliances with respect to Tax Deducted at Source ('TDS') and Tax Collected at Source ('TCS') for businesses and accounting professionals. While Sec. 194Q of the Act deals with TDS on sale of goods, Sec. 206AB and 206CCA have been enacted to penalize persons who were liable but did not file their income tax returns.

Flashback

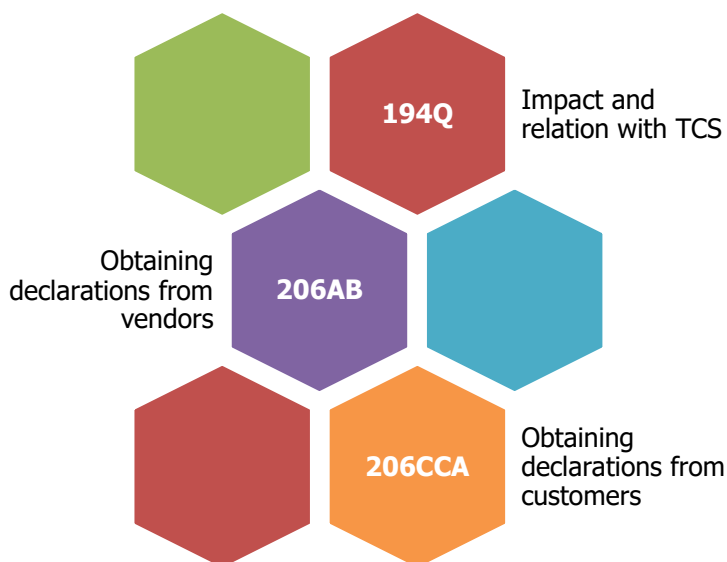
- ▶ Wind the clock back a year when the Finance Act, 2020, inserted sub-section (1H) in Section 206C. The new provision required sellers of goods to collect TCS from buyers where the amount received as consideration exceeded Rs. 50 lakhs in any year. The new provision was fraught with difficulties as the requirement to collect TCS was on receipts and not on sales. This required sellers to keep track of receipts from their buyers and collect TCS separately depending upon when they paid for their purchases.

Moving the new provision to the next level

- ▶ On the similar lines, the Finance Act, 2021, inserted a new Sec. 194Q to provide for deduction of tax by a buyer on purchase of goods. As one man's sale is another man's purchase, the applicability of two provisions on the same transaction may create several uncertainties. This document hopes to dispel some of those questions.

Carrot & stick

- ▶ Sec. 206AB and Sec. 206CCA have also been introduced for deduction and collection of TDS and TCS at higher rates on amounts payable persons who did not have not filed their income tax returns.
- ▶ The new provisions are presumably to encourage assesseees to file their tax returns failing which they would find themselves being subject to a higher rate of TDS and TCS. In other words, their cashflows will be severely affected.
- ▶ This document summarises these provisions which will have an impact on business entities from July 1st, 2021.



Who is liable to deduct TDS under this section?

- ▶ TDS shall be deducted under Sec. 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. 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. This provision shall be applicable from July 1, 2021.

When should tax be deducted under this provision?

- ▶ TDS is applicable if the total purchases from a vendor satisfies the following conditions:
 - 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**;
 - c. If tax is NOT deductible under any other section of the Act.
- ▶ It may be noted that the limit of Rs. 50 lakhs is for aggregate purchases in a year and not a single purchase.
- ▶ These provisions are not applicable for imports.
- ▶ Only transactions involving goods attract these provisions and not services.

What is the rate of tax?

- ▶ The tax shall be deducted by the buyer of goods at the rate of **0.1%** of the purchase value **exceeding Rs. 50 lakhs**

What is the consequence of non deduction of tax under this section?

- ▶ As per section 40(a)(ia) of the Act, if the Buyer fails to deduct TDS, 30% of the expenditure will be disallowed.

Threshold limit amount to be computed from July 1st or April 1st?

- ▶ For the purchasing limit of Rs. 50 lakhs under section 194Q mentioned previous year, hence the purchasing limit of Rs. 50 lakhs is to be considered from April 1, 2021 and not from July 1, 2021.

Should TDS be deducted on the total invoice value including GST ?

- ▶ The Central Board of Direct Taxes ('CBDT') vide Circular No. 23/2017 dated July 19, 2017 clarified that where the component of '**GST on services**' is indicated separately, TDS shall be deducted on the value 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 Sec. 206C(1H) [TCS on sale of goods], the CBDT vide Circular No. 17, dated September 29, 2020 has clarified that since the collection is made with reference to receipt of the amount of sale consideration, TCS has to be collected including the GST portion.
- ▶ To avoid litigation, it is advisable to deduct TDS on the purchase amount including GST till a clarification is issued by the CBDT.

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

- ▶ The primary responsibility falls on the **buyer** to deduct TDS under Sec. 194Q. Once the buyer deducts tax, then TCS under 206C(1H) need not be collected by the seller. The following is a brief comparison of the provisions of both sections.

Point of difference	TDS on Purchase of Goods [Section 194Q]	TCS on Sale of Goods [Section 206C(1H)]
Applicable when	Buyer's turnover > Rs. 10 Crores (Irrespective of seller's turnover)	Sellers's turnover > Rs. 10 crores
Applicable on	Purchase value/advance from a vendor exceeds Rs. 50 lakhs in a year	Receipt against sale of goods to a Buyer exceeds Rs. 50 lakhs in a year
Rate of tax	0.1 % of purchase value exceeding Rs. 50 lakhs	0.1% sales receipt exceeding Rs. 50 lakhs
When to collect/deduct tax	Due OR payment, whichever is earlier	At the time of ACTUAL RECEIPT against sales (<i>irrespective of FY to which sale relates</i>)
Rate of tax in case customer/vendor does NOT have PAN	5% under Sec. 206AA	1% under Sec. 206CC <i>[In case of this section even Aadhaar can be accepted in lieu of PAN. So, if Aadhaar is provided then the higher rate will not be applicable]</i>
Advances received	TDS / TCS is applicable even in case of advances received / paid	
Applicable from	01.07.2021 – In this case threshold of Rs. 50 lakhs to be considered by even taking into account transactions between April and June 2021.	01.10.2020 – In this case the receipt of money against previous year sales in the year 2020-21 will also have to be taken into account for arriving at the threshold of Rs. 50 lakhs.

Applicability matrix

► The below table will help you to identify the applicability of the relevant provision under various scenarios:

Buyer	Seller	Purchase by Buyer	Receipt by Seller	Primary responsibility
Turnover > 10 crores	Turnover > 10 crore	Above Rs. 50 lakhs	Above Rs. 50 lakhs	TDS by BUYER
		Below Rs. 50 lakhs	Above Rs. 50 lakhs	TCS by SELLER
		Below Rs. 50 lakhs	Below Rs. 50 lakhs	Not Applicable
		Above Rs. 50 lakhs	Below Rs. 50 lakhs	TDS by BUYER
Turnover > 10 crores	Turnover < 10 crore	Above Rs. 50 lakhs	Above Rs. 50 lakhs	TDS by BUYER
		Below Rs. 50 lakhs	Above Rs. 50 lakhs	Not Applicable
		Below Rs. 50 lakhs	Below Rs. 50 lakhs	Not Applicable
Turnover < 10 crores	Turnover > 10 crore	Above Rs. 50 lakhs	Above Rs. 50 lakhs	TCS by SELLER
		Below Rs. 50 lakhs	Above Rs. 50 lakhs	TCS by SELLER
		Below Rs. 50 lakhs	Below Rs. 50 lakhs	Not Applicable
		Above Rs. 50 lakhs	Below Rs. 50 lakhs	Not Applicable

The two new sections, Sec. 206AB and Sec. 206CCA were introduced for deduction and collection of tax at source at higher rates if an amount is paid or payable to the specified person [explained below] who did not file income tax returns. It provides for higher rate of TDS/TCS in case of payments made to those who has defaulted in filing of their tax returns on time.

Applicability and conditions

- ▶ The new provision is applicable to all payments except the specified payments mentioned below under Exclusions.
- ▶ Aggregate TDS / TCS in each of immediately preceding two financial years is Rs. 50,000 or more.
- ▶ The person has **not filed OR filed after the due date**, the returns of income for two preceding financial years for which the time limit for filing of income return has expired.
- ▶ **To summarize:** In case you have deducted/collected tax at source amounting to Rs. 50,000 from a vendor during the preceding two years i.e., FY 2020-21 and FY 2019-20, then you have to ensure that the vendor has filed income tax returns for at least 2018-19 or 2019-20 or both within due dates [note that the time limit for FY 2020-21 has not expired as on date of this document]. If not, then TDS at a higher rate should be applied to all transactions. Following the expiration of the due date of filing for FY 2020-21, then you will have to verify whether at least one of returns for 2020-21 or 2019-20 have been filed.

Important:

The provisions are applicable only if the person has not filed both the years return on time. If he has filed return for any one year, out of the two, on time, then the provisions of Sec. 206AB will not be applicable.

Quantum of TDS / TCS

- ▶ If the provisions of Sec. 206AB or 206CCA are attracted, the following would be the applicable TDS / TCS rates:
 - a. Twice the rate specified in the relevant provision of the Act/rates in force OR
 - b. 5 %Whichever is higher

- ▶ **Example:** In case TDS is deductible under Sec. 194C at 2% and the vendor has not submitted his income tax returns for any of the previous two financial years for which the due date of filing tax returns has expired, then the TDS rate will be higher of the below:
 - a. TDS under Sec. 194C at 2% x 2 = 4%
or
 - b. 5%

Exclusions

- ▶ Payments to Non-residents not having a permanent establishment in India.
- ▶ Payment covered under the following sections:
 - ▶ Sec. 192 – TDS on salaries
 - ▶ Sec. 192A – TDS on premature withdrawal from EPF
 - ▶ Sec. 194B – TDS on lottery
 - ▶ Sec. 194BB – TDS on horse racing
 - ▶ Sec. 194LBC – TDS on income in respect of investment in securitisation trust
 - ▶ Sec. 194N - TDS on cash withdrawal from bank in excess of Rs. 1 crore

Immediate action to be taken by entities

Sec. 194Q and Sec. 206C(1H) – TDS / TCS on purchase / sale of goods

- ▶ Identify whether your turnover for FY 2020-21 is more than Rs. 10 crores.
- ▶ List out the vendors from whom purchase of goods are likely to exceed 50 lakhs in the current year.
- ▶ Deduct tax at source at 0.1% in case purchase exceeds Rs. 50 lakhs on the amount purchased in excess of Rs. 50 lakhs.
- ▶ Inform the vendors sufficiently in advance about your deduction so that they do not collect TCS under Sec. 206C(1H).

Sec. 206AB / 206CCA – TDS / TCS at higher rates in certain cases

- ▶ List out the parties from whom TDS has been deducted or TCS collected for both FY 2019-20 and FY 2020-21 amounting to Rs.50,000 or more.
- ▶ Get a declaration from them that they have filed their tax returns for either FY 2018-19 and FY 2019-20 with a copy of the acknowledgements. It is not uncommon for vendors / customers to be reluctant to share their tax return acknowledgements. In such situations, they can be requested to provide their acknowledgement numbers. These acknowledgement numbers can be verified for genuineness on the portal of the income tax department at the following link:
<https://eportal.incometax.gov.in/iec/foservices/#/pre-login/itrStatus>
- ▶ Following the expiration of the due date of filing of return for FY 2020-21, these parties are to be contacted again for updating their declarations with respect to FY 2020-21.

Template of declaration to be obtained from vendors / customers

[On the letter head of the vendor / customer]

DECLARATION

Date:

To,
<TDS deductor / TCS collector>

Dear Sir / Madam,

Sub: Declaration for compliance of section 206AB / 206CCA of Income-tax Act, 1961

As the aggregate of TDS deducted / TCS collected from us during both the FY 2019-20 and FY 2020-21 exceeds Rs. 50,000, the provisions of sections 206AB / 206CCA of the Income-tax Act, 1961, we are required to provide details to ascertain the applicability of these provisions. Accordingly, we hereby confirm that the income tax returns were filed by our entity for both / one of the previous two assessment years for which the due date of filing has expired.

The details of the returns filed are as follows:

	FY2019-20	FY2018-19
Filing date		
Due date		
Ack. number		
Ack. enclosed (Yes / No)		

Based on the above, the provisions of Sec. 206AB / 206CCA are not applicable to us. Therefore, we request you to deduct rates only as per applicable rates.

Sincerely,

For <Vendor / Customer>

<Name>
<Designation>

Notice to the reader

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Glossary

Act	: Income-tax Act, 1961
AY	: Assessment Year
CBDT	: Central Board of Direct Taxes
Crores	: Ten millions
FY	: Financial Year
GJA	: G. Joseph & Associates
GST	: Goods & Services Tax
INR /Rs.	: Indian Rupee
TCS	: Tax Collected at Source
TDS	: Tax Deducted at Source