



# Insights to TDS on Purchase of goods Applicable from 1 July 2021

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# Overview

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In Finance Act 2021, various amendments have been enacted in TDS provisions. The most significant amendment is made by inserting a new Section which mandate to deduct TDS on purchase of goods. It will be a huge compliance for deductor to comply with above section. TDS on purchase of goods will be burdensome and cumbersome.

Already TCS had been imposed on sale of goods vide finance Act 2020 which was collected by seller. Now, responsibility has been cast upon buyer of goods to deduct TDS. Although the above section shall not be applicable on SMEs, even it is a tedious task to keep track of TDS applicability on transaction of purchase of goods deduct TDS thereon for large taxpayer. Also, interlink between provisions of TDS and TCS on purchase/sale of goods has create lots of confusion.

In this write up we have discussed about the provisions and procedural aspects of the above provisions of TDS which will give you insight about these provisions of TDS on purchase of goods.

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# Who will deduct TDS

Every person, required to make payment for purchase of goods, shall deduct TDS. i.e. Buyer of goods shall deduct TDS.

However in following conditions, TDS is not required to be deducted:

- ☐ If Gross sales/receipt/turnover of buyer is less than 10 Crore in immediately preceding financial year
- ☐ Goods worth less than Rs. 50 lakhs are sold in aggregate during the year to one Buyer
- ☐ Buyer is liable to deduct TDS under any other provisions of TDS.
- ☐ Seller is liable to collect TCS under any other provisions of TCS Except TCS under section 206C(1H)

## Points to Note

1. For calculating limit of Rs. 10 Crore, sale of services shall also be included, as section refers to gross sale / gross receipts / turnover.
2. If the turnover of preceding financial year exceeds Rs 10 crores, the provision is applicable even if the turnover of the current financial year is less than 10 crores. Similarly, If the turnover of the preceding financial year is less than 10 crores, even if the turnover exceeds 10 crores in the current financial year, it is not applicable.



# Whose TDS to be deducted

TDS of seller of goods shall be deducted by the buyer of goods i.e. any person who sell the goods. "seller" means any person who sell any goods. Thus, it includes all persons whether individual, HUF, Company, Firm etc.

However in case of following seller, section shall not be applicable and hence TDS not required to be deducted.

- ☐ Non resident person. i.e. if seller is non resident no TDS is required to be deducted.
- ☐ Seller who sells goods worth **less than Rs. 50 lakhs** in aggregate during the year to one Buyer.



# Time and Rate of TDS deduction

TDS under section 194Q shall be deducted at the time of crediting the account of the seller or at the time of payment of consideration, whichever is earlier. Thus, liability of deduction of TDS on purchase of goods shall arise at the time of when amount is credited or paid, whichever occurs first.

Rate at which TDS shall be deducted is categorize below:

	Rate of TDS
If PAN / Aadhar of seller is available (Section 194Q)	0.1%
If PAN / Aadhar of Seller not available. (Section 206AA)	5%
If ITR for last two year not filed by seller (Section 206AB) *	5%

\* Section 206AB is applicable only when TDS of seller deducted by buyer is more than Rs. 50,000 in each of the last two preceding year for which due date of filing of ITR has expired..



# Value on which TDS to deduct

TDS is to be deducted at prescribed rate of amount of sale consideration exceeding Rs. 50 Lakhs. It is amply clear that TDS is not required to be deducted on amount of sale consideration of goods upto Rs. 50 lakhs. The limit of Rs. 50 Lakhs is for each buyer whether goods sold in one transaction or in multiple transactions during the whole financial year.

## **Sale consideration inclusive of GST?**

Whether TDS is to be deducted on the total invoice value including the GST still requires clarity. As per Circular No. 17/2020, dated 29-09-2020 TCS on goods, under section 206C(1H), is required to be collected on the sale consideration inclusive of GST. While as per Circular No. 23 /2017, dated 19<sup>th</sup> July 2017, TDS is required to be deducted on the amount paid or payable without including such 'GST on services' component.

Circular No. 17/2020 Clarifies the position regarding TCS on goods while Circular no. 23/2017 clarifies the position regarding TDS on GST charged on services. Since TCS and TDS on sale of goods are interlink and similar, position clarified in Circular no. 17/2020 should be considered in this case and TDS should be deducted on gross amount including GST.



# Interlink between TDS & TCS on sale of goods

Provisions of both, section 194Q and 206C(1H) are applicable on transaction of purchase/sale of goods. Section 194Q mandate for Tax deduction at source by buyer. While Section 206C(1H) requires for tax collection at source by seller.

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 under Section 206C(1H).

On the bare perusal of above provision it is clear that 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 in deduction of TDS, the liability to collect the tax gets shifted to the seller.

Basic comparison between section 194Q and section 206C(1H) has been summarized in below table for the ease of understanding.



# Interlink between TDS & TCS on sale of goods

<b>Basis of distinction</b>	<b>TDS on purchase of goods [Section 194Q]</b>	<b>TCS on Sale of goods [Section 206C(1H)]</b>
Who is liable for deduction/collection	Buyer is liable to deduct the tax	Seller is liable to collect the tax
Limit of Turnover	Turnover of the buyer is more than Rs. 10 crores during immediately preceding financial year.	Turnover of the seller should be more than Rs. 10 crores during immediately preceding financial year.
Threshold limit of purchase/sale	If the value of goods purchase by seller exceeds Rs. 50 lakhs	If the value of goods sold to buyer exceeds Rs. 50 lakhs
Rate	0.1%	0.1%
Time of deduction or collection	At the time of credit or payment, whichever is earlier	At the time of receipt of sale consideration
When both section are applicable	Purchaser is liable to deduct the tax if the transaction is subject to provisions of both sections.	Seller is liable to collect the tax only if the purchaser is not liable to deducted or failed to deduct tax under section 194Q.

# Transitional and procedural issues

## **TCS on advance received / goods sold before 1st July, 2021**

If Advance is received before 1 July, 2021 and goods are sold on or after 1 July, 2021 or vice versa, no TDS is required to be Deducted as point of time of deduction of TDS is earlier of credit or receipt which will lie before 1 July 2021.

## **Limit of Rs. 10 Crore, whether inclusive or Exclusive of GST?**

No clarification has been provided by CBDT in this regard. However, GST component is included while calculating the limit of section 44AB i.e. Tax Audit. Same interpretation may be followed while calculating the threshold limit under this section i.e. GST component should be included in sales.

## **Whether additional, miscellaneous and out-of-pocket expenses form part of the value of goods?**

Additional, allied or out-of-pocket charges may or may not form part of value of goods. Where these expenses have been reflected in the 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.



# Transitional and procedural issues

## **For calculating the amount of sales of ₹ 50 Lakhs, whether the sales before 01-07-2021 shall be considered?**

No clarification has been issued by the CBDT in this respect. However, Circular No. 17/2020, dated 29-09-2020 has clarified the similar issue with reference to section 206C(1H). Considering the said circular, the buyer should also consider the purchase of goods made up to 30-06-2021 while calculating the threshold of ₹ 50 lakh from one buyer.

## **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.

## **Whether the amount advanced as a loan to the seller shall come within the ambit of this provision?**

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 to Seller. However, if at any future date, such loan amount is settled against purchased value, the liability to deduct TDS shall arise.

# Transitional and procedural issues

## **What is the meaning of goods as per section 194Q for the purpose of TDS deduction?**

No definition of goods has been given in Income Tax Act. Goods has been defined in Sales of Goods Act, 1930 and CGST Act, 2017. 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.

As per Sales of goods Act, "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"

Thus all movable properties except actionable claim and money shall be treated as goods. If the definition of Sales of Goods Act is considered, Shares, Securities, Electricity shall also be classified as goods.



# Transitional and procedural issues

## **Whether TDS is required to be deducted on sale of Securities, electricity and Software?**

Although, Securities and electricity both are treated as goods. However, CBDT vide Circular No. 17 of 2020, clarified that provisions of Section 206C(1H) shall not be applicable in relation to transactions in securities (and commodities) which are traded through recognized stock exchanges and transaction in electricity, renewable energy certificates and energy-saving certificates traded through power exchanges.

The above clarification was in relation to TCS on sale of goods under 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.

Taxation of software has always been a contentious issue. The Supreme Court in the decision of *Tata Consultancy Services v. State of A.P* [2004] 141 Taxman 132 (SC) held that Canned software are 'goods' and as such assessable to sales tax.

Thus, the requirement to deduct TDS shall be decided on the basis whether the purchase of software has been treated as goods or service. If the same has been treated as service, it shall not be subject to TDS under Section 194Q but under section 194J or 195. However, if the software has been treated as goods then the buyer shall be liable to deduct TDS under Section 194Q.

# THANKS!

## In case of any questions



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