

FAQs on TDS under Section 194Q on purchase of goods

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RITU GUPTA

Assistant Manager, Taxmann

Is it a coincidence or an irony that TDS and Tedious sound similar? Currently, the Income-tax Act has 36 provisions which require deduction of tax at source from various payments. The number is increased to 38 by the Finance Act, 2021. If all these provisions are projected in a table, they may look like a Periodic Table of Elements. There are a few transactions or payments which may be covered under multiple provisions, and to find out the relevant provision, the deductor will have to solve a complex theorem. One such transaction is the sale or purchase of goods exceeding Rs. 50 lakhs.

The Finance Act, 2020, inserted Sub-Section (1H) in Section 206C to provide for tax collection by a seller from the amount received as consideration for the sale of goods if it exceeds Rs. 50 lakhs in any previous year. On similar lines, the Finance Act, 2021 has inserted a new Section 194Q to provide for a tax deduction by a buyer from the purchase of goods. As sale and purchase are the flip-side of a transaction, the applicability of two provisions on the same transaction may create a lot of doubts. The CBDT¹ (with the prior approval of the Central Government) has issued various guidelines to remove the difficulties in implementing the provisions of this Section.

Further, to resolve all these doubts, we have prepared a list of the Frequently Asked Questions (FAQs) about the requirement to deduct TDS on purchase of goods with effect from 01-07-2021 with a distinction between the new Section 194Q 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. Whether a non-resident buyer is also liable for deduction of tax under this provision?

Section 194Q defines the term "buyer" as a person whose total sales, gross receipts, or turnover from the business carried on by him exceed Rs. 10 crores during the financial year immediately preceding the financial year in which the purchase of goods is carried out. This provision does not specify if a buyer should be a resident or non-resident, or both. However, the CBDT has clarified that Section 194Q shall

not apply to a non-resident whose purchase of goods is not effectively connected with the permanent establishment in India. For this purpose, "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

FAQ 3. When shall tax 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). Also, refer to *FAQ 9*.

FAQ 4. 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 seller's account 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 5. At what rate tax is to be deducted?

The buyer of goods shall deduct the tax 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 6. Whether tax is required to be deducted where the income of the seller is exempt from tax?

The CBDT has clarified that Section 194Q shall not apply to the purchase of goods from a seller who is exempt from tax under the Income-tax Act or under any other Act passed by the Parliament. However, this exemption shall not be applicable where only a part of the seller's income is exempt from tax.

FAQ 7. Whether the TDS is deductible in the year of incorporation?

Section 194Q applies if total sales or gross receipts or turnover from the business carried on by the buyer exceeds Rs. 10 crores during the financial year immediately preceding the financial year in which goods are purchased. Since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q shall not apply in the year of incorporation.

FAQ 8. What to do if a transaction is subject to TDS under Section 194Q or Section 194-O?

No tax is required to be deducted under Section 194Q if the tax is deductible or collectible under any

other provision except Section 206C(1H). If a transaction is covered both within the purview of Section 194-O and section 194Q, tax is required to be deducted under Section 194-O and not under Section 194Q. Thus, e-commerce operators shall have the first obligation to deduct the tax. If it does so, the buyer will not have any obligation to deduct the tax under Section 194Q. However, if the e-commerce operator defaults, the liability to deduct the tax gets shifted to the buyer.

FAQ 9. 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 collectible under section 206C [other than a transaction on which tax is collectible 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 for any reason, tax has been collected by the seller under Section 206C(1H), before the buyer could deduct tax under Section 194Q on the same transaction, such transaction would not be subjected to tax deduction again by the buyer.

Both these provisions are distinguished in the below table:

<i>Basis of distinction</i>	<i>TDS on purchase of goods [Section 194Q]</i>	<i>TCS on Sale of goods [Section 206C(1H)]</i>
Who is liable for deduction/collection	The buyer is liable to deduct the tax	Seller is liable to collect the tax
Turnover limit of deductor or collector	The total sales, gross receipts, or turnover of the buyer from the business should exceed Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased	The total sales, gross receipts, or turnover of the collector from the business should exceed Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are sold
Threshold limit of purchase/sale	If the value of the purchase exceeds Rs. 50 lakhs	If the value of sales exceeds Rs. 50 lakhs
Rate	0.1%	0.1%
Amount on which tax to be deducted/collected	On the amount of purchase in excess of Rs. 50 lakhs	On the amount of sale consideration in excess of Rs. 50 lakhs
Time of deduction/collection	At the time of credit or payment, whichever is <i>earlier</i>	At the time of receipt
Preference to be given	Purchaser is first liable to deduct the tax if the transaction could be subject to both provision	Seller shall be liable to collect the tax only if the purchaser is not liable to deduct the tax or purchaser failed to deduct tax

Example

<i>Particulars</i>	<i>Scenario 1</i>	<i>Scenario 2</i>	<i>Scenario 3</i>
Turnover of Seller (In cr.)	12	6	12
Turnover of Buyer (In cr.)	6	12	12
Sale of goods (In cr.)	2	2	2
Sales consideration paid during the year (In cr.)	1	1	1
Who is liable to deduct or collect tax?	Seller	Buyer	Buyer
Rate of Tax	0.1%	0.1%	0.1%
Amount on which tax to be deducted or collected (In Cr.)	0.5	1.5	1.5
Tax to be deducted or collected	5,000	15,000	15,000

FAQ 10. Is a buyer importing goods from outside India required to deduct tax at the 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 11. In the 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 that deals with the 'sale of goods' whereas the CGST Act, 2017 deals with tax on 'supply of goods'. Thus, the definition of the 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 12. Whether a transaction in securities through stock exchanges shall be subject to TDS under this provision?

Concerns have been raised about the applicability of Section 194Q in respect of transactions through stock exchanges (or commodity exchange) as there is no one-to-one contract between the buyers and sellers.

To remove the difficulty, the CBDT has clarified that the provisions of Section 194Q shall not be applicable in relation to transactions in securities (and commodities) that are traded through recognised stock exchanges or cleared and settled by the recognised clearing corporation, including recognised stock exchanges or recognised clearing corporations located in International Financial Service Centre (IFSC).

FAQ 13. 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 14. 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 the *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 Customs Tariff Act has covered 'Electricity' under heading 2716 00 00, which also clarifies that Electricity is 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 through direct purchase from the company engaged in electricity generation 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 TDS under the provision of Section 194Q. Thus, TDS is deductible on a transaction in electricity only when there is a direct purchase from the company engaged in electricity generation.

FAQ 15. Whether Should TDS 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 servicetax 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 the 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. The amendment has clarified that the consideration for the use or right to use computer software is 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. the 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 based on 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 TDS provisions 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, the buyer shall be liable to deduct TDS subject to the fulfillment of other conditions of Section 194Q.

FAQ 16. Whether TDS is liable to be deducted on the purchase of Jewellery not connected with business?

Tax is required to be deducted 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. There is no condition that the purchases should be connected with the business only. Thus, if a person is falling within the definition of the buyer, tax is required to be deducted even if such purchase is not connected with the business carried on by him.

Jewellery, being a movable property, is covered within the term goods. There is no specific exclusion under Section 194Q for deduction of TDS on purchase of jewellery. Thus, the tax shall be deductible on the purchase of jewellery if other conditions are also fulfilled.

FAQ 17. 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 the 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, they should form part of the purchase value. If they are charged through a separate invoice, it should not form part of the purchase value.

FAQ 18. From which date the threshold limit of Rs. 50 lakhs will be computed?

The Finance Act, 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?

In this respect, the CBDT has clarified that since the threshold of Rs. 50 lakhs is with respect to the previous year, it shall be computed from 01-04-2021. Hence, if a buyer has already credited or paid Rs. 50 lakhs or more up to 30-06-2021 to a seller, TDS under this provision shall apply on all credits or payment on or after 01-07-2021.

FAQ 19. Whether TDS is to be deducted on the total invoice value, including the GST?

The CBDT has clarified that tax under this provision shall be deducted on the amount credited without including GST if the following conditions are satisfied:

- (a) Tax is deducted at the time of credit of amount in the account of the seller; and
- (b) The component of GST comprised in the amount payable to the seller is indicated separately as per the terms of the agreement or contract between the buyer and the seller.

However, if the tax is deducted on a payment basis because the payment is made before credit in to the seller's ledger, the tax would be deducted on the whole amount.

FAQ 20. Whether TDS has to be deducted on advance payment made to the seller?

The CBDT has clarified that since the provision of Section 194Q requires the buyer to deduct tax on the credit of sum in the account of the seller or on payment of such sum, whichever is earlier, the provisions of this section shall apply to advance payment made by the buyer to the seller.

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*. If the advance payment is not made with an intention to adjust it against future purchase (deposit or loan), but eventually it is adjusted against the future purchase, no tax is required to be deducted at the time of payment of such advance. In such a case, liability to deduct tax will arise the moment such advance is adjusted against the purchase value of goods.

FAQ 21. Whether payment of advance before 01-07-2021 for purchase of goods will be subject to TDS?

The CBDT has clarified that the provision of Section 194Q shall not apply on any sum credited or paid before 01-07-2021. If either of the two events had happened before 01-07-2021, that transaction would not be subjected to the provisions of this Section.

In simple words, the tax should be deducted where the payment is made, and the amount is credited on or after 01-07-2021. Thus, where any of the trigger events (*i.e.*, payment or credit) has occurred before

the date of applicability of provision, no liability to deduct tax will arise.

FAQ 22. 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 a loan advanced by the buyer. However, if such loan amount is settled against purchased value at any future date, 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 23. Whether tax is 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 to purchase goods. Thus, the existence of two distinct parties as 'seller' and 'buyer' is a prerequisite 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 24. What shall be the treatment of purchase return for computation of TDS?

In relation to purchase return, the CBDT has clarified that since 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 on that purchase. In that case, where the seller has refunded the money against the purchase return, the tax deducted may be adjusted against the next purchase against the same seller. However, where purchase return is replaced by the goods, no adjustment is required.

FAQ 25. 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 or Aadhaar number to the deductor, failing which the tax is required to be deducted at higher rates. If the PAN or Aadhaar number 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 or Aadhaar number, the amount paid or payable to all such units shall be aggregated to compute the limit of Rs. 50 Lakhs.

FAQ 26. Can a seller apply for the certificate for a 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 assesseees have an option to file a declaration for *nil* deduction of tax.

However, the Finance Act, 2021, has not extended the benefit of applying for a certificate for deduction of tax at lower rates or filing a 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 file a declaration for nil deduction regarding 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 27. How to deposit the TDS?

A corporate assessee and other assessees (who are subject to tax audit under Section 44AB) will have to make payment of tax (including TDS) electronically through an internet banking facility or by way of debit cards. To deposit the tax, the deductor has to fill the Challan No. ITNS 281.

Other deductors can deposit the tax deducted into any branch of the RBI or the State Bank of India, or any authorized bank.

FAQ 28. What is the due date to deposit TDS?

Tax deducted during the month shall be deposited on or before the following due date:

<i>Type of Deductor</i>	<i>Mode of payment of TDS</i>	<i>Due Date for deposit of TDS</i>
Office of Government	Without Income-tax Challan	On the same day on which tax is deducted
	With Income-tax Challan ITNS 281	Within 7 days from the end of the month in which tax is deducted
Other Deductor	With Income-tax Challan ITNS 281	<i>For April-February Month:</i> Within 7 days from the end of the month in which tax is deducted <i>For March Month:</i> On or before April 30

FAQ 29. What shall be the 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 the 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 30. 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 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 return.

However, in case a transaction is covered both within the purview of Section 194-O as well as Section 206C(1H), tax is required to be deducted under Section 194-O. Once the e-commerce operator has deducted the tax on a transaction, the seller is not required to collect the tax under Section 206C(1H) on the same transaction.

It is clarified that the primary responsibility is on e-commerce operators to deduct the tax under Section 194-O. Since the rate of deduction is higher under Section 194-O, the responsibility of the e-commerce operator cannot be condoned if the seller has collected the tax under Section 206C(1H).

FAQ 31. What is the due date for filing of TDS return?

The statement of tax deducted at source under this provision shall be filed with the Income-tax Department on or before the following due date:

<i>Quarter</i>	<i>Due Date</i>
April- June	31st July of the Financial Year
July- September	31st October of the Financial Year
October- December	31st January of the Financial Year
January- March	31st May of the financial year immediately following the financial year in which deduction is made

FAQ 32. What shall be the consequences of non-filing of TDS return?

If there is a delay in TDS return filing, the late filing fee shall be payable under Section 234E. The fee for default in furnishing the TDS/TCS Statement shall be levied at the rate of Rs. 200 per day, during which such failure continues. However, the amount of fee shall not exceed the total amount deductible or collectible, as the case may be. The fee shall be payable before submission of the belated TDS/TCS Statement.

If a person fails to file the TDS return or does not file it by the due dates, he shall be liable to pay the penalty under Section 271H. The penalty under Section 271H is also levied in case of furnishing of inaccurate information under TDS return. The minimum amount of penalty for failure to furnish TDS return or providing inaccurate information therein is Rs. 10,000, which can go up to Rs. 1,00,000.

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