

Date: 12th July, 2021

To,

1. **Smt. Nirmala Sitharaman,**
Hon'ble Finance Minister,
Ministry of Finance, North Block,
New Delhi 110 001.

2. **Shri Ajay Bhushan Pandey**
Hon'ble Revenue Secretary,
Central Board of Direct Taxes,
North Block,
Delhi – 110 001

3. **Shri Jagannath Bidyadhar Mohapatra**
Chairman,
Central Board of Direct Taxes,
North Block,
Delhi – 110 001

Respected Madam / Sirs,

Sub: Request for Rationalisation of TCS reporting Compliances

The Chamber of Tax Consultants, established in 1926, is one of the oldest non-profit organizations of tax practitioners of Mumbai, having Advocates, Chartered Accountants and Tax Practitioners as its members. Many senior tax professionals who regularly appear before Supreme Court, High Courts and ITAT, are its Past Presidents. The Chamber has been making regular representations before various government agencies.

The Chamber regularly takes up initiatives to act as a bridge between stakeholders and concerned regulatory bodies in order to convey and help in resolving genuine grievances or effectively implement the laws.

We have come forward with a request for rationalisation of TCS reporting Compliances.

1. Background

Section 206C(1H) of the Act was introduced *vide* Finance Act, 2020, which, *inter alia*, provides that every seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding INR 50,00,000 in any previous year, shall, at the time of receipt of such amount, collect from the buyer, 0.1% of the sale consideration exceeding INR 50,00,000 as Tax Collection at Source ('TCS'). The said provision is effective from **1 October 2020**.

Further, the second proviso to section 206C(1H) provides that the provisions of section 206C(1H) shall not apply to a transaction in case TDS provisions are applicable under any other section of the Act and such tax has been deducted.

Subsequently, *vide* the Finance Act, 2021, Section 194Q has been introduced **with effect from 1 July 2021**, which provides that any buyer required to pay to any resident seller for purchase of any goods, aggregate value of which exceeds INR 50,00,000 in any previous year, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof, whichever is earlier, deduct 0.1% of such sum exceeding INR 50,00,000 as Tax Deduction at Source ('TDS').

In view of the above provisions and on a conjoint reading of Section 206C(1H) and Section 194Q, there would be no obligation on the seller to collect tax at source from the buyer on the consideration for sale of the goods, where the underlying transaction is subject to TDS under Section 194Q of the Act, effective 1 July 2021. However, if the buyer fails to comply with Section 194Q, the seller would have an obligation to collect taxes at source.

Pursuant to the above introduction of Section 194Q, Circular No. 13 of 2021 was issued on 30 June 2021 providing certain clarifications on the interplay between Section 206C(1H) and Section 194Q.

Further to our earlier representation, we would like to highlight that introduction of Section 194Q has considerably burdened the taxpayers that too in these difficult times of COVID-19 where everyone is struggling to get their business back on track.

These compliances have created a lot of confusions despite the clarifications issued *vide* above Circular No. 13 of 2021 dated 30 June 2021 and it has become difficult for the taxpayers to track and undertake these compliances.

Also, they do not support the Motto and intent of the Government of Ease of Doing

Business and Minimum Government and Maximum Governance.

Lastly, the cost of undertaking these compliances and also monitoring the same will be much higher than the expected tax collections in this regard.

2. Reporting Requirements for TCS

A TCS collector is required **to report the transactions** on which TCS has been collected. Additionally, the **collector is also required to report transactions wherein TCS is not collected on account of TDS being done by the payer**. In such a case, the TCS return **also requires the TDS challan number and the date of remittance of TDS by the payer** [kindly refer Page 4 and 5 of the annexed Form 27EQ: columns 680 to 681C of Form 27EQ].

For ease of reference, the headings of the relevant columns are reproduced as under-

- **Column 680:** Reason for non-collection/ lower collection/ or collection at higher rate;
- **Column 681:** Number of the certificate u/s 206C issued by the Assessing Officer for lower collection of tax;
- **Column 681A:** Whether the payment by collectee is liable to TDS as per clause (a) of the fifth proviso to sub-section (1G) or second proviso to sub-section (1H) and whether TDS has been deducted from such payment (if either "F" or "G" is selected in 680);

If, answer to [681A] is yes, then-

- **Column 681B:** Challan Number and
- **Column 681C:** Date of payment of TDS to Central Government.

3. Issues involved in the above reporting requirement

As mentioned above, the Form 27EQ requires the disclosure of TDS challan and TDS remittance date by the payer. This is likely to create significant challenges and will also involve significant time and effort as under:

- a. The charge of TDS is on accrual/ payment basis (earlier of the two), whereas the

TCS obligation is at the time of collection of consideration. Therefore, the very basis of these two transactional taxes is different and is very difficult to track and reconcile the same for reporting purposes (especially in cases of voluminous sale invoices/ block payments/ timing differences).

- b. The buyers cannot immediately furnish the TDS challan and remittance date. The obligation to make the remittance of TDS falls in the subsequent month, and therefore it is difficult for the seller to immediately collect this information.

Additionally, the obligation to file a TCS return (obligation of the seller) precedes the date by which the buyer has to file the TDS return and furnish the TDS certificates thereafter.

To illustrate- For a sale and collection during the month of October, the TDS will be undertaken by the buyer in October, and TDS will be remitted by 7 November. The TDS return for this period will be filed by the buyer by the following 31 January, and TDS certificate will have to be issued by 15 February. However, at the time of collection in October, the details of the TDS remittance would not be available. Further, the obligation to file the TCS return on the buyer remains much earlier at 15 January (as compared to date of receipt of the TDS certificate).

While the above is a simple example, the situation will get more worse and complicated if the sale and collection are spread over more than one quarter.

Therefore, the above reporting in Column 680 to 681C not only has practical challenges in collating the details, but also is at times impossible to track and map the transactions with challans specifically where the volume of transactions is high.

4. Request for Rationalisation of TCS reporting Compliances

In view of the above background, we continue our plea that Your Honour should consider the above aspects and defer the applicability of the said provisions of Section 194Q to 1st April 2022.

If the same is not deferred, least the disallowance of thirty percent (30%) of such purchases, as per the provisions of section 40(a)(ia), on which tax is deductible at source and such tax has not been deducted or after deduction has not been paid on or before the due date of filing the Return On Income be deferred to 1st April 2022.

Without prejudice to the above, pursuant to introduction of section 194Q by the Finance Act, 2021, the Government / CBDT as the case may be would already have the data of sale of goods on which TDS is supposed to be deducted. Therefore, reporting such transactions again in the TCS returns make the process redundant, in addition to the impossibility/ difficulty as highlighted above.

Therefore, columns 680 to 681C should be done away with in the TCS return form **i.e.** Form 27EQ, at least for cases where section 194Q / 206C (1H) are applicable.

With due respect to the above difficulties faced by the assesseees /collector, we request Your Honour to consider our request and to kindly defer the applicability of the said provisions of Section 194Q to 1 April 2022. Without prejudice to the above, we request Your Honour to kindly consider removing the columns 680 to 681C in the TCS return Form 27EQ, specifically for the above cases. In any case, the PAN and name of the counter party is already required to be reported in Columns 667 and 668 respectively,

We look forward for your kind consideration to the request.

Yours Sincerely,

For THE CHAMBER OF TAX CONSULTANTS

Sd/-

Sd/-

Ketan Vajani
President

Mahendra Sanghvi
Chairman
Law & Representation Committee