



Issues in TDS/TCS provisions – 194Q/206C(1H)/206AB

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Changing TDS landscape

Changing TDS landscape

Section 4 – Charge of Income Tax

4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

Changing TDS landscape

- Changing Role of TDS/TCS provisions:
 - Collection of tax at transaction level to contribute to government exchequer (e.g. 194J, 194C, section 194D)
 - Ensure tax is collected at point of receipt so that taxpayer is not saddled with tax after receipt of income (e.g. salary income)
 - Reporting of high value transaction (e.g. 194-IA, section 194-IC)
 - Reporting of income from financial transaction e.g. dividend, income from mutual fund, interest from debt fund, income from business trust (e.g.194, 194K,194LB, 194LBA, 194LBB)
 - C2B transactions by individual say payment of rent, payment to contractor (e.g. 194M, 194-IB)
 - Capture individual payment which are personal in nature e.g. TCS on LRA [section 206C(1G)]
 - Capture e-commerce transaction and sellers on online portals (section 194-O)

Changing TDS landscape

- Other modes of collecting information continues to strengthen
 - GST return and annual compliance
 - Filing with SEBI under various allied laws
 - Real estate transaction captured at state level registration – PAN mandatory
 - Information from banking channel, financial intermediary and stock brokers
- FA 2020 onwards – Capture every possible transaction - section 206C(1H) and section 194Q

In Search of Black sheep

Changing TDS landscape

- Section 206C(1H) introduced effective from 1 Oct 2021 which required seller to collect TCS
- Key challenges accomplished by Taxpayer
 - System changes to facilitate TCS, pay monthly TCS, quarterly return and communicate TCS certificate with seller
 - Technical positions – literal reading is pay on collection. Considering practical challenges industry practice is to follow accrual and pay ahead of time
 - Educate stakeholders e.g. sales, customers on new compliance requirement
- FA 2021 introduced section 194Q shifting TDS on Buyer rather than seller
 - Restart entire exercise from TCS to TDS
- Section 206AB introduced providing for higher withholding rate in case of non-filers of TDS return

End Result



Larger Questions

- Impact on ease of doing business
- Deductor – agent of government or unpaid quasi government authority?
- Increase in compliance cost, system upgradation cost
- Audit and scrutiny of same transaction by different regulatory relying upon cross regulatory information

Section 194-Q Provisions

Intent of provision

- Memorandum explaining provisions of Finance Bill 2020 - TCS
 - “Further, in **order to widen and deepen the tax net**, it is proposed to amend section 206C to levy TCS on sale of goods above specified limit“
- No rationale provided by FB 2021 – perhaps intent is same except that now it is changed to TDS from TCS

Provisions in brief

- Buyer who is responsible for paying any sum to resident for purchase of any goods is required to deduct TDS
- TDS to be deducted only if value or aggregate value of goods exceed Rs 50,00,000 in previous year
- TDS to be deducted at the time of credit or payment whichever is earlier
- Buyer means a person whose total sales, gross receipts or turnover from business carried on by him exceed 10crs during immediately preceding financial year
- Provisions shall not apply to a transaction on which-
 - Tax is deductible under any of the provisions of Act
 - Tax is collectible under section 206C other than section 206C(1H)
- Other provisions of TDS applies mutatis mutandis to section 194Q

Meaning of goods

Meaning of goods

Article 366(12) of Constitution

“Unless the context otherwise requires goods includes all materials, commodities and articles”

Sale of Goods Act 1930

“goods” means every kind of moveable 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” [Section 2(7) of Sale of Goods Act 1930]

The Goods and Service 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 [Section 2(52)]

Judicial interpretation

Judicial Interpretation

A 'goods' may be a tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) its utility; (b) capable of being bought and sold; and (c) capable of transmitted, transferred, delivered, stored and possessed

[Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector, AIR 2007 SC 1984; Tata Consultancy Services v State of Andra Pradesh (2005) 271 ITR 401 (SC)]

Illustrative reference to goods in Act

Section	Provisions
10(48)	any income received in India in Indian currency by a foreign company on account of sale of crude oil, any other goods or rendering of services.....
92B(3)(iii)	any transfer of goods or services referred to in sub-section (8) of section 80-IA
Proviso to section 43(5)	A transaction is not speculative if a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him;
Section 72A(7)(aa)	Industrial undertaking means any undertaking which is engaged in the manufacture or processing of goods

Act seems to use goods and services separately. Further, services are unlikely to fit within the criteria of goods as laid down by TCS decision

Meaning of goods

- Goods are not defined but has been subject matter of judicial review on numerous occasion
- Goods need be goods used in business proper but can even includes stationery, food cost, fixed asset anything which can resonate with goods
- Logic of acquisition of stock in trade v/s capital asset may not apply
- Circular No 13 of 2001 exempted following:
 - Transaction in securities and commodities traded through stock exchange
 - Transaction in electricity, renewable energy certificates and energy saving certificates traded through power exchanges

Meaning of goods

- Applicability of section 194Q to following
 - NCLT approved merger, demerger
 - Slump sale
 - Purchase of unlisted company shares, NCD
 - Loan assignment and factoring transactions
 - Foreign currency
 - Actionable claims

Illustrative precedents

- Sale of software program on a CD/floppy disc is good [Tata Consultancy Services v State of Andhra Pradesh (2005) 1 SCC 308]
- Gas, electricity and water satisfies all attributes of goods as laid down by judiciary [Commissioner of Sales Tax v Madhya Pradesh Electricity Board AIR 1970 SC 732]
- Space segment capacity leased in a satellite transponder can be classified as goods [Antrix Corporation Ltd v ACCT 2020(2) AIR Kar R 657]
- Electromagnetic waves are not goods [Bharat Sanchar Nigam Ltd. v UOI (WP No 183 of 2003)]

Composite Contract

Composite Contract

- It is possible that a contract may involve supply of goods as also provision of service
- Test for determination of nature of contract is laid down by SC in M/S. Hindustan Shipyard Ltd vs State Of Andhra Pradesh (2002) 119 STC 533 (SC)

“There may be three categories of contracts: (i) The contract may be for work to be done for remuneration and for supply of materials used in the execution of the work for a price; (ii) It may be a contract for work in which the use of the materials is accessory or incidental to the execution of the work; and (iii) It may be a contract for supply of goods where some work is required to be done as incidental to the sale. The first contract is a composite contract consisting of two contracts one of which is for the sale of goods and the other is for work and labour. The second is clearly a contract for work and labour not involving sale of goods. The third is a contract for sale where the goods are sold as chattels and the work done is merely incidental to the sale”

Composite Contract

- Buyer will have to determine true nature of contract and deduct TDS under applicable provisions on applicable proportion
- Controversy likely to arise in case where service and goods are part of composite supply and invoice/contract does not provide bifurcation
- Judgement will have to be applied and TDS will have to be deducted under appropriate provision

Point of TDS

Point of TDS

Point of TDS

- In line with other TDS provision and much unlike section 206C(1H) provides for TDS levy at the time of credit or payment whichever is earlier
- Compliance in line with accrual basis of accounting
- Possible to reconcile TDS and GST return as trigger point is aligned

TDS on Advance

- Trigger is payment by buyer of any sum for purchase of goods
- Buyer is defined in Sale of Goods Act 1930 to mean a person who buys or agrees to buy goods
- Wide enough to cover payment for purchase and agreement to purchase

Scope of 'any sum'

- TDS is to be deducted on sum paid for purchase of any goods exceeding specified value
- Should include constructive payments and thus receivable-payable set off will amount to payment[See J.B.Boda v CBDT [1997] 223 ITR 271 (SC)]
- Whether 'any sum' includes payment in kind [See Chief Accounts Officer v. ITO, (2014) 52 taxmann.com 453 (Bang Trib) (2015) 167 TTJ 390 (Bang) where it is held expression "any sum" which clearly indicates that it is only when payment is made in monetary terms that those provisions are attracted]

CBDT Circular

TDS on advance

It is requested to clarify if the provisions of section 194Q of the Act shall apply to advance payment made by the buyer. It is clarified that since the provisions apply on payment or credit whichever is earlier, the provisions of section 194Q of the Act shall apply to advance payment made by the buyer to the seller (para 4.6.1)

Open Issues:

- TDS credit in hands of seller will be in the year in which income is assessed to tax
- Borderline cases – Rs 50 L threshold not crossed at the time of advance

CBDT Circular

TDS on purchase return

Further, with respect to purchase return it is clarified that the 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 of the Act on that purchase. If that is the case and against this purchase return the money is refunded by the seller, then this tax deducted may be adjusted against the next purchase against the same seller. No adjustment is required if the purchase return is replaced by the goods by the seller as in that case the purchase on which tax was deducted under section 194Q of the Act has been completed with goods replaced (para 4.3.3)

CBDT Circular

Open Issues:

- Implication on issuance of debit note/credit note – consideration is adjusted not goods
- Reporting in TDS return if purchase and purchase return are in different months or different quaters
- What if commercially parties decide not to adjust tax on the belief other party will claim credit
- Price adjustment in case of quality dipute, delayed delivery and other diverse commercial reasons?

Buyer and turnover

Section extract

Definition of Buyer

buyer" means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein

Buyer and turnover

- Contrast with section 44AB
 - “Every person **carrying on business** shall, if his total sales, turnover or gross receipts, as the case may be, **in business** exceed or exceeds one crore rupees in any previous year”
- Whether casual receipt like income from sale of shares, immovable property etc to be factored?
- Whether newly incorporated company is required to comply with section 194Q?
- NR Buyer – whether required to comply with section 194Q
 - Section 204 – person responsible for paying in case of person not resident in India the person himself or any person authorized
 - See extract from SC decision in case of Vodafone 341 ITR 1 (next slide)

Extract from Vodafone decision

- Extract from Vodafone decision (minority view)

“A literal construction of the words "any person responsible for paying" as including non-residents would lead to absurd consequences. A reading of sections 191A, 194B, 194C, 194D, 194E, 194-I, 194J read with sections 115BBA, 194-I, 194J would show that the intention of the Parliament was first to apply section 195 only to the residents who have a tax presence in India. It is all the more so, since the person responsible has to comply with various statutory requirements such as compliance of sections 200(3), 203 and 203A.

The expression "any person", in our view, looking at the context in which Section 195 has been placed, would mean any person who is a resident in India”

CBDT Circular

CBDT clarification

It is requested to clarify if the provisions of section 194Q of the Act shall apply to a buyer being a non-resident. To remove difficulties, it is clarified that the provisions of section 194Q of the Act **shall not apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such non-resident in India.** For this purpose, “permanent establishment” shall mean to include a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Open Issues:

- Is Circular overstepping – PE in India governed by section 195 already?
- Impact of SEP not considered
- Document TRC, 10F as prerequisite to avail benefit of no PE exemption

CBDT Circular

Whether provisions of section 194Q of the Act shall apply to buyer in the year of incorporation?

It is requested to clarify if the provisions of section 194Q of the Act shall apply to a buyer in the year of its incorporation. It is clarified that under section 194Q of the Act a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding ten crore rupees during the financial year **immediately preceding the financial year in which the purchase of good is carried out. Since this condition would not be satisfied in the year of incorporation,** the provisions of section 194Q of the Act shall not apply in the year of incorporation. (para 4.7.1)

Open Points:

- Incorporation should not be read legally, Circular should apply to unincorporated entity

Threshold limit of Rs 50 L

Section 194Q

Any person, being a buyer who is responsible for paying any sum to any resident (hereafter in this section referred to as the seller) for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees 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 by any mode, whichever is earlier, deduct an amount equal to 0.1 per cent of such sum exceeding fifty lakh rupees as income-tax.

Threshold limit of Rs 50 L

- Law is applicable from 1 July 2021, for computing threshold of Rs 50,00,000 transaction undertaken from 1 April 2021 to 30 June 2021 needs to be factored [See Circular 17 of 2020]]
- TDS needs to be deducted for purchase of any goods of the value or aggregate of such value exceeding fifty lakh. Reference to 'for' and 'value' indicates TDS needs to be deducted on total price of good inclusive of freight, insurance and other charges levied on goods
- No TDS on discount account in invoice. However, no relief if discount is given subsequently (e.g. volume discount)
- TDS to be deducted only on amount exceeding Rs 50 L [e.g. Sale value Rs 51 L; TDS to be deducted only on Rs 1 L]
- Threshold needs to be computed for each vendor separately. Amongst respective vendor threshold needs to be computed at entity level irrespective of purchase at branch level
- Limit of Rs 50 L needs to be computed separately for each financial year for each vendor

CBDT Circular

Threshold calculation for FY 2021-22

Since section 194Q of the Act mandates buyer to deduct tax on credit of sum in the account of seller or on payment of such sum, **whichever earlier**, the provision of this sub-section shall not apply on any **sum credited or paid before 1st July 2021**. **If either of the two events had happened before 1 July 2021, that transaction would not be subjected to the provisions of section 194Q of the Act.**

Since the threshold of fifty lakh rupees is with respect to **the** previous year, calculation of sum for triggering TDS under section 194Q shall be computed from 1st April, 2021. Hence, if a person being buyer has already **credited or paid fifty lakh rupees or more up to 30th June 2021 to a seller**, the TDS under section 194Q shall apply on all credit or payment during the previous year, on or after 1st July 2021, to such seller.

(para 4.2.2)

CBDT Circular

Open Points

- Section 194Q uses words 'any pervious year' and Circular 'the previous year' supporting that threshold of Rs 50 lakhs needs to be calculated afresh for every year
- Reference to 'paid or credited' upto 30 June 21 to seller should be read with threshold of Rs 50 lakhs and hence payment of opening balance should be excluded
- Whether GST paid should be included in Rs 50 lakh threshold?

TDS on GST?

TDS on GST?

- Section 206C(1H)

“Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year”

- CBDT Circular 17 of 2020

“It is hereby clarified that no adjustment on account of sale return or discount or indirect taxes **including GST** is required to be made for collection of tax under sub-section (1H) of section 206C of the Act since the collection is made with reference to **receipt of amount of sale consideration**”

TDS on GST?

Section 194Q(1) extract

any person, being a buyer who is responsible for paying **any sum** to any resident.....at the time of credit of **such sum** to the account of the seller

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay **such income**, such credit of income shall be deemed to be the credit of **such income** to the account of the payee and the provisions of this section shall apply accordingly.

Reference material

- CIT v Rajasthan Urban Infrastructure [2013] 37 taxmann.com 154 (Rajasthan)
- Circular No 1/2014
- Circular No 23/2017

Rajasthan Urban Infrastructure

“The words, "any sum paid", used in Section 194J of the Act, relate to fees for professional services, or fees for technical services. As per the terms of agreement, the amount of service tax was to be paid separately and was not included in the fees for professional services or fees for technical services. In these circumstances, we are satisfied that the orders passed by the Appellate Authority as well as the Appellate Tribunal, are in accordance with the provisions of Section 194J of the Income Tax Act. The service tax was to be paid separately or not, is purely a question of fact and as per the agreement entered in the present case, it was to be paid separately and there is a finding of fact in this regard, recorded by the Appellate Authority as well as the Appellate Tribunal also”

Circular No 1/2014

“The matter has been examined afresh. In exercise of the powers conferred under section 119 of the Act, the Board has decided that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such service tax component.”

Circular No 23/2017

“The matter has been examined. It is noted that the Government has brought in force a new Goods and Services Tax regime with effect from 01.07.2017 replacing, amongst others, the Service Tax which was being charged prior to this date as per the provisions of Finance Act, 1994. **Therefore, there is a need to harmonize; the content of Circular No. 1/2014 of the Board with the new system for taxation of services under the GST regime.**”

. In the light of the fact that even under the new GST regime, the rationale of excluding the tax component from the purview of TDS remains valid, 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 XVII-B of the Act on the amount paid or payable without including such ‘GST on services’ component.** GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax

CBDT Circular

Accordingly with respect to TDS under section 194Q of the Act, it is clarified that when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of GST comprised in the amount payable to the seller is indicated separately, **tax shall be deducted under section 194Q of the Act on the amount credited without including such GST. However, if the tax is deducted on payment basis because the payment is earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identify that payment with GST component of the amount to be invoiced in future**

(para 4.3.2)

Exemption from section 194Q

Exemption from section 194Q

- Section 194Q applies to payment to Resident. Thus, import from non-resident is excluded
 - Provision of section 195 read with PE/SEP provision may apply
- Section 196 except TDS on payment made to:
 - Government
 - RBI
 - Mutual fund registered under section 10(23D)

where such sum is payable to it by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or **any other income accruing or arising to it.**

CBDT Circular

4.5. Whether tax is to be deducted when the **seller is a person whose income is exempt**

4.5.1 It is requested to clarify if the provisions of section 194Q of the Act shall apply to a **seller whose income is exempt**. To remove difficulty, it is clarified that the provisions of section 194Q of the Act shall not apply on purchase of goods from a person, **being a seller, who as a person is exempt** from income tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).

4.5.2 Similarly, with respect to sub-section (1H) of section 206C of the Act, it is clarified that the provisions of this sub-section shall not apply to sale of goods to a person, being a buyer, who as a person is exempt from income tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).

4.5.3. The above clarifications **would not apply if only part of the income of the person (being a seller or being a buyer, as the case may be) is exempt**.

CBDT Circular

Open Issues

- Is exemption given to:
 - Seller who as person is exempt from tax
 - Income of seller which is exempt from tax

Impact of purchase return

Purchase return

Purchase Return/Sale Return

- No TDS if Seller account is not credited in books of Buyer and since it is case of sales return, no payment will be made. Accordingly TDS not applicable to this case
- Issue will arise when Buyer deducts TDS and subsequently goods are returned
- View 1: TDS is applicable on purchase return
 - Language of section 194Q is materially different from section 206C(1H) which is triggered on receipt of consideration for sale of goods
 - Trigger point of TDS u/s 194Q is buyer who is responsible for paying any sum 'for' purchase of goods
 - 'For' is indicative of intention to Buyer. Since party account is credited with intention to buy goods, requirement of section 194Q is satisfied

Other implications

Purchase Return/Sale Return

- View 2: TDS is not applicable on purchase return
 - Section 4(2) permits TDS only in case where income is chargeable to tax. In case of sales return, there is no income chargeable to tax
 - Section 199 read with Rule 37BA permits credit of TDS only in year in which income is assessable. Since no income is assessable in hands of seller it cannot be credit for TDS
 - Expression 'for purchase' needs to be read in light of intention of law i.e. to capture transaction within tax net. If there is no transaction under law, TDS should not apply

Other implications

Purchase Return/Sale Return

- Practical considerations
 - TDS needs to be paid 7th of subsequent month. Sales return may be subsequent to payment of tax
 - Practical difficulty in adjustment of sales return in TDS return

Threshold of Rs 50,00,000

- Purchase Return will have implication on Rs 50 L threshold
- System flagging needs to be seen for border line cases where threshold may reduce below Rs 50L after purchase return

Interplay of TDS v/s TCS

TDS v/s TCS provision

एक कमरे में दो व्यवसायी, "भाई तू TDS काटेगा या में TCS लगा दू..." पर चर्चा कर रहे होंगे।



TDS v/s TCS provision

Particulars	TDS – section 194Q	TCS – section 206C(1H)
Nature	Tax Deducted at Source	Tax Collected at Source
Obligation on	Buyer	Seller
Obligation viz-a-viz turnover	Turnover etc. exceeds Rs. 10 cr. in preceding financials year	Turnover etc. exceeds Rs 10 cr. in preceding financials year
Transaction limit in previous year	Rs 50 lakhs or more	Rs 50 lakhs or more
Nature of Payment/Receipt	Any sum for purchase of goods	Consideration for sale of goods
Timing	Credit or payment, whichever is early	Receipt
Rate	0.1%	0.1%

TDS v/s TCS provision

Particulars	TDS – section 194Q	TCS – section 206C(1H)
Not Applicable	(i) If tax is deductible under any other provision (ii) If tax is collectible under any other provision except section 206C(1H)	(i) if tax is deducted by the buyer under any other provisions
Deductee/Collectee	Any person who is a resident i.e., seller	A person who purchases the goods but does not include Govt, etc, local authority or importer.

TDS v/s TCS provision

Particulars	TDS – section 194Q	TCS – section 206C(1H)
Exemptions	<ul style="list-style-type: none"> • Applies to payment to resident. By implication import payment to NR are out of the scope • Purchase from entities specified in section 196 exempt: <ul style="list-style-type: none"> • Government • RBI • Corporation established by or under Central Act which is exempt under Income Tax Act • Conversely, TDS on purchase by above agency is not exempt 	<ul style="list-style-type: none"> • Export of good out of India • Central Government, State Government, an embassy, High Commission, legation, consulate, trade representative of foreign State • A local authority as defined in Explanation to section 10(20) • A person importing goods into India

TDS v/s TCS provision

- Provision based on time period

Time Period	Provisions
Upto 31 March 2021	<ul style="list-style-type: none">• TCS provisions with 0.075% rate
1 April 2021 to 30 June 2020	<ul style="list-style-type: none">• TCS provision with 0.1% rate
1 July 2021 onwards	<ul style="list-style-type: none">• Both TDS and TCS provision simultaneously exist with 0.1% rate

Interplay of TDS with TCS

- Section 194Q(5)

“The provisions of this section shall not apply to a transaction on which tax is collectible under the provisions of section 206C **other than a transaction to which sub-section (1H) of section 206C applies**”

- Section 206C(1H)

“Provided further that the provisions of this sub-section shall not apply, if the buyer **is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.**”

- Extract from Memorandum to FB 2021

“

Interplay of TDS with TCS

- Extract from Memorandum to FB 2021

“This means, if on a transaction a TDS or tax collection at source (TCS) is required to be carried out under any other provision, then it would not be subjected to TDS under this section. There is one exception to this general rule. If on a transaction TCS is required under sub-section (1H) of section 206C as well as TDS under this section, then on that transaction only TDS under this section shall be carried out.”

Situation in which TCS is applicable

- **Situation in which only section 206C(1H) applies**
 - Turnover, sales or gross receipt in business (specified threshold) of Buyer in preceding previous year does not exceed Rs 10 crs irrespective of the turnover of previous year
 - Buyer is newly incorporated company
 - Seller specified threshold exceeds benchmark level and accordingly TCS applies

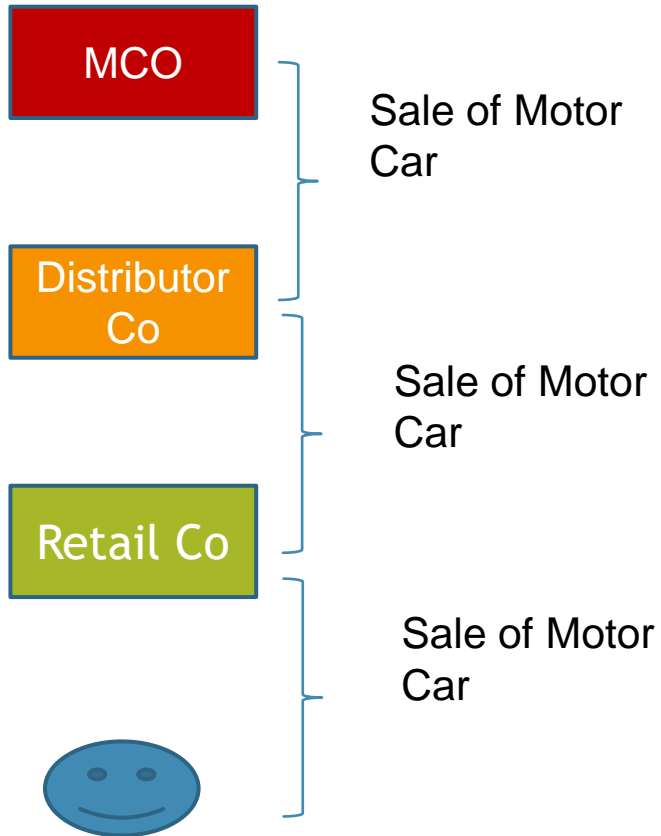
Situation in which TDS will apply

- **Situation in which only section 194Q applies**
 - Turnover, sales or gross receipt in business (specified threshold) of Seller in preceding previous year does not exceed Rs 10 crs irrespective of the turnover of previous year
 - Seller is newly incorporated company
 - Buyer has intimated vendor about his intention to deduct TDS

Possible overlap

- **Situation in which only section 194Q and section 206C(1H) simultaneously applies**
 - Both Buyer and Seller deducts/collects TDS/TCS conservatively being unaware about other person specified threshold
 - TCS is applicable on collection basis. Section 194Q is effective from 1 July 2021 and accordingly sale consideration received by seller (following cash basis) after 1 July 2021 in respect of sales made prior to 1 July 2021 will trigger TCS
 - Trigger for TDS is credit or payment whichever is earlier. In case of Buyer who has not credited seller but made payment after 1 July 2021 for purchase made prior to 30 June 2021 will deduct TDS
 - Buyer deducts TDS u/s 194Q in Year 1 as it meets specified threshold but seller does not meet specified threshold. In year 2 seller meets specified threshold and levies TCS on receipt basis

Interplay of TDS and TCS – motor car



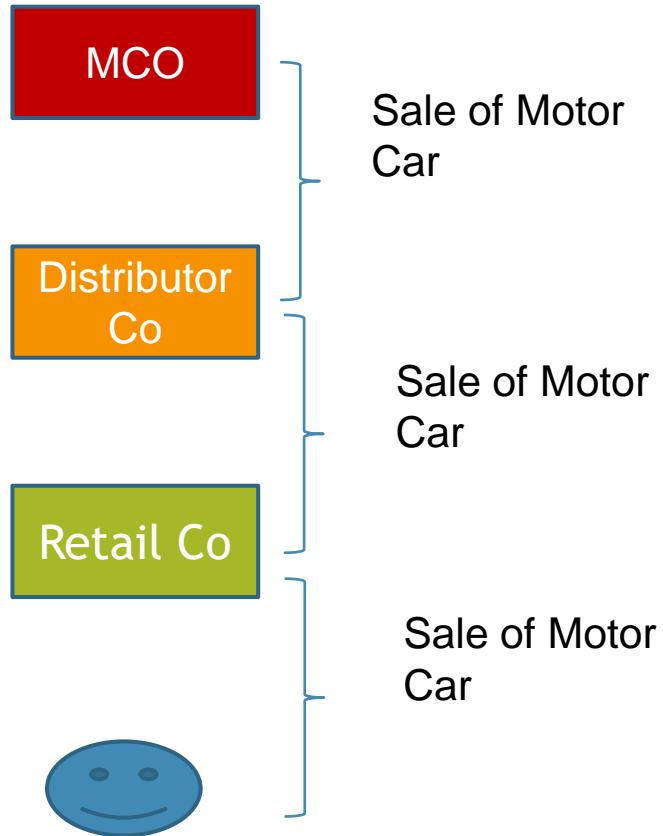
Facts:

- MCo is manufacturer of motor vehicles
- DCO is distributor company which purchases motor vehicle from MCO
- DCO sells to Retailer Co (RCO) which in turn sells to end user

Issue:

- Evaluate applicability of TDS/TCS provisions

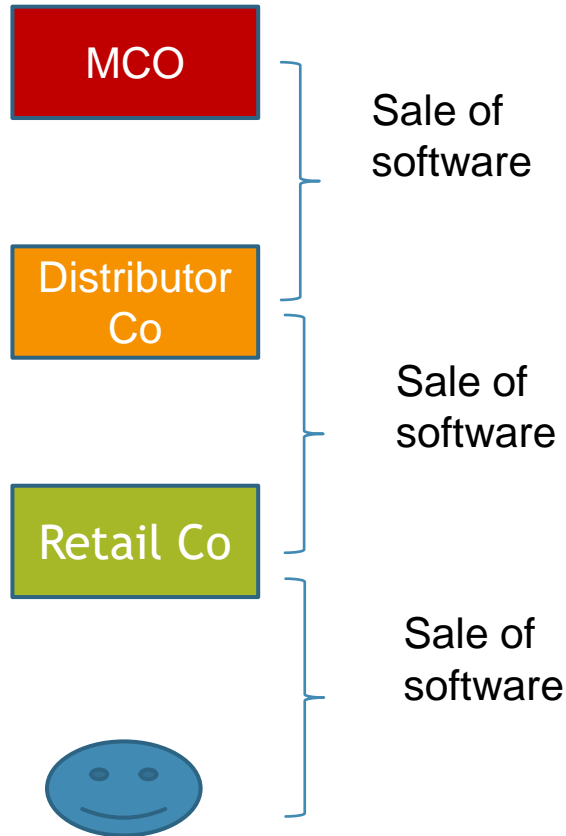
Interplay of TDS and TCS – motor car



Comments:

- CBDT Circular 22/2016 makes TCS applicable to sale of motor car at retail level and it will not apply to sale of motor car manufacturers to distributor/retail
- Thus, Retail Co will collect TCS
- Section 194Q is not applicable to tax collectible under section 206C
- Since no tax is collectible by MCO and DCO pursuant to Circular exemption, section 194Q will apply
- RCO to deduct tax on payment to Distributor Co;
Distributor Co to deduct tax on payment to MCO

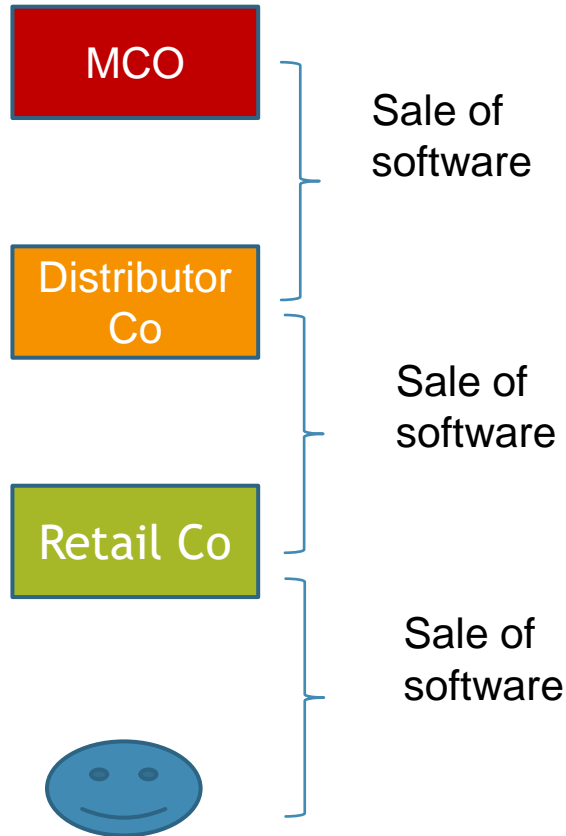
Interplay of TDS and TCS – Software



Notification No 12/2012

- No TDS under section 194J for acquisition of computer software by one resident from another:
 - The software is acquired in a subsequent transfer and the transferor has transferred the software without any modification,
 - Tax has been deducted under section 194J /195 on payment for any previous transfer of such software
 - the transferee obtains a declaration from the transferor that the tax has been deducted along with PAN

Interplay of TDS and TCS – Software



- Assuming Notification No 12/2012 is complied no TDS u/s 194J on payment by Retail Co to Distributor Co ; Distributor CO to MCO
- 194Q does not apply if tax is deductible under any of the provisions of the Act
- Since no tax is deductible on account of Notification No 12/2012, transaction will be subject to section 194Q

Practical challenges

- TDS and TCS is dependent upon other buyer and seller turnover in preceding previous year as also transaction value in current year
- Seller is not exonerated from TCS if buyer fails to deduct TDS
- TCS is on receipt basis and TDS is on accrual basis
- Transaction and business are dynamic and automated functioning in seamless manner
- Obtaining self declaration and mapping with system
- Reconciliation with Form 26AS to ensure that declaration are abided by other party

Overriding impact of section 206AB read with section 206CCA increasing withholding rate to 5%

CBDT Circular

4.9. Cross application of section 194-O, sub-section (1H) of section 206C

If a transaction is both within the purview of section 194-Q of the Act as well as sub-section (1H) of section 206C of the Act, the tax is required to be deducted under section 194-Q of the Act. The transaction shall come out of the purview of sub-section (1H) of section 206C of the Act after tax has been deducted by the buyer on that transaction. Once the buyer has deducted the tax on a transaction, the seller is not required to collect the tax under sub-section (1H) of section 206C of the Act on the same transaction. **However, if, for any reason, tax has been collected by the seller under sub-section (1H) of section 206C of the Act, before the buyer could deduct tax under section 194-Q of the Act on the same transaction, such transaction would not be subjected to tax deduction again by the buyer. This concession is provided to remove difficulty, since tax rate of deduction and collection are same in section 194Q and sub-section (1H) of section 206C of the Act.**

CBDT Circular

Open Issues

- No impact on threshold of Rs 50 lakhs
- Circular states:
 - “However, if, for any reason, tax has been collected by the seller under sub-section (1H) of section 206C of the Act, **before the buyer could deduct tax** under section 194-Q”
- Reference to ‘Before’ – is it intending to cover oversight TCS levy or Buyer/seller can mutually decide who will levy what
- Reporting in TDS return?
- Exemption should be taken to logical end – no section 40(a) disallowance or holding buyer as AID

Credit of TDS

Credit of TDS

TDS Credit for tax deducted u/s 194Q

- Section 198 deems TDS as income of assessee
- Rule 37BA provides credit shall be given for assessment year in which income is assessable
- Since Buyer will deduct tax on credit or payment whichever is earlier which may not be in sync with year in which seller will offer said income to tax robust reconciliation will be required to be maintained for claiming tax credit
- Tax credit pertaining to stock in trade or goods which take substantial period of time to complete will need to be deferred or where income is offered at the time of passing of title to buyer in accordance with Ind AS 115 read with ICDS

Tax Audit - Clause 34(a)

Tax Audit reporting

34(a) Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes please furnish:

Tax deduction and collection account number (TAN)	Section	Nature of payment	Total amount of payment or receipt of the nature specified in column (3)	Total amount on which tax was required to be deducted or collected out of (4)	Total amount on which tax was deducted or collected at specified rate out of (5)	Amount of tax deducted or collected out of (6)	Total amount on which tax was deducted or collected at less than specified rate out of (7)	Amount of tax deducted or collected on (8)	Amount of tax deducted or collected to the credit of the Central Government out of (6) and (8)
1	2	3	4	5	6	7	8	9	10

Tax Audit reporting

Extract from Guidance note on tax audit under section 44AB

“In column (4), the auditor is required to furnish the details of the total amount of payment or receipt of the nature specified in column (3). The details in the said column may be drawn from the TDS/TCS statements furnished by the assessee to the Department along with the books of accounts and other relevant documents which **include aggregate of payments on which tax is liable to be deducted as well as not liable to be deducted. Auditor may maintain working paper giving reconciliation of amount as per books of accounts and amount on which is TDS/TCS is required to be deducted/collected**

Tax Audit reporting

Extract from Guidance note on tax audit under section 44AB

“The tax auditor is required to verify that **no items have been omitted in the information furnished to him and reasonable test checks would reveal whether or not the information furnished is correct.** The extent of check undertaken would have to be indicated by the tax auditor in his working papers and audit notes”

TDS on non filers of ITR

Rationale in FB

Explanatory Memorandum

“Section 206AA of the Act provides for higher rate of TDS for non-furnishing of PAN.

Similarly section 206CC of the Act provides for higher rate of TCS for non-furnishing

of PAN. It is seen that while these provisions have served their purpose in ensuring

obtaining and furnishing of PAN by various person, there is need to have similar

provisions to ensure filing of return of income by those person who have suffered a

reasonable amount of TDS/TCS”

Section 206AB

- TDS to be deducted on payment/credit of any amount to specified person at higher of following rates:
 - Twice of rate specified in relevant provision of the Act
 - Twice the rate or rates in force
 - At the rate of 5%
- **In a case where section 206AA applies, tax will be deducted at higher of rate provided in section 206AA or section 206AB**

Section 206AB

- Specified person means:
 - a person who has not filed ROI for both the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted for which the time limit of filing of filing ROI under section 139(1) has expired and
 - Aggregate tax collected and deducted at source in his case is Rs 50,000 in each of the two years
- Non resident who does not have PE is excluded from definition of specified person

Scope of provision - exclusion

- Payments which fall within following provisions are excluded:

Section	Payment
192	Salary
192A	Payment of accumulated balance due to employee
194B	Winning from lottery or crossword puzzle
194BB	Winning from horse race
194LBC	Income in respect of investment in securitization trust
194N	Cash withdrawal

- Section 206AA will still apply

Impact analysis

- Aggregate TDS or TCS is Rs 50,000 or more in each of the two previous year
 - Exemption threshold linked with TDS/TCS and not with base amount paid
 - TDS/TCS deducted under various sections in preceding year needs to be seen cumulatively
 - Reference to aggregate TDS/TCS of Rs 50,000 or more in 'his case' creates interpretation ambiguity
 - View 1: Whether deductor needs to see aggregate TDS/TCS deducted by all parties on payment to payee
 - View 2: Whether deductor needs to see aggregate TDS/TCS deducted by payer himself

206AB Compliance utility

- To ease this compliance burden the CBDT has issued a new functionality "Compliance Check for Sections 206AB & 206CCA". This functionality is already functioning through reporting portal of the Income-tax Department (<https://report.insight.gov.in>)
- Bulk PAN verification option possible
- Step by Step guidance provided
- Utility provides information of PAN validation, Aadhar linking status and section 206AB compliance

Step in right direction – end of section 206AB declaration which were widely circulated prior to introduction of compliance utility

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Likely issues

- Applicability of provision to NR who has PE in India
- Newly incorporated company
- NR is excluded unless it has PE in India
 - Widening tax net in terms of SEP provisions
 - Practical difficulty in obtaining TRC, Form 10F etc
- Gross up tax arrangement
- Applicability of cess and surcharge on section 206AB rate

Scope of provision

- Payment to following cases will be covered:

Section	Payment
193	Interest on securities
194	Dividend income
194A	Interest from Bank and others
194C	Payment to contractors
194D	Insurance commission
194DA	Payment in respect of life insurance policy
194EE	Payment in respect of deposit under National Saving Scheme
194F	Payment on account of re-purchase of units by Mutual Fund or Unit Trust of India
194G	Commission on sale of Lottery tickets

Scope of provision

- Payment to following cases will be covered:

Section	Payment
194H	Commission or brokerage
194I	Rent
194IA	Payment on transfer of immoveable property
194IB	Payment of rent by individual or HUF
194IC	Payment under specified agreement (redevelopment of society)
194J	Fees for professional or technical services
194K	Income in respect of units by mutual fund
194LA	Payment of compensation on acquisition of certain immoveable property

Scope of provision

- Payment to following cases will be covered:

Section	Payment
194LBA	Income from units of Business Trust
194LBB	Income from units of Investment fund
194LBC	Income in respect of investment in securitisation trust
194M	Payment by Individual and HUF (professional services, contract, commission brokerage)
194-O	Payment to e-commerce operator to e-commerce participant
194Q	TDS on purchase of goods
194P	TDS on specified senior citizen

Concluding thoughts

Concluding Thoughts

- Unprecedented procedural burden obtaining declaration, building system and post transaction compliance
- Monthly TDS computation, TDS return and associated compliances
- Consequences of non- deduction
 - Disallowance of 30% of expenses
 - AID under section 201
 - Interest under section 201(1A)
 - Prosecution
- Income Tax scrutiny
 - Reconciliation of TDS appearing with Form 26AS with books of account
 - Reconciliation of TDS appearing with GST turnover
- Lastly - CA is required to certify clause 34(a) to certify that taxes are deducted correctly

Thank You

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