



CBDT issues guidelines on 194Q

To cater to queries and difficulties being faced in implementing the provisions of 194Q and Section 206(1H), CBDT issued detailed guidelines vide Circular 13. 194Q is applicable w.e.f. July 1, 2021 on buyer responsible for paying sum, for withholding tax compliance of 0.1% provided such sum exceeds INR 50 lacs. The guidelines issued are reproduced hereunder for ready reference:

Applicability on transactions through Exchanges

194Q shall not be applicable in relation to:

- transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges, or recognized clearing corporation located in IFSC;
- transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC;

Threshold for FY 2021-22

- Since 194Q mandates buyer to deduct tax on credit of sum in account of seller or on payment of such sum, whichever is earlier, the provision of

this sub-section shall not apply on any sum credited or paid before July 1, 2021. If either of the two events had happened before July 1, 2021, that transaction would not be subjected to the provisions of 194Q

- Since threshold of INR 50 lacs is with respect to PY, calculation of sum for triggering TDS shall be computed from April 1, 2021. Hence, if a person being buyer has already credited or paid INR 50 lacs or more up to June 30, 2021 to a seller, TDS shall apply on all credit or payment during PY, on or after July 1, 2021, to such seller.

Adjustment for GST, purchase returns

- When tax is deducted at time of credit of amount in 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 194Q on the amount credited without including such GST. However, if tax is deducted on payment basis because payment is earlier than credit, 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.

- Further, with respect to purchase return it is clarified that tax is required to be deducted at time of payment or credit, whichever is earlier. Thus, before purchase return happens, tax must have already been deducted under 194Q 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 194Q has been completed with goods replaced.

Applicability non-resident buyer

Provisions of 194Q shall not apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with PE of such non-resident in India.

Withholding on seller having exempt income

Provisions of 194Q shall not apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.). Similarly clarification to be applicable to Section 206(1H).

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.

Withholding on advance payment

194Q shall apply to advance payment made by the buyer.

Applicability to buyer in year of incorporation

Under 194Q a buyer is required to have total sales or gross receipts or turnover from the business carried

on by him exceeding INR 10 crores during FY immediately preceding FY in which purchase of good is carried out. Since this condition would not be satisfied in the year of incorporation, 194Q shall not apply in the year of incorporation.

Applicability to buyer if the turnover from business is 10 crore or less

A buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding INR 10 crores during FY immediately preceding FY in which the purchase of good is carried out. Hence, the sales or gross receipts or turnover from business carried on by him must exceed INR 10 crores. His turnover or receipts from non-business activity is not to be counted for this purpose.

Cross application of section 194-O, sub-section (1H) of section 206C and section 194Q

Under sub-section (3) of section 194-O, a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), shall not be liable to tax deduction at source under any other provision of chapter XVII.

Under second proviso to sub-section (1H) of section 206C, provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provisions of this Act on the goods purchased by him from the seller and has deducted such tax.

Under sub-section (5) of 194Q, the provision of this section shall not apply to a transaction on which:

- tax is deductible under any of the provisions and
- tax is collectible under the provisions of section 206C, other than a transaction on which sub-section (1H) of section 206C applies

After conjoint reading of all these provisions the following is clarified:

- If tax has been deducted by e-commerce operator on a transaction under section 194-O [including transactions on which tax is not deducted on account of sub-section (2) of section 194-O], that transaction shall not be subjected to tax deduction under 194Q.
- Though sub-section (1H) of section 206C provides exemption from TCS if buyer has deducted tax at source on goods purchased by him, to remove difficulties it is clarified that this exemption would also cover a situation where instead of the buyer, the e-commerce operator has deducted tax at source on that transaction of sale of goods by seller to buyer through e-commerce operator.
- If a transaction is both within the purview of section 194-O as well as 194Q, tax is required to be deducted under section 194-O and not under 194Q.
- Similarly, if a transaction is both within the purview of section 194-O as well as sub-section (1 H) of section 206C, tax is required to be deducted under section 194-O. The transaction shall come out of the purview of subsection (1H) of section 206C after tax has been deducted by the e-commerce operator on that transaction. Once the e-commerce operator has deducted the tax on a transaction, the seller is not required to collect the tax under sub-section (1H) of section 206C on the same transaction. It is clarified that here primary responsibility is on e-commerce operator to deduct tax under section 194-O and that responsibility cannot be condoned if the seller has collected the tax under sub-section (1H) of section 206C. This is for the reason that the rate of TDS under section 194-O is higher than

rate of TCS under sub-section (1H) of section 206C of the Act.

- If a transaction is both within the purview of section 194-Q as well as sub-section (1H) of section 206C, the tax is required to be deducted under section 194-Q. The transaction shall come out of the purview of sub-section (1 H) of section 206C 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 on the same transaction. However, if, for any reason, tax has been collected by the seller under sub-section (1H) of section 206C, before the buyer could deduct tax under section 194-Q 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 194Q and subsection (IH) of section 206C of the Act.

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