

**K C Mehta & Co.**

Chartered Accountants



# *kcm*Guide

Corporate Tax

## Tax Deduction at Source (TDS) on Purchase of Goods

FAQs on section 194Q  
Recent Amendments

## Background & Coverage

### Tax Deduction at Source (TDS) on Purchase of Goods – Recent Amendments

Our readers would recollect that Finance Act 2020 had introduced provision relating to Tax Collection at Source (TCS) on sale of goods u/s 206C(1H) with effect from October 1, 2020, to widen the tax net. The said section was introduced to collect TCS at the rate of 0.1% of the amount of consideration at the time of receipt of consideration for 'sale of goods' exceeding INR 50 lakh by a seller from the buyer, subject to prescribed conditions.

Finance Act 2021 has now introduced a new section, viz. Section 194Q which casts an obligation on a buyer of goods to deduct tax at source in respect of goods purchased from sellers.

An interplay of the above sections could pose practical challenges for parties responsible for deducting tax, especially with possibilities of overlap between the TDS and TCS provisions. Accordingly, it becomes important to understand the basics of the newly inserted provisions as also understand the application of the same in various situations.

To help you to understand various nuances of the new provisions as well as interplay of various sections stated above, we have tried to analyse the same in form of FAQs.

**1. When does section 194Q come into effect?**

The provision is applicable with effect from July 01, 2021.

**2. Who is required to deduct tax on purchase of goods?**

Every person, being a buyer of goods, is required to deduct tax at source from payment made / to be made to the seller in a financial year, if total sales, turnover or gross receipts from the business carried on by such buyer in the immediately preceding financial year is more than Rs. 10 Crore.

In case of any doubt regarding calculation of the value of sales, turnover or gross receipts, one can resort to Guidance Note of ICAI on Tax Audit in view of identical language appearing in section 44AB(a).

**3. Whose tax is required to be deducted at source?**

Tax is required to be deducted from value of goods purchased from a "seller" of goods in a financial year when the value of purchases from such seller exceeds Rs. 50 lakhs in financial year.

**4. What is the applicable rate of TDS?**

Tax is required to be deducted at source @ 0.1%.

However, if the seller of goods does not provide Permanent Account Number (PAN) / Aadhar Number, tax is required to be deducted @ 5% u/s 206AA.

Further, while seller of goods has obtained PAN or Aadhar Number but he has not filed income tax returns for last two immediately preceding years for which due date to furnish return of income u/s 139(1) is expired and the amount of TDS & TCS in his account is Rs. 50,000 or more in each of such two years, in such case too, tax is required to be deducted @ 5% u/s 206AB.

**5. At what point in time is tax required to be deducted at source?**

Tax is required to be deducted at the time of credit to the account of vendor / seller of goods or at the time of payment, whichever is earlier.

**6. On what amount is tax required to be deducted at source?**

Tax is required to be deducted on the amount of consideration exceeding Rs. 50 Lakh. It means that there shall not be any TDS obligation until transaction value from a particular seller exceeds Rs. 50 lakhs in a Financial Year.

**7. When is TDS to be deposited with Government?**

As per Rule 30, except for the month of March, TDS is required to be deposited within 7 days from the end of the month in which tax is deducted at source. In case where tax is deducted in month of March, the same is required to be deposited with government by 30th April of next financial year.

**8. Which type of transactions do not attract TDS provisions u/s 194Q?**

TDS provisions are not applicable to following transactions:

- Import (where goods are imported into India) of goods from outside India
- Goods purchased from non-resident persons  
[In above two cases, one may need to evaluate the applicability of TDS u/s 195]
- Transactions on which tax is deducted at source under any other provisions of the Act [e.g. in case of work contract where buyer of goods is liable to deduct tax at source u/s.194C]

- Transaction of purchase of goods when same are subjected to TCS under any provision of section 206C other than section 206C(1H) [e.g. Sale of Scrap which is liable to TCS u/s.206C(1)]
- If a seller of goods is Central Government or State Government or an Embassy, High Commission, Legation, Commission, Consulate and Trade representation of foreign state or local authority as referred to in section 10(20) of the Act
- If seller of goods is person specified in section 196 of the Act being Central Government, State Government, Reserve bank of India, corporations established by Central Act which are exempt from income tax on its income and Mutual Funds as covered by section 10(23D) of the Act.
- Any other person as the Central Government may notify (no such notification has been issued as on date).

## 9. What are the compliances to be undertaken by buyer?

A buyer is required to undertake the following compliances:

- Filing of Quarterly TDS Statements in form No.26Q

Quarter ended	To be Filed by
June	31 <sup>st</sup> July
September	31 <sup>st</sup> October
December	31 <sup>st</sup> January
March	31 <sup>st</sup> May

- Issuance of TDS certificate

Certificate of TDS is required to be issued by buyer to a seller in Form No.16A within 15 days from the due date of filing TDS return as mentioned above.

## 10. Is there any reporting requirement if a transaction of purchase of goods is not liable to TDS by virtue of section 194Q(5)? ?

CBDT vide Notification dated June 8, 2021 has amended Rule 31A(4) whereby it has inserted clause (xvi) which mandates every deductor to furnish, in Form 26Q, the details of transactions of purchase of goods on which tax is not deducted u/s 194Q in view of exception provided in section 194Q(5) i.e. where TDS / TCS is made under any other provision of the Act.

Therefore, in respect of transaction of purchase of goods where tax is not deducted since the same is subject to TDS under any other section, the deductor shall separately furnish details of such transaction in Form 26Q though the same would amount to reporting of same transaction twice. For. e.g. when tax is deducted u/s 194C in respect of purchase of goods under composite work contract and reported in Form 26Q, the buyer shall also be required to report such transaction in view of amended provisions of Rule 31A of Income tax Rules, 1962.

## 11. Who is entitled to claim credit of TDS and in which year?

A seller (from whose account tax has been deducted at source) is entitled to claim credit of TDS. Such TDS credit shall be allowed in the financial year in which income corresponding to such TDS is assessable. Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.



- 12. Whether a seller of goods can apply for lower / non-deduction certificate from tax authorities?**

The provisions of section 197 empower the assessing officer to grant certificate to the recipient of income for non-deduction / deduction at a rate lower than specified rate of TDS. However, such provision is yet not made applicable to TDS on purchase of goods under section 194Q. Hence, the seller of goods would not be eligible for such benefit.

- 13. While computing the threshold of Rs. 50 Lakh for FY 2021-22, whether the transactions carried out between April 2021- June 2021 are to be included?**

Though the TDS provision on purchase of goods is operative with effect from July 01, 2021, the provision casts an obligation to deduct tax at source when the total purchase during the previous year exceeds by Rs. 50 Lakhs. Accordingly, in our view, transactions of purchase of goods that have taken place during April 2021 to June 2021 is required to be included while computing the threshold of Rs. 50 Lakh.

- 14. Whether the threshold of Rs. 50 Lakh is to be tested for all the sellers cumulatively or is it an individual limit applicable to each seller?**

The threshold of Rs. 50 Lakh is applicable for each individual seller.

- 15. I have newly set up my business in April 2021. Whether TDS will apply in my case if turnover during the current year is likely to exceed by Rs. 10 crore?**

TDS is applicable to a buyer only if receipts, sales or turnover from business in immediately preceding year has exceeded Rs. 10 crore. In case of businesses newly set up in April 2021, the sales, turnover or receipts in immediately preceding year is not available and hence it should be considered as Nil. Hence, in such case, buyer should not be required to deduct tax in FY 21-22.

- 16. Whether tax is to be deducted in respect of consideration paid on or after July 1, 2021, in respect of purchase of goods made during April 2021- June 2021?**

Considering that the TDS provisions are effective only from July 01, 2021, in our view, the provisions should apply only in respect of transaction of purchase effected on or after July 01, 2021, and accordingly, since the purchase was made prior to July 01, 2021, such transaction should not be subject to TDS.

However, such consideration is required to be included while computing the threshold of Rs. 50 Lakh for a seller.

- 17. The buyer has paid an advance prior to July 01, 2021 and purchase against the said advance will be recognized on or after July 01, 2021. Whether TDS is applicable on such sale?**

Unlike provisions of TCS on sale of goods u/s 206C(1H) which are applicable on receipt of consideration, the provisions of section 194Q which become effective from July 1, 2021, cast an obligation to deduct tax at source at the time of payment or credit whichever is

earlier. Since the event triggering liability to deduct tax (i.e., time of payment of advance) has taken place before July 01, 2021, in our view, ideally, transaction of purchase of goods recognized against such advance on or after July 1, 2021 shall not be subject to TDS. To this effect, the clarification provided by the Government in context of TCS provisions should not apply while interpreting section 194Q. However, pending any such clarification, a taxpayer may decide to deduct tax on a conservative basis, especially considering the negligible rate of TDS @ 0.1% for which credit would be available to the payee.

**18. Whether advance paid by the buyer should be considered in computing threshold of Rs. 50 lakhs?**

The provisions of section 194Q require deduction of tax at source when the value of purchase of goods exceeds Rs. 50 lakhs in the Financial Year. The payment of advance by the buyer against purchase of goods cannot be considered as a transaction of purchase of goods. Hence, any advance paid during the year should not be considered while computing the threshold of Rs. 50 lakhs. However, the buyer shall be required to deduct TDS on such advance if the same exceeds Rs. 50 lakhs.

**19. Whether TDS provisions apply on advance paid on or after July 01, 2021 where no purchase has been recognised during the financial year 2021-22 against such advance?**

Tax is required to be deducted by a buyer at the time of payment or credit whichever is earlier. Since the buyer has paid the

advance for purchase of goods on or after July 01, 2021 but prior to the event of purchase of goods, the buyer is mandatorily required to deduct tax at source on such advance paid at the time of making payment.

**20. Whether TDS provisions apply while importing goods from a non-resident?**

The transactions of import of goods from a person who is non-resident are not subject to TDS u/s 194Q of the Act. However, TDS under Section 195 or payment of Equalisation Levy may be required in respect of such transactions, and one needs to evaluate the same.

**21. Whether TDS provisions apply in transaction of purchase of goods from non-resident having Permanent Establishment in India?**

Though purchases have been made from a non-resident having Permanent Establishment in India, the same would not be subject to TDS u/s 194Q as section 194Q covers only resident sellers. However, the TDS under Section 195 may be required in respect of such transactions, and one needs to evaluate the same.

## 22. Whether tax is required to be deducted on GST component included in purchase consideration?

There are arguments both in favour and against applicability of TDS on GST component.

CBDT while issuing clarification in context of section 206C(1H), has stated that since levy of TCS is on receipt of sales 'consideration' there should not be any adjustment on account of any indirect taxes. In case of section 194Q, tax is required to be deducted on sum payable to resident being value for purchase of goods and hence, one may take a view that TDS should not be applied on GST component included in value of invoice.

Further, CBDT Circular 23 of 2017 dated July 19, 2017 provides that wherever in terms of agreement or contract between payer and payee, the component of GST on Services comprised in the amount payable to 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. Applying same analogy in respect of transaction of purchase of goods, no TDS shall apply on GST component levied on purchase of goods.

One may however, possibly argue that the application of such Circular was limited to GST on Services and the same should not apply for purchase of goods. Further, CBDT's clarification for TCS may equally apply for 194Q as well. It would be important to note that section 194Q is the first provision which has levied TDS on purchase of goods whereas before introduction of the said section, earlier there were provisions for TDS in context of services only. In absence of specific clarity from CBDT, in our view, it is advisable to

deduct TDS on GST component too till the time necessary clarification is issued by CBDT in this regard.

## 23. Does TDS apply when part of the payment is made in cash/cheque and the balance is made through Journal Voucher adjustment?

TDS is not dependent on mode of payment. Once the aggregate value of purchase (either in cash or in kind) during the year exceeds Rs. 50 Lakh, TDS is applicable.

## 24. Whether a transaction of purchase of goods involving barter or where consideration is paid by way of passing journal voucher (e.g. by adjusting receivables against payable with same party or other party) attracts TDS?

If consideration is not paid in cash / cheque / electronic mode but same is paid by way of either barter or by way of an adjustment of payables against already existing receivables or third party adjustment if approved by the seller, tax is required to be deducted at the time of passing of book entry since such book entry amounts to discharge of consideration by the buyer.

## 25. What would be the impact of purchase return, debit note and credit note while deducting tax at source?

TDS is applicable at the time of payment or credit for purchase of goods, whichever is earlier and therefore buyer is required to deduct TDS on value of goods purchased. However, if any purchase return or debit note is booked against any earlier purchase of goods, buyer cannot reverse its TDS liability to the extent of tax already deducted by the buyer against such purchase of goods. In such case, there is no option but the seller has to claim credit of such TDS in tax return in absence of any provision relating to refund of TDS by buyer.

- 26. Whether TDS u/s 194Q is attracted where a transaction of purchase of goods is also ideally subject to TCS in the hands of seller under section 206C(1H)?**

The second proviso to sub-section (1H) of Section 206C provides that when any transaction is subject to TDS under any section give under Chapter XVII-B of the Act and such tax has been deducted, there should not be any tax collection at source by the seller of goods on such transaction u/s 206C(1H) of the Act. Thus, the provisions of section 194Q overrides the provisions of section 206C(1H). A similar provision has been inserted in section 194Q whereby a transaction of purchase or sale of goods getting covered by both section 194Q and section 206C(1H) would ideally tie-break in favour of section 194Q. Hence, when buyer is liable to deduct TDS u/s 194Q and he has actually deducted tax, the seller is not required to collect TCS u/s 206C(1H) of the Act.

- 27. Whether TDS u/s 194Q is attracted where a transaction of purchase of goods is also subject to TCS in the hands of seller under any sub-section of section 206C but not under sub-section 206C(1H)?**

The provisions of section 206C [except sub-section (1H) relating to TCS on sale of goods] overrides the provisions of section 194Q. Hence, when seller is liable to collect TCS under any sub-section of section 206C [except under sub-section (1H) relating to TCS on sale of goods], the buyer is not liable to deduct TDS u/s 194Q. For e.g. In case of transaction of sale of scrap, if seller is liable to collect TCS u/s 206C, no tax shall require to be deducted u/s 194Q by the buyer.

- 28. Where seller of scrap is liable to collect tax u/s 206C, however, he fails to do the same, whether such failure of seller makes buyer liable to deduct TDS u/s 194Q, assuming other conditions given u/s 194Q are met by the buyer?**

The provisions of section 194Q does not apply when tax is collectible at source by the seller under section 206C [except sub-section (1H) of section 206C] irrespective of fact whether or not seller actually collects tax at source or after collection, deposits the same with the government.

- 29. In a case where buyer of goods is liable to deduct tax at source u/s 194Q but fails to do the same, whether seller of goods is liable to collect tax at source on same u/s 206C(1H)?**

The seller of goods shall not be required to collect tax at source u/s 206C(1H) only when buyer is liable to deduct TDS and the buyer has in fact deducted the same. In case buyer fails to deduct tax u/s 194Q though liable to deduct, the seller in such case is required to collect tax at source u/s 206C(1H) of the Act.

- 30. In a case where buyer of the goods is liable to deduct tax at source u/s 194Q and deducts the same but fails to do deposit with government, whether seller of goods is liable to collect tax at source on same u/s 206C(1H)?**

The seller is not required to collect tax at source if the buyer has deducted tax at source on purchase of goods u/s 194Q of the Act. Once tax has been deducted, TCS is not applicable. It is not material whether the buyer has remitted such TDS to the government or not.



**31. Does purchase of software attract TDS provision u/s 194Q?**

In case of purchase of software, the consideration paid is ideally regarded in nature of Royalty u/s 194J read with section 9(1)(vi) of the Act. Hence, the same would attract TDS u/s 194J of the Act. Therefore, while the software can be regarded as goods, considering the exception provided in section 194Q(5), there shall not be any requirement to make TDS u/s 194Q.

Further, if the buyer has not deducted tax at source u/s.194J in view of CBDT Notification No.21 of 2012 [on account of declaration provided by seller that tax has already been deducted u/s.194J / 195 on the first sale], in our view, TDS u/s 194Q would apply since tax is not deductible u/s 194J. While there is possible view for non-applicability of TDS u/s 194Q since transaction is prime facie subject to TDS u/s 194J but no deduction is made basis declaration as permitted in section 194J, it may entail litigation.

**32. Whether TDS provisions apply on purchase of immovable property?**

Immovable property cannot be regarded as "goods" considering various judicial pronouncements under the Act. Further, tax is required to be deducted at source u/s.194-IA on consideration for transfer of immovable property. Accordingly, TDS u/s 194Q should not be applicable to such transaction.

**33. Whether transaction of purchase of shares and securities attract TDS u/s 194Q?**

The term 'goods' have not been defined u/s 194Q, however, considering the definition provided in the Sale of Goods Act 1930,

the term 'goods' includes shares, stock and securities. Hence, prima facie the provisions of section 194Q would apply to same.

However, in context of TCS on sale of goods u/s 206C(1H), Vide CBDT Circular No. 17 of 2020 whereby it has excluded the transaction of sale of share and securities which have taken place through recognized stock exchanges from ambit of section 206C(1H). Applying the rationale behind such clarification, it is expected that the CBDT may allow a similar exemption from TDS under section 194Q as well.

**34. Whether a buyer is required to deduct tax at source on interest paid for delayed payments?**

If the buyer of the goods has deducted tax u/s 194A of the Act, there is no requirement to deduct TDS u/s 194Q. However, if no such deduction is made, a conservative view can be taken that the interest partakes the character of purchase consideration and hence, tax is required to be deducted at source u/s 194Q.

**35. Under the Act, if a buyer of scrap has furnished a declaration in Form 27C to the effect that such scrap is to be utilized for manufacturing or further processing then a seller is not required to collect tax at source. Whether TDS u/s. 194Q in the hands of buyer shall apply in such case?**

It has been provided that when tax is collectible under section 206C [Except section 206C(1H)], there should not be any deduction u/s 194Q by the buyer. However where TCS u/s 206C(1) is not made due to declaration provided by the buyer in Form 27C, the buyer of the goods shall require to deduct at source u/s 194Q of the Act.

Also, if such items are not subject to provision of section 206C(1) by virtue of not being regarded as "Scrap" as defined in section 206C, TDS on purchase of goods in the hands of buyer should be applicable.

**36. Whether purchase of goods includes purchase of capital assets / fixed assets?**

The provisions of section 194Q applies to all type of goods. The term goods have not been defined in said section. However, considering definition provided under other Acts like the Sale of Goods Act 1930 and the Central Goods and Service Tax Act 2017, purchase of goods which are in nature of capital assets or fixed assets would also get covered under ambit of section 194Q.

**37. In case of composite supply of goods and services e.g. EPC contract, whether TDS is applicable on supply of goods included therein?**

In case of composite contract, if a buyer has deducted tax at source under any other provision of the Act on the value of composite contract which includes supply of goods (like u/s 194C), TDS u/s 194Q shall not be applicable to buyer on purchase of such goods. However, if no tax is deducted at source on the component of supply of goods under any other section, a buyer is required to deduct TDS on value which is represented by purchase of goods.

**38. Whether a refundable advance given in performance of contract of purchase of goods attracts TDS u/s 194Q?**

In our view, refundable advances paid by buyer of goods are considered as in nature of deposit rather than consideration for purchase of goods in advance and hence, buyer is not required to deduct TDS on this transaction.

**39. Whether purchase of motor vehicle from dealers / distributors attracts TDS u/s section 194Q of the Act?**

The provisions of section 194Q explicitly provides that when transaction is subject to TCS u/s 206C [other than under sub-section (1H)], the provisions of section 194Q shall not apply. Hence, the seller of motor vehicles shall have to collect TCS u/s 206C(1F) of the Act. Therefore, sale of motor vehicle for the value exceeding Rs. 10,00,000 as referred to in section 206C(1F) is not subject to TDS u/s 194Q.

Technically, TDS u/s. 194Q on purchase of motor vehicle should be applicable when vehicle is having value up to Rs. 10,00,000 and if other conditions are fulfilled.

**40. Whether various charges recovered along with purchase value of goods attract TDS u/s 194Q?**

If buyer of goods is required to make TDS under any other section of the Act on value of charges paid for various services associated with purchase of goods, then there should not be any TDS u/s 194Q on such amount of charged made for services rendered by the seller of goods. However, if no TDS is applicable under any other provisions of the Act, the buyer should deduct tax on such charges u/s 194Q of the Act.

## Conclusion

The amendment is surely going to increase the compliance burden for the taxpayer, more importantly, considering that this provision impacts the basic transaction of purchase of goods.

As can be seen from the FAQs, there are many areas which are currently unsettled and taxpayers will have to exercise due care in respect of the positions to be adopted. Further, taxpayers will have to evolve standard procedures for tax deduction at source and make necessary changes to the ERP to provide for the new provisions.

Government should come up with suitable clarifications to ensure ease of compliance for taxpayers. Apart from the above, the Government should also come up with a utility to ensure that the deductors are able to check the compliances of the deductees to be sure about the applicability of section 206AB of the Act.

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