

INTERPLAY BETWEEN TDS AND TCS PROVISIONS

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The ambit of Tax deduction at source (TDS) and Tax collection at source (TCS) has been widened over a period of time. Recently, the Finance Act 2020 and 2021 has introduced many amendments under the TDS and TCS provisions which are not only expanding the scope of levy but also ensuring regularization of income tax return filed by the tax payer.

We now understand the amendments brought in by the Finance Act under the TDS and TCS provisions.

A. Section 194Q & 206C(1H) – TDS on purchase / sale of goods

The following are the provisions regarding the amendments brought in relation to purchase of goods:

Particulars	TDS u/s 194Q	TCS u/s 206C(1H)
Effective Date	1 st July 2021	1 st Oct 2020
Applicable to	Buyer whose turnover or gross receipts exceeds Rs 10 crore in immediately preceding financial year	Seller whose turnover or gross receipts exceeds Rs 10 crore in immediately preceding financial year
Levy	On purchase of any goods exceeding 50 lakhs from resident seller	On receipt of consideration for sale of any goods (other than exports) exceeding 50 lakhs
Point of levy	At the time of credit or payment whichever is earlier	At the time of receipt of such amount
Rate of Tax	0.1%	0.1%
Exclusion	Transactions where: TDS under other provisions are applicable TCS provisions (other than 206C(1H)) are applicable on the said transaction	Transactions where other provisions of TDS and TCS are applicable on the said transaction
Rates in case PAN is not available	5% (Section 206AA)	1%

Practical Approach/Issues:

1. In case TDS (194Q) / TCS [206C(1H)] both provisions are applicable – priority has to be given to TDS provisions. Thus, the entity whose turnover exceeds Rs. 10 crore is liable to :
 - a. deduct TDS on purchases made exceeding Rs 50 lakhs

- b. collect TCS from those customers who are not deducting TDS and receipts from it exceeds Rs 50 lakhs
2. Practically, the sellers and buyer will have to decide upon the taxability beforehand in order to avoid multiple levy of taxes. Declarations may be taken from the party about the preceding year's turnover to know the applicability of TDS / TCS provisions. However, timely reconciliation with Form 26AS is recommended to ensure that declaration are abided by the other party.
3. This provision deals with Purchase / Sale of Goods – however the term 'Goods' has not been defined. The term "Goods" is wide enough and would include all goods used in business purpose for eg: Stationery, Fixed Asset, Electricity, etc.
4. In cases where purchase are made before 1st July, 2021 or advance is paid before 1st July, 2021, one can take a view that the TDS provisions are not applicable since point of levy is earlier of credit or payment.
5. CBDT Circular No. 17 of 2020 clarified that no adjustment on account of sales returns, discounts or indirect taxes is required to be made since the collection of TCS is made on receipt of sale consideration. Similar analogy can be applied to provisions of TDS on purchases. However, the clarity is awaited from CBDT in this regards.
6. In case of liability under Composite contract, one needs to determine the true nature of contract and deduct TDS under applicable provisions. In absence of bifurcation, S. 194C would preliminarily apply, if not, then S. 194Q shall be applied.
7. For computing threshold of Rs 50 lakh aggregate value of Purchase including other charges like insurance, freight etc. are to be included
8. In case of export of goods, seller need not collect TCS because of explicit exclusion u/s 206C(1H). However, no exemption is provided to Non-resident for deduction of TDS. Clarification expected from CBDT on the said issue.
9. CBDT Circular No. 17 of 2020, provided exemption only where transaction insecurities were entered on recognized stock exchange. Hence, all other transaction of shares/securities would be covered within the ambit of TDS / TCS
10. The aforementioned limits are to be checked on entity level. Thus, purchase through multiple branches of same the entity will require aggregation.

A. Higher rate of TDS/TCS for non-filers of Income tax return w.e.f 1st July, 2021

Section 206AB :-

Currently, 206AA provides for higher rate of TDS for non-furnishing of PAN. This has served in ensuring obtaining and furnishing PAN by various persons.

In order to ensure filing of return of income too, a new section 206AB has been inserted to provide for higher rate of TDS for non-filers of Income tax return. The TDS to be deducted of the **specified person** under this section will be higher of:-

- a. twice the rate specified in the relevant provision of the act;
- b. twice the rates in force; or
- c. the rate of 5%

This section will **not** apply where tax is required to be deducted under following section:

Section	Particulars
192	Salary
192A	Payment of accumulated balance due to an employee
194B	Winning from Lottery or crossword puzzle
194BB	Winnings from Horse race
194LBC	Income in respect of investment in securitization trust
194N	Payment of certain amount in cash

In case, the person does not furnish PAN, provisions of section 206AA would be applicable. The TDS to be deducted in such case, will be higher of the applicable rates as per Section 206AA or Section 206AB.

For the purpose of this section, **specified persons**:

- a. are the person whose aggregate of TDS & TCS deducted/collected exceeds Rs. 50,000/- in each of the 2 previous years preceding the previous year in which tax is required to be deducted and he has not filed income tax return for both the relevant assessment years and the due date for filing the return of income has expired.

Example 1 :For testing the applicability (before the expiry of due date filing of return of income as per sec 139(1)) of these provisions of this section to the transactions of F.Y. 2021-22 with Mr. A, all the following conditions are to be satisfied:

- the aggregate of TDS and TCS of Mr. A for P.Y. 2019-20 and P.Y. 2018-19 should exceed Rs 50,000 for each year and
- he has not filed his income tax return for A.Y. 2020-21 and A.Y 2019-20

Example 2 :For testing the applicability (after the expiry of due date filing of return of income as per sec 139(1)) of these provisions of this section to the transactions of F.Y. 2021-22 with Mr. B, all the following conditions are to be satisfied:

- the aggregate of TDS and TCS of Mr. B for P.Y. 2020-21 and P.Y. 2019-20 should exceed Rs 50,000 for each year and
- he has not filed his income tax return for A.Y. 2021-22 and A.Y 2020-21

- b. shall not include a non-resident who does not have a permanent establishment in India.

Section 206CCA

Analogous to section 206AB, finance act has introduced the higher rate of TCS for non-filers of Income tax return vide newly inserted section 206CCA. The TCS to be collected from the **specified person** under this section will be higher of:-

- a. twice the rate specified in the relevant provision of the act;

b. the rate of 5%

In case, the person does not furnish PAN, provisions of section 206CC would be applicable. The TCS to be collected in such case, will be higher of the applicable rates as per Section 206CC or Section 206CCA.

For the purpose of this section, the definition of the **specified persons** is identical to the provision of Section 206AB.

Utility has been released by CBDT to identify thenon filers. However, the declarations along with a copy of Income tax return acknowledgement can be called for from the party whose aggregate TDS amount in both the preceding financial year exceeded Rs 50,000/-

Conclusion

Apart from disallowance of expenditure, interest & penalty provisions, there are prosecution implication in case of non-compliance with TDS provisions. Thus, timely compliance with relevant provision is need of an hour. Thus, the business will have to keep procedures in place to obtain declaration, building system for post transaction compliance and regular monitoring for the threshold applicability.

Note : This article was submitted before the issue of guidelines u/s194Q by CBDT vide circular No. 13 of 2021 detailed 30th June 2021

