

TDS under section 194Q – CBDT issues Guidelines

Snapshot

Finance Act 2021 introduced new provision for withholding tax on purchase of goods under section 194Q, subject to certain conditions, with effect from July 01, 2021. However, there was a lack of clarity on its applicability in various situations.

CBDT has now issued a circular dated June 30, 2021 (Circular No. 13 of 2021) providing guidelines on applicability of withholding tax under section 194Q in certain specific situation or on specific types of transactions. This provides much-needed clarity and will help taxpayers undertake proper compliance under section 194Q.

Guidelines

Sr. No.	Issue	CBDT Guidelines
1	Whether section 194Q applies to transactions in securities and commodities?	Provisions of section 194Q shall not apply to transactions in securities and commodities undertaken through stock exchanges or cleared and settled by recognised clearing corporations including the ones located in IFSC
2	How would the threshold of INR 50 lakh be calculated for determining applicability of section 194Q?	As the calculation of threshold of INR 50 lakh is with respect to the <i>previous year (financial year)</i> , it should be calculated considering the amounts paid or credited from April 01, 2021 (and not July 01, 2021).
3	Whether the provisions of section 194Q apply if either payment or credit has happened before July 01, 2021?	It has been clarified that provisions of section 194Q shall not apply if either the credit or payment has happened before July 01, 2021.

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4	Whether tax is to be withheld on GST component of the invoice?	<p>Relying upon Circular No. 23 of 2017, it has been clarified that when tax is being withheld at the time of credit of account of the payee and the amount of GST is separately indicated in terms of the contract or agreement, tax shall be withheld on the amount excluding GST. It is worth noting that CBDT has differentiated between a situation under 194Q and that in 206C(1H) wherein reference was to the <i>receipt of amount of sale consideration</i>.</p> <p>If, however, tax is to be withheld on 'payment' basis (it being the earlier event), it would be difficult to identify the amount of GST and hence, in such a scenario, tax is to be withheld on the full amount of advance.</p>
5	Whether adjustment on account of purchase returns is possible?	<p>It has been clarified that if there is a purchase return subsequently and money is refunded, the tax withheld can be adjusted against the subsequent purchase from the same seller. However, if the purchase return has been settled by replacement of goods, no adjustment is required to be made.</p>
6	Do provisions of section 194Q apply to a non-resident buyer?	<p>CBDT has now clarified that section 194Q shall apply to a non-resident buyer only when such a buyer has a Permanent Establishment in India and the purchase from a resident seller is effectively connected to such a Permanent Establishment.</p>
7	Whether tax is to be withheld / collected when income of the seller / buyer is exempt?	<p>It has been clarified that the provisions of section 194Q and section 206C(1H) shall not apply when income of the seller or buyer respectively, is totally exempt from tax (say either under section 10 or under any other Act passed by Parliament). However, in case of partial exemption, such benefit is not available.</p>
8	Whether tax is to be withheld on advance payment?	<p>Considering that section 194Q applies at the time of payment or credit, whichever is earlier, tax is to be withheld under section 194Q at the time of advance payment.</p>
9	Whether section 194Q applies to a buyer in the year of incorporation?	<p>It has now been clarified that provisions of section 194Q shall not apply in such a scenario as the condition of turnover exceeding INR 10 crore in the previous year shall not be satisfied.</p>

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10	Does section 194Q apply when turnover of the buyer <i>from business</i> is INR 10 crore or less?	Turnover is to be seen <i>qua</i> the business activities and should not include turnover from non-business activities. Hence, even if the total turnover (including from non-business activities) exceeds INR 10 crore, provisions of section 194Q shall not apply if the turnover <i>from business</i> does not exceed INR 10 crore.
11	How does one deal with the interplay between sections 194-O, 194Q and 206C(1H)?	<p>Sections 194-O and 194-Q</p> <p>If provisions of section 194-O apply (or no deduction is required as per 194-O(2) because the e-commerce operator is an individual / HUF fulfilling certain parameters), section 194Q shall not apply in such cases</p> <p>If a transaction falls both under sections 194-O and 194Q, tax shall be withheld under section 194-O</p> <p>Sections 194Q and 206C(1H)</p> <p>Though language of section 206C(1H) provides for exemption when <i>buyer</i> has withheld taxes, in order to remove difficulties, even in cases where tax is deducted by e-commerce operator (and not buyer), provisions of section 206C(1H) would not apply and exemption would be available.</p> <p>If a transaction falls both under sections 194Q and 206C(1H), the primary responsibility is that of the purchaser. If for some reason, the seller collects tax under section 206C(1H) before the buyer could withhold tax, such transaction would not be subjected to withholding of tax under section 194Q. This concession is provided as the rates prescribed under both the sections are same.</p> <p>Sections 194-O and 206C(1H)</p> <p>If a transaction falls both under sections 194-O and 206C(1H), tax is required to be withheld under section 194-O and the deductor shall not be free of his responsibility even if tax is collected at source under section 206C(1H)</p>

Conclusion

The guidelines issued by CBDT provide much needed clarity on certain crucial aspects of withholding of tax, especially the aspects of transactions that have taken place partly prior to July 01, 2021, inclusion or exclusion of GST for the purpose of withholding of tax, interplay between sections 194-O, 194Q and 206C(1H), etc. However, there are certain other practical aspects that still remain unclear, and one can hope that the Government will issue further clarifications in due course of time. Most of the issues dealt with by the CBDT have been covered in the form of FAQs in the **kcmGuide** dated June 23, 2021,

answers wherein are largely in line with the CBDT Guidelines.

Our readers can refer to **kcmGuide** dated June 23, 2021, for getting a further understanding on certain critical or peculiar issues.

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For further analysis and discussion, you may please reach out to us.

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