

# GUIDELINES FOR TDS/TCS ON E-COMMERCE OPERATIONS AND SALE OF GOODS

# 2021

## DISCLAIMER

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Finance Act, 2020 inserted a new section 194-O in the Income-tax Act 1961 (hereinafter referred to as 'the Act') which deals with deduction of tax at source by an e-commerce operator on sale of goods or provision of services or both, facilitated through its digital or electronic facility or platform at the rate of 1% which is effective from 1st October 2020.

Finance Act, 2020 also inserted sub-section (1H) in section 206C of the Act which deals with collection of tax on receipt of consideration by a seller for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees at the rate of 0.1% which is effective from 1st October 2020.

Finance Act, 2021 inserted a new section 194Q to the Act which took effect from 1st day of July, 2021. This deals with deduction of tax at source for the buyer who is responsible for paying any sum to any resident seller for purchase of any goods of the value or aggregate of value exceeding fifty lakh rupees at the rate of 0.1%.

Circulars were issued to remove difficulties and provide clarity on the above matters by CBDT vide circular no. 17 of 2020 dated 29.09.2020 and circular no. 13 of 2021 dated 30.06.2021. In continuation to those, to further remove the difficulties, CBDT issues the following guidelines in relation to the above provisions:

#### **A. E-auction services carried out through electronic portal**

It is clarified that the provisions of section 194-O of the Act shall not apply in relation to e-auction activities carried out by e-auctioneers if all the facts listed below are satisfied:

- (a)** The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible for the price discovery only which is reported to the client.
- (b)** The price so discovered through e-auction process is not necessarily the price at which the transaction takes place and it is up to the discretion of the client to accept the price or to directly negotiate with the counter-party.
- (c)** The transaction of purchase/sale takes place directly between the buyer and the seller party outside the electronic portal maintained by the e-auctioneer and price discovery only acts as the starting point for negotiation and conclusion of purchase/sale.
- (d)** The e-auctioneer is not responsible for facilitating the purchase and sale of goods for which e-auction was conducted on its electronic portal except to the extent of price discovery.
- (e)** Payments for the transactions are carried out directly between the buyer and the seller outside the electronic portal and the e-auctioneer does not have any information about the quantum and the schedule of payment which is decided mutually by the client and the counterparty.
- (f)** For payment made to e-auctioneer for providing e-auction services, the client deducts tax under the relevant provisions of the Act other than section 194-O of the Act.

It is clarified further that the buyer and seller would still be liable to deduct/ collect tax as per the provisions of section 194Q and 206C (1H) of the Act, as the case may be.

#### **B. TDS on indirect taxes u/s 194Q**

Circular no. 13 of 2021 clarified that in case the GST component has been indicated separately in the invoice and tax is deducted at the time of credit of the amount in the account of the seller, then the tax is to be deducted under section 194Q of the Act on the amount credited without including such GST. It has been further provided that in case the tax is deducted on payment basis as the payment is earlier than the credit, the tax is to 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, adjustment of tax deducted in case of purchase return has also been provided.

Now, it has been clarified that the guideline applies to other indirect taxes like VAT, sales tax, Excise Duty etc.

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 VAT, Sales tax etc., as the case may be, has been indicated separately in the invoice, then the tax is to be deducted under section 194Q of the Act on the amount credited without including such VAT, Sales tax etc., as the case may be. However, if the tax is deducted on payment basis, if it is earlier than the credit, the tax is to be deducted on the whole amount as it will not be possible to identify the payment with VAT/Excise duty/Sales tax/CST component to be invoiced in the future. Furthermore, in case of purchase returns, the clarification as provided in earlier circular shall also apply to purchase return relating to non-GST products liable to VAT, Sales tax etc.,

**C. Applicability of section 194Q of the Act in cases where exemption has been provided under section 206C (IA) of the Act**

In case of sale of goods which are covered under section 206C(1) but exempt from collection of tax under section 206C(1A), tax will not be collectible either u/s 206C(1) or u/s 206C(1H). It has been clarified now that section 194Q shall apply on this transaction as it has not suffered collection of tax under 206C.

**D. Applicability of section 194Q in case of department of Government not being a public sector undertaking or corporation**

It has been clarified that, for the purpose of section 194Q, any Department of the Government which is not carrying out any business or commercial activity, the primary requirement for being considered as a 'buyer' will not be fulfilled. Accordingly, such an organization will not be considered as 'buyer' for the purposes of section 194Q of the Act and will not be liable to deduct tax on the goods so purchased by them. However, if the said department is carrying on a business/commercial activity, the provision of section 194Q of the Act shall apply subject to the fulfillment of other conditions.

It is also clarified that, for the purposes of section 194Q, any Department of Central Government or State Government shall not be considered as a 'seller' and no tax is to be deducted by the buyer, in cases where any Department of Central or State Government are seller of goods.

It is further clarified that any other person, such as a Public sector Undertaking or corporation established under Central or State Act or any other such body, authority or entity, shall be required to comply with the provisions of section 194Q and tax shall be deducted accordingly.