

## **BRIEF OF TDS AND THE NEW SECTIONS APPLICABLE FROM 1<sup>ST</sup> JULY, 2021**

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This article has been written with an intent to provide the readers with the basic meaning of TDS and the provisions of the newly inserted sections which are coming to effect from 01<sup>st</sup> July, 2021.

### **What is Tax Deducted at Source (TDS)?**

TDS as the name suggests, is the tax which is deducted at the source. The aim of TDS is to collect the tax at the very source of income. A person (Deductor) making specified payments to another person (Deductee), shall deduct the tax and remit to the Central Government. The duty of deducting the tax and remitting it is entrusted on the person making the specified payments. The deductee shall be entitled to get tax credit for the amount so deducted on the basis of Form 26AS or TDS Certificate issued by the Deductor.

The intention of the TDS provision is to minimize the tax evasion and to confirm that the person receiving the payment does not escape from the tax bracket.

### **Who are liable to deduct TDS?**

Every person who are responsible to make “specified” payments shall deduct TDS. Individual and HUF who are not liable to get their accounts audited u/s 44AB are not covered under these provisions.

### **When to deduct TDS?**

Unless and otherwise specified, tax must be deducted at the time of making of payment or at the time of crediting the payee’s account whichever is earlier.

### **What is rate applicable for deducting tax?**

The rates for each specified payments are provided for in the respective sections in Chapter XVIIIB of the Income Tax Act, 1961.

## **NEW PROVISIONS OF TDS APPLICABLE FROM 1<sup>ST</sup> JULY, 2021**

Let us look into the various aspects of the following newly inserted sections in the Income Tax Act, 1961 vide Finance Act, 2021.

### **I. SECTION 206AB & 206CCA**

#### **To whom is the provision of this section applicable?**

The provisions of section 206AB & 206CCA provide for deduction/collection of tax at source at a higher rate for certain non-filers (*specified person*) of Income Tax Return. Section 206AB deals with deduction of tax at higher rate and section 206CCA deals with collection of tax at higher rate.

#### **Who is specified person?**

The provisions of Sec. 206AB & 206CCA will be applicable if all the following conditions are satisfied:

1. Resident payment/collection - Tax is required to be deducted or collected at source on **resident** payments/collections and,
2. Income Tax Returns not filed for 2 years: Person has **not filed tax return within the due date for 2 consecutive years prior to year** in which tax is required to be deducted /

collected at source. Eg: If TDS/TCS is required to be done in year 2021-22 then tax return should have been filed for year 2019-20 & 2020-21 and,

3. TDS & TCS for 2 years more than Rs. 50,000: Person has **TDS & TCS of Rs. 50,000 or more in each of 2 consecutive years prior to year** in which tax is required to be deducted/collected at source.

#### **What is the rate of applicable?**

Sub section 1 of section 206AB & 206CCA states that states that, where tax is required to be deducted/collected at source on any sum or income or amount paid/received or payable or credited by any person to/from the *specified person*, then Tax shall be deducted/collected at higher of the following rates:

- a. **Twice** the applicable rate (Eg. Rate u/s 194J is 10%, applicable rate is 20%)  
OR
- b. **5%**  
OR
- c. **Rates** as per section 206AA/206CC

#### **Who are exempted from the provisions of these sections?**

The provisions of the new sections are not applicable in case of making the following payments –

1. Salary u/s 192
2. Payment of accumulated balance due to an employee u/s 192A
3. Winnings from lottery or crossword puzzle u/s 194B
4. Winning from a horse race u/s 194BB
5. Income in respect of investment in securitisation trust u/s 194LBC
6. Payments of certain amount/amounts in cash u/s 194N

#### **Other points worth noting –**

1. The Income Tax Return shall be filed within the original due date as per section 139. So even if a belated return is filed, the same is not regarded as filed and double the rate of TDS/TCS will be applicable.
2. In order to facilitate Tax Deductors and Collectors in identification of Specified Persons as defined in sections 206AB and 206CCA, Income Tax Department has released a new functionality “**Compliance Check**” for Section 206AB & 206CCA to facilitate tax deductors/collectors to verify if a person is a “Specified Person” as per section 206AB & 206CCA.  
This functionality is made available through (<https://report.insight.gov.in>) of Income-tax Department. CBDT Circular No. 11 of 2021 dated 21.06.2021 provides the details regarding use of the functionality.

## **II. SECTION 194Q**

#### **Applicability**

As per provisions of **section 194Q of the Income Tax Act**, TDS is deductible if-

- The buyer is responsible for making payment of a sum to the resident seller; and
- Such payment is to be done for the purchase of goods of the value/ aggregate of the value exceeding INR 50 Lakhs.

### **Who is a Buyer?**

As per explanation to section 194Q, the term 'buyer' means as under-

- A person having total sales/ gross receipts/ turnover exceeding INR 10 Crores in the immediately preceding Financial Year in which the specified purchase of goods took place;
- Buyer will not include any person notified by the Central Government

### **When to deduct Tax?**

TDS on purchase of goods is to be deducted by the buyer at the time of credit of the sum into the account of the seller or at the time of payment of the sum thereof, whichever is earlier.

### **What is the applicable rate of tax?**

The buyer is liable to deduct TDS at the rate of 0.1% of the purchase value above INR 50 Lakhs. However, in case the Permanent Account Number (PAN) of the seller is not available, then the buyer would be liable to deduct tax @5%.

### **Who are exempted from this provision?**

TDS provisions covered under section 194Q are not applicable under the following cases -

- Transactions on which TDS is already deductible under other provisions of the Income Tax Act; or
- Transactions on which TCS is collectable as per provisions of **section 206C** [other than a transaction on which TCS is collectable under section **206C(1H)**].

### **What is the impact of Non compliance ?**

As per section 40a(ia) of Income Tax Act 1961, in case of non- deduction/ non- payment of TDS, amount to the extent of 30% of the value of transaction on which TDS was to be deducted shall be disallowed to the buyer.

### **Other points worth noting –**

1. Provisions of section 194Q are not applicable when the seller is a non-resident.

### **Whether TDS is to be deducted on value inclusive or exclusive of GST?**

Circular 23/2017 dated 19-07-2017 (Modification to Circular 01/2014) has clarified that TDS shall not be deducted on the GST component. The above circular is specific about GST on Services. No such clarification has been issued for GST on goods.

On the other hand, in respect of Section 206C(1H), the CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the collection is made with reference to receipt of the amount of sale consideration, no adjustment on account of indirect taxes including GST is required to be made for the collection of tax under this provision.

Since deduction under Section 194Q is to be made with reference to the purchase value, applying the same principle it can be concluded that GST shall form part of the purchase value, therefore, the TDS is deductible on the purchase value inclusive of GST.

### **Section 194Q vs. Section 206C(1H)**

In the existing section 206C of the Income Tax Act, 1961, a new sub- section (1H) was inserted vide the Finance Act, 2020 which provides that a seller having turnover of more than ₹10 Crores

in the preceding F.Y. is required to collect from the buyer, TCS @ 0.1% of the consideration received, for sale of goods exceeding ₹50 lakhs. This provision was made effective from 1st October, 2020.

In case there is an overlapping of both sec. 206C(1H) and sec. 194Q, then section 194Q shall prevail over section 206C(1H).

***Disclaimer:*** *The article is written with an intention to educate the readers. We recommend to seek professional advice before taking any action on specific issues.*