

## **CHANGES IN TDS / TCS REGULATION FROM 1<sup>st</sup> JULY 2021 ONWARDS**

### **Section 194Q - TDS on purchase of goods**

#### Background

Section 194Q applicable from 1<sup>st</sup> July 2021 onwards says that:

- Any Buyer
- Whose sales / turnover from business exceeded Rs. 10 crore (Rs.100 million) in preceding financial year (FY 2020-21), and
- Who is responsible for paying any sum to an *Indian Resident Seller*
- For Purchase of any goods
- Of aggregate value exceeding Rs. 50 lakh in any financial year (FY 2021-22), shall
- At the time of payment or credit to such Seller, *whichever is earlier*
- Deduct / Withhold tax at source @ 0.1% of the sum exceeding Rs. 50 lakh, and
- Deposit the same with Government treasury on or before the 7<sup>th</sup> day of succeeding month

If the Seller fails to provide his / her Permanent Account No. (PAN) to the Buyer, the above TDS / WHT rate would be increased to 5% (instead of 0.1%).

#### Why was it required

Last year, the Government introduced similar obligation in case of a Seller by way of TCS under section 206C(1H). As per the said provision, a Seller [whose sales / turnover from business exceeded Rs. 10 crore (Rs.100 million) in preceding financial year] on receipt of consideration after 1<sup>st</sup> October 2020 exceeding Rs. 50 lakh (or 5 million) a year for sale of goods, is required to collect tax at source @ 0.1% of the amount exceeding Rs. 50 lakh (or 5 million) from the Buyer and deposit the same with the Government treasury. If the Buyer fails to provide his / her Permanent Account No. (PAN) to the Seller, the TCS rate would be 1% (instead of 0.1%)

Government noticed that there were instances where Seller's sales / turnover in preceding financial year did not exceed Rs. 10 crore, however his / her receipt from a particular Buyer exceeded Rs. 50 lakh a year. In such cases, there was no liability to collect tax at source by the Seller. Hence, to fill the gap and bring such instances within the purview of withholding tax net, Government has introduced section 194Q applicable on Buyers by way of TDS. This is because the Government wants to bring as many transactions as possible under the ambit of withholding tax.

#### What happens in case both Buyer's as well as Seller's preceding year's sale / turnover exceeds Rs. 10 crore

Will both the obligations of TDS and TCS arise? The answer is *No*. In that case, it will be the liability of the *Buyer* to withhold TDS under section 194Q. This has been possible because the Government has specifically carved out an exception in case both Buyer's as well as Seller's preceding year's sale / turnover exceeds Rs. 10 crore.

Illustration

Seller's Sales / Turnover in preceding year (Rs.in crore)	Buyer's Sales / Turnover in preceding year (Rs.in crore)	Aggregate value of Purchase / Sale of Goods during the relevant year (Rs. in lakh)	Taxable Amount (Rs. in lakh)	Whether PAN is available	TDS or TCS	Rate of TDS / TCS	Liability on
12	8	60	10	Buyer's PAN available	TCS	0.1%	Seller
12	8	60	10	Buyer's PAN not available	TCS	1%	Seller
8	12	60	10	Seller's PAN available	TDS	0.1%	Buyer
8	12	60	10	Seller's PAN not available	TDS	5%	Buyer
12	12	60	10	Seller's PAN available	TDS	0.1%	Buyer
12	12	60	10	Seller's PAN not available	TDS	5%	Buyer

**Sections 206AB & 206CC - Higher rate of TDS / TCS in case of Non-Filers**

Section 206AB applicable from 1<sup>st</sup> July 2021 onwards provides for a higher rate of TDS on payments to non-filers of Income-tax return. In other words, from 1<sup>st</sup> July 2021 onwards, a higher rate of TDS is required to be withheld at source by a Buyer for most of the payments (and not just purchase of goods) if any Vendor:

- Has not filed Income-tax Return for preceding 2 financial years for which the due date of filing the return has expired, and
- The aggregate TDS / TCS in case of such Vendor is Rs. 50,000 or more in each of these 2 years, and
- The Vendor is not a non-resident having no Permanent Establishment (PE or taxable presence) in India. In other words, the higher rate of TDS shall apply only in case of payment to an Indian Vendor *or* a foreign Vendor who has a taxable presence in India

Similar change has been made in TCS regulations by inserting section 206CCA in the Income-tax Act, 1961.

### **Action required to be undertaken**

- If you are a Buyer of Goods:
  - ✓ Check your volume of sales / turnover for FY 2020-21 (a)
  - ✓ If (a) exceeds Rs. 10 crore, check volume of purchase of goods from each resident Seller for FY 2021-22 (b)
  - ✓ If (b) exceeds (or is expected to exceed) Rs. 50 lakh, deduct tax at source u/s 194Q from 1<sup>st</sup> July 2021 onwards
  - ✓ Obtain PAN from the Seller. In case Seller fails to furnish PAN, deduct tax at higher rate
  - ✓ Inform Seller that no tax should be collected at source by him / her if you are deducting tax on the same transaction
  
- If you are a Buyer of Goods or Services, the following action needs to be completed *before 30<sup>th</sup> June 2021*:
  - ✓ Seek confirmation from each vendor regarding status of his / her income-tax return filings for FYs 2018-19 and 2019-20 as well as aggregate TDS / TCS liability for the said years
  - ✓ If the vendor is at no default and has also furnished his / her PAN, deduct tax at regular rates. Otherwise, deduct tax at higher rate under section 206AA or 206AB as the case may be
  - ✓ Seek indemnity in case any loss is caused to you as a result of lower deduction of tax due to misrepresentation by the Vendor

### **How we can support**

- Assistance in determining liability to deduct tax at source u/s 194Q on purchase of goods
- Assistance in drafting of communication to vendors informing the changes in TDS law, obtaining confirmation from vendors regarding tax return filing status and TDS/TCS liability for preceding years, seeking indemnity from vendors

Please feel free to write to us at [communications@krayman.com](mailto:communications@krayman.com)