



Varaiya and Shah LLP

Chartered Accountants

Tax Alert

SUB: TDS and TCS provisions under the Income tax Act, 1961 (the Act)

This tax alert is for those clients who are carrying on business and whose aggregate turnover in business exceeded rupees ten crores during financial year (F.Y.) 2020-21.

I. TCS (tax collection at source) – Section 206C(1H):

With effect from 1st October, 2020, seller of goods whose turnover (TO) of sales exceeded rupees 10 crores in preceding year (i.e. Financial Year 2019-20) are liable to collect TCS @0.1% on receipt of consideration from a buyer in excess of rupees 50 lakhs.

Such TCS is not applicable if the concerned buyer is liable to TDS (deduct tax at source) under any provision of the Act.

Both i.e. the Collector and Collectee shall indicate PAN (of buyer) on all bills, vouchers etc.

Conditions:

- a. The rate of TCS will increase to 1% if the buyer does not furnish PAN or Aadhaar number [section 206CC].
- b. The rate of TCS shall be 5% if the buyer has not furnished returns of preceding two assessment years section [section 206CCA]. (This condition is effective from 1st July, 2021).

II. TDS (new section 194 Q) and TCS [section 206C (1H)] provisions with effect from 1st July, 2021:

Now TDS and TCS provisions will apply as under with effect from 1st July, 2021:

Section 194Q:

Any buyer (whose aggregate turnover in preceding year i.e. Financial Year 2020-21 exceeded rupees 10 crores) is liable to TDS @0.1% on purchases of goods from a resident supplier from the purchase value (including GST & other charges) exceeding rupees fifty lakhs in a financial year. The said tax is required to be deducted at the time of credit to the supplier's account or at the time of payment by any mode, whichever is earlier.

This provision of TDS u/s. 194Q will not apply if TDS under other provisions of the Act apply (e.g. section 194C)

Rate of TDS will increase as under:

- i. If ~~buyer~~ **SELLER** does not furnish PAN - 5% (section 206AA)

AND

- ii. If ~~buyer~~ **SELLER** has not furnished returns of income of preceding two assessment years - 5% (section 206AB)

Both i.e. the Deductor and Deductee shall indicate PAN (of seller) on all bills, vouchers, etc.

Important Note:

1. If a transaction is subject to TCS u/s. 206C(IH) as well as to TDS u/s. 194Q, the latter shall prevail i.e. the buyer will be liable to TDS u/s. 194Q. And in such case, seller will not be liable for TCS.

However, if the buyer makes a default, the seller will be liable for TCS.

2. If the buyer is subject to TDS, he should inform the seller that he (buyer) is liable for TDS and hence seller shall not do TCS. Buyer should obtain Declaration from seller giving his (seller's) PAN and certifying that he (seller) has furnished IT returns of two preceding assessment years.

3. *Conversely, if the seller is subject to TCS, he has to obtain Declaration from buyer giving his (buyer's) PAN and certifying that he (buyer) has furnished IT returns of two preceding assessment years.*

4. Further note that non-compliance of provisions of TDS u/s. 194Q by the buyer, will inter alia attract disallowance to the extent of 30% of the entire amount of transaction [Section 40a(ia)]. In addition, penalty will also apply.

Some examples:

Particulars	Situation 1	Situation 2	Situation 3
Turnover of Seller in preceding year (i.e. FY 2020-21)	16 cr.	5 cr.	15 cr.
Turnover of Buyer in preceding year (i.e. FY 2020-21)	8 cr.	14 cr.	15 cr.
Sale of Goods in current year (i.e. FY 2021-22)	4 cr.	3 cr.	5 cr.
Sales consideration paid during the financial year	1.5 cr.	2 cr.	3 cr.
Who is liable to deduct or collect Tax?	Seller (TCS)	Buyer (TDS)	Buyer (TDS)
Rate of Tax	0.1 % (TCS)	0.1 % (TDS)	0.1 % (TDS)
Amount on which tax is required to be deducted or collected	1 cr.	1.5 cr.	2.5 cr.
Tax to be collected or deducted (TDS/TCS)	10,000 (TCS)	15,000 (TDS)	25,000 (TDS)

We have attached draft of letters to be exchanged between buyer & seller.

Please contact us for any further clarifications.

Thanking You,

We, at Varaiya & Shah LLP

Date: 08th June, 2021

Varaiya & Shah LLP

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Annexure I

Declaration to be given by the Buyer whose turnover exceeded Rupees 10 Crore in preceding financial year (i.e. F Y 2020-21)

On the letter head of Buyer

To,

The Seller

Dear Sirs:

Re: Declaration to Seller of goods for TDS U/s 194Q

Under newly inserted section 194Q in the income tax Act 1961, we are required to deduct income tax at source (TDS) as applicable on and from 1st July 2021 on the amount of purchase of goods exceeding Rs 50 lacs from your firm/company during the financial year 2021-22. In respect of TDS to be deducted, we submit as under:

- 1) Our PAN is _____ and TAN is _____.
(Self-attested copies attached).
- 2) Our total sales/gross receipt exceeded Rs. 10 crore during the financial year 2020-21.
- 3) We will deduct tax at source (TDS) at 0.1% u/s 194Q on and from 1st July 2021 if applicable. Hence you are requested not to levy TCS on sales made by your firm/company on or after that date.
- 4) Kindly furnish self-attested copy of your PAN card and a declaration that you have furnished returns of income of two preceding assessment years in respect of which time limit to file return u/s. 139(1) has expired.

I, _____ being Director/partner/proprietor do hereby confirm that all the information provided hereinabove is true and correct.

For (Name of Buyer)

Authorized Signatory

Encl: as above

Annexure II

Declaration to be given by the Seller, to buyer who is liable to TDS u/s. 194Q

On the letter head of Seller

To,

The buyer

Dear Sirs:

Re: Declaration to buyer of goods for TDS U/s 194Q

We are in receipt of your letter dated _____ stating that you are liable to TDS U/s 194Q of the Income tax Act 1961 on and from 1st July 2021. In respect of tax to be deducted by you, we confirm as under: -

- 1) We are resident of India and holding valid PAN _____.
(Self-attested copy attached).
- 2) We have filed income tax returns for the Financial year 2018-19 and 2019-20 relevant to assessment year 2019-20 and 2020-21 respectively.
- 3) We will not collect TCS on sales effected by us as you have confirmed that you will deduct TDS U/s 194Q of the Income tax Act 1961.

I, _____ being Director/partner/proprietor do hereby confirm that all the information provided hereinabove is true and correct.

For (Name of Seller)

Authorized Signatory

Encl: as above

Annexure III

Declaration to be given by the buyer, whose turnover did not exceed Rs. 10 Crore in the financial year 2020-21

On the letter head of Buyer

To,

The Seller

Dear Sirs:

Re: Declaration to seller of goods for TDS U/s 194Q

As our turnover during the financial year 2020-21 did not exceed Rs 10 Crore, we will not deduct tax at source u/s 194Q of the Income tax Act, 1961. Hence you are required to collect TCS as applicable on the amount realized from us exceeding Rs 50 lacs against sale of goods made during the year 2021-22. In respect of TCS to be collected by you, we confirm as under: -

- 1) We are resident of India and holding valid PAN _____.
(Self-attested copy attached).
- 2) We have filed income tax returns for the Financial year 2018-19 and 2019-20 relevant to assessment year 2019-20 and 2020-21 respectively.
- 3) Please furnish us self-attested copies of your PAN & TAN

I, _____ being Director/partner/proprietor do hereby confirm that all the information provided hereinabove is true and correct.

For (Name of Seller)

Authorized Signatory

Encl: as above