

# SECTION 194-Q OF THE INCOME TAX ACT

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# BACKGROUND

- Section 206C(1H) was introduced effective from 01.10.2020 requiring sellers to collect tax collection at source (TCS) under certain circumstances.
- Massive system changes undertaken by businesses.
- Huge compliance burden
- Circulars on scope of application
- Even though TCS is on collection to avoid the reconciliation issues, industry is discharging TCS on accrual basis.

# BACKGROUND

- After TCS on the sellers, FA, 2021 has introduced TDS on the buyers.
- The objective of TDS is completely diluted and the new provisions are more in the nature of monthly income tax collection regime and that too from another person.
- Compliance challenges
- Information and data challenges
- Higher rates under Section 206AB under certain circumstances.

# SECTION 194Q

- Applicable to a buyer who is responsible for paying any sum to any resident (seller) towards purchase of goods.
- All buyers are not covered.
- 'Buyer' means a person whose total sales / gross receipts / turnover from the business carried on by him exceed Rs.10 crores during the financial year immediately preceding the financial year in which the purchase of goods is carried out.
- Buyer **excludes** a person as may be notified by the Central Government for this purpose subject to such conditions as may be specified.

# SECTION 194Q

- The buyer as defined in the provisions will have to deduct tax at source when he is responsible for paying any sum to any resident for purchase of any goods of the value or aggregate of such value exceeding Rs.50 lakhs in any previous year.
- TDS at the time of credit to the account of the seller or at the time of payment whichever is earlier.
- TDS at the rate of 0.1% of the sum exceeding Rs.50 lakhs as income tax.
- Section 194Q shall not apply to a transaction on which
  - Tax is deductible under any of the provision of this Act;
  - Tax is collectable under the provisions of Section 206C other than a transaction to which Section 206C(1H) applies

# GOODS

- What is 'goods'?
- Article 366(12) of the Constitution defines 'goods' to include all materials, commodities and articles.

Sale of Goods Act	CGST Act
Section 2(7)	Section 2(52)
Every kind of movable property	Every kind of movable property
Excludes money	Excludes money
Excludes actionable claim	Includes actionable claim
Includes stock and shares	Excludes securities
Includes grass and things attached to or forming part of land which are agreed to be severed before sale or under the contract of sale.	Includes grass and things attached to or forming part of land which are agreed to be severed before supply or under a contract of supply.

# GOODS

- **Goods not defined in the Income Tax Act.**
- Erstwhile Section 80HHC referred to goods or merchandise. The following have been held to be goods:
  - Beta cum tape – *Abdulgafer A Nadiyawala Vs. CIT (2004) 267 ITR 488 – Bom.*
  - Telecast rights – *CIT Vs. B. Suresh (2009) 313 ITR 149 – SC.*
  - Music software – *CIT Vs. Superstar Music (2007) 291 ITR 8 – Mad.*
  - Lease rights – *CIT Vs. Romesh Sharma (354 ITR 229)*

# GOODS

- **Section 194-O of the Income Tax Act introduced by Finance Act, 2020 w.e.f. 01.10.2020.**
  - Where *sale of goods* or provision of service of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform, e-commerce operator is required to deduct tax at the rate of 1% on the *gross amount of such sale or services or both*.
  - E-Commerce defined to mean *supply of goods* or services or both including digital products over digital or electronic network.
- E-Commerce operator required to comply with Section 194-O, even in a case where purchaser pays directly to the e-commerce participants in the sale of goods or provision of services facilitated by e-commerce operator.
- Section 194-O, is a non-obstante provision in the context of Part-B of the Chapter and hence would prevail over Section 194-Q.



# GOODS

## ■ Goods under sales tax / VAT law.

- Electricity is goods – *State of AP Vs. NTPC (2002) 127 STC 280*
- Supply of electricity is a service – *Karnataka Power Transmission Corporation Vs. Ashok Iron Works (2009) 3 SCC 240.*
- Software is goods – *TCS Vs. State of AP (2005) 137 STC 620*
- DEPB is goods – *Yash Overseas Vs. CST (2008) 8 SCC 681*
- Electromagnetic waves not goods – *BSNL Vs. Uoi (2006) 145 STC 91*
- Sodexo coupons are not goods – *Sodexo SVC India Vs. State of Maharashtra (2016) 331 ELT 23*

## ■ Goods under customs law

- Technical drawings are goods – *ACC Vs. CC (2001) 128 ELT 18*
- Oil rigs are vessels – *Amership Management (1996) 86 ELT 15 (Bom.)*

# GOODS

- Distinction between Goods and Services are getting blurred.
- Goods Vs. Services was a raging debate in pre-GST era.
- Goods Vs. Services continue to be a debate in GST.
- Goods Vs. Services debate enters the TDS arena.

# GOODS – ISSUE No.1

- **Contracts that involve both goods and services**
- Section 194C refers to carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract.
- 'Work' includes catering.
  - GST considers supply by way of or as part of any service or in any other manner whatsoever of goods being foods or any other article for human consumption or any drink other than alcoholic liquor for human consumption as a supply of service.
  - Catering contracts – Section 194-C Vs. Section 194-Q.

# GOODS – ISSUE No.2

- **Manufacture of goods with customer providing material as well as specifications.**
- In terms of 194-C 'work' includes manufacturing or supplying products as per specification of customer using material purchased from such customer / associate being parties falling under the relationship referred to in Section 40A(2)(b).
  - If say packing boxes are manufactured with a logo of the customer and the customer who supplies the papers is related, Section 194C is applicable.
  - Since Packing boxes are only being sold as goods and purchased by the customer – Section 194-Q is applicable.
  - Section 194Q vs. Section 194-C.

# GOODS – ISSUE No.3

- **Renewable energy sector.**
- Dispute around works contract vs. composite supply.
- Changes in GST rate of tax notifications.
- 70% of contract value treated as goods and 30% treated as service.
  - Some assesseees have a total contract value and adopt the 70:30 formula.
  - Some assesseees take on separate contracts for goods and services
  - Section 194Q, 194C, 194J
- **Classification disputes enter TDS arena.**
- Deductor Vs. Deductee disputes on applicable provisions.

# GOODS – ISSUE No.4

- No exclusion from the definition of goods.
- Power available to exclude a certain set of buyers. Notifications likely
- Board with the previous approval of the Government can issue guidelines for the purpose of removing difficulties.
- Clarifications similar to 206-C(IH) likely / expected
- Circular No.17/2020 dated 29.09.2020
  - 206-C(IH) not applicable to transactions in securities and commodities traded through recognized stock exchanges, etc.
  - Transactions in electricity, renewable energy certificates and saving certificates traded through power exchanges.
  - Motor vehicle related transactions.

# GOODS – ISSUE no.5

- **Gems, Gold and Jewellery**
- Gold purchased from banks and bullion traders
- Jewellery purchased from smaller jewelers or artisans not being job workers
- Old jewellery purchased from customers
  - How will the jeweller know whether 194Q is applicable or not?
- No usage or nexus test to business specified.
- If 194Q thresholds are met even purchases for personal use may see applicability of TDS provisions
- Assuming jewellery is purchased and thresholds are met Section can apply even though no business deduction is going to be claimed
  - Government should exclude all personal purchases from scope
- Trading in bullion may have high volumes but very thin margins.
  - Sellers may insist on continuing with 206C(IH)
  - GST, TCS and TDS

# GOODS – ISSUE no.6

- Petroleum products including aviation turbine fuel
- Capital goods
- Construction materials purchased and given to contractors
- COVID 19 related health infra goods purchased and given to hospitals or Government as part of CSR
- Income exempt organisations purchasing goods
- Agricultural products
- Agro machinery
- Buyer in service industry buying goods



# DEDUCTION UNDER SECTION

## 194Q

- Rate equal to 0.1% of such sum exceeding Rs.50 lakhs
  - On the excess or on the entire amount where it exceeds Rs.50 lakhs?
  - Circulars under Section 206C(IH) indicate only on excess
- Section 206AA would apply where the seller does not furnish his PAN to the buyer.
- Section 206AB would apply if the seller is a 'specified person'.
  - All buyers will now have to check the seller's status in the IT portal.

# INTERPLAY OF 206C(IH) and 194 Q

- Where buyer is liable to deduct TDS and has deducted TDS, then no TCS – *Second proviso to Section 206C(IH)*.
- No TDS under Section 194-Q if TDS is required to be deducted under any other provision or TCS is collectible under any other provision except Section 206-C(IH)- *Section 194-Q (5)*.
- **While 206C(IH) excludes TDS applicability scenarios, 194Q does not exclude Section 206-C(IH) applicable scenarios.**

# INTERPLAY OF 206C(IH) and 194 Q

- **Chicken and Egg situation**
  - Sellers may insist that they will continue with 206C(IH) and buyer need not deduct
  - If Buyer fails to deduct and 194 Q is applicable, consequences for buyer are severe
  - Seller must be confident that buyer will deduct under Section 194 Q
  - Sellers may call for declaration from buyers that they will be deducting TDS
  - Buyers obligation gets triggered at the time of payment or credit
  - If buyer defaults then Seller remains liable for TCS under Section 206C(IH)
- **Abundant caution and general safety may result in both Sections being implemented by the transacting parties**

# EXPORTS

- Section 206-C(IH) defined a 'buyer' to exclude a person importing goods into India.
- Section 194-Q definition of buyer does not provide for any such exclusion though power is available with the Government.
- Seller has to be a resident and there is no necessity for buyer to be a resident.
- Does this mean that importers located outside India are required to comply with Section 194-Q?
  - Complex situations
  - Questions on jurisdiction
  - Ease of doing business with India
  - Notification must clearly exclude foreign buyers to avoid confusion.
- High sea sale by A in India to B in India would tantamount to seller being a resident.

# THRESHOLDS

- Section 194Q w.e.f 01.07.2021
- TDS if purchase value exceeds Rs.50 lakhs during the previous year
- 01.04.2021 to 30.06.2021 ?
- Circular No.17 was issued by CBDT in the context of similar doubts when 206C(1H) was operationalised to the effect that computation will be from 01.04.2020.If a seller has already received Rs. 50 lakhs or more up to 30-09-2020 from a buyer, TCS under this provision shall apply on all receipts of sale consideration on or after 01-10-2020.
- Same rationale can apply

# VALUE

- **Seller would be charging GST if applicable and in the case of goods covered under VAT, would be charging applicable VAT.**
- Whether TDS should be on the sale price inclusive of taxes or exclusive of taxes?
  - In the context of Section 206-C(IH), Circular No.17/2020 provided that no adjustments shall be made on account of indirect taxes.
  - CBDT in the context of service tax vide Circular No.1/2014 had clarified that TDS under Chapter-XVII(B) need not include the service tax component if the service tax is indicated separately.
  - CBDT vide Circular No.23/2017 had clarified that if GST is separately indicated, TDS can be done without including the GST component.

# WHO AM I?



## ***“Who am I?”***

*Is an amazing book which takes the reader on a journey through life, spirituality and philosophy.*

*It is the title given to a set of questions and answers based on self-enquiry.*

# WHO AM I

- **If, I am the seller, I should**
  - Understand scope of Section 206-C(IH)
  - Be aware of exceptions through orders of CBDT
  - Understand scope of circulars and take positions
  - Collect TCS from buyers at the rate of 0.1%
  - Collect TCS from buyers at the rate of 5% if PAN is not provided
  - Understand Section 206-CCA and identify whether buyer is a 'specified person'.
  - Hope that buyer does not deduct under Section 194-Q



# WHO AM I

- **If I am the buyer, I should**

- Understand scope of Section 194-Q
- Look out for Notifications excluding 'buyers'
- Understand threshold limits and scope of circulars under other provisions.
- Check whether any other TDS provision is applicable for the transaction.
- Understand what could be 'goods'
- Deduct tax at the rate of 0.1%
- Check compliance of Section 206AA
- Understand Section 206AB and identify whether buyer is a 'specified person'.
- Hope that the seller does not collect TCS under Section 206-C(IH).

# CONCLUDING THOUGHTS

- Income tax has moved away from real income.
- If the objective is to unearth assesseees who are not paying taxes then the thresholds of Rs.10 crores and Rs.50 lakhs do not seem to indicate such an objective.
- If the objective is to collect taxes in advance, a better solution would have been to amend the advance tax provisions to increase the applicable percentages.
- **While the rate is only 0.1%, countless productive hours would be wasted in compliance.**
- By bringing in TCS to all sale of goods; TDS on all purchases and higher rates through Section 206AA / 206AB / 206CCA, income tax is increasingly becoming a transaction tax.

# THANK YOU

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