

TDS - TCS INTERPLAY

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VIRTUAL DIRECT TAX REFRESHER COURSE

WIRC OF ICAI

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SYNOPSIS

- Introduction
 - S. 194Q – Payment by buyer of goods
 - S. 206C(1H) – TCS on sale of goods
 - S. 206C(1F) – TCS on sale of motor vehicle
 - S. 206C(1G) – TCS on sale under LRS
 - S. 194-O – Payment by E-Commerce Operator
- Interplay and Issues
 - similarities of parallel provisions – s.194Q and s. 206C(1H)
 - dissimilarities
 - selecting the section
 - provision to eliminate dual application
 - situations of dual application
 - Precautions
- Common Issues

PAYMENT BY BUYER OF GOODS

Section 194Q

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PAYMENT BY BUYER OF GOODS – S. 194Q - I

- Inserted w.e.f. 01.07.2021 by FA 2021
- Applicable to any assessee - buyer
- TDS @ 0.1%
 - on value of goods purchased
 - 5% in Non PAN or Aadhar cases – s. 206AA/206AB
 - threshold limit - > 50 Lakhs in a F.Y.
 - TDS only on value of goods in excess of Rs. 50 Lakhs
 - services not included
- Requirements
 - purchase of any goods – capital goods, personal goods
 - seller to be resident in India
 - value of purchase to exceed Rs. 50 Lakhs in F.Y.
 - buyer's sales etc. of business > Rs. 10 Crores in P.F.Y.

PAYMENT BY BUYER OF GOODS – S. 194Q - II

- TDS by buyer on credit or payment - earliest point of time
 - applicable for “Suspense Account” too
- Exemption from TDS u/s. 194Q
 - liable to TDS under other provisions, and
 - liable to TCS u/s 206C [excluding (1H)]
- Exemption for specified persons
 - CG to notify in Official Gazette
- No exemption for individual / HUF buyer
- Buyer defined
 - T/O > Rs. 10 Crores for P.F.Y.
 - purchase exceeds Rs. 50 Lakhs for the year
 - not a notified person – exemption form TDS

PAYMENT BY BUYER OF GOODS – S. 194Q - III

- CBDT empowered to issue guidelines for removal of difficulty
 - approval of CG & Parliament
 - binding on IT Authorities and Buyer

TCS ON SALE OF GOODS

Section 206C(1H)

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TCS ON SALE OF GOODS – S. 206C(1H) -I

- Inserted w.e.f. 01.10.2020 by FA 2020
- TCS @0.1%
 - on aggregate value of goods
 - @1% in Non PAN or Aadhar Cases – s. 206CC
 - threshold limit - > 50 Lakhs in a F.Y.
 - TCS on value of goods in excess of Rs. 50 Lakhs for F.Y.
 - services not included
- TCS only on receipt of payment
- Requirements
 - Sale of any goods other than;
 - goods exported outside India
 - alcoholic liquor for human consumption, tendu leaves, scrap, timber...
 - motor vehicle – value exceeds Rs. 10 Lakhs
 - Overseas Tour Program Package

TCS ON SALE OF GOODS – S. 206C(1H) -II

- value of sales to exceed Rs. 50 Lakhs in F.Y.
- seller's sales, etc. of business > Rs. 10 Crore in P.F.Y.
- Exemption from TCS;
 - buyer liable to TDS and
 - buyer has deducted such tax
 - buyer covered by Explanation
 - notified seller
- Buyer defined
 - includes
 - person who purchases any goods
 - excludes
 - specified persons
 - Local Authorities
 - person importing goods into India
 - notified person

TCS ON SALE OF GOODS – S. 206C(1H) -III

- Seller defined
 - sales, gross receipts or T/O > Rs. 10 Crore in P.F.Y.
 - not a notified person
- Circular no. 17/2020 dt. 29.09.2020
 - Exemption for;
 - transactions in securities and commodities
 - traded through RSE / cleared and settled by RCC
 - transaction in electricity and energy certificates
 - traded through Power Exchanges
 - supply of fuel to non resident airline at Indian airport

TCS ON SALE OF MOTOR VEHICLE

Section 206C(1F)

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TCS ON SALE OF MOTOR VEHICLE – S. 206C(1F)

- Inserted w.e.f. 01.06.2016 by F.A. 2016
- TCS @1%
 - on sale of motor vehicle
 - Value exceeds Rs. 10 Lakhs
- On receipt of consideration
- No exemption even if TDS applicable
- ‘Buyer’ and ‘Seller’ not defined
- Circular No. 17/2020 dt. 29.09.2020
 - exclusion for sale by manufacturer to dealer
- Circular No. 22/2016 dt. 08.06.2016
 - TCS applicable also non luxury cars
 - TCS on each receipt even where received in installments
 - TCS even where seller is an individual or HUF

TCS ON SALE UNDER LRS

Section 206C(1G)

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TCS ON SALE UNDER LRS – S. 206C(1G) - I

- Inserted w.e.f. 01.10.2020 by F.A. 2020
- Applicable to any assessee – seller AD
- TCS @5% by AD on sale of foreign currency
 - on remitting amount out of India under LRS
 - threshold limit - in excess of Rs. 7 Lakhs in a F.Y.
 - @1.5% - in excess of Rs. 7 Lakhs in a F.Y.
 - if remittance of education, loan from financial institution
 - on sale of an Overseas Tour Program Package (OTPP)
 - no limit for OTPP – From Re. 1
- TCS by seller on debiting amount payable or receipt
 - earliest point of time

TCS ON SALE UNDER LRS – S. 206C(1G) - II

- Exemption from TCS;
 - aggregate amount remitted by buyer - < Rs. 7 Lakhs in F.Y. &
 - for purchase other than of OTPP
 - buyer liable to TDS and buyer has deducted such tax
 - purchase by specified / notified person
- Authorized dealer defined
 - person authorized by the RBI
- Overseas Tour Program Package defined
 - offers visit to country / territory outside India
 - includes travel or hotel stay or any other similar expenditures

PAYMENT BY E - COMMERCE OPERATOR

Section 194-O

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PAYMENTS BY E-COMMERCE OPERATOR – S.194-O - I

- Inserted w.e.f. 01.10.2020 by FA 2020
- Applicable to any assessee - ECO
- Overrides contrary provisions of Chapter XVII-B
- TDS @1% by E-commerce Operator
 - on gross amount of sales or services or both
 - @5% in Non-PAN or Aadhar cases - S. 206AA/206AB
 - no threshold limit – starts from Re. 1
 - TDS on aggregate value of goods plus services

PAYMENTS BY E-COMMERCE OPERATOR – S.194-O - II

- Requirements
 - sale of goods or providing of services
 - services to include FTS and FPS
 - includes taxes of digital products over/through digital/electric network
 - of an e-commerce participant
 - facilitated by ECO
 - through digital / electronic facility or platform
 - payments by ECO to ECP
 - direct payment by customer to ECP to be deemed payment for ECO
 - ECP to be resident in India
- TDS by ECO on credit or payment - earliest point of time
 - no provision for “Suspense Account”

PAYMENTS BY E-COMMERCE OPERATOR – S.194-O - III

- Exemption for payments to Individuals or HUF
 - gross sales / services \leq 5 Lakhs
 - ECP to furnish PAN / Aadhar Number
- Exemption for TDS under other provisions of Chapter XVII-B
 - exemption not applicable for advertisement or other services
 - difficulty in cases of direct payments by buyer
- EC, ECO and ECP defined
 - EC definition expands the scope of TDS
- CBDT empowered to issue guidelines for removal of difficulty
 - approval of CG and Parliament
 - binding on IT authorities and ECP
- ECO to be “person responsible for payment” to ECP

PAYMENTS BY E-COMMERCE OPERATOR – S.194-O - IV

- Circular No. 17/2020 dt. 29.09.2020
 - exemption for Payment Gateway from TDS u/s 194-O
 - where TDS u/s 194-O by ECO
 - exemption for;
 - transactions in securities and commodities
 - traded through RSE / cleared and settled by RCC
 - transaction in electricity and energy certificates
 - traded through Power Exchanges
 - direct transactions between buyer of insurance policy and co.
 - exemption for insurance agents \ aggregator
 - from 2nd year onwards

INTERPLAY & ISSUES

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SIMILARITIES OF PARALLEL PROVISIONS – S. 194Q & S. 206C(1H) - I

- Deals with goods
- Applicable to any assessee
- Excludes import or export of goods
- Rate of tax is 0.1%
- Sales etc. from business of P.F.Y. to exceed Rs. 10 Crore
- Applies where value of specified activity > Rs. 50 Lakhs in F.Y.
- Provision for removal of difficulty
- No possibility of s. 197A certificate
- No possibility of lower TDS u/s 197
- Similar consequences for default in compliance

SIMILARITIES OF PARALLEL PROVISIONS – S. 194Q & S. 206C(1H) - II

- S. 194Q does not apply on application of TDS under other pro.
 - S. 206C(1H) does not apply on application of other TCS provision
- S. 194Q not to apply where TCS u/s 206C [other than (1H)]
 - S. 206C(1H) not to apply in all cases of TDS

DISSIMILARITIES - I

- Rate of tax for Non PAN cases
 - 5% u/s 194Q
 - 1% u/s 206C(1H)
- S. 194Q applies on purchase
 - S. 206C(1H) applies on receipt of sales
- S. 19Q applies to a buyer of goods
 - S. 206C(1H) applies to a seller of goods
- S. 194Q does not exempt purchase from Govt. etc.
 - S. 206C(1H) exempts sales to Govt. etc.
- S. 194Q covers credit to Suspense Account
 - S. 206C(1H) not attracted on debit to Suspense Account

DISSIMILARITIES - II

- S. 194Q applies irrespective of TCS
 - S. 206C(1H) does not apply on TDS
- Non deduction u/s 194Q leads to disallowance u/s 40(a)(ia)
 - not collecting TCS has no impact on income of seller
- Applies on sale / purchase by Resident
- S. 194Q effective from 01.07.2021
 - S. 206C(1H) effective from 01.10.2020
- S. 194Q does not exempt purchases from specified person
 - S. 206C(1H) exempts specified person
- S.194Q contains provision for removal of difficulties by CG
 - S. 206C(1H) does not contain such a provision
- S. 194Q does not exclude imports
 - S. 206C(1H) excludes imports

SELECTING THE SECTION

- Difficulties in identifying applicable provision
- No option to choose
 - necessary to choose right provision
 - applying any one provision does not eliminate correct compliance
- Mutually exclusive in nature, generally
- Possibility of dual application
- Overlapping TDS / TCS provisions

COMPARATIVE APPLICATIONS

Particular	Section 194Q [TDS on purchase of goods]	Section 206C(1H) [TCS on sell of goods]
Nature	Tax deduction at source (TDS)	Tax Collection at source (TCS)
Obligation on	Buyer	Seller
Obligation, viz-a viz the turnover	T/O exceeds Rs. 10 Cr. in preceding F.Y.	T/O exceeds Rs. 10 Cr. in preceding F.Y.
Transaction limit in previous year	> Rs. 50 Lakhs	> Rs. 50 Lakhs
Nature of Payment / Receipt	Any sum for purchase of goods	Consideration for sale of goods
Timing	Credit or payment, whichever is early	Receipt
Rate	0.1% or 5%	0.1% or 1%
Not applicable	<ul style="list-style-type: none"> i. If tax is deductible under any other provision ii. If tax is collectible under any other provision except section 206C(1H) 	<ul style="list-style-type: none"> i. If tax is deducted by the buyer under any other provisions
Deductee / Collectee	Any person who is a resident i.e. seller	A person who purchases the goods but does not include Govt, etc., local authority or importer

ILLUSTRATIVE ANALYSIS

Sr. No.	Particulars of buyer	TDS u/s 194Q	Particular of seller	TCS u/s 206C(1H)
1	If the T/O etc. of buyer in Preceding financial year is more than Rs. 10 Crore And Transaction of purchase of goods during the year is > Rs. 50 Lakhs	Yes	Not Relevant once buyer deducts tax	N.A. [Second Provisio to s. 206C(1H)]
2	If T/O > 10 Crore & Purchase < Rs. 50 Lakhs	No	T/O – Not Relevant Value of Sales < Rs. 50 Lakhs	N.A.
3	If T/O < 10 Crore & Purchase > Rs. 50 Lakhs	No	T/O > 10 Crore T/O < 10 Crore	Yes No
4	If T/O < 10 Crore & Purchase < Rs. 50 Lakhs	No	T/O – Not Relevant Value of Sales < Rs. 50 Lakhs	N.A.

PROV. TO ELIMINATE DUAL APPLICATION

- Second proviso to s. 206C(1H)
 - excludes application of TCS where buyer;
 - liable to TDS & has deducted such tax
- No TCS u/s 206C(1H) where;
 - goods covered by 206C(1), (1F) and (1G)
- S. 194-O(3) attempts to eliminate duality
- S. 194Q(5) exempts a transaction on which;
 - tax is deductible elsewhere and
 - tax is collectible u/s 206C [excluding (1H)]
- Fifth Proviso to s. 206C(1G)
 - excludes application of TCS where buyer is;
 - liable to TDS and has deducted such tax
- Other TDS / TCS provisions does not contain such eliminating provisions

SITUATION OF DUAL APPLICATIONS

- Buyer liable to TDS but fails to deduct
 - liability of buyer continues post TCS u/s 206C(1H)
- Buyer liable to TDS, deducts tax and does not pay
- Buyer not liable to TDS but deducts tax
- Payment by buyer > Rs. 50 Lakhs
 - purchases of two years
- Payments by buyer in kind
- Advance payment by buyer

FAILURE OF BUYER TO DEDUCT TDS

- Buyer liable to TDS u/s 194Q
- Fails to deduct tax at source
- Seller liable to collect tax at source
 - second proviso to s. 206C(1H) inapplicable
 - exemption for seller not activated
- Buyer may deduct tax subsequent to TCS
 - to redress this default
 - no exemption from TDS u/s 194Q
- Payment of taxes by buyer and seller

BUYER DEDUCTS & DOES NOT PAY

- Buyer liable to TDS u/s 194Q
- Buyer deducts tax and does not pay
- Seller not liable to TCS u/s 206C(1H)
 - second proviso to s. 206C(1H) activated
 - seller exempted from TCS
- Seller pays TCS
- Buyer will have to deposit the tax deducted
- Payment of taxes by buyer and seller

BUYER VOLUNTARILY DEDUCTS TAX

- Buyer not liable to TDS u/s 194Q
- Deducts tax and pays the same
- Seller liable to collect tax at source
 - second proviso to s. 206C(1H) inapplicable
 - exemption for seller not activated
- Payment of taxes by buyer and also by seller

PAYMENT FOR MORE THAN ONE YEAR

- Buyer paying an amount exceeding Rs. 50 Lakhs
 - in one year for two purchases
- Buyer deducts tax on payment
- Seller liable to collect tax at source on receipt
 - second proviso to s. 206C(1H) inapplicable
 - exemption for seller not activated
- Payment of taxes by buyer and also by seller

PAYMENT IN KIND

- Buyer purchases goods
- Buyer liable to TDS u/s 194Q on purchase
 - credits the sellers account
- Makes payment in kind
- Buyer not liable to TDS
 - payment of any sum
- Seller liable to TCS
 - second proviso to s. 206C(1H) inapplicable
 - seller not exempted from TCS
- Payment of taxes by buyer and seller

ADVANCE PAYMENT

- Payment of advance
- Seller liable to collect tax at source on receipt
 - second proviso to s. 206C(1H) inapplicable
 - exemption for seller not activated
- Buyer purchases goods in the next year
 - deducts tax at source u/s 194Q
- Payments of taxes by buyer and also by the seller

PRECAUTIONS

- By seller
 - to check on receipt whether buyer is liable to TDS and has deducted
 - whether he is liable to TCS
- By buyer
 - whether he is liable to TDS
 - whether seller is liable to TCS u/s 206C(1), (1C), (1F), (1G)

COMMON ISSUES



COMMON ISSUES - I

Sr. No.	ISSUES	194-O	194Q	206C(1H)	206C(1F)	206C(1G)
1	‘Goods’ not defined - immovable property, intangible assets, security and other cases	-	-	-	-	-
	- Clarification by CBDT for s. 194-O	-	-	-	-	-
	- Off market transaction	-	-	-	-	-
	- Unlisted securities transactions	-	-	-	-	-
2	TDS on value – gross or net - delivery charges, GST, other levies, discount, adjustments	-	-	-	-	-
3	Includes different goods	-	-	-	-	-
4	Purchases from branch included	-	-	-	-	-
5	Purchases before cut-off date	-	-	-	-	-

COMMON ISSUES - II

Sr. No.	ISSUES	194-O	194Q	206C(1H)	206C(1F)	206C(1G)
6	No overriding effect for s. 194Q	-	-	-	-	-
7	Goods returned / price adjustment	-	-	-	-	-
8	Exchange and consideration in kind	-	-	-	-	-
9	Non business purchases, capital, personal, intangibles	-	-	-	-	-
10	Payment to PE of non-resident	-	-	-	-	-
11	No relevance of business for limit of Rs. 50 lakhs for F.Y.	-	-	-	-	-
12	Limit of Rs. 10 Lakhs qua each vehicle or not	-	-	-	-	-
13	Declaration u/s 197A not possible	-	-	-	-	-

COMMON ISSUES - III

Sr. No.	ISSUES	194-O	194Q	206C(1H)	206C(1F)	206C(1G)
14	Lower deduction certificate u/s 197 not possible	-	-	-	-	-
15	Interest, penalty and prosecution possible for default	-	-	-	-	-
16	Not applicable to case of new business	-	-	-	-	-
17	Purchase from units in SEZ / EOU not exempted	-	-	-	-	-
18	Cases of composite supply	-	-	-	-	-
19	Receipt of advance	-	-	-	-	-
20	Disallowance u/s 40(a)(ia) on non deduction	-	-	-	-	-
21	Purchases covered by s. 194-O – see s. 194-O(3)	-	-	-	-	-

COMMON ISSUES - IV

Sr. No.	ISSUES	194-O	194Q	206C(1H)	206C(1F)	206C(1G)
22	Exceed – exceeding – excess of	-	-	-	-	-
23	Amount of sales / sales consideration	-	-	-	-	-
24	Sales and consideration not defined	-	-	-	-	-
25	Determination of value of Rs. 50 lakhs for F.Y. – qua sales or receipt	-	-	-	-	-
26	‘Purchases’ not defined	-	-	-	-	-
27	Case of non resident seller not specifically excluded	-	-	-	-	-
28	Importing goods into india	-	-	-	-	-
29	Receipts towards sale of earlier / subsequent years	-	-	-	-	-
30	TCS to be included in invoice or not	-	-	-	-	-

COMMON ISSUES - V

Sr. No.	ISSUES	194-O	194Q	206C(1H)	206C(1F)	206C(1G)
31	Cost of tickets, VISA fees and other reimbursements	-	-	-	-	-
32	Remittance of expenditure with no element of income	-	-	-	-	-
33	TCS even where buyer is an agriculturist	-	-	-	-	-
34	Purchase from different branches of authorized dealers	-	-	-	-	-
35	Purchase from different authorized dealers	-	-	-	-	-
36	No threshold for OTPPP	-	-	-	-	-
37	Clarification for the basic exemption of rs. 7 lakhs	-	-	-	-	-
38	Any Buyer of OTPPP – non-resident, non-individual	-	-	-	-	-

COMMON ISSUES - VI

Sr. No.	ISSUES	194-O	194Q	206C(1H)	206C(1F)	206C(1G)
39	Tour Cancellation in Covid-19 times	-	-	-	-	-
40	Electronic v. Physical delivery	-	-	-	-	-
41	E-books, music, songs, presentations, lectures covered	-	-	-	-	-
42	Case of Ola and Uber	-	-	-	-	-
43	Payment gateways	-	-	-	-	-
44	Online travel ticket sales	-	-	-	-	-
45	Credit card purchases	-	-	-	-	-
46	Non resident ECO covered	-	-	-	-	-
47	Non resident purchaser/recipient covered	-	-	-	-	-

COMMON ISSUES - VII

Sr. No.	ISSUES	194-O	194Q	206C(1H)	206C(1F)	206C(1G)
48	Case of sale through own website	-	-	-	-	-
49	Difficulty in case of direct payment by purchaser to ECP	-	-	-	-	-
50	Meaning of digital/electronic facility and platform, not known	-	-	-	-	-
51	TDS on commission of ECO - goods returned	-	-	-	-	-
	- possibility of TDS liability for ECP u/s. 194H	-	-	-	-	-
52	Determination of value of sales of Rs. 5 lakhs of Individual / HUF - qua an entity or platform	-	-	-	-	-
53	TDS compliance u/s 194Q by consumer	-	-	-	-	-
	- purchasing goods digitally	-	-	-	-	-
54	No impact on income of ECO / ECP for non deduction	-	-	-	-	-

THANK YOU

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