

TDS on purchase of goods exceeding 50 lakhs w.e.f 1st July, 2021

Only 9 months passed by with the introduction of TCS on sale of goods on sum exceeding 50 lakhs, where specified sellers were under the obligation to collect tax at the rate of 0.1% on sales exceeding 50 lakhs made to a person and just when they got used to the provision of TCS and installed the necessary tools in their accounting software, the Finance Act, 2021 with effect from 01/07/2021 shifts the responsibility of deduction of tax on goods by specified buyers u/s 194Q of the Income-tax Act, 1961.

Provision of the Income Tax Act

Any person, being a buyer who is responsible for paying any sum to any resident (hereafter referred to as the seller) for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, deduct an amount equal to 0.1% of such sum exceeding fifty lakh rupees as income-tax.

Buyer means a person whose total sales, gross receipts or turnover from the business carried on by him exceed INR 10 Crores during the previous year ended on 31st March.

Explanation



- Purchase of goods of aggregate value > 50 lakhs in a year from seller.
- Applicable with effect from 01st July, 2021 on accrual basis
- If tax is not deductible under other TDS provisions, then the buyer is liable to deduct TDS at the rate 0.1% of the purchase value above INR 50 lakhs.
- Not applicable if tax is collectible under the provision of section 206C except TCS on sale of goods u/s 206C (1H).

Important points:

1. **Buyer:** Buyer means a person having turnover/gross receipts/total sales from business exceeding Rs.10 Crores during the financial year (FY) preceding the FY in which goods are purchased.
2. **Seller:** Seller means a resident person. Thus, import of goods are outside the purview of section 194Q.
3. **Services:** These provisions are applicable only in respect of transaction of sale of goods and do not apply to sale of services.
4. **Goods:** The term goods have not been defined in the Income Tax Act, hence one may refer to Sales of Goods Act, 1930 or Goods and Service Tax Act 2017 for the meaning of goods.
As per the Sale of Goods Act 1930, goods means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.
In Goods and Service Tax Act 2017, the term "Goods" has been defined as goods means every kind of movable property other than money and securities but includes actionable claims, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.
5. **PAN/Aadhar not provided by seller:** If the seller does not provide PAN/Aadhar number then the TDS shall be deducted at 5%, instead of 0.1%.
6. **Section 194Q Non applicability:**
 - a) Transactions on which TDS is deductible under other provisions of the Income Tax Act;
 - b) Transactions on which TCS is collectable under the provisions of section 206C excluding TCS collectable on sale of goods under section 206C(1H).
7. **TDS to prevail over TCS on transaction of goods:** TDS provisions on purchase of goods have to be examined before checking the provisions of TCS on sale of goods i.e., the Buyer will have to first examine whether TDS on purchase of goods is applicable or not subject to the conditions mentioned above and if TDS under section 194Q is deducted and paid on the transaction, then the seller would not be required to check the applicability of TCS on sale of goods under section 206C(1H). Needless to mention, if the buyer has not withheld tax u/s 194Q, then the seller has to

examine whether TCS is required to be collected from the buyer in accordance with section 206C(1H).

8. Qualifying amount: The amount on which the tax needs to be deducted shall be limited only to the consideration for purchase of goods actually payable. The liability is triggered at the point of credit of sum payable to a seller over and above the threshold limit of INR 50 Lakhs. The purchase consideration can be interpreted as amount paid in advance or in arrears. In case, if there is some change in valuation say under GST law then too the requirement of TDS will be qua actual consideration and not qua valuation under the GST law.

9. TDS to be deducted at the earliest:

TDS is required to be deducted 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.

10. Threshold of INR 50 Lakhs shall be computed from 01/04/2021: The CBDT vide Circular No. 17, dated 29/09/2020 in context of section 206C(1H) i.e., TCS on sale of goods had clarified that the threshold of Rs 50 lakhs is to be considered from 1st April.

Applying the same principle, buyers while computing the threshold limit of Rs.50 lakhs shall consider the purchases made from the respective seller from 01/04/2021. Thus, if a buyer has already purchased goods of value Rs. 50 lakhs or more up to 30/06/2021 from a particular seller, then TDS should be deducted u/s 194Q on all purchases made on or after 01/07/2021 if the Turnover of the buyer in the financial year 2020-21 is more than INR 10 Crores.

11. TDS has to be deducted on advance payment made to the seller: Section 194Q provides that tax is required to be deducted in the transaction relating to the purchase of goods. It does not mention whether such purchase needs to be effected immediately or at a future date. As the tax is required to be deducted at the time of payment or at the time of credit, whichever is earlier, it can be concluded that the provision gets attracted even if such purchase happens in future. As long as the intention is to adjust the advance payment against the future purchase of goods, the tax should be deducted at the time of payment or credit, whichever is earlier.

12. Whether consideration will include the amount payable towards GST:

The CBDT vide Circular No. 23/2017, dated 19/07/2017, had clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component. However, in respect of Section 206C(1H), the CBDT vide Circular No. 17, dated 29/09/2020, had 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 the extant provision.

TDS under section 194C/194J/194I etc is not required to be deducted on the GST component if the same is disclosed in the tax invoice separately. Therefore similar analogy may be drawn while deducting taxes u/s 194Q and it can be claimed that tax is not required to be deducted on GST component reflected in the tax invoice. However, department may claim that the former circular only covers GST on service component and the principle intent is already clarified in the latter circular where TCS was required to be collected on the GST component. Hence, considering the ambiguity in the provisions and circulars, one may take a conservative approach to withhold TDS on the total purchases value inclusive of GST.

13. Whether TDS provisions would be applicable if the amount payable is adjusted against the amounts receivable from said party:

In such a situation, though the amount is not paid in cash mode, however there is a deemed payment for purchase of goods through indirect means i.e., through an adjustment of receivable and payables account and hence TDS should be deducted on such transactions.

14. Whether advance payments before 01/07/2021 for purchase of goods will be subject to TDS:

The provisions of this section shall not apply on any payment made or credit made in the books of accounts before 01/07/2021 and hence any entry of purchases recorded in the books of account prior to 01/07/2021 would not be subject to TDS in ideal circumstances. Needless to mention, TCS could be collected on such transactions by the seller if conditions of section 206C(1H) are satisfied.

15. Due date of payment of TDS and disclosure in TDS return: The amount deducted as TDS by the buyer (other than an office of the Government) shall be paid to the credit of the Central Government within one week from the last day of the month in which the deduction is made for all the months from April to February. The amount deducted as TDS in the month of March is 30 April. These transactions are to be reported by the buyers in Form No. 26Q.

16. Consequences for failure to deduct or pay TDS: If any person fails to deduct the whole or any part of the tax OR after deduction fails to deposit the same to the credit of the Central government, then the person shall be deemed to be an assessee-in-default and 30% of the purchases could be disallowed while computing Business Income.

17. TDS not applicable on transactions carried through Exchanges: CBDT vide Circular No. 17 of 2020, had clarified that provisions of Section 206C(1H) shall not be applicable in relation to transactions in securities and commodities which are traded through recognised stock exchanges. The said circular should hold good for purchase of goods and hence TDS under Section 194Q is not applicable for purchase of securities and commodities traded through recognised stock exchanges.

There is no clarification as on date in cases of transaction in securities which are not traded through recognised stock exchange and hence one may need to evaluate in detail whether TDS is required to be deducted on purchase of off-market securities.

18. TDS applicability on purchase from a person located in special economic zone: TDS is not required to be deducted if the goods are imported. Given that the special economic zone (SEZ) is located within the country's national borders, purchase of goods from a person located in SEZ would not mean that the goods are imported, hence TDS could be applicable on such purchase, subject to fulfilment of other conditions.

19. Purchase value of 50 lakhs is per year qua seller: TDS is required to be deducted, if the value of consideration in respect of purchase of goods is more than INR 50 lakhs qua seller for a year and only in respect of the consideration in excess of 50 Lakhs. E.g., M/s MU Ltd, has purchased goods worth INR 25 Lakhs from Mr. Ron from April 2021 to June 2021. Thereafter, M/s MU Ltd purchases

goods worth INR 30 Lakhs from Mr. Ron on 01/07/2021. Here, M/s MU Ltd will have to deduct TDS only on INR 5 lakhs.

- 20. TDS not applicable on transfer of one branch to another:** The preliminary condition for applicability of provision of TDS is that there should be two parties involved in a transaction viz., buyer and seller. Further, there must be a purchase of goods between the parties. The activity of transfer of goods from one branch to another should not be construed as a purchase transaction and accordingly TDS need not be deducted on inter branch transfer of goods. Moreover, even if this type of transactions are held to be a purchase of goods, TDS should not be applicable because as per the IT Act both the seller and buyer are one and the same person and one cannot deduct taxes for himself on his own.
- 21. No TDS on purchase of specific goods covered under TCS provisions:** TDS is not required to be deducted under this provision if TDS is to be deducted under any other provision OR TCS to be collected under section 206C(1) / 206C(1F) / 206(1G) viz, for sale of alcoholic liquor for human consumption, tendu leaves, timber, scrap, coal, lignite, iron ore, sale of motor vehicle, foreign remittances and overseas tour program package etc. Thus, if there is a purchase of goods which are sold as scrap, then TDS would not be required to be deducted under this provision by the buyer as the seller will collect TCS in accordance with the provisions of the IT Act.
- 22. TDS on immovable property at 1%:** Although purchase of immovable property may be treated as a purchase of goods, however provisions of section 194-IA would override provisions of section 194Q and hence TDS on purchase of immovable property would be at 1% in accordance with provisions of section 194-IA of the IT Act.
- 23. Can a seller apply for the certificate for lower deduction of TDS:** Assessee can apply to the Assessing Officer to issue a certificate for deduction of tax at lower rates. Such certificate shall be issued if existing and estimated tax liability of assessee justifies deduction of tax at a lower rate. However, provisions of IT Act have not proposed to extend the benefit to apply for a certificate for deduction of tax at lower rates or to file declaration for nil deduction with respect to sale of goods. Hence, the seller does not have the option to approach the assessing officer to issue a

certificate for a lower tax deduction or to file declaration for nil deduction in respect of transactions covered under section 194Q.

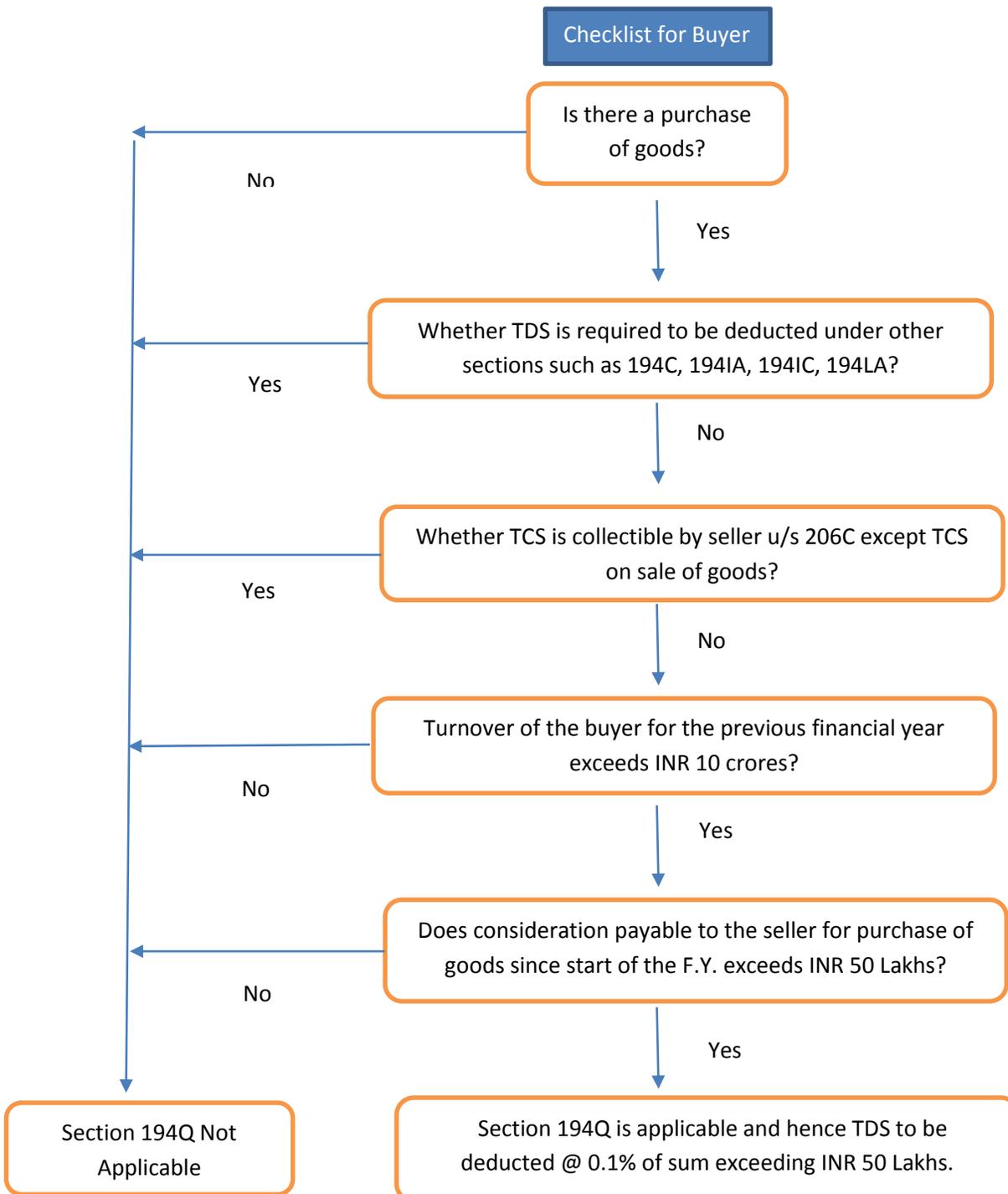
Comparison of Sec 194Q and 206C(1H) of the Income Tax, 1961

Particulars	Section 194Q	Section 206C(1H)
Purpose	Tax to be <i>DEDUCTED</i>	Tax to be <i>COLLECTED</i>
Obligation of	Buyer/Purchaser	Seller
With effect from	01/07/2021	01/10/2020
When Deducted or collected	Payment or credit, whichever is earlier	At the time of receipt
Advances	TDS shall be deducted on advance payments made	TCS shall be collected on advance receipts
Rate of TDS/TCS	0.1%	0.1% (0.075% for FY 2020-21)
PAN not available	5%	1%
Triggering point	Turnover/Gross Receipts from the business of BUYER should exceed INR 10Cr during previous financial year. Purchase of goods qua seller exceeds 50 Lakhs in the current year.	Turnover/Gross Receipts from the business of SELLER should exceed INR 10Cr during previous financial year. Sale consideration qua buyer received exceeds 50 Lakhs in the current year.
When to deposit/collect	Tax so deducted shall be deposited with government by 7th day of subsequent month except in month of March where it is to be deposited by 30th April.	Tax so collected shall be deposited with government by 7th day of subsequent month.
Quarterly statement to be filed	Form 26Q	Form 27EQ

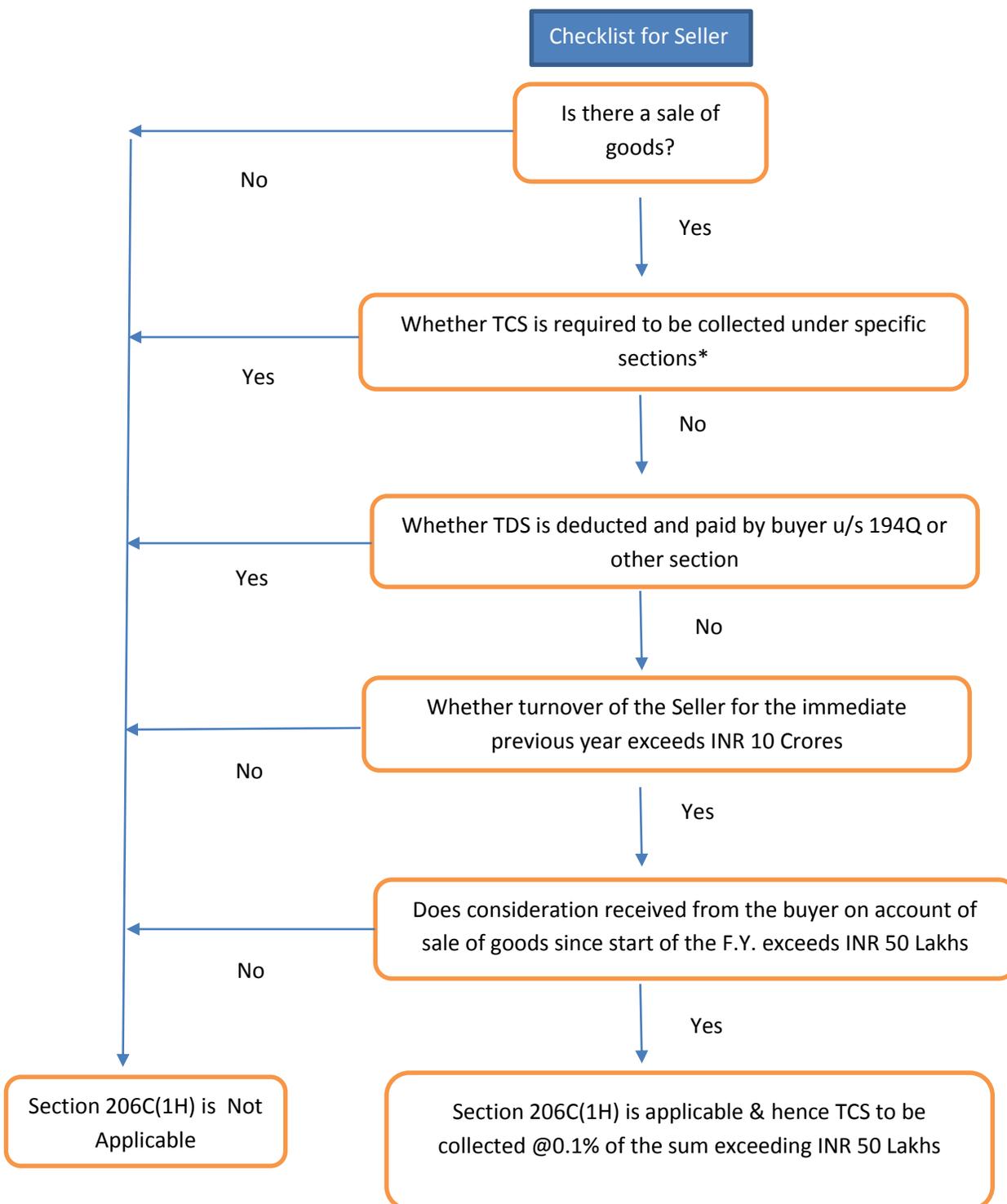
Let us take a look at some illustration for better understanding of the new provision:

<i>Particulars</i>	<i>Scenario 1</i>	<i>Scenario 2</i>	<i>Scenario 3</i>
Turnover of Seller (In cr.)	12	6	12
Turnover of Buyer (In cr.)	6	12	12
Sale of goods (In cr.)	2	2	2
Consideration paid during the year (In cr.)	1	1	1
Who is liable to deduct or collect tax?	Seller	Buyer	Buyer
Rate of Tax	0.1%	0.1%	0.1%
Amount on which tax to be deducted or collected (In Cr.)	0.5	1.5	1.5
Tax to be deducted or collected	5,000	15,000	15,000

Flowchart for applicability of TDS on purchase of goods



Flowchart for applicability of TCS on sale of goods



*Specific sections means section 206C(1), 206C(1C), 206C(1F) and 206C(1G).

Comments

From 01/07/2021 sellers would have to check with all their buyers whether they are required to withhold Tax on purchase of goods. In fact this exercise will have to be carried out on yearly basis because whether Tax is required to be deducted on purchases depends on the Turnover of the preceding financial year of the buyer. So it can very well happen that in one year the responsibility to withhold tax is on buyer and in subsequent year the obligation of collection of tax could be on the seller. Moreover it is pertinent to note that once tax is deducted and paid by the buyer then tax is not required to be collected by the seller and hence clear communication between the buyer and seller carries utmost significance in order to not only comply with the law but also to avoid dual application of tax which may lead to unnecessary blockage of funds.

13 June 2021

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