CBDT clarifies on new TDS provisions applicable on purchase of goods

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Withholding tax provisions under the Income-tax Act, 1961 (TDS/WHT provisions) in India have a long history. They have been introduced with an aim to collect tax from the very source of income and with a view to safeguard the interests of revenue.

The Finance Act, 2021 has introduced a new set of provisions (Section 194Q). It provides that a 'buyer' is required to deduct tax at source at the rate of 0.1% of the such sum (exceeding INR 5 million) while paying any sum to any resident 'seller' for the purchase of goods of the value or the aggregate of such value exceeding INR 5 million in any previous year. These provisions apply to a buyer where total sales, gross receipts or turnover from the business carried on by the buyer exceed INR 100 million during the financial year immediately preceding the financial year in which the purchase of goods is carried out. These provisions came into effect from 1 July 2021.

The Finance Act, 2020, had introduced sub-section (1H) in Section 206C dealing with the collection of tax at source. It provides for the mechanism to collect tax by a seller on the sale of goods of a sum equal to 0.1% of the sale consideration exceeding the value or aggregate of such value exceeding INR 5 million in any previous year from the buyer.

With the two set of provisions targeted at the same transaction, one in the hands of the buyer and the other in the hands of the seller, there persisted doubts in the minds of taxpayers with regard to the congruent applicability of the said provisions to the same transaction. Various representations were made to the Central Board of Direct Taxes (CBDT). Recently, CBDT has issued guidelines with an objective to provide clarity on the applicability of such TDS provisions.

The guidelines, *inter alia*, provided clarity on a number of issues viz. calculation of threshold, applicability of provisions to transactions carried out through various exchanges, adjustment for GST, purchase return, applicability to a non-resident, etc. The government has promptly responded to the concerns raised by the stakeholders and has provided clarity on many issues that would have otherwise impacted the effective implementation of the TDS mechanism. This has also saved taxpayers from being treated as an 'assessee in default' for not having deducted tax at source under the relevant provisions of the Act and also act as a safeguard from the penalty for non-filing of TDS returns under the relevant provisions of the Act.

The guidelines have also attempted to remove the difficulties arising due to overlapping TDS provisions of Section 194Q *vis-à-vis* the provisions applicable to e-commerce operators under Section 194-O and TCS provisions under Section 206C(1H).

In the context of 'purchase returns', it has been clarified that if tax has already been deducted under Section 194Q on that purchase, and against this 'purchase return' the money is refunded by the seller, then this tax deducted may be adjusted against the next purchase only against the same seller. In case if the transaction entered into is the only transaction with the seller and crosses the threshold of INR 5

million, there may be no scope for adjusting the tax against the next purchase. In such a situation, a question may arise on whether the refund can still be available to the deductor.

The guidelines also clarify that the provisions of Section 194Q shall not apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the Permanent Establishment (PE) of such non-resident in India. For this purpose, a PE shall mean to include a fixed place of business through which the business of the enterprise is wholly or partly carried on. The exercise of determination of PE itself has been a matter of huge litigation before the Courts/Tribunal and is still being litigated. In such a situation, whether the subjectivity involved in ascertaining the PE of an entity should in any way be prejudicial to the interest of the deductor and treat him as an 'assessee in default' may be an area of concern which may have to be addressed in the times to come. Emphasis has been laid on the aspect of a 'fixed place' of business. Whether this has been a conscious inclusion or whether some of the other types of PE's viz. Service PE, Agency PE, etc. have been deliberately left out would be a matter of judgmental analysis.

The Income-tax Act does not define the term 'goods'. To ascertain the applicability of the TDS provisions one may have to draw reference from the definition of the term 'goods' under the Sale of Goods Act, 1930. The term 'goods' have been defined to *mean 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;"*. Thus, if one relies on the aforesaid definition, the ambit of the TDS provisions under Section 194Q would be very wide, subject to satisfying the turnover and value threshold.

It has also been clarified that when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of GST comprised in the amount payable to the seller is indicated separately, tax shall be deducted on the amount credited without including such GST. In line with this bifurcation, an issue that may need to be addressed is the treatment of certain 'out of pocket' reimbursements that may be made by the buyer, which do not form part of the transaction value for the goods purchased. In such instances, one may have to carefully bifurcate between the value of the goods and the other expenses not forming part of the purchase price of the goods and raise two bills separately so as to exclude the component of re-imbursement, which does not have an income element, from the value of the goods purchased. This aspect has been clarified by CBDT in Circular no 715, dated 8 August 1995.

Another issue that may warrant a mention here is in the case of transfer of goods between one branch to another. Since the Section makes a reference to the term 'buyer' for purchase of any goods for the purpose of complying with the withholding tax provisions, one can argue that intra-branch stock transfers may not be covered within the ambit of such TDS provisions.

While the government has introduced TDS provisions with a view to safeguard their revenue, a twin-fold TDS compliance mechanism on the same transaction is an unheard situation. Though the government has earnestly issued the guidelines, it is pertinent to think whether there was a need to introduce such TDS provisions when a corresponding set of provisions in the form of TCS is already existing.

(Source: Taxmann.com)