

# VOICE OF CA - VOCA

## Important Issues & Recent Amendments in TDS & TCS Provisions under Income Tax Act

**Chief Guest**  
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## **SALARY : EXCESS OR SHORTAGE OF TDS DURING THE F.Y.**

- Any excess/ deficiency arising out of previous deduction or failure to deduct during the financial year can be adjusted subsequently as per **Section 192(3)**.
- Thus, where assessee did not deduct tax from salaries in each month, rather it deducted tax at end of financial year, interest u/s. 201(1A) could not be levied – **CIT v. Enron Expat Services Inc.(Uttarakhand HC)(ITA No. 78/2007)**
- If TDS u/s. 192 is not deducted in equal instalments intentionally(not bona fide) and the deficiency is made good in last months, interest u/s. 201(1A) is liable to be levied – **Madhya Gujarat Vij Co. Ltd. v. ITO (Ahmedabad Trib.)(ITA No. 420/Ahd/2011)**

## OTHER INCOMES MAY BE INFORMED TO EMPLOYER

- The employee MAY provide to the employer, particulars of :
  - **Other Income**, including tax deducted thereon- self declaration rule 26B.
  - **Loss**, only if it is under the head 'Income from house property'
- **Income from House Property –**
  - **Any other rental income** may be informed to the employer.
  - **Deemed let out property** - From AY 2020-21, if assessee owns more than **2** Self occupied houses, such other house or houses shall be **deemed to have been let** and its annual value shall be computed in accordance with Section 23(1). [Prior to AY 2020-21, if the assessee owned 2 houses, the other house had to be deemed to have been let]
  - Assessee can claim deduction of interest paid on borrowed capital u/s. 24(b) of the Act.

## FORM 12BB – CHAPTER VI-A DEDUCTIONS

- Evidence of investment or expenditure for -
  - **Section 80C/CCC/CCD(1)** – upto Rs. 1,50,000
    - **Section 80CCD(1B)** – Additional Rs. 50,000 for NPS
    - **Section 80D** –Medical expense for senior citizen and Health insurance premium (payment to be made by any mode, other than cash)
      - Rs. 25,000 for family (self, spouse and dependant children; 50,000 if senior citizen)
      - Rs.25,000 for parents (dependant or not; Rs. 50,000 if senior citizen)
      - Above limit includes Rs. 5,000 – for preventive health checkup (can be paid in cash)

## FORM 12BB – CHAPTER VI-A DEDUCTIONS

- **Section 80DD** – Maintenance including medical treatment of a dependant who is a person with disability
  - Any expenditure incurred for the medical treatment (including nursing), training and rehabilitation
  - Any amount paid/deposited in an approved scheme of LIC
  - **Amount of deduction:** Rs. 75,000 for person with disability and Rs. 1,25,000 for person with severe disability

## FORM 12BB – CHAPTER VI-A DEDUCTIONS

- **Section 80E** – Deduction in respect of payment of interest on loan taken for higher education
  - No upper limit for deduction
  - Loan to be taken from a banking company or notified financial institution or a charitable institution approved u/s. 10(23C) or 80G(2)(a).
  - Loan can be taken for higher education of the assessee **himself** or **his relative** (relative means spouse, children or a student for whom the assessee is a legal guardian)
  - **Higher Education** – Any course of study pursued after passing Senior Secondary examination or equivalent from any recognised school / board / university.

## FORM 12BB – CHAPTER VI-A DEDUCTIONS

- **Section 80EEA** (w.e.f. A.Y. 2020-21) – Deduction upto **Rs. 1,50,000** in respect of **INTEREST ON LOAN FOR THE PURPOSE OF ACQUISITION OF HOUSE PROPERTY** subject to following conditions:
  - Loan should be sanctioned b/w. 1.4.2019 to **31.03.2022**
  - Stamp duty value of house property – **upto Rs. 45 Lakhs.**
  - Owns no residential house property on the date of sanction of loan.
  - **Double deduction of same interest should not be allowed under any other section.** (i.e. interest cannot be claimed u/s. 24(b) of the Act)



## **FORM 12BB – CHAPTER VI-A DEDUCTIONS**

- **Section 80EEB** – Deduction in respect of **INTEREST ON LOAN** taken for purchase of **ELECTRIC VEHICLE**
  - **Amount of deduction:** upto Rs. 1,50,000
  - Loan should be sanctioned by the financial institution during the period FY 2019-20 to FY 2022-23
  - No limit for amount of loan or price of the electric vehicle.

## **NORMAL PROVISIONS vs. SECTION 115BAC ?**

- If the assessee opts under the special provisions of tax u/s. 115BAC, then in respect of a salaried employee, **some** of the exemption/deductions/claims which will **NOT BE AVAILABLE** are as under:
  - **Leave travel concession** - Section 10(5)
  - **House rent allowance** - Section 10(13A)
  - **Standard deduction of Rs. 50,000** – Section 16(ia)
  - **Entertainment allowance** – Section 16(ii)
  - **Professional tax** – Section 16(iii)
  - **Standard deduction (lower of 1/3<sup>rd</sup> or Rs. 15,000) against family pension** – Section 57(iia)

## **NORMAL PROVISIONS vs. SECTION 115BAC ?**

- If the assessee opts under the special provisions of tax u/s. 115BAC, then in respect of a salaried employee, **some** of the exemption/deductions/claims which will **NOT BE AVAILABLE** are as under:
  - **Interest on loan for self occupied house property** – Section 24(b)
  - Life insurance premium, principal repayment of housing loan, PPF deposit, etc. upto **Rs. 1,50,000 - Section 80C**
  - Interest on savings bank account upto **Rs. 10,000 – Section 80TTA- other than senior citizen**
  - Interest on S. B. A/c, R. D. and time deposits upto **Rs. 50,000 – Section 80TTB – Senior Citizen**
  - Health insurance premium/medical expenditure – **Section 80D**

## **NORMAL PROVISIONS vs. SECTION 115BAC ?**

- If the assessee opts under the special provisions of tax u/s. 115BAC, then in respect of a salaried employee, **some** of the exemption/deductions/claims which will **NOT BE AVAILABLE** are as under:
  - Specified deductions u/s. 80DD, 80DDB, 80U
  - Interest on loan for higher education – **Section 80E**
  - Interest on loan for certain house property upto Rs. 1,50,000 – **Section 80EEA**
  - Interest on loan taken for purchase of electric vehicle upto Rs. 1,50,000 – **Section 80EEB**
  - **Donations u/s. 80G, and other Chapter VI-A deductions**
  - No set-off of loss under the head '**Income from house property**'. However, it can be carried forward to subsequent AY's.

## **TDS U/S. 192 IN LIGHT OF THE SECTION 115BAC-FORM 10-IE**

- **Intimation to Employer** - The employee, whether having any income under head 'profits and gains from business or profession' or not, has to intimate the employer about the intention to opt for concessional rate of taxation u/s. 115BAC of the Act. The employer will deduct TDS accordingly.
- If **no such intimation** is made, TDS will be deducted without considering Section 115BAC.
- Intimation so made to the employer **cannot be modified during the year**.
- However, this intimation given to employer is not binding and the employee can choose different option while filing return of income.
- In respect of employee having income under PGBP head – intimation for subsequent years should not deviate from previous intimation, except when the employee opts out from Section 115BAC.
- **CBDT Circular No. C1 of 2020 dated April 13, 2020.**

## TDS ON DIVIDENDS – SECTION 194

- **Nature of Payment:** Dividend (including dividends on preference shares)
- **Deductor:** Any Domestic company
- **Deductee:** Resident shareholder
- **Threshold limit:** No deduction upto Rs. 5,000, if dividend is paid by any mode, other than cash.
- **Rate of tax:** 10% (7.5% w.e.f 14.05.2020 to 31.03.2021)
- No deduction on dividend paid to LIC, GIC or any other connected insurer.
- **Only Individual Shareholder** can furnish **Form No. 15G** or **15H**, as the case may be.

## **194P : CITIZEN OF THE AGE OF 75 YEARS OR MORE NOT REQUIRED TO FILE ITR**

**citizen of the age of 75 years or more not required to file ITR** :- w.e.f. A.Y. 2021-22, Any such resident citizen having income from pension only and receiving interest from the same bank in which he is receiving pension, will not be required to file return of income, bank will do requisite TDS u/s 194P after allowing deduction available under Chapter VI-A and rebate U/s 87A.

## **TDS ON INTEREST** (other than interest on securities) – **SECTION 194A**

- **Nature of Payment:** Interest (other than interest on securities)
- **Threshold:** **Rs. 40,000** in case of payment by **Banks/co-operative bank/Post office** (Rs. 50,000 in case of senior citizen), and Rs. 5,000 in any other case.
- For banks with CBS, limit to be calculated per bank (and not per branch)
- **Rate of tax:** 10% (7.5% w.e.f.14.05.2020 to 31.03.2021)
- Interest paid by a **co-operative society (if its total sales, gross receipts or turnover of the preceding FY does not exceeds Rs. 50 Crores<sup>#</sup>)** to its member or to any other co-operative society not liable for TDS as per 194A(3)(v).
- Recipient other than company or firm can furnish **Form No. 15G** or **15H**, as the case may be.

**# Inserted vide Finance Act, 2020 w.e.f 01.04.2020**



## Whether payment of Interest by a co-operative bank to a co-operative society is liable for TDS under section 194A ?

- As per literal interpretation of Clause (v) of Section 194A(3), **payment of interest by a co-operative society to any other co-operative society is not liable for TDS u/s. 194A.** Co-operative society includes a co-operative bank. Thus, **payment of interest by a co-operative bank to a co-operative society is not liable for TDS u/s. 194A.** On the above issue, **Hon'ble Kerala High Court** has held that in terms of Section 194A(3)(v) there will be no requirement of deducting tax at source in the case of payment of interest by a co-operative bank to a co-operative society. - **Vembayam Service Co-operative Bank Ltd. vs. ACIT** [WP(C).No. 9578/2019 dated 18.10.2019] (Kerala High Court)

## **TDS ON INTEREST** (other than interest on securities) – **SECTION 194A**

- **Interest paid for delayed payments of trade liability** is out of ambit of section 2(28A). Accordingly, not liable for TDS u/s. 194A – **ITO vs. Parag Mahasukhlal Shah** [2011] 46 SOT 302 (**Ahmedabad Trib.**), The same view has followed in **Kakhani Metals P. Ltd. Vs. ACIT Ay 2014-15** ITA/513/Ahd/2018 dt. 16-10-2019.
- If a Bank/Co-operative bank/Hsg. Fin. Co. has **paid interest without deduction of tax u/s. 194A** due to threshold limit of Rs. 40,000 (or Rs. 5,000 for deposits in public company), then statement of such particulars to be submitted in **Quarterly return in Form No. 26QAA**.

## **TDS ON INTEREST (other than interest on securities) – SECTION 194A**

- **CBDT Notification S.O. 3489 [No. 170 (F.No. 12/164/68)], dated 22-10-1970**
- **In pursuance of sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notify the following for the purposes of the said sub-clause:-**
  - **(i) any corporation established by a Central, State or Provincial Act;**
  - **(ii) any company in which all the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a Corporation owned by that Bank; and**
  - **(iii) any undertaking or body, including a society registered under the Societies Registration Act, 1860 (21 of 1860), financed wholly by the Government.**

## **TDS ON INTEREST** (other than interest on securities) – **SECTION 194A**

- Honorable **SC** in the case of CIT(TDS), Kanpur Vs. **Canara Bank** vide Civil Appeal No. 6020 of 2018 dt. 2-7-2018, dismissed the appeal of revenue and held that NOIDA is covered **194(3)(iii)(f)**, so TDS will not be deducted by bank on its deposits.
- ITAT Ahd. In the case of Gujarat State Electricity Corp Ltd. Vs. ACIT(TDS) ITA/2970/Ahd/2011 dt. 27-3-19 held that lender to whom the interest is payable being a Government company(GUVNL), the assessee is exempted u/s. 194A(3)(iii)(f) of the Act from its obligation to deduct taxes at source.

## INDIVIDUAL OR HUF LIABLE TO TDS

- Any individual or HUF whose turnover or gross receipts in business exceed Rs. 1 crore or in the profession exceed Rs. 50 Lakh in the just preceding previous year is liable to TDS provisions U/s **194A, 194C, 194H, 194-I, 194J**
- Payment by an individual or HUF for **Personal purposes** excluded from TDS liability U/s **194C, 194J**.

## **SEC. 197 : CERTIFICATE FOR DEDUCTION AT LOWER RATE**

- For deducting tax at lower rate or nil rate under provisions of **sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC, 194M, 194-O and 195**, the payer can apply online for lower rate certificate.

## SEC. 197A : FORM 15G/15H FOR NO TDS

- An **individual** can furnish form **15G/15H** to receive **dividend** without deduction of tax U/s 194, if tax on his income would be nil,
- Any person (individual/HUF/AOP/BOI/TRUST etc.) other than a company or a firm can furnish a declaration in form **15G/15H** as applicable, to receive any amount U/s 192A (PF) or 193 (interest on securities) or **194A** (interest other than interest on securities) or 194D (insurance commission) or 194DA (insurance maturity) or **194-I** (Rent) or 194K (income from units), without TDS, if tax on his estimated total income of the previous year will be *nil*.
- *Form 15G cannot be furnished if aggregate of income under above referred sections is exceeding Rs. 2.50 Lakh i.e. if exceeds basic exemption limit.*
- *As per rule 28AB any trust or institution claiming exemption U/s 11 or 12 or any institution required to file ITR U/s 139(4C) also cannot furnish form 15G if aggregate of income under above referred sections is exceeding Rs. 2.50 Lakh i.e. if exceeds basic exemption limit.*
- *Senior citizen can furnish form 15H if tax on his income will be nil.*

# TDS ON PAYMENT TO CONTRACTORS – SECTION 194C

- **Nature of Payment:** Works Contract. It includes :
  - Advertising
  - Broadcasting and telecasting including production of programmes for such broadcasting or telecasting
  - Carriage of goods or passengers by any mode of transport other than by railways
  - Catering
  - Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate covered u/s. 40A(2)(b), but **does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer or associate of such customer.**



## TDS ON PAYMENT TO CONTRACTORS – SECTION 194C

- **Threshold:** upto **Rs. 30,000** for single payment and upto **Rs. 1 Lakh** for aggregate payments
- **Rate of tax:** 1% if recipient is Individual/HUF (2% in any other case)<sup>#</sup>
- **Contract of Sale vs. Works contract** – Purchase of **printed packing material** is a 'Contract of Sale' and not 'Works contract'. Thus, not liable for TDS u/s. 194C - **CIT v. Dabur India Ltd.** [2006] 283 ITR 197 (**Delhi**)
- **Payments to transporters:** If any person owns **10 or less goods carriage** at any time during the year and he furnishes a declaration to this effect, TDS u/s. 194C is not required to be deducted. [Such details of non deduction of tax are to be furnished in **Form No. 26Q**] This exemption is not available if payment is made to a person merely acting as a transport agent and not a goods carriage owner.

<sup>#</sup> 0.75% or 1.5%, as the case may be, w.e.f 14.05.2020 to 31.03.2021

## TDS ON PAYMENT TO CONTRACTORS – SECTION 194C

- **ITAT Chennai in the case of Siva Valli Vilas Jewellers P. Ltd. V. DCIT Pondichery** vide ITA No. 3071/Chny/2017 dt. 31-3-2021 AY 2013-14 :- AO held that average wastage in this line of business is 1%, whereas the assessee has claimed wastage of 6.2% which is very higher, when compared to industrial practice. Therefore, he opined that wastage allowed to goldsmiths while making ornaments is nothing but making charges, which was paid in lieu of cash, hence, the same needs to be considered as service charges for manufacturing of jewellery. Assessee stated that there is no merit in the reasons given by the Assessing Officer that assessee has paid making charges in form of gold and such payment attracts TDS provisions u/s.194C of the Act. AO and CIT(A) stated that excessive wastage claimed by assessee, while manufacturing gold ornaments which is over and above industry average and thus, same needs to be considered as making charges paid to goldsmiths for manufacturing gold ornaments. **Contd.....**

## SECTION 194C: Contd.....

- According to the assessing Officer, average wastage in manufacturing gold ornaments is at 1% whereas, the assessee has claimed 6.2% wastage. Therefore, he has computed excessive wastage of 5% and treated the same as making charges paid for manufacturing of gold ornaments. To arrive at such conclusion, he has relied upon statement recorded from goldsmiths, who were involved in manufacturing of gold ornaments. ITAT held that, “In this case, the assessee has neither debited making charges into profit and loss account nor credited any amount to the respective parties account. Therefore, **when no payment is made or amount is credited to respective parties account, then question of application of provisions of section 194C does not arise at all**”. relied upon decision of ITAT., Mumbai in the case of Interactive Avenues (P) Ltd. Vs. DCIT (2021) 124 taxmann.com 126 and the decision of ITAT., Delhi in the case of Green Valley Tower Pvt.Ltd. Vs.ACIT (2021) (1) TMI 737 - ITAT Delhi.

## TDS ON PAYMENT TO CONTRACTORS – SECTION 194C

- **Honorable Bombay High Court in the case of CIT(TDS) V. Asian heart Care institute and research Pvt. Ltd.** on 5-3-2019 vide ITA/1294/2016/Bom discussed revenue's contention that the Respondent - Assessee while making payment to a contractor providing **maintenance and support services** ought to have deducted tax at source under Section 194J of the Act instead of Section **194C** under which the Assessee had made such deductions. We notice that the CIT(Appeals) and ITAT have concurrently held that the contractor was meant to carry out maintenance and the repair work and therefore his services could not have been categorized as providing technical services. We do not find any error in such finding. No question of law arises. All the Income Tax Appeals of the revenue are dismissed

## TDS ON COMMISSION OR BROKERAGE – SECTION 194H

- **Nature of payment:** Commission or Brokerage
- **Threshold:** upto Rs. 15,000
- **Rate of tax:** 5% (3.75% w.e.f 14.05.2020 to 31.03.2021)
- **Principal to agent relationship** should exist.
- **Discount offered to distributors for promotion of sales** cannot be treated as commission liable to TDS u/s. 194H - **Nokia India (P.) Ltd. v. DCIT (Delhi Trib.)**[ITA No. 5791/Del/2015]
- Discount on pre-paid SIM Cards not liable to TDS u/s. 194H – **Bharti Airtel Ltd. vs. DCIT** [2015] 372 ITR 33 (**Karnataka HC**)
- No TDS on specified payments to Bank or authorized payment systems company – **CBDT Circular 47/2016** dated **17.06.2016** and **PCIT v. Make My Trip (Del. HC)**(ITA No. 136/2019)

## TDS ON COMISSION OR BROKERAGE – SECTION 194H

- In case of advertising business:- payment by client to advertising agency is liable to TDS U/s 194C by the client.
- In case of payment by advertising agency to media company or retaining of discount by advertising agency is not covered under commission hence no liability to TDS U/s 194H. **CBDT circular 05/2016** has affirmed the views held by Allahabad High Court in the case of **Jagran Prakashan Ltd.** and Delhi High Court in the matter of Living Media Limited. No TDS is attracted on payments made by television channels/ newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements.

## TDS ON COMISSION OR BROKERAGE – SECTION 194H

- **ITAT Mumbai in the case of Tata Sky Ltd V. ACIT ITA/3214/Mum/2014 dt. 10-9-2020 AY 09-10** held that, “assessee was not required to deduct TDS U/s 194H on the amounts of **discount on sale of Set-top box and hardware, discount on sale of recharge coupon and vouchers, bonus** or credit provided by assessee to subscribers, sales promotion expenses and distribution channel support expenses. Further, the transaction between the company and distributor is on **principal to principal basis** and all the risk, loss, damages are transferred to distributor on delivery. Further, distributors are free to sale at any price below maximum retail price”.

## TDS ON COMMISSION OR BROKERAGE – SECTION 194H

- ITAT Delhi in the case of SRL Ltd. Vs. JCIT 3639 & 3851 (Rev.)/del/2013 AY09-10 dt. 25-4-2018. The “a” offered discount to collection centres which was disallowed U/s 40(a)(i)/(ia) by AO. CIT(A) & ITAT held that amount of discount given to collection centres outside India do not fall within the preview of section 195 because the amount of discount which is given to them are of rendering services outside India hence this amount is not taxable in India by an Indian exporter to a foreign agent operating overseas and is remitted direct to the agent.
- As regards disallowance U/s 40(a)(ia) it was held that there is no principal agent relationship between the assessee and collection centres and the assessee has not debited in its books any amount paid to collection centres. Payment to collection centre was also not in the nature of work hence 194C also not applicable.



## TDS ON COMISSION OR BROKERAGE – SECTION 194H

- **ITAT Bangalore in the case of R.K.Associates V. ITO** Dt. 11-2-2021 vide ITAT 681/bang/2020 A.Y. 2014-15 held that provisions of section 40(a)(ia) of the Act are not applicable while computing income under the head "**Capital Gain**" and therefore the disallowance made by the AO cannot be sustained. Section 40 clearly stipulates that "Notwithstanding anything to the contrary in Sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession.

## TDS ON COMMISSION OR BROKERAGE – SECTION 194H

- **Bombay HC in the case of CIT(TDS) V. Jet Airways I. Ltd. 23-4-2019** in ITA/628/2018/BOM held that, we uphold the order of ITAT and CIT(A) wherein they held that the **amount retained by a bank/credit card agency out of the sale consideration of the tickets booked through credit cards is not covered under the definition of "commission or brokerage"** given in the Explanation (i) to section 194H of the Act” and further held that so called bank guarantee commission is not in the nature of commission paid to an agent but it is in the nature of bank charges for providing one of the banking service. The requirement of Section 194H of the Act, therefore, would not arise. No question of law arises. The Income Tax Appeal of the revenue is dismissed”

## TDS ON RENT – SECTION 194-I

- **Nature of payment:** Rent
- **Threshold:** Rs. 2,40,000
- **Rate of tax:** For use of plant or machinery or equipment - 2%<sup>#</sup> ; For use of Land and building or furniture or fittings – 10%<sup>#</sup>
- For invoking the provisions of Section 194-I, **element of control and possession is necessary – Chhattisgarh State Electricity Board vs. ITO (Mumbai ITAT) [2012] 50 SOT 33 (Mumbai)**
- In case of **co-owners** of property, having definite and ascertainable share in the property, the limit of Rs. 2,40,000 will apply for each payee/co-owner separately – **CBDT Circular No. 715 dtd. 08.08.1995**

<sup>#</sup> 1.5% and 7.5%, as the case may be, w.e.f 14.05.2020 to 31.03.2021

## TDS ON RENT – SECTION 194-I

- **Non refundable Security deposit** – It is nothing but advance rent and liable for TDS u/s. 194-I.
- Payment of **cooling charges to cold storage owners** liable for TDS u/s. 194C and not u/s. 194-I. – **CBDT Circular No. 1/2008.**
- Payments for **hotel accommodation** on regular basis is liable for TDS u/s. 194-I – **CBDT Circular No. 5/2002**
- Payment for **warehousing charges** is liable for TDS u/s. 194-I - **CBDT Circular No. 718 dated 22.08.1995.**

## **TDS ON RENT – SECTION 194-I**

- **ITAT Mumbai in the case of DCIT(TDS) V. Bank of India** vide ITA/6039/Mum/2016 dt. 20-12-2018 dismissed the appeal of revenue and held that there is no need of TDS u/s. 194-I of the Act on the **lease premium paid for acquiring lease rights on immovable property** from MMRDA, treating it as rent. one-time non-refundable upfront charges paid by the assessee for the acquisition of lease hold rights over an immovable property could not be taken to constitute rental income in the hands of the lessor.
- **CBDT had also issued circular No. 35/2016 dt. 13-10-2016 stating that upfront charges/one time charges for long term lease are not rent.**

## TDS ON RENT – SECTION 194-I

- ITAT Ahmedabad in the case of Bachubhai Jivanbhai Soni Vs. DCIT AY 2013-14 ITA/1009/Ahd/2018 dt. 26-11-2019. AO confirmed addition of advertisement expenses paid to Gems & Jewellery Export Promotion Council under rule 40(a)(ia) on the ground that assessee has deducted tax u/s. 194C of the act as against correct deductible amount u/s. 194J following the judgment of Hon'ble High Court of Kerala in the case of CIT-1 Vs. PVS Memorial Hospital Ltd. (2015-60-taxman.com 69). CIT(A) dismissed the appeal. ITAT allowed on the basis of Hon'ble HC of Calcutta in the case of **CIT vs. S.K. Tekriwal 361 ITR 432 (Cal)** held that once tax is deducted and paid in wrong section with bonafide belief then section 40(a)(ia) would not be applied as it did not satisfy two limbs of said section hence section 40(a)(ia) cannot be applied

## TDS ON RENT – SECTION 194-I

- **Bombay HC in the case of CIT(TDS) V. Jet Airways I. Ltd.** 23-4-2019 in ITA/628/2018/BOM held that, we uphold the order of ITAT and CIT(A) wherein they held that for **lounge charges**, “The assessee did not have exclusive use to the lounge for its customers. The customers of the Airlines along with customers of other Airlines of specified categories, would be allowed to use all such facilities. Section 194-I of the Act governs the situation where a person is responsible for paying any rent. In such a situation deduction of tax at source while making such payment is obligated. We do not find that the revenue is correct in invoking section 194-I of the Act. Hence affirmed the views of the ITAT that, “the Hon'ble ITAT was justified in holding that the use of lounge premises paid by the assessee were payments for contract of work under **section 194C** of the I.T. Act and not in the nature of rent as per section 194-I of the I.T. Act”

## TDS ON PAYMENT FOR ACQUISITION OF IMMOVABLE PROPERTY – SECTION 194-IA

- **Nature of payment:** Consideration for transfer of **immovable property** (not being a rural agricultural land) to a **resident transferor**.
- **Threshold:** No deduction where the consideration is less than **Rs. 50 Lakhs**
- **Rate of tax:** 1% **(0.75% w.e.f 14.05.2020 to 31.03.2021)**
- **Consideration** (w.e.f. 1.9.2019) – includes club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property



## TDS ON PAYMENT FOR ACQUISITION OF IMMOVABLE PROPERTY – SECTION 194-IA

- TDS u/s. 194-IA is not required to be deducted in case of joint buyers if individual **buyer's share** is less than 50 Lakhs. - **Vinod Soni vs. ITO (Delhi ITAT)** - ITA No. 2736/Del/2015.
- TDS u/s. 194-IA is not required to be deducted in case of **joint sellers (co-owners)** if share of each co-owner is less than 50 Lakhs - **Oxcia Enterprises Pvt. Ltd. vs. DCIT (Jodhpur ITAT)** - ITA No. 291/Jodh/2018.
- TAN not required.
- Challan-*cum*-statement in **Form No. 26QB** to be filed within 30 days from the end of the month in which TDS is deducted and TDS Certificate in **Form No. 16B** to be given to deductee within 15 days.
- If the immovable property is **purchased as a stock in trade** and TDS u/s. 194-IA is not deducted, then 30% of the purchase price will be disallowed u/s. **40(a)(ia)**.

## TDS ON PAYMENT OF RENT BY INDIVIDUAL OR HUF – SECTION 194-IB

- **Nature of payment:** Rent payable by an individual or HUF (not liable u/s. 194-I)
- **Threshold:** No TDS for Rent upto **Rs. 50,000 per month** or part of the month
- **Rate of tax:** 5% (3.75% w.e.f 14.05.2020 to 31.03.2021)
- TDS to be deducted at the time of credit of rent for the month of **March or the last month of tenancy**, whichever is earlier.
- TAN not required.
- Challan-*cum*-statement in **Form No. 26QC** to be filed within 30 days from the end of the month in which TDS is deducted and TDS Certificate in **Form No. 16C** to be given to deductee within 15 days.
- TDS u/s. 194-IB is also required to be done by persons covered u/s. 44AD and 44AE whose turnover does not exceeds Rs. 1 Crore or Rs. 50 Lakhs, as the case may be.

## TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.- SECTION 194J

Nature of payment	Threshold limit	Rate of tax	Rate of tax (w.e.f 14.05.2020 to 31.03.2021)
Fees for professional services	Rs. 30,000	10%	<b>7.5%</b>
Fees for technical services and payment to call centers	Rs. 30,000	<b>2%</b> (for FTS -10% upto FY 19-20)	<b>1.5%</b>
Remuneration or fees to Director (other than 192)	NIL	10%	<b>7.5%</b>
Royalty	Rs. 30,000	10%	<b>7.5%</b>
Non-compete fees	Rs. 30,000	10%	<b>7.5%</b>

## TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J

- Reimbursement of expense – TDS not liable to be deducted on pure reimbursements when separate bill is raised.
- **Fees for professional services** means services rendered by person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or **technical consultancy** or interior decoration or advertising or film artist.
- TDS u/s. 194J not to be deducted on **subsequent sale of software** without modification – **Notification No. 21/2012** dtd. 13.06.2012.
- As per Finance Act, 2020, In respect of fees for technical services (not being professional services) TDS is required to be deducted @2%. (1.75% w.e.f 14.05.2020 to 31.03.2021)

## TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J

- **High Court of Karnataka in the case of PCIT V. Tally Solutions P. Ltd.** vide ITA/199/Kar/2017 & 952/2017 dt. 16-12-2020 AY 2009-10 & 11-12. Assessee stated that Section 40(a)(i) and (ia) of the Act provides for disallowance in respect of amounts claimed as deduction on which tax has not been deducted or paid after deduction under Chapter XVII-B of the Act and the provision does not apply to a **claim for depreciation**, which is not in the nature of expenditure but is an allowance. It is also urged that depreciation is not an outgoing expenditure and therefore, provisions of Section 40(a)(i) or (ia) of the Act are not attracted. It is also urged that depreciation is a statutory deduction available to the assessee on the asset, which is wholly or partly owned by the assessee and used for the purpose of business or profession.

## TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J

- High court held that The depreciation is not an outgoing expenditure and therefore, provisions of Section 40(a)(i) and (ia) of the Act are not applicable. The **depreciation is an allowance and not an expenditure**, loss or trading liability. CIT(A) also held in favour of the assessee that the payment has been made by the assessee for an **outright purchase of Intellectual Property Rights** and **not towards royalty** therefore, the provision of Section 40(a)(ia) of the Act is not attracted in respect of a claim for depreciation. HC held that substantial question of law framed by a bench of this court is answered against the revenue and in favour of the assessee.

## **TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J**

- **ITAT Mumbai in the case of Red Chillies Entertainment P. Ltd. V. ACIT** vide ITA No. 1577/Mum/2013 dt. 31-5-2016 AY 09-10 held that since the **payment made by the assessee is in kind, the provisions of section 194J are not applicable.**
- ITAT Bangalore in the case of DCIT Vs. Core Object I. P. Ltd. ITA/517/Bang/2015 AY 10-11 dt. 1-4-2021 dismissed the appeal of revenue and held that the assessee has capitalized software purchases payment in question, then even if the assessee has not deducted tax at source on such payment, the provisions of section 40(a)(i)/(ia) cannot be invoked for disallowance of the claim of depreciation.

## **TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J**

- **Honorable Bombay High Court in the case of CIT V. Reliance Life Insurance Co. Ltd. on 18-6-2019** in ITA 500/2017/Bom/ held that, “The CIT (Appeals) and the Tribunal examined the nature of expenditure and came to the conclusion that the assessee had hired the services for various **works such as storage of data, scanning of documents, processing charges, call centre operations etc.** Looking to the nature of services outsourced, it was held that the same were basically clerical services of repetitive nature of work and payments were therefore, **neither for managerial nor for technical services.** Having perused the documents on record and looking to the nature of services described, we do not find that the Tribunal has committed any error. The work outsourced was in the nature of clerical work. No question of law arises”. And held that **such payments are covered U/s 194C and not 194J.** In the result appeal of the revenue was dismissed.



## TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J

- **Delhi Tribunal in the case of DCIT v. Parasrampuriah Synthetics Ltd.** [20 SOT 248] wherein the Tribunal, while dealing with the issue relating to applicability of s. **194J** of the Act in respect of the payment towards AMC contract, observed as under: "In the present case, it is seen that there may be use of services of technically qualified persons to render the services but that itself do not bring the amount paid as 'fees for technical services within the meaning of Explanation 2 to section 9(l)(vii). The amounts paid are towards annual **maintenance contract of certain machinery or for converting POY into textured/twisted yarn.** The technology or the technical knowledge of the persons is not made available to the assessee but only by using such technical knowledge services are rendered to the assessee. In such a case, it cannot be said that the amount is paid as 'fees for technical services'. Rendering services by using technical knowledge or skill is different than charging fees for technical services. In a latter case, the technical services are made available due to which the assessee acquired certain right which can be further used. In the present case, it is not so. The persons rendering certain services has only maintained machinery or converted yarn but that knowledge is not now vested with the assessee by which itself it can do research work. In the circumstances, the amount paid cannot be considered as fees for technical services within the meaning of section 194J of the Act.

## **TDS ON FEE FOR PROFESSIONAL OR TECHNICAL SERVICES (FTS), ROYALTY, ETC.– SECTION 194J**

- **In the case of Kandla Port Trust Vs. DCIT, 50 SOT 109, the Rajkot Bench held:-** A perusal of annual maintenance contract between assessee and M/s McNally Bharat Engineering Company Ltd, OTIS Elevators, we notice that the AM contractor shall carry out all repairs as per detailed description in the agreements. From these agreements we did not find that these contracts were in respect of managerial or technical or consultancy services. Thus, it is clear that these agreements were related to **annual maintenance of machineries and not for technical services**. The revenue in view of the fact that the contractors have utilized services of technical persons presumed that the assessee made payments for technical services. For this presumption we do not agree with the revenue. **It may be technical services for contractor but not for the assessee**. The case of assessee is simply a case of annual maintenance of machineries for section 194J is not applicable, we therefore hold accordingly.

## LOWER RATE CERTIFICATE

- **ITAT Mumbai in the case of KINETIC advertising p lt. v. ACIT 7-10-2020** vide ITA/3194/Mum/2019/AY 2013-14 held followed the case of Tata Communications Ltd. Vrs. DCIT' (ITA No. 7084 & 7085/Mum/2017) in which it was held that:- the assessee has deducted tax at the rates specified in the certificates issued in **Form no.13**, for the entire payment made to the concerned parties during the year under consideration even in respect of **payments made in excess of amount specified in Form no.13**. The issue before us is, whether for deducting tax at lower rate on the payments exceeding the amounts specified in the certificates issued in form no.13, r/w section 197(2) and rule 28AA, the assessee can be treated as assessee in default for short deduction of tax. In this regard, the specific contention of the assessee is, as per section 197 of the Act, the certificate to be issued by the Assessing Officer under sub-section (2) is **person specific and not income specific**.  
**Contd.....**

## LOWER RATE CERTIFICATE

- It is observed, the Tribunal, Kolkata Bench, in 21st Century Securities Ltd. (ITA No. 464/Kol/2014), after interpreting the provisions of section 197 of the Act as well as rule 28AA has held that neither under section 197 of the Act nor in rule 28AA, there is reference to any income to be specified in the certificate to be issued for deduction of tax at lower rate. Thus, the Tribunal has ultimately held that in such circumstances, if the assessee continues to deduct tax at the rate specified in the certificate, even, in respect of payment made over and above the sum specified in the certificate, it cannot be treated as assessee in default for short deduction of tax. In our view, the aforesaid decision of the Co-ordinate Bench squarely applies to the facts of the present case. In the absence of any contrary decision having been brought to our notice by learned Departmental Representative, we are inclined to follow the decision of the Co- ordinate Bench referred to above and hold that the assessee cannot be treated as assessee in default for short deduction of tax.

## TDS ON COMPENSATION ON ACQUISITION OF IMMOVABLE PROPERTY – SECTION 194LA

- **Nature of payment:** Payment for compensation on **compulsory** acquisition of immovable property (other than any agricultural land)
- **Threshold:** No TDS upto Rs. 2,50,000/-
- **Rate of tax:** 10% (7.5% w.e.f 14.05.2020 to 31.03.2021)
- TDS u/s. 194LA is not required to be deducted in case the payment is exempt under Section 96 of the **RFCTLARR Act, 2013** (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013)

## **TDS ON PAYMENT OF CERTAIN SUMS BY INDIVIDUAL OR HUF – SECTION 194M (w.e.f. 1.9.2019)**

- **Deductor:** An Individual or HUF (other than those who are **required to deduct TDS** u/s. **194C** or **194H** or **194J**)
- **Nature of Payment:**
  - Works Contract (including supply of labour for carrying out any work)
  - Commission or brokerage
  - Fees for professional services
- **Threshold:** No TDS upto Rs. 50 Lakhs in a FY.
- **Rate of TDS:** **5%** (3.75% w.e.f 14.05.2020 to 31.03.2021), recipient can apply for lower rate.
- TAN not required.
- Challan-*cum*-statement in **Form No. 26QD** to be filed within 30 days from the end of the month in which TDS is deducted and TDS Certificate in **Form No. 16D** to be given to deductee within 15 days.

## **TDS ON PAYMENT OF CERTAIN SUMS BY INDIVIDUAL OR HUF – SECTION 194M (w.e.f. 1.9.2019)**

- **Example:** If an individual or HUF who is not liable to TDS u/s. 194C because his business turnover is not exceeding 1 crore or professional fees not exceeding Rs. 50 Lakh or for **building construction or residential house** to a **works contractor** (with material or without material) and makes payment of **Rs. 50 Lakh or more in a year** then he will be **liable to deduct TDS u/s. 194M @5%** (3.75% w.e.f 14.05.2020 to 31.03.2021) TDS on whole payment as per Sec. 194M.
- Thus, if payment to Works Contractor for construction of any building or residential house is Rs. 60 Lakhs, then TDS of Rs. 2,25,000/- (@3.75% of entire Rs. 60 Lakhs) shall be deducted.

**TDS ON PURCHASE OF GOODS :-**  
**W.E.F. 1-7-2021 U/S 194Q**




- **Nature of transaction covered : Purchase of goods :- w.e.f. 1-7-2021**
- **Who is liable to deduct :-** any person being a buyer whose total sales, **gross receipts or turnover** of the **business** exceeds Rs. 10 crores in immediately preceding financial year purchasing any **goods of Rs. 50 Lakh** or more in any previous year from a **resident seller**, shall
- **From whom to deduct :-** seller from whom the goods is being purchased, at the time of **credit or payment whichever is earlier** deduct an amount equal to 0.1% of such **sum exceeding Rs. 50 Lakh**.
- **Rate of Tax:** 0.1% of the amount exceeding Rs. 50 Lakhs.



**TDS ON PURCHASE OF GOODS :-**  
**W.E.F. 1-7-2021 U/S 194Q(5)**

- The proposed section shall **not apply** to a transaction on which—
- a) tax is deductible under any of the provisions of this Act; and
- (b) tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.
- But above transactions will have to be reported in TDS statement form 26Q by mentioning the word, “**S**” in the column No. 424 requiring reason for non deduction.

**Notes:**

1. Write "A" if "lower deduction" or "no deduction" is on account of a certificate under section 197.
2. Write "B" if no deduction is on account of declaration under section 197A other than the cases mentioned in sub-section (1F) of section 197A.
3. Write "C" if deduction is on higher rate under section 206AA on account of non-furnishing of PAN.
4. Write "D" if no deduction or lower deduction is on account of payment made to a person or class of person on account of notification issued under sub-section (5) of section 194A.
5. Write "E" if no deduction is on account of payment being made to a person referred to in Board Circular No. 3 of 2002 dated 28<sup>th</sup> June 2002 or Board Circular No. 11 of 2002 dated 22<sup>nd</sup> November 2002 or Board Circular No. 18/2017 dated 29<sup>th</sup> May 2017
6. Write "Y" if no deduction is on account of payment below threshold limit specified in the Income-tax Act, 1961. 
7. Write "T" if no deduction is on account of deductee/payee being transporter. PAN of deductee/payee is mandatory [section 194C(6)]. 
8. Write "Z" if no deduction or lower deduction is on account of payment being notified under section 197A(1F).
9. Write "M" if no deduction or lower deduction is on account of notification issued under second proviso to section 194N.
10. Write "N" if no deduction or lower deduction is on account of payment made to a person referred to in the third proviso to section 194N or on account of notification issued under fourth proviso to section 194N.
11. Write "O" if no deduction is as per the provisions of sub-section (2A) of section 194LBA.
12. Write "P" if no deduction is on account of payment of dividend made to a business trust referred to in clause (d) of second proviso to section 194 or in view of any notification issued under clause (e) of the second proviso to section 194.
13. Write "Q" if no deduction in view of payment made to an entity referred to in clause (x) of sub-section (3) of section 194A.
14. Write "S" if no deduction is in view of the provisions of sub-section (5) of section 194Q.\* 
15. Write "U" if the deduction is on higher rate in view of section 206AB for non-filing of return of income\*.
16. List of section codes is as under:

## TDS ON PURCHASE OF GOODS :- W.E.F. 1-7-2021 U/S 194Q(5)-26Q

<i>Total tax deducted</i>	<i>Total tax deposited</i>	<i>Date of deduction (dd/mm/yyyy)</i>	<i>Rate at which deducted</i>	<i>Reason for non-deduction / lower deduction/ Higher Deduction/ Threshold/ Transporter etc. (See notes 1 to 15)</i>	<i>Number of the certificate under section 197 issued by the Assessing Officer for non-deduction/ lower deduction</i>
<i>[420]</i>	<i>[421]</i>	<i>[422]</i>	<i>[423]</i>	<i>[424]</i>	<i>[425]</i>

## **Section 194Q – Whether turnover of Rs. 10 Crores includes GST ?**

- For the purpose of determining applicability of Turnover of Rs. 10 Crores, **the turnover limit of Rs. 10 Crores is to be determined excluding the amount of GST collected on Sales.**
- **Sec. 145A.** *For the purpose of determining the income chargeable under the head "Profits and gains of business or profession":- the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation;*

## Section 194Q – Whether turnover of Rs. 10 Crores includes GST ?

- **Example:**

- Total Sales for the Financial Year 2020-21 (excluding GST) is **Rs. 9 Crores**.
- GST Collected on Sales @18% is **Rs. 1.62 Crores**.
- Total Amount (inclusive of GST) is **Rs. 10.62 (Rs. 9 Crores + Rs. 1.62 Crores)**.
- In the above example, the assessee would **not be covered** under the provisions of Section 194Q since his turnover is Rs. 9 Crores only, which is below the threshold limit of Rs. 10 Crores.

-

## Section 194Q – How to determine the limit of Rs. 50 Lakhs ?

- The buyer is liable to deduct TDS from the seller if the purchases in the financial year **(including purchases before 1<sup>st</sup> July, 2021)** exceeds Rs. 50 Lakhs.
- In respect of the Financial Year 2021-22, the purchases or payments made before 1<sup>st</sup> July, 2021 **(even if it exceeds Rs. 50 Lakhs)** shall not be liable to TDS u/s. 194Q.
- However, **to calculate the threshold of Rs. 50 Lakhs:- purchases before 1<sup>st</sup> July, 2021 shall be included to determine the applicability of TDS u/s. 194Q.**
- TDS is also required to be deducted at the time of payment of **advance for purchases of goods.**
- **Threshold of Rs. 50 Lakh – EVERY YEAR FOR EVERY seller.**

## **Section 194Q – Whether limit of Rs. 50 Lakhs is exclusive of GST or inclusive of GST ?**

- The applicability of the provisions of Section 194Q of the Act shall be determined with reference to **purchases** during a financial year.
- TDS is to be done with reference to payment or credit for purchases whichever is earlier , and not with reference to purchases only. **the total amount of purchases (excluding GST) is liable for TDS only, if CBDT issues a circular at par with Cir. 23/2017 Excl. GST on services, in absence of specific circular TDS will be done inclusive of GST on goods.**

**Section 194Q – Whether limit of Rs. 50 Lakhs is exclusive of GST or inclusive of GST ? CBDT Circular No. 23/2017**

“In the light of the fact that even under the new GST regime, the rationale of excluding the tax component from the purview of TDS remains valid, the Board hereby clarifies 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 under Chapter XVII-B of the Act on the amount paid or payable without including such ‘GST on services’ component. GST for these purposes shall include IGST, CGST, SGST and UTGST”.



## Section 194Q – Whether limit of Rs. 50 Lakhs is exclusive of GST or inclusive of GST ?

- **in absence of specific circular, tax may be deducted on amount of purchase inclusive of GST on goods.**
- Example:
  - Date of Purchases of Goods : 3<sup>rd</sup> July, 2021
  - Purchase Value (excluding GST) : Rs. 55 Lakhs
  - GST Amount @ 18% : Rs 9.9 Lakhs
  - Total Invoice Value : 64.9 Lakhs
  - Date of payment for purchases value : 1<sup>st</sup> December, 2021
  - **If CBDT Circular does not come till 30<sup>th</sup> Jun, 2021 stating that GST is to be excluded to determine threshold of Rs. 50 Lakh or to deduct TDS on purchase value excluding GST till then TDS is to be deducted and threshold of Rs. 50 lakh is to be considered to be inclusive GST, hence in the above example TDS will be Rs. 1490/- @0.1% on Rs. 14.90 Lakh (64.9 - 50).**

**Section 194Q – Whether to deduct at the time of purchases or at the time of payment if any of this event occurred before 1<sup>st</sup> July, 2021**

- **Section 194Q provides that TDS is required to be deducted at the time of payment or credit of the purchase value, if purchases had been made before 1<sup>st</sup> July, 2021 but payment has been made on or after 1<sup>st</sup> July, 2021 then no TDS on this amount at the time of payment.**
- **if payment as an advance had been made before 1<sup>st</sup> July, 2021 but purchase invoice has been raised by seller on or after 1<sup>st</sup> July, 2021 then no TDS on this amount at the time of recording of purchase invoice.**

## **WHEN AND HOW TO DEPOSIT TDS DEDUCTED U/S. 194Q?**

- **TDS deducted u/s. 194Q for a month is required to be deposited on or before 7<sup>th</sup> day of next month. Example - TDS deducted in the month of July, 2021 is to be deposited on or before 7<sup>th</sup> August, 2021. Further, TDS deducted in the month of March can be deposited upto 30<sup>th</sup> April.**
- **TDS is to be paid through Challan No. 281 under code 94Q and details of TDS deducted will be included in Quarterly TDS Statement Form No. 26Q**

## WHAT IF THE BUYER FAILS TO DEDUCT TDS U/S. 194Q?

40(a)(ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139:

**Provided** that where in respect of any such sum, tax has been deducted in any subsequent year, or has been **deducted during the previous year but paid after the due date specified in sub-section (1) of section 139**, thirty per cent of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid :

**Provided further** that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, **it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee** referred to in the said proviso.

## **WHAT IF THE BUYER FAILS TO DEDUCT TDS U/S. 194Q?**

- **It is very important to note that if the buyer fails to deduct TDS u/s. 194Q of the Act, then 30% of such sum will be disallowable u/s. 40(a)(ia). In such cases, buyer of goods may have to furnish Form No. 26A from the recipient to prevent disallowance u/s. 40(a)(ia). However, Interest @1% per month will still be payable from the date of purchase / payment upto the date of furnishing of return of income by the seller in accordance with the proviso to Section 201(IA) of the Act.**

## **WHAT IF THE BUYER FAILS TO DEDUCT TDS U/S. 194Q?**

- **For Example :- If in a case Mr. A is Buyer who is liable to deduct TDS U/s 194Q in July, 2021- due date of filing of audit case ITR by him is 31-10-2022 U/s 139(1) and Mr. B is seller whose turnover is not more than 2 crore hence covered U/s 44AD so he can file and he has filed his ITR upto 31-12-2022 U/s 139(4), since B has filed his ITR after due date of ITR of Mr. A therefore date of payment of tax as per Second proviso to Sec. 40(a)(ia) is 31-12-2022, therefore during the F.Y. 21-22 there will be disallowance of 30% of purchases in the hands of Mr. A and it will be allowable in FY 22-23 and interest will also be leviable U/s 201(1A) from July, 2021 to 31-12-2022 for 18 months.**

## TDS U/S. 194Q

- If TCS u/s. 206C(1H) as well as TDS u/s. 194Q is applicable on the same transaction because buyer and seller both have turnover of preceding previous year exceeding Rs. 10 crore, only TDS u/s. 194Q will be deductible and TCS u/s. 206C(1H) will not be collectible.
- **Whether a SEZ unit is liable to deduct TDS u/s. 194Q?**

Yes. Any person, being a buyer, responsible for paying to a resident seller for purchase of goods is liable to deduct tax u/s. 194Q. Thus, even if the buyer is a SEZ Unit, it will be required to deduct TDS u/s. 194Q in respect of purchase made from resident sellers.

## **TDS U/S. 194Q**

- **Is there any other compliance required to be done by the seller covered under 206C(1H) ?**

Yes. All the transactions where seller has not collected tax because the buyer has already deducted tax are required to be reported by the seller in his TCS Statement in 27EQ.

- **Whether TDS u/s. 194Q is required at the time of advance payment also?**

Yes. It is required to be deducted at the time of payment or credit, whichever is earlier.

- **Whether TDS u/s. 194Q is applicable on agricultural products / GST exempted items?**

Yes. Section 194Q is applicable on purchase of agricultural products/GST exempted items.



## **TDS U/S. 194Q**

- **Whether TDS u/s. 194Q is required to be deducted on purchase of Plant and Machinery?**

Yes. TDS u/s. 194Q is also required to be deducted on purchase of capital assets such as Plant and Machinery.

- **Whether TDS u/s. 194Q is required to be deducted on purchase of land and building?**

No. Since the same is an immovable property and not goods, thus TDS u/s. 194Q is not applicable on purchase of land and building even by a builder or colonizer.

- **Whether a builder or colonizer purchasing raw material e.g. cement, bricks, sand, iron, steel etc. will be liable to TDS U/s 194Q ?**
- Yes, because it is a goods.

## Section 194Q (Applicable w.e.f 1<sup>st</sup> July, 2021)

Applicability of TDS u/s. 194Q and TCS u/s. 206(1H) on Transaction of Value of Rs. 75 Lakhs:-

Sr. No.	Turnover of Seller of preceding FY	Turnover of Buyer of preceding FY	Applicability of Section 206C(1H) viz-a-viz. 194Q
1.	Rs. 2 Crores	Rs. 20 Crores	Only TDS u/s. 194Q
2.	Rs. 50 Crores	Rs. 5 Crores	Only TCS u/s. 206C(1H)
3.	Rs. 15 Crores	Rs. 15 Crores	Only TDS u/s. 194Q. No TCS as per 2 <sup>nd</sup> Proviso to Section 206C(1H)
4.	Rs. 8 Crores	Rs. 8 Crores	No TDS u/s. 194Q. No TCS u/s. 206C(1H).

## TDS ON PAYMENT TO NON RESIDENTS – SECTION 195

- **Nature of payment:** Any sum chargeable under Income tax Act, not being Salary
- **Threshold:** Nil
- **Rate of tax:** As per rates in force (Part-II of the First Schedule of the Finance Act)
- Application can be made of **lower withholding** u/s. 195(2) by the payer or u/s. 197 by the recipient.
- **Purchase of immovable property from non-resident:** TDS is required to be deducted u/s. 195 and **not** u/s. 194-IA.
- 15CB not required to be furnished if remittance does not exceed Rs. 5,00,000 in a year. However, TDS is required to be deducted and 15CA - Part A is required to be uploaded.
- **Section 206AA** not to apply if basic details, Tax residency certificate and its TIN in the foreign country is given – **[Rule 37BC]**

## TDS u/s. 195 - OTHER SUMS

- **Applicability:** TDS to be deducted on **any sum chargeable under the provisions of Income Tax Act, 1961** not being income chargeable under the head 'Salaries'. (E.g. Payments such as interest, royalty, fees for technical services are liable for tax deduction u/s. 195 of the Act)
- **Payer:** Any person (both Resident and Non-resident)
- **Payee:** Non-residents / Foreign Company
- **Threshold limit: NIL i.e. No Threshold limit.**
- No TDS u/s. 195 on payment of Income chargeable under the head 'Salaries' or payments covered u/s. 194LB or 194LC or 194LD.
- TDS to be deducted at the time of **payment or credit, whichever is earlier.**

## SECTION 9 – DEEMED TO ACCRUE OR ARISE IN INDIA

- As per the provisions of Section 5(2)(b) of the Act, the total income of a non-resident also includes all income which **accrues or arises** or is **deemed to accrue or arise in India** to the non-resident.
- **To check whether the income of the non-resident is deemed to accrue or arise in India – We have to refer Section 9.**
- If the income is deemed to accrue or arise in India, then the payer is liable to withhold taxes in India.

## **SECTION 9(1) – CLAUSE (ii), (iii) & (iv)**

**Following shall be deemed to accrue or arise in India:**

- **Section 9(1)(ii)** – Income which falls under the head "Salaries", if it is earned in India, i.e. when the services are rendered in India [**Tax deductible u/s. 192**]
- **Section 9(1)(iii)** – Salary payable by the Central Govt. to a **citizen of India** for services rendered outside India [**Tax deductible u/s. 192**]
- **Section 9(1)(iv)** – Dividend paid by an Indian company outside India

## **SECTION 9(1)(v) – INTEREST**

**Section 9(1)(v)** – Income by way of **interest** payable by a **Resident** shall be deemed to accrue or arise in India except if amount used for business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India

## **SECTION 9(1)(vi) – ROYALTY**

**Section 9(1)(vi)** – Income by way of **royalty** payable by a **Resident** shall be deemed to accrue or arise in India except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.



## **SECTION 9(1)(vii) – FEES FOR TECHNICAL SERVICES**

**Section 9(1)(vii)** – Income by way of **fees for technical services** payable by a **Resident**, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.

## **SECTION 9(1)(viii) –SUM OF MONEY**

**Section 9(1)(viii)** – Income arising outside India, being **any sum of money** referred to in Section 2(24)(xviiia), paid on or after 5<sup>th</sup> July, 2019 by a resident to a non-resident / foreign company shall be deemed to accrue or arise in India.

**Section 2(24)(xviiia)** includes in Income - any sum of money covered u/s. **56(2)(x)** of the Act.

However, Gift of any sum of money **from relative** shall not be liable for withholding tax obligation u/s. 195.

## **SECTION 9(1)(i) – Income other than Interest / Royalty FTS / Salaries/ Dividend**

**Section 9(1)(i)** – All income accruing or arising, whether directly or indirectly, through or from

- **Business connection in India**
- **Property in India**
- **Asset or source of income in India**
- **Transfer of a Capital asset situate in India**

## EXPLANATION TO SECTION 9

Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this section, income of a **non-resident** shall be deemed to accrue or arise in India under **clause (v) [Interest]** or clause (vi) **[Royalty]** or clause (vii) **[Fees for technical services]** of sub-section (1) and shall be included in the total income of the non-resident, **whether or not:**

- **The non-resident has a residence or place of business or business connection in India; or**
- **The non-resident has rendered services in India.**

## WITHHOLDING TAX OBLIGATION u/s. 195

If the payment to non-resident or a foreign company is covered u/s. 9 of the Act and chargeable to tax, the provisions of Section 195 of the Act shall come into play.

As per **Section 195(1)** – Tax is required to be deducted at the time of payment or credit, whichever is earlier at the **rates in force**.

Further, **TDS u/s. 195 is also required to be withheld at the time of making provision on accrual basis** the payee is identified and amount is ascertainable.

## **RATES IN FORCE – Section 2(37A)(iii)**

**Rate or Rates in force means** - The rates of income tax specified in the

- **Finance Act of the relevant previous year, or**
- **DTAA** (Double Taxation Avoidance Agreement)

**Section 90(2)** - The provisions of the Act or the DTAA, whichever is **more beneficial to the assessee** shall be applied.

**Surcharge and Education Cess** – Not required to be added separately if the rates mentioned in DTAA are applied.

## RATES IN FORCE – Finance Act, 2021

Some Important rates mentioned in the Finance Act, 2021 for the purpose of withholding tax u/s. 195 are as under:

- **Dividend** – 20%<sup>#</sup>
- **Royalty** – 10%<sup>#</sup>
- **Fees for technical services** – 10%<sup>#</sup>
- **Interest** (other than 194LB/194LC/194LD) – 20%<sup>#</sup>

<sup>#</sup> The above rates shall be increased by education cess @4% and applicable surcharge to corporate/non-corporate assessee.

Rates mentioned in DTAA should be applied if they are more beneficial.

## PERMANENT ESTABLISHMENT

Any person who is responsible for paying any sum being royalty or fees for technical services to a non-resident / foreign company carrying on business through a **Permanent Establishment (PE)** in India shall deduct tax u/s. 195 of the Act at the rate of tax at applicable rates.

**Thus, for payments to Foreign Companies having a PE in India:**

If amount exceeds Rs. 1 Crore: 40% + 4% Cess + 2% Surcharge (42.432%)

If amount exceeds Rs. 10 Crores: 40% + 4% Cess + 5% Surcharge (43.68%)



## **LOWER / NIL DEDUCTION CERTIFICATE** **– Application By Payer u/s. 195(2)**

- Application to be made by the **Payer in form 15E**.
- **When?** – When the payer considers that the whole of such sum would not be income chargeable in the case of the recipient
- The Assessing Officer shall determine the appropriate proportion of such sum, on which tax is required to be deducted u/s. 195 of the Act.
- **Nil Deduction Certificate** can also be obtained u/s. 195(2) by the payer.

## **NIL DEDUCTION CERTIFICATE**

### **– Application By Payee u/s. 195(3)**

- The recipient of income (Payee) can apply to the Assessing Officer for receiving payment without deduction of tax at source.
- For. E.g. In case of transfer of Capital Asset, if the payee wants to claim exemption u/s. 54 or 54F, he can apply to the Assessing Officer for receiving payment without deduction at source.

## **NIL/LOWER DEDUCTION CERTIFICATE u/s. 197 - FORM 13**

- The recipient of income can apply to the Assessing Officer for Lower Deduction Certificate u/s. 197 of the Act.
- Application to be made in prescribed **Form No. 13** electronically.
- Lower Rate to be determined keeping in view the estimated total income, total income of previous 3 years, taxes paid for the current year.
- Tax to be deducted by the payer at the rate mentioned in Lower Deduction Certificate issued by the AO.

## 15CA - 15CB CERTIFICATION REQUIREMENTS u/s. 195(6)

- As per Section 195(6) - The person responsible for paying to a non-resident / foreign company, any sum, **whether or not chargeable under the provisions of this Act**, shall **furnish the information** relating to payment of such sum, in such form and manner, as may be prescribed.
- **Rule 37BB** and **Form No. 15CA - Part A to Part D, Form No. 15CB** and **Form No. 37CC** have been prescribed.

## 15CA - 15CB CERTIFICATION REQUIREMENTS u/s. 195(6)

Sr. No.	Chargeable / Not chargeable to Tax in India	Conditions	Applicable Form/(s)
1.	Chargeable to tax	Aggregate payment during the financial year does not exceeds Rs. 5 Lakhs	Form 15CA – Part A
2.	Chargeable to tax	Assessee has obtained a Lower Deduction Certificate u/s. 197 or Certificate u/s. 195(2) or 195(3) from the AO	Form 15CA – Part B
3.	Chargeable to tax	Aggregate Payment exceeds Rs. 5 Lakhs	Form 15CB along with Form 15CA – Part C
4.	Not Chargeable to tax	-	Form 15CA – Part D

## **RULE 37BB – Exemption**

- As per Rule 37BB, particulars in Form No. 15CA and/or Form No. 15CB (if applicable) is required to be made, whether or not any sum is chargeable to tax in India or not.
- As per rule 37BB No information is required to be furnished **(not even Form 15CA - Part D)** by an **individual** if it does not require prior approval of RBI or by any other person if it does not require prior approval of RBI as 33 items mentioned in the RBI LRS list . However, practically the banks may insist for the same.

## PRIOR RBI APPROVAL NOT REQUIRED IN FOLLOWING

- **Prior RBI Approval is not required** for transactions within limit of **\$2,50,000** for private visits to any country (except Nepal and Bhutan)
- Gift or donation
- Going abroad for employment
- Emigration
- Maintenance of close relatives abroad
- Travel for business/ conference/ specialized training/ medical treatment/ studies abroad
- Any other current account transaction

## 15CA – PART D NOT REQUIRED FOR BELOW 33 ITEMS

Sl. No.	Purpose code as per RBI	Nature of payment
1	S0001	Indian investment abroad - in equity capital (shares)
2	S0002	Indian investment abroad - in debt securities
3	S0003	Indian investment abroad - in branches and wholly owned subsidiaries
4	S0004	Indian investment abroad - in subsidiaries and associates
5	S0005	Indian investment abroad - in real estate
6	S0011	Loans extended to Non-Residents
7	S0101	Advance payment against imports
8	S0102	Payment towards imports - settlement of invoice
9	S0103	Imports by diplomatic missions
10	S0104	Intermediary trade
11	S0190	Imports below Rs.5,00,000 - (For use by ECD offices)



## 15CA – PART D NOT REQUIRED FOR BELOW 33 ITEMS

Sl. No.	Purpose code as per RBI	Nature of payment
12	SO202	Payment for operating expenses of Indian shipping companies operating abroad
13	SO208	Operating expenses of Indian Airlines companies operating abroad
14	S0212	Booking of passages abroad - Airlines companies
15	S0301	Remittance towards business travel
16	S0302	Travel under basic travel quota (BTQ)
17	S0303	Travel for pilgrimage
18	S0304	Travel for medical treatment
19	S0305	Travel for education (including fees, hostel expenses etc.)
20	S0401	Postal services
21	S0501	Construction of projects abroad by Indian companies including import of goods at project site

## 15CA – PART D NOT REQUIRED FOR BELOW 33 ITEMS

Sl. No.	Purpose code as per RBI	Nature of payment
22	S0602	Freight insurance - relating to import and export of goods
23	S1011	Payments for maintenance of offices abroad
24	S1201	Maintenance of Indian embassies abroad
25	S1202	Remittances by foreign embassies in India
26	S1301	Remittance by non-residents towards family maintenance and savings
27	S1302	Remittance towards personal gifts and donations
28	S1303	Remittance towards donations to religious and charitable institutions abroad
29	S1304	Remittance towards grants and donations to other Governments and charitable institutions established by the Governments
30	S1305	Contributions or donations by the Government to international institutions

## 15CA – PART D NOT REQUIRED FOR BELOW 33 ITEMS

Sl. No.	Purpose code as per RBI	Nature of payment
31	S1306	Remittance towards payment or refund of taxes
32	S1501	Refunds or rebates or reduction in invoice value on account of exports
33	S1503	Payments by residents for international bidding.

## FORM 15CB – PRACTICAL ASPECTS

- **Determine applicability of Section 195** - Ascertain the identity of payee – Whether resident/non-resident?
- **Determine nature of payment** - Whether Royalty/ fees for technical services / Interest / etc.
- Ascertain the chargeability and rate of tax as per the provisions of Income Tax Act.
- To claim beneficial rate as per DTAA as per Section 90(2), obtain **Tax Residency Certificate** from the payee. Tax Residency Certificate is provided u/s. 90(4).
- Obtain **Form No. 10F** duly certified from the payee.

# Tax Residency Certificate



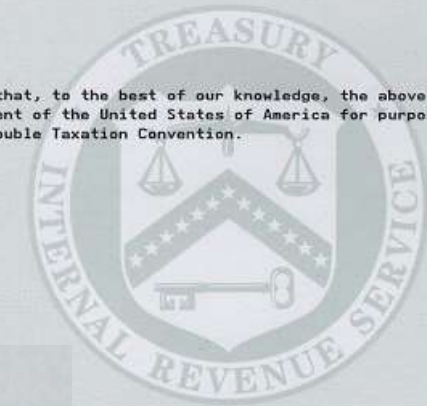
CERTIFICATION  
PROGRAM

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
PHILADELPHIA, PA 19255

Date: June 4, 2018

Taxpayer: [REDACTED]  
TIN: [REDACTED]  
Tax Year: 2017

I certify that, to the best of our knowledge, the above-named taxpayer is a resident of the United States of America for purposes of the Greece - U.S.A. Double Taxation Convention.



I certify that, to the best of our knowledge, the above-named taxpayer is a resident of the United States of America for purposes of the Greece - U.S.A. Double Taxation Convention.

Joseph Dianto  
Field Director, Accounts Management

## Details required in Form No. 10F

<i>Sl.No</i>	<i>Nature of information</i>	:	<i>Details #</i>
(i)	Status (individual, company, firm etc.) of the assessee	:	
(ii)	Permanent Account Number or Aadhaar Number of the assessee if allotted	:	
(iii)	Nationality (in the case of an individual) or Country or specified territory of incorporation or registration (in the case of others)	:	
(iv)	Assessee's tax identification number in the country or specified territory of residence and if there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident	:	
(v)	Period for which the residential status as mentioned in the certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A is applicable	:	
(vi)	Address of the assessee in the country or territory outside India during the period for which the certificate, mentioned in (v) above, is applicable	:	

## PENALTY FOR NOT FURNISHING 15CA AND 15CB

- **Section 271-I** : Penalty of **Rs. 1 Lakh** for not furnishing information in **Form 15CA** and **Form 15CB** u/s. 195(6) of the Act or for furnishing **inaccurate information** in **Form No. 15CA**.
- **Section 271J** : Penalty of **Rs. 10,000** upon Chartered Accountant for furnishing **incorrect information** in Form 15CB.

## SECTION 206AA read with RULE 37BC

The provisions of Sec. 206AA shall not apply on payment in the nature of interest, royalty, fees for technical services, payment on transfer of capital asset if the payee furnishes the following:

- **Name, e-mail id, contact number**
- **Address** in the country of residence
- **Tax Residency Certificate (TRC)**
- **Tax Identification Number** in such country. If not available, then a **unique number** on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.



## **SECTION 206AA read with RULE 37BC**

- ITAT DELHI in the case of Air India Ltd. V. ITO(TDS)(INTL.) 23-4-2021 ITA No.2260/Del./2017. (ASSESSMENT YEAR : 2013-14) held that, “following the order passed by the coordinate Bench of the Tribunal in cases of DDIT (IT-II), Pune vs. Serum Institute of India Ltd., DCIT vs. M/s. Infosys BPO Ltd. and the judgment of Hon'ble Delhi High Court in case of Danisco India Pvt. Ltd. vs. UOI, we are of the considered view that Id. CIT (A) has erred in holding that in this case, provisions contained u/s 206AA overrides beneficial provisions of DTAA between India and Neitherland. Consequently, assessee has rightly deducted the tax @ 10% as per provisions contained under DTAA, as section 206AA cannot have overriding effect on DTAA, hence no demand is payable by the assessee. Hence, question framed is decided in favour of the assessee.

## **Declaration Regarding Permanent Establishment or Place of Effective Management from the PAYEE**

- In most of the cases, Payer might not be aware about the existence of Permanent Establishment of payee in India. Thus, it is advisable to obtain a declaration from payee regarding existence/non-existence of its **permanent establishment /place of effective management** in India to determine the correct rate of withholding tax.

## RULE 26 – EXCHANGE RATE

- **Applicability** – For the purpose of deduction of tax at source on any income payable in **foreign currency**.
- For **Conversion of amount in foreign currency into INR**.
- **Rate of Exchange** – **SBI TT Buying Rate** (Telegraphic transfer) as on the date on which the tax is required to be deducted at source.
- Rate of Tax shall be applied on the resultant amount in INR.
- If TDS is deducted at the time of credit and payment is made at a subsequent date, then TDS is not applicable on foreign exchange difference.

## TDS ON PURCHASE OF IMMOVABLE PROPERTY FROM NON RESIDENT – Section 194-IA or Section 195 ?

- As per the provisions of Section 194-IA, TDS is required to be deducted @1% if the value of immovable property is Rs. 50 Lakhs or more.
- However, the provisions of Section 194-IA do not apply when the seller is a non-resident. Provisions of Section 195 will be applicable.
- No threshold for TDS if property purchased from non-resident. TDS is required to be deducted even if consideration is less than 50 Lakhs.
- Certificate u/s. **195(2) by buyer** or **195(3) by seller** can also be obtained.

## TDS ON PAYMENT OF RENT TO NON-RESIDENT OWNER OF PROPERTY – Section 194-I or Section 195 ?

- If Rent (whether for commercial premises or for property used for residential purposes) is payable to a non-resident, then the payer is required to withhold tax u/s. 195 of the Act.
- **Threshold limit: NIL**
- The payer shall **not be eligible to obtain benefit of threshold** of Rs. 2,40,000 in case of rent of business premises u/s. **194-I** or threshold of rent of Rs. 50,000 per month u/s. **194-IB** of the Act.
- Rate of TDS 31.2% (30%+4% of tax)
- Even if property is used for **residential purpose, payer will have to obtain TAN and file Form No. 27Q quarterly.**

## CONSEQUENCES OF NOT DEDUCTING TAX u/s. 195

- **Section 40(a)(i):** If any person responsible for paying any sum (such as interest/royalty/FTS/etc.) outside India or to a non-resident is liable to deduct tax at source, fails to do so, or after deducting, fails to deposit the same on or before the due date u/s. 139(1), then **100% of such sum shall be disallowed u/s. 40(a)(i).**
- It shall be allowed subsequently in the year of deduction/deposit.
- **w.e.f. 1.9.2019:** No Disallowance if the recipient of income (payee) has
  - Furnished return u/s. 139
  - Has taken into account such sum for computing his income
  - Has paid the tax due on such income.

## TDS ON CASH WITHDRAWALS – SECTION 194N (As amended by Finance Act, 2020 w.e.f 1<sup>st</sup> July 2020)

### Nature of payment: Cash withdrawal

Aggregate amount of cash withdrawal	If the recipient has FILED return of income for <b>ANY</b> of the 3 previous years (i.e. AY 2020-21, <b>or</b> AY 2019-20, <b>or</b> AY 2018-19) <sup>#</sup>	If the recipient has NOT FILED return of income for <b>ALL</b> of the 3 previous years (i.e. AY 2020-21, <b>and</b> AY 2019-20, <b>and</b> AY 2018-19) <sup>#</sup>
Upto Rs. 20 Lakhs	NIL	Nil
More than Rs. 20 Lakhs but upto Rs. 1 Crore	NIL	2%
More than Rs. 1 Crore	2%	5%

**Applicable rate for TDS u/s. 194N can be verified from [www.incometax.gov.in](http://www.incometax.gov.in)**

## **TDS ON CASH WITHDRAWALS – SECTION 194N** **(As amended by Finance Act, 2020 w.e.f 1<sup>st</sup> July 2020)**

- **Deductor:**
  - Banking Company
  - Co-operative Bank
  - Post Office
- Limit of Cash withdrawal is to be calculated per bank and **not per branch**.
- If the recipient has filed his return of income of ANY of the 3 previous years, then, no TDS upto cash withdrawal of Rs. 1 Crore.



## **TDS ON CASH WITHDRAWALS – SECTION 194N** **(As amended by Finance Act, 2020 w.e.f 1<sup>st</sup> July 2020)**

- The recipient **CANNOT** apply for lower deduction certificate u/s. 197 and **CANNOT** furnish Form No. 15G/15H.
- TDS not required on payments to registered commission agent or trader, operating under **Agriculture Produce Market Committee (APMC)** who has certified that the cash withdrawal is for the purpose of making payments to the farmers on account of purchase of agriculture produce. – Notification 70/2019 and CBDT Circular No. 14 of 2020 dated 20<sup>th</sup> July, 2020.

**TDS ON PAYMENT OF CERTAIN SUMS BY E-COMMERCE  
OPERATOR TO E-COMMERCE PARTICIPANT**  
(Introduced by Finance Act, 2020 w.e.f 1<sup>st</sup> October 2020)

- Section 194-O has been introduced vide Finance Act, 2020.
- **Nature of payment:** On Payment by E-commerce operator to E-commerce participant **for sale of goods or provision of service over electronic platform**
- **Threshold:** No TDS u/s. 194-O where **gross amount of sales/service** through the e-commerce platform does not exceeds **Rs. 5 Lakhs**.
- **Rate of tax:** 1% **(0.75% w.e.f 01.10.2020 to 31.03.2021)**
- **Rate of TDS if No PAN :** **5% as per First proviso to Section 206AA.**
- For the purpose of determining applicability of Section 194-O for the FY 2020-21, the Sales/Gross receipts prior upto 30th September, 2020 shall also be included.

## **INTEREST ON TDS**

Interest chargeable u/s. 201(1A) should be levied from the date of deduction of TDS to the date of actual payment of TDS.

### **Example:**

Date of Deduction – **15-11-2020**

Date of Deposit – **10-12-2020** (Due Date – 7-12-2020)

Period of Interest – **1 Month @1.5%**, since the actual difference between both the days does not exceeds 1 month.

Refer:

**Bank of Baroda vs. CIT** [2017] 88 taxmann.com 103 (Ahmedabad – Trib.)

**UTI Mutual Fund vs. DCIT, CPC-TDS** (ITA No.2295/Mum/2018 dated **01.07.2019**)

## One months relief of interest in case of delay payment of TDS

The Hon'ble ITAT - Ahmedabad Bench in the case of **Bank of Baroda v. Deputy Commissioner of Income-tax [2017] 88 taxmann.com 103 (Ahmedabad - Trib.)** held that the interest chargeable under section 201(1A) of the Income-tax Act should be levied from the date of deduction of tax to the date on which such tax is actually paid to the Government.

Following are the examples that may help to understand the levy of interest u/s. 201(1A):-

1. Date of Deduction – 05-11-2017  
Due Date of depositing TDS – 07-12-2017  
Actual Date of Deposit – 07-12-2017  
Period of Interest - No Interest shall be levied as the TDS is deposited within the prescribed time limit.
2. Date of Deduction – 05-11-2017  
Due Date of depositing TDS – 07-12-2017  
Actual Date of Deposit – 10-12-2017  
Period of Interest - 2 Months, as the period from which the tax is deducted to the date on which such tax is actually paid exceeds one month.
3. Date of Deduction – 15-11-2017  
Due Date of depositing TDS – 07-12-2017  
Actual Date of Deposit – 12-12-2017  
Period of Interest - Period from which the tax is deducted to the date on which such tax is actually paid does not exceeds one month. Accordingly, only one month's interest u/s. 201(1A) shall be levied.
4. Date of Deduction – 05-11-2017  
Due Date of depositing TDS – 07-12-2017  
Actual Date of Deposit – 10-01-2018  
Period of Interest - 3 Months

**Conclusion:** Levy of interest u/s. 201(1A) for the second month can arise only if the period of time between the date on which tax was deducted and the date on which tax was paid to the Government exceeds one month.

## CONSEQUENCES OF NOT DEDUCTING TAX AT SOURCE

- If TDS not deducted, or after deduction, not deposited upto due date of filing of return on any amount, then **30%** of such sum will be disallowed u/s. **40(a)(ia)**. In case the payee is **NR / Foreign Co.**, 100% of such sum will be disallowed u/s. **40(a)(i)**.
- Such sum will be allowed in the year in which tax has been deducted subsequently.
- However, no disallowance u/s. 40(a)(ia) and **Section 40(a)(i)** shall be made if the recipient of such income has filed his return of income within the time prescribed u/s. **139(1)** after including the said income and has paid the tax due thereon and recipient has to furnish CA Certificate in **Form No. 26A** electronically. However, **Payer shall be liable for interest u/s. 201(1A) @ 1% p.m. or part thereof.**

## **SURVEY BY TDS CHARGES**

**Any verification or survey u/s 133A of the Act by the TDS charge shall be conducted by its own officers.**

**Where the TDS charge is headed by the Pr.CCIT of the region or by the CCIT (TDS), the verification or survey action shall be approved by the Pr.CCIT of the region or the CCIT (TDS), as the case may be and shall be conducted by the officers of the TDS charge.**

## **Time limit for TDS Assessments**

**Time limit for TDS Orders:** 7 years from the end of financial year in which payment is made or credit is made or 2 years in case of correction statements, **whichever is later.**

**Vide Finance Bill, 2021, time limit for assessment / reassessment has been reduced. However, no such reduction in time limit is provided for TDS / TCS Assessments.**

## **TDS / TCS SURVEY ON CHARITABLE AND RELIGIOUS INSTITUTIONS / GOVT. DEPARTMENTS**

**As per Sec. 133A(2A) Income tax authority can carry out survey at any office or any other place where business or profession is carried on, for verifying that TDS/TCS has been deducted or collected in accordance with the law. But TDS/TCS survey cannot be carried out at a charitable or religious trust or institution or at the office of any Central or State Government or local authority because no business or profession is being carried out by them.**



## **TIME LIMIT OF ORDER U/S 200A, 201 UNCHANGED**

**As per Sec. 200A processing of TDS/TCS statement can be done within one year from the end of the financial year in which the statement is filed. As per Sec. 201 an order deeming a person to be an assessee in default for failure to deduct or for short deduction from a resident person can be passed within 7 years from the end of the financial year in which the payment is made or credit is given or within 2 years from the end of financial year in which correction statement as per provision to Sec. 200(3) is delivered, whichever is later, e.g. if any TDS statement is filed in F.Y. 2017-18 its order U/s 201 for non or short deduction can be passed upto 31-3-2025. So time limit of 7 years is still unchanged. In case of non payment of TDS there is no time limit, i.e. if tax was deducted in F.Y. 2009-10 but not deposited till 31-3-2021 then proceedings U/s 201 can be initiated at any time i.e. unlimited time.**

## CONSEQUENCES OF NON-COMPLIANCE OF TDS PROVISIONS

- **Short deduction** - Disallowance u/s. 40(a)(ia) can only be made for non-deduction and **not for short deduction of tax**. However, assessee will be liable to pay interest u/s. 201(1A).
- **Prosecution u/s. 276B** – If TDS deducted but not paid – rigorous imprisonment : 3 months to 7 years and fine.
- **Late fee u/s. 234E @ Rs. 200/day** – For delay in furnishing TDS statements
- **Penalty u/s. 271H** – Incorrect TDS or TCS statements– **Rs. 10,000 to Rs. 1 Lakh.**

## **CONSEQUENCES OF NON-COMPLIANCE OF TDS PROVISIONS**

- **Penalty u/s. 271C** – Equal to the whole or part amount of TDS not deducted.
- Kerala High Court in the case of Subscriber Chit Fund P. Ltd. V. CIT, Kochi vide ITA/26/Ker/2016 dt. 23-3-2021 allowed the appeal of assessee and held that non-remittance of tax deducted at source U/s 194C of Chapter XVIIIB of the Act is not covered by Section 271C(1)(b) of the act to attract penalty U/s 271C.

## 15G- 15H DUE DATES

<b>Date of ending of the quarter of the financial year</b>	<b>Due Date</b>
30 <sup>th</sup> June	15 <sup>th</sup> July of the Financial Year
30 <sup>th</sup> September	15 <sup>th</sup> October of the Financial Year
31 <sup>st</sup> December	15 <sup>th</sup> January of the Financial Year
31 <sup>st</sup> March	30 <sup>th</sup> April of the Financial Year immediately following the financial year in which declaration is made.

## Higher TDS/TCS for non-filers Section 206AB, w.e.f. 1-7-2021

*Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source under the provisions of Chapter XVIIIB, other than [section 192](#), [192A](#), [194B](#), [194BB](#), [194LBC](#) or [194N](#) on any sum or income or amount paid, or payable or credited, by a person ~~(hereafter referred to as deductee)~~ to a specified person [\(hereafter referred to as deductee\)](#), the tax shall be deducted at the higher of the following rates, namely:—*

- (i) at twice the rate specified in the relevant provision of the Act; or*
- (ii) ~~at twice the rate or rates in force; or~~*
- (iii) at the rate of five per cent.*

## Higher TDS/TCS for non-filers Section 206CCA w.e.f. 1-7-2021

*Notwithstanding anything contained in any other provisions of this Act, where tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person (~~hereafter referred to as collectee~~) from a specified person (hereafter referred to as collectee), the tax shall be collected at the higher of the following two rates, namely:—*

- (i) at twice the rate specified in the relevant provision of the Act; or*
- (ii) at the rate of five per cent.*

## **Higher TDS/TCS for non-filers Section 206AB, 206CCA w.e.f. 1-7-2021**

Person covered under this section is a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted, **for which the time limit of filing return of income U/s 139(1) has expired**; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years, person shall not include a non-resident who does not have a permanent establishment in India

## Higher TDS/TCS for non-filers Section 206AB, 206CCA CBDT Cir 11/2021 dt. 21-6-21

Higher rate is twice the prescribed rate or 5%, whichever is higher. Specified person means a person who satisfies both the following conditions: -

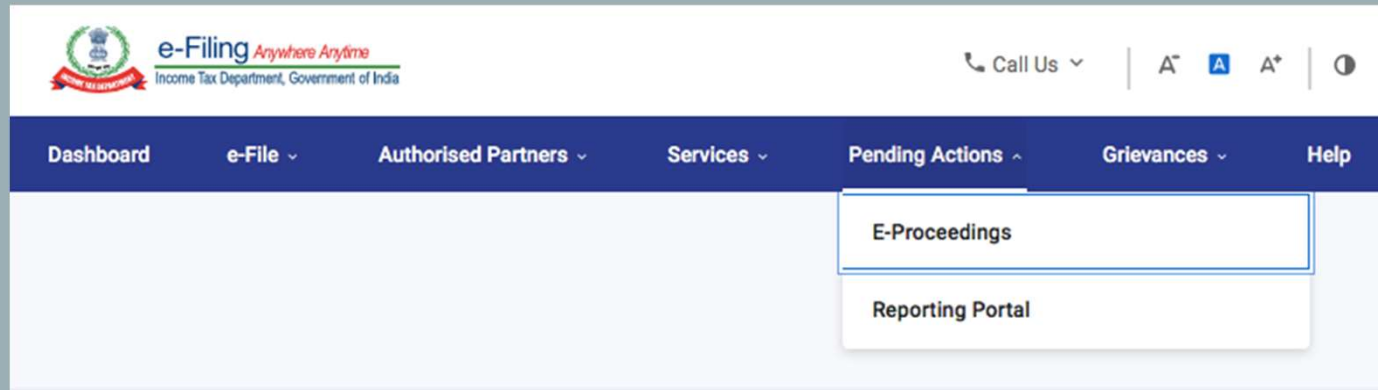
- (i) He has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately before the previous year in which tax is required to be deducted /collected. Two previous years to be counted are required to be those whose return filing date under sub-section (1) of section 139 has expired.
- (ii) Aggregate of tax deducted at source and tax collected at source is rupees fifty thousand or more in each of these two previous years.



## **Higher TDS/TCS for non-filers Section 206AB, 206CCA CBDT Cir 11/2021 dt. 21-6-21**

- If any specified person files a valid return of income (filed & verified) for assessment year 2019-20 or 2020-21 during the financial year 2021-22, his name would be removed from the list of specified persons. This would be done on the date of filing of the valid return of income during the financial year 2021-22.
- If any specified person files a valid return of income (filed & verified) for assessment year 2021-22, his name would be removed from the list of specified persons. This will be done on the due date of filing of return of income for A.Y. 2021-22 or the date of actual filing of valid return( filed & verified) whichever is later.

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### Form Type and Category

Form Type\*

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Entity Category\*

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Form Type\*

Entity Category\*

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FORM 61A

FORM 61

Compliance Check (Tax Deductor & Collector)

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Form Type*	Compliance Check (Tax Deductor & Collector) ▾
Entity Category*	Individual/Hindu Undivided Family (Karta) ▾
<a href="#">Back</a> <a href="#">Next</a>	

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Enter Entity Details	
<b>Entity Name*</b>	<input type="text" value="Entity Name"/>
<b>Entity PAN*</b>	<input type="text" value="Entity PAN"/>
<b>Flat/Door/Building*</b>	<input type="text" value="Enter Flat/Door/Building"/>
<b>Road/Street</b>	<input type="text" value="Enter Road/Street"/>
<b>Area/Locality*</b>	<input type="text" value="Enter Area/Locality"/>
<b>Town/City/District*</b>	<input type="text" value="Enter Town/City/District"/>
<b>Pin Code*</b>	<input type="text" value="Enter Pin Code"/>
<b>State*</b>	<input type="text" value="Select State"/>
<b>Country*</b>	<input type="text" value="Select Country"/>
<p style="text-align: center;"><a href="#">Back</a> <a href="#">Add Principal Officer</a></p>	

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Enter Entity Details	
Entity Name*	<input type="text" value="Entity Name"/>
Entity PAN*	<input type="text" value="Entity PAN"/>
Flat/Door/Building*	<input type="text"/>
Road/Street	<input type="text"/>
Area/Locality*	<input type="text"/>
Town/City/District*	<input type="text" value="INDORE"/>
Pin Code*	<input type="text" value="452001"/>
State*	<input type="text" value="MADHYA PRADESH"/>
Country*	<input type="text" value="INDIA"/>
<input type="button" value="Back"/> <input type="button" value="Add Principal Officer"/>	

Fields with \* mark are mandatory

## ITDREIN Generated Successfully Inbox x



**noreply@insight.gov.in**  
to me ▾

9:15 AM Jun 25, 2021, 9:15 AM 4 minutes ago Reply ⋮



Dear User,

Registration request number REG0000087371 submitted on 25-06-2021 has been successfully verified and approved. You have been designated as Principal Officer of registered entity.

Please find the login details below:

ITDREIN [Redacted]

Authorised Person Type: Principal Officer

Login Id: [Redacted]

Temporary Password: C5\$s5Z\$pdS\_9

Please change the password upon first [login](#). ←

This is a system generated e-mail. Please do not reply to this mail. For any assistance please reach out to "Help" section of reporting portal <https://report.insight.gov.in>. If you have not made this request, please contact [cmcpc\\_support@insight.gov.in](mailto:cmcpc_support@insight.gov.in).

Regards,

Project Insight Team

Income Tax Department

Please add [noreply@insight.gov.in](mailto:noreply@insight.gov.in) to your whitelist or safe sender list, else your mailbox filter may stop you from receiving emails from this sender.



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### Change Password

**Current Password\***

**New Password\***

**Confirm Password\***

**What is your favourite movie?\***

**What was the make of your first car?\***

SUBMIT

Reporting Portal Password Policy :

- 1) Password must be at least 8 characters in length
- 2) Password must contain at least 1 uppercase character
- 3) Password must contain at least 1 lowercase character
- 4) Password must contain at least 1 number
- 5) Password must contain at least 1 special character and allowed special character are #, \$, \_
- 6) Past 3 passwords cannot be used

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PAN*	<input type="text"/>
Password*	<input type="password"/>  
<a href="#">LOGIN</a>	
<a href="#">Forgot Password?</a>	
<a href="#">Back</a>	

**After changing the default password, log onto Reporting Portal through the PAN of the Principal Officer. (or Proprietor)**

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Form Type	Compliance Check (Tax Deductor & Co 
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Authorized Person Type

Principal Officer

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**Compliance Check for Section 206AB & 206CCA**

- FAQs**
- Overview
  - Registration
  - Login
  - Reporting Entity & User Profile
  - Statement of Financial Transactions (Form 61A)
  - Resources

**News & Updates**

- 22-06-2021**  
 Directorate of Systems notifies procedure for Compliance Check for Section 206AB & 206CCA functionality  
[Click Here.](#)
  - 21-06-2021**  
 CBDT Circular regarding use of functionality under section 206AB and 206CCA of the Income-tax Act, 1961.  
[Click Here.](#)
  - 21-06-2021**  
 CBDT Order u/s 138(1)(a)(i) of Income-tax Act, 1961 ,for furnishing information of "Specified Persons" as per section 206AB & 206CCA to "Tax Deductor/Tax Collector" through the functionality "Compliance Check for Section 206AB & 206CCA"  
[Click Here.](#)
  - 22-04-2021**  
 Format, Procedure and Guidelines for submission of Statement of Financial Transactions (SFT) for Dividend income and Interest Income.  
**Notification:**  
[Interest](#) [Dividend](#)
- [View more >](#)

**Events**

- Department of Revenue Pavilion set up by CBDT at Make In India Week, Mumbai
  - Chairman CBDT inaugurates Taxpayer Lounge at IITF 2016
- [View more >](#)

**Tips**

- Mandatory error needs to be resolved by user for successful generation of XML
- User should use DD-MM-YYYY format while entering date in CSV

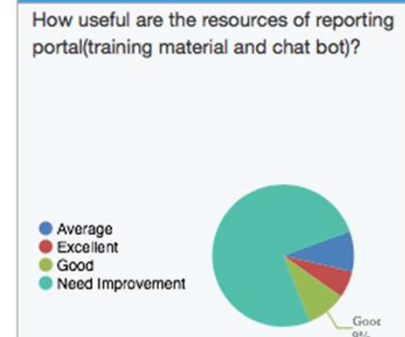
**Current Poll**

How useful are the resources of reporting portal(training material and chat bot)?

Average  
 Need Improvement  
 Excellent  
 Good

**Submit**

**Current Poll Result**



**Guides**

[Reporting Portal - User Guide](#)



## Reporting Portal



Welcome [Redacted], Principal Officer

[Logout](#)



Compliance Check for Section 206AB & 206CCA

### Compliance Check for Section 206AB & 206CCA


**PAN Search**

Bulk Search

PAN \*

ENTER

Captcha Code

6 4 3 4 3 

Enter Captcha Code \*

ENTER

**Search**



## Reporting Portal



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Compliance Check for Section 206AB & 206CCA

### Compliance Check for Section 206AB & 206CCA


**PAN Search**

Bulk Search

PAN \*

CXMPM9469G

Captcha Code

6 4 3 4 3 

Enter Captcha Code \*

64343

[Search](#)



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Compliance Check for Section 206AB & 206CCA

### Compliance Check for Section 206AB & 206CCA

[PAN Search](#)

[Bulk Search](#)

PAN *	<input type="text" value="CXMPM9469G"/>
Captcha Code	<input type="text" value="9 4 2 3 6"/> 
Enter Captcha Code *	<input type="text" value="ENTER"/>
<input type="button" value="Search"/>	

Search Result of PAN : CXMPM9469G on 25-06-2021 (Financial Year 2021-22) 

Name	PAN Allotment Date	PAN-Aadhaar Link Status	Specified Person u/s 206AB & 206CCA
AXXXA MXXXA	05-12-2015	Linked	No





## Income Tax Department



### Compliance Check for Section 206AB & 206CCA

Search Result of PAN : <b>CXMPM9469G</b> on <b>25-06-2021</b> (Financial Year <b>2021-22</b> )	
Name	AXXXXA MXXXXA
PAN Allotment Date	05-12-2015
PAN-Aadhaar Link Status	Linked
Specified Person u/s 206AB & 206CCA	No
This is a system generated acknowledgement and does not require signature.	

## BULK PAN VERIFICATION –MAXIMUM 10000 PAN ONCE

Compliance Check for Section 206AB & 206CCA					
Search Result on 25-06-2021 (Financial Year 2021-22)					
#	PAN	Name	Allotment Date	PAN-Aadhaar Link Status	Specified Person u/s 206AB & 206CCA
1	ABCDE1234X	RXXXXH MXXXXA	15-03-1999	Linked	No
2	ABCDE1234X	AXXXXA MXXXXA	05-12-2015	Linked	No
3	ABCDE1234X	DXXXP KXXXR JXXN	15-02-1999	Not Linked	No

BPLA01102X.TV842\_206AB\_206CCA +

## **Higher TDS/TCS for non-filers Section 206AB, 206CCA**

If any sum or income is liable to TDS (other than 192, 192A, 194B, 194BB, 194LBC, 194N) and the deductee or collectee has not filed his return for immediately preceding two assessment year and TDS & TCS in each year exceeds Rs. 50,000/- then **TDS at twice the rate specified in the relevant provision of the Act; ~~or at twice the rate or rates in force~~; or at the rate of five per cent, whichever is higher. In case of TCS at twice the rate specified in the relevant provision of the Act, or at the rate of five per cent, whichever is higher.** If the provision of section 206AA/206CC is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA/206CC.

# TCS ON SALE OF CERTAIN GOODS – SECTION 206C(I)

Seller of below goods shall collect tax from buyer.

Sr. No.	Nature of goods	Rate of TCS	Rate of TCS (w.e.f 14.05.2020 to 31.03.2021)
(i)	Alcoholic Liquor for human consumption	1%	1% # (no change)
(ii)	Tendu leaves	5%	3.75%
(iii)	Timber obtained under a forest lease	2.5%	1.875%
(iv)	Timber obtained by any mode other than under a forest lease	2.5%	1.875%
(v)	Any other forest produce not being timber or tendu leaves	2.5%	1.875%
(vi)	Scrap	1%	0.75%
(vii)	Minerals, being coal or lignite or iron ore	1%	0.75%

# As per Section 206C (10A) introduced vide Taxation & Other Laws (Relaxation & Amendment of certain provisions) Act, 2020 – No reduction in rate of TCS on alcoholic liquor for human consumption.

## TCS ON SALE OF CERTAIN GOODS – SECTION 206C(1)

- **Every person, being a seller** of the goods of the nature specified in Column (2) of the Table **shall collect tax from buyer.**
- **Seller** means:
  - **CG, SG**, local authority, etc. or **Company** or **Firm** or **Co-operative society** or
  - **Individual/HUF** whose turnover in just preceding FY exceeds Rs. 1 Crore or Rs. 50 Lakhs, as the case may be.
- **Buyer** means:
  - A person, who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table :-
  - TCS not to be collected from PSU, CG, SG, consulate or the like.
  - TCS not to be collected from a buyer in the retail sale of such goods purchased by him for **personal consumption**

## TCS ON SALE OF CERTAIN GOODS – SECTION 206C(1)

- **Kerala High Court** in the case of **Excel Timbers P. Ltd. Vs. ITO(TDS)** vide WP(C)/14431/2014 Dt. 15-12-2014 held that TCS has to be effected by first Indian seller(importer) in case of **import of timber**. the first sale effected in India has been performed by the petitioners in their capacity as sellers. The petitioners do not fall into the shoes of 'buyers', with reference to the mandate of Section 206C and stand to be the 'sellers', whose duty was only to collect tax at source, when sale was effected to the buyers (after clearance from the Customs department).

## **TCS ON SALE OF CERTAIN GOODS – SECTION 206C(1)**

- TCS u/s. 206C(1) shall not be required to be collected from a resident buyer, if the goods are to be utilised for the purpose of **manufacturing, processing or producing articles or things** or for the purposes of generation of power and **not for trading purposes**.
- Buyer to furnish declaration in Form No. 27C to the seller.
- No time limit has been prescribed for furnishing Form No. 27C by the buyer to the seller - **Chandmal Sancheti vs. ITO (Jaipur ITAT)** (ITA No. 344&345/JP/2015)
- Seller to submit Form No. 27C, on or before 7<sup>th</sup> day of the next month in which Form No. 27C is received.

## TCS ON SCRAP- SECTION 206C(I)

- SCRAP has been defined u/s. 206C as under:
  - *“(b) "scrap" means **waste and scrap** from the **manufacture or mechanical working of materials** which is definitely **not usable as such** because of breakage, cutting up, wear and other reasons”*
- Thus, the two important conditions for an item to be considered as SCRAP are:
  1. The scrap should arise from manufacture or mechanical working of materials, and
  2. It should not be usable as such
- If any of the above 2 conditions is not satisfied, then the item will not be treated as Scrap, and thus No TCS u/s. 206C.



## **TCS ON SCRAP- SECTION 206C(I)**

- CBDT had issued a letter No. 275/86/2011-IT(B) dt. 18-5-2012 to all CIT(TDS) and stated that there is no requirement that goods to be eligible for scrap should be produced/manufactured by the seller itself. Thus all sellers of scrap including those trading in scrap are liable to collect TCS.

## TCS ON SCRAP- SECTION 206C(I)

- The definition of Scrap does not suggest that the scrap should be generated by the seller himself. Thus, the **provisions of section 206C of the Act are applicable to a trader dealing in the scrap – Chandmal Sancheti vs. ITO (Jaipur ITAT) (ITA No. 344&345/JP/2015)**
- The scrap sold should arise out of manufacturing or mechanical working of material. In absence of which, no requirement to collect tax at source - **Navine Fluorine International Ltd. vs. ACIT (Ahmedabad ITAT)[2012] 14 ITR(T) 481**
- Provisions of TCS not applicable to dealer of scrap – **Lala Bharat Lal & Sons vs. ITO (Lucknow ITAT) (ITA No. 14,15,16/LKW/2019 dtd.19.02.2020)**
- Where products obtained in course of **ship breaking activity** are **usable as such**, they do not fall within definition of scrap. Hence, not liable for TCS – **CIT vs. Priya Blue Industries Pvt. Ltd. (Gujarat HC) [2016] 381 ITR 210**
- Sale of railway scrap by dealer being certainly not usable due to its breakage or wear and tear, same would be subjected to TCS during **resale – Pramod Kumar Jain vs. ITO [2020] 117 taxmann.com 649 (Jaipur - Trib.) dated 3rd July, 2020.**

## **TCS ON SCRAP- SECTION 206C(I)**

- **ITAT Ahmedabad in the case of ACIT(TDS) Vs. Bansal Ship Breakers P. Ltd. Vide ITA/151/Ahd/2017 09-07-2019 AY 2008-09 dismissed the appeal of revenue and held that, “Sale of such items capable of being used as such is outside the ambit of Section 206C of the Act, in the light of decision of Hon'ble Gujarat High Court in the case of CIT(TDS) vs. Priya Blue Industries P. Ltd. [2016] 381 ITR 0210 (Guj)”.**
- **ITAT Mumbai in the case of DCIT(TDS) Vs. Dr. Balabhai Nanavati Hospital vide ITA/4427/Mum/2015 Dt. 8-9-2017 AY 2012-13 dismissed the appeal of the revenue on the question of liability to collect TCS on sale of scrap and held that assessee is neither a trader nor a manufacturer generating or dealing in resale of scrap generated as waste material or unusable. Secondly, the assessee has sold the product under buy back and useable items i.e. hospital equipments and machinery.**

## TCS ON GRANT OF LEASE/LICENSE, ETC. – SECTION 206C(1C)

Sr. No.	Nature of contract or license or lease, etc.	Rate of TCS	Rate of TCS (w.e.f 14.05.2020 to 31.03.2021)
(i)	Parking lot	2%	1.5%
(ii)	Toll plaza	2%	1.5%
(iii)	Mining and quarrying (does not includes mining and quarrying of mineral oil, including petroleum and natural gas)	2%	1.5%

- **Every person**, who grants a **lease** or a **license** or **transfers any right or interest** in respect of the above shall be liable to collect tax at source (TCS) at the time of debit/receipt.
- **Individual/HUF** even if his turnover does not exceed Rs. 1 Crore or Rs. 50 Lakhs, as the case may be are also **liable to collect tax u/s. 206C(1C)**.

## **TCS ON GRANT OF LEASE/LICENSE, ETC. – SECTION 206C(1C)**

- For the purpose of section 206C(1C) on parking lot, toll plaza or mining or quarrying, every **person** [person as defined u/s. 2(31) of the Income tax Act, 1961], should collect TCS.
- Thus, the Central Govt., State Govt., not a person u/s. 2(31), hence cannot be made liable to collect tax at source U/s 206C(1C).
- Shree Jagannath Temple Office is not a person u/s. 2(31). Thus, not liable to collect tax at source u/s. 206C(1C) - **Shree Jagannath Temple Managing Committee vs. ACIT (Cuttack ITAT)**(ITA No. 197 and 198/2013)

## TCS ON SALE OF MOTOR VEHICLE – SECTION 206C(1F)

- **Nature of transaction:** Retail Sale of motor vehicle
- **Threshold:** No TCS upto **Rs. 10 Lakhs**
- **Rate of TCS:** 1%
- TCS on motor vehicle to be collected by **seller** at the time of (receipt of) **Retail Sale** and,
- not on sale of motor vehicle by manufacturers to dealers/distributors – **CBDT Circular No. 22/2016 dtd. 08.06.2016 [Not relevant for Section 206C(1H) - discussed in subsequent slides]**
- TCS also applicable on **motor bikes** of amount exceeding Rs. 10 Lakhs.
- e.g. Value of Motor Vehicle - Rs. 12 Lakhs, then TCS applicable on entire Rs. 12 Lakhs.

## **TCS ON FOREIGN REMITTANCE UNDER LIBERALISED REMITTANCE SCHEME (LRS) – Section 206C(1G) w.e.f 1<sup>st</sup> October 2020**

- **Nature of transaction:** Remittance out of India under LRS
- **Threshold:** No TCS if aggregate amount in a FY is less than **Rs. 7 Lakhs** and remittance for purpose other than overseas tour program package (**but to be reported in 27EQ**)
- **No Threshold** for payments for **overseas tour program package** to an operator and TCS is liable to be collected **without any threshold**.
- **Rate of TCS:** **5%** on amount in excess of Rs. 7 Lakh in a FY. (**0.5%** if the remittance is educational loan from Bank or notified financial institution as specified U/s 80E)
- Rate of TCS will be 10% / 5% respectively, if the buyer does not furnishes PAN.
- Example: If remittance outside India for medical treatment of Rs. 10 Lakhs. Then TCS u/s. 206C(1G) @ 5% to be collected on Rs. 3 Lakhs – i.e. Rs. 15,000
- **As per Section 206C(10A) introduced vide Taxation & Other Laws (Relaxation & Amendment of certain provisions) Act, 2020 – No reduction in rate of TCS u/s. 206C(1G).**

## **TCS ON OVERSEAS TOUR PACKAGE – Section 206C(1G) w.e.f 1<sup>st</sup> October 2020**

- **Nature of transaction:** Purchase of **Tour Package** which includes expenses for travel or hotel stay/boarding/lodging, etc.
- **Threshold:** NIL
- **Rate of TCS:** 5%
- If TCS has already been collected by the Tour Operator, then no further TCS will be collected by the authorised dealer for remittance outside India or TDS liable and deducted by buyer then no TCS.



## **TCS ON RECEIPT OF SALE CONSIDERATION – Section 206C(1H) w.e.f 1<sup>st</sup> October 2020**

- **Nature of transaction:** Receipt of Sale consideration for Sale of Goods in India. by a **Seller whose turnover exceeds Rs. 10 Crores** in the preceding FY is liable to collect tax at source.
- **Who is liable to collect – Seller whose Turnover of immediately preceding previous year exceeds Rs. 10 Crores**
- **From whom to collect – Buyer from whom, receipt (and not sales) exceeds Rs. 50 Lakhs, in aggregate, in a financial year.**
- **Rate of Tax:** 0.1% of the amount exceeding Rs. 50 Lakhs. (**@0.075% upto 31.03.2021**)
- If the buyer does not furnishes PAN or Aadhaar, then TCS **@1% - First Proviso to 206C(1H)**
- TCS u/s. 206C(1H) is required to be collected at the **time of receipt of amount and not at the time of debit.**
- **Eg.** If Amount received in a FY is Rs. 60 Lakhs, then TCS is applicable only on Rs. 10 Lakhs.

## **POWER OF CBDT TO ISSUE GUIDELINES**

**– Section 206C(1-I) w.e.f 1<sup>st</sup> October 2020**

- “(1-I) If any difficulty arises in giving effect to the provisions of sub-section (1G) or sub-section (1H), the **Board** may, **with the approval of the Central Government**, **issue guidelines** for the purpose of removing the difficulty.”
- “(1J) **Every guideline** issued by the Board under sub-section (1-I) **shall be laid before each House of Parliament**, and **shall be binding on the income-tax authorities and on the person liable to collect the sum.**”
- CBDT has issued Guidelines u/s. 206C(1-I) vide **Circular No. 17/2020** dated **29.09.2020**.

## Section 206C(1H) – Who is liable to collect TCS ?

- As per Section 206C(1H) "**Seller** means a person whose total sales, **gross receipts** or **turnover** from the business carried on by him **exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out**, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein."
- However, as per **Para 2** of the **CBDT Press Release** dated 30<sup>th</sup> September, 2020 - A seller would be required to collect tax only if his turnover exceeds Rs. 10 crore in the **last financial year. (not the year of sale)**
- **Practically, it can be concluded that any person whose turnover exceeds Rs. 10 Crores in the immediately preceding previous year, shall be covered u/s. 206C(1H).**

## Section 206C(1H) – Tax not to be collected in certain cases

- **Explanation (a) to Section 206C(1H) - Buyer** means a person who purchases any goods, but does not include,
  - (A) the Central Government, a State Government, etc.
  - (B) a local authority as defined in the Explanation to Section 10(20)
  - (C) a person importing goods into India or any other notified person
- Although, no tax is to be collected from them, but the same is **required to be mentioned in the quarterly TCS Statement (Form No. 27EQ)** and non-disclosure of such items in quarterly TCS Statement is required to be reported by the Tax Auditor under **Clause 34(b) of the Tax Audit Report.**
- TCS not to be collected on Export Sales.
- TCS not to be collected on Sale of immovable property as it is out of ambit of goods.

## **Section 206C(1H) – Whether turnover of Rs. 10 Crores includes GST ?**

- For the purpose of determining applicability of Turnover of Rs. 10 Crores as per Explanation to Section 206C(1H), **the turnover limit of Rs. 10 Crores shall be determined excluding the amount of GST collected on Sales.**
- **Example:**
  - Total Sales for the Financial Year 2019-20 (excluding GST) is **Rs. 9 Crores.**
  - GST Collected on Sales @18% is **Rs. 1.62 Crores.**
  - Total Amount (inclusive of GST) is **Rs. 10.62 (Rs. 9 Crores + Rs. 1.62 Crores).**
  - In the above example, the assessee would **not be covered** under the provisions of Section 206C(1H) since his turnover is Rs. 9 Crores only, which is below the threshold limit of Rs. 10 Crores.

## Section 206C(1H) – Whether limit of Rs. 50 Lakhs is exclusive of GST or inclusive of GST ?

- The applicability of the provisions of Section 206C(1H) of the Act shall be determined with reference to **receipt** during a financial year.
- Collection of tax is to be made with reference to receipt, and not with reference to Sales. Thus, **the total amount of receipt (including GST) is liable for TCS.**
- Example:
  - Date of Sale of Goods : 3<sup>rd</sup> October, 2020
  - Sale Value (excluding GST) : Rs. 45 Lakhs
  - GST Amount @ 18% : Rs 8.1 Lakhs
  - Total Invoice Value : 53.1 Lakhs
  - Date of receipt of sale consideration : 1<sup>st</sup> December, 2020
  - **TCS to be collected on Rs. 3.1 Lakhs on 1<sup>st</sup> December, 2020 @0.075% - i.e. Rs. 233 only.**

## **Section 206C(1H) – Whether to collect at the time of receipt or at the time of raising invoice / debiting the Party A/c. ?**

- **Section 206C(1H) provides that TCS is required to be collected at the time of receipt of the Sale consideration and not at the time of debiting the Party Ledger Account.**
- Charging TCS at the time of issuing invoice would result in **practical difficulties** such as:
  - Adjustments for Sales Return
  - Adjustments for subsequent discounts / Credit notes
  - It may result in earlier payment of TCS without even collecting from the buyer
  - It may result in excess collection of tax.
- **What about Sales made in FY 2020-21 where TCS @0.075% is levied on invoice ?** – If it's payment is received in FY 2021-22, then @0.1% will be levied. Separate accounting/collection for such shortfall would be required.

## Example:

## DEBTOR'S ACCOUNT

Date of Transaction	Particulars	Debit Amount	Credit Amount
01.04.2020	Opening Balance	Rs. 50 Lakhs	
September-20	By Payment Recd.		Rs. 50 Lakhs
Oct-20 to Mar-21	To Sales (incl. GST)	60 Lakhs	
Oct-20 to Mar-21	To TCS @0.075%	Rs.4,500	
31st March, 21	Closing Balance	<b>Rs. 60 Lakhs</b>	
April-21	By Payment Recd.		Rs. 20 Lakhs

### Why TCS may not be collected on invoice ?

- Issue-1 : At the time of receipt of Rs. 20 Lakhs in April-21, the assessee will have to collect tax on Rs. 20 Lakhs and will not be able to claim the benefit of threshold of Rs. 50 Lakhs since he has charged TCS on invoice.
- Issue-2 : TCS liability is @0.1% (i.e. Rs. 2,000) whereas TCS raised in invoice @0.075% (i.e. Rs. 1,500 only) in respect of 20 Lakhs. Thus, shortfall.
- Issue-3 : Assessee collected TCS in FY 2020-21 since his turnover was more than Rs. 10 Crores in FY 2019-20. However, what if his Turnover does not exceeds Rs. 10 Crores in FY 2020-21 ? He will not be required to collect TCS on receipts in FY 2021-22, but since he has already charged TCS on invoice, he may not be eligible for such benefit of threshold.



## Section 206C(1H) – Whether to collect at the time of receipt or at the time of raising invoice / debiting the Party A/c. ?

- Thus, TCS should be collected only at the time of **receipt** of Sale consideration by way of issuing issue a debit note for TCS.

- Sample Journal Entries for Debit Note of TCS Amount (FY 20-21):

1. Debtors Account Dr.	Rs. 1.18 Crores
To Sales Account	Rs. 1 Crores
To GST Payable Account	Rs. 18 Lakhs
2. Bank Account Dr.	Rs. 1,18,05,100
To Debtors Account	Rs. 1.18 Crores
To TCS Payable Account	Rs. 5,100 (@0.075% of Rs. 68 Lakhs)
3. TCS Payable Account Dr.	Rs. 5,100
To Bank Account	Rs. 5,100

## SAMPLE TAX INVOICE

**M/s. ABC TRADING CO.**

**GSTIN:**

Date: 3<sup>rd</sup> October, 2020

**Invoice No. 01/Oct-20**

Bill to : **M/s. PQR TRADING COMPANY**

PARTICULARS	AMOUNT
Value of Items Sold	Rs. 80,00,000
CGST @ 9% - Rs. 7,20,000 and SGST @9% - Rs. 7,20,000	Rs. 14,40,000
<b>TOTAL</b>	<b>Rs. 94,40,000</b>

**Sample Note:** We are liable to collect TCS on receipts above Rs. 50 Lakhs in a financial year u/s. 206C(1H) of the Income tax Act, 1961 at prevailing rates. If aggregate payments made by you to us exceed Rs. 50 Lakhs in FY 2020-21, kindly pay TCS @ 0.075% **(Rs. 7,080/-)** in addition to the invoice amount. In case you do not make the payment of TCS, your payments shall be deemed to be inclusive of TCS and will be recoverable subsequently.

Particulars	Sales	Amount Received	TCS	Reason
Opening Bal. as on 1 <sup>st</sup> April, 2020	Rs. 40 Lakhs	NA	NA	NA
April to September-2020	Rs. 30 Lakhs	Rs. 60 Lakhs	NIL	Since 206C(IH) not applicable on receipts before 01.10.2020
October-2020	Rs. 10 Lakhs	Rs. 20 Lakhs	Rs. 1,500 (@0.075% on 20 Lakhs)	Liable for TCS as aggregate receipts has exceeded Rs. 50 Lakhs.
November-2020	Rs. 80 Lakhs	Rs. NIL	NIL	Since TCS is collectible at the time of receipt and not at the time of Sales.
December-2020	NIL	Rs. 10 Lakhs	Rs. 750 (@0.075% on 10 Lakhs)	Liable for TCS as aggregate receipts has exceeded Rs. 50 Lakhs.
April -2021	NIL	Rs. 70 Lakhs	Rs. 2,000 (@0.1% on 20 Lakhs)	Liable for TCS on amount exceeding Rs. 50 Lakhs, i.e. Rs. 20 Lakhs only.

## TCS ON MOTOR VEHICLE MANUFACTURER COVERED due to CBDT CIRCULAR dated 29-09-2020

- Para 4.5.2.(i) of the CBDT circular 17/2020 states that:

“Receipt of Sale consideration from a dealer would be subjected to TCS under sub-section (1H) of the Act, if such sales are not subjected to TCS (~~covered~~) under sub-section (1F) of section 206C of the Act.

## **Section 206C(1H) – Whether Sale of Motor Vehicles by manufacturers to distributors/dealers liable to TCS ?**

- As per Para 4.5 of CBDT Guidelines vide **Circular No. 17/2020** dated 29.09.2020 – **Receipt of sale consideration by a dealer is liable for TCS u/s. 206C(1H).**
- Thus, earlier exemption given on sale of motor vehicles by manufacturers to **dealers/distributors** vide **CBDT Circular No. 22/2016** dated **08.06.2016** is not much relevant now since the same have been specifically included vide above Guidelines vide CBDT Circular No. 17/2020.
- **Thus, the manufacturer/distributors are liable to collect TCS @0.1% as per Section 206C(1H) on receipts on or after 1<sup>st</sup> October, 2020.**

## Section 206C(1H) – Whether Sale of Scrap where Form 27C has been submitted by buyer is liable to TCS u/s.206C(1H)

- **Bare Text - Section 206C(1H):**

“(1H) Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered (and liable to tax collection and has collected) in **sub-section (1)** or **sub-section (1F)** or **sub-section (1G)** shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax...

**2<sup>nd</sup> Proviso** - Provided further that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.”

## **Section 206C(1H) – Whether Sale of Scrap where Form 27C has been submitted by buyer is liable to TCS u/s.206C(1H)**

- Thus, from a plain reading, it can be concluded that since sale of scrap is covered u/s. 206C(1), the provisions of Section 206C(1H) shall not apply.
- Thus, where the assessee has received declaration in **Form No. 27C** from the buyer that the goods shall be used in manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes, TCS shall not be required to be collected. **[Neither u/s. 206C(1) nor u/s. 206C(1H)]**

## Section 206C(1H) Vs. 194Q

- **Seller may obtain Self Declaration from Buyer**
- Where a seller whose turnover exceeds Rs. 10 Crores in the preceding financial year, then it is advisable that he may obtain a self declaration, from all its customers / buyer (from whom receipt against sale of goods exceeds Rs. 50 Lakhs in a financial year) that whether such buyer will deduct TDS u/s. 194Q or not.
- If the buyer will deduct tax u/s. 194Q, then the seller is not required to collect tax u/s. 206C(1H).
- If the buyer will not deduct TDS u/s. 194Q then the seller will have to collect tax u/s. 206C(1H). This will help seller to ensure proper compliance of section 206C(1H)



## PAYMENT OF TAX, QUARTERLY STATEMENT AND FURNISHING TDS/TCS CERTIFICATE

Quarter ending on	Due Date for Quarterly TDS Statement in Form No. 24Q/26Q/27Q	Due Date to issue TDS Certificate in Form No. 16A	Due Date for Quarterly TCS Statement in Form No. 27EQ	Due Date to issue TCS Certificate in Form No. 27D
31 <sup>st</sup> March, 2021	15 <sup>th</sup> July, 2021	31 <sup>st</sup> July, 2021	<b>15<sup>th</sup> May, 2021</b>	30 <sup>th</sup> May, 2021
30 <sup>th</sup> June, 2021	31 <sup>st</sup> July, 2021	15 <sup>th</sup> August, 2021	<b>15<sup>th</sup> July, 2021</b>	30 <sup>th</sup> July, 2021
30 <sup>th</sup> Sept, 2021	31 <sup>st</sup> October, 2021	15 <sup>th</sup> November, 2021	<b>15<sup>th</sup> October, 2021</b>	30 <sup>th</sup> October, 2021
31 <sup>st</sup> Dec, 2021	31 <sup>st</sup> January, 2022	15 <sup>th</sup> February, 2022	<b>15<sup>th</sup> January, 2022</b>	30 <sup>th</sup> January, 2022
31 <sup>st</sup> March, 2022	31 <sup>st</sup> May, 2022	15 <sup>th</sup> June, 2022	<b>15<sup>th</sup> May, 2022</b>	30 <sup>th</sup> <b>May, 2022</b>

### Due date to deposit:

**TDS : 7<sup>th</sup> day of next month (30<sup>th</sup> April for TDS deducted in the month of March)**

**TCS : 7<sup>th</sup> day of next month (for TCS collected in the month of March – 7<sup>th</sup> April)**

**Due dates for TDS statement for FY 2020-21 Q4 extended till 15<sup>th</sup> July, 2021.**

# CERTIFICATE FOR COLLECTION OF TAX AT LOWER RATE – Section 206C(9)

- Who can make application of collection of tax at lower rate ?
- A buyer or licensee or lessee.
- **Lower Rate Certificate can be applied by :**
  - **A buyer** – for TCS u/s. 206C(1) on sale of scrap, timber, coal, tendu leaves, etc.
  - **A licensee or lessee** - for TCS u/s. 206C(1C) for lease or license, etc.
- **Lower Rate Certificate cannot be obtained for :**
  - **TCS u/s. 206C(1F) – Sale of Motor Vehicle**
  - **TCS u/s. 206C(1G) – Payment under Liberalised Remittance Scheme or for Sale of overseas tour program package**
  - **TCS u/s. 206C(1H) – For sale consideration of goods**

## CREDIT OF TAX COLLECTED AT SOURCE

- **Credit of tax collected at source u/s. 206C(1F), (1G) and (1H):** As per **Rule 37-I** as amended by Income-tax (17<sup>th</sup> Amendment) Rules, 2020
- “(2A) Notwithstanding anything contained in sub-rule (2), for the purposes of **sub-section (1F)** or, **sub-section (1G)** or, **sub-section (1H) of section 206C**, credit for tax collected at source shall be given to the person from whose account tax is collected and paid to the Central Government account **for the assessment year relevant to the previous year in which such tax collection is made**”

## CONSEQUENCES OF NON-COMPLIANCE OF TCS PROVISIONS

- If a person fails to collect TCS – Liable to pay Interest @1% p.m. or part thereof [**Section 206C(7)**]
- **Sec.206C(6A)** proviso: A person shall not be deemed to be an assessee in default u/s. 206C(1) & (1C) (not for 206C(1F), (1G) and (1H), if:
  - The buyer has filed his return of income u/s. 139
  - has taken into account such amount for computing income in such return of income; and
  - has paid the tax due on the income declared by him in such return of income,
- The buyer will have to furnish CA Certificate in **Form No. 27BA** electronically.
- **For delay in furnishing TCS statements** – Late fee u/s. 234E @ Rs. 200/day.
- **Penalty u/s. 271CA** – Equal to whole or part amount of TCS not collected.
- **Prosecution u/s. 276BB** – If TCS collected but not paid – rigorous imprisonment : 3 months to 7 years and fine.




## New Form 27EQ notified vide Notification No. 54/2020

Reason for non-collection /lower collection /or collection at higher rate (See Note 1 to 8)	Number of the certificate u/s 206C issued by the Assessing Officer for lower collection of tax	Whether the payment by collectee is liable to TDS as per clause (a) of the fifth proviso to sub-section (1G) or second proviso to sub-section (1H) and whether TDS has been deducted from such payment (if either "F" or "G" is selected in 680)	If, answer to [681A] is yes, then	
			Challan number	Date of payment of TDS to Central Government
[680]	[681]	[681A]	[681B]	[681C]

# New Form 27EQ notified vide Notification No. 54/2020

## Notes:

1. Write "A" if "lower collection" is on account of a certificate under sub-section (9) of section 206C.
2. Write "B" if "non-collection" is on account of furnishing of declaration under sub-section (1A) of section 206C.
3. Write "C" if collection is at higher rate on account of non-furnishing of PAN/Aadhar by the collectee.
4. Write "D" if no collection is on account of the first proviso to sub-section (1G) of section 206C.
5. Write "E" if no collection is on account of the fourth proviso to sub-section (1G) of section 206C.
6. Write "F" if no collection is on account clause (i) or clause (ii) of the fifth proviso to sub-section (1G) or in view of notification issued under the clause (ii).
7. Write "G" if no collection is on account of the second proviso to sub-section (1H) of section 206C. 
8. Write "H" if no collection is on account of sub-clause (A) or sub-clause (B) or sub-clause (C), or in view of notification issued under sub-clause (c), of clause (a) of the Explanation.
9. Write collection code as mentioned below:

# New Form 27EQ notified vide Notification No. 54/2020

9. Write collection code as mentioned below:

Section	Nature of collection	Collection Code	
206C	Collection at source from alcoholic liquor for human consumption	6C	A
206C	Collection at source from timber obtained under forest lease	6C	B
206C	Collection at source from timber obtained by any mode other than a forest lease	6C	C
206C	Collection at source from any other forest produce (not being tendu leaves)	6C	D
206C	Collection at source from scrap	6C	E
206C	Collection at source from contractors or licensee or lease relating to parking lots	6C	F
206C	Collection at source from contractors or licensee or lease relating to toll plaza	6C	G
206C	Collection at source from contractors or licensee or lease relating to mine or quarry	6C	H
206C	Collection at source from tendu leaves	6C	I
206C	Collection at source on sale of minerals, being coal or lignite or iron ore	6C	J
206C	Collection at source on cash sale of bullion and jewellery	6C	K
206C	Collection at source on sale of motor vehicle	6C	L
206C	Collection at source on remittance under LRS for purchase of overseas tour program package	6C	O
206C	Collection at source on remittance under LRS for educational loan taken from financial institution mentioned in section 80E	6C	P
206C	Collection at source on remittance under LRS for purpose other than for purchase of overseas tour package or for educational loan taken from financial institution	6C	Q
206C	Collection at source on sale of goods	6C	R





## **TCS – REPORTING UNDER TAX AUDIT**

**Transactions to be reported in TCS Statement even when no TCS collected:**

- TCS not collected u/s. 206C(1H) because of buyer being Central/State Govt. or Local Authority (Applicable from AY 2021-22)
- TCS not collected because buyer has furnished declaration in Form No. 27C.
- TCS not collected because TDS deducted by the buyer - 2<sup>nd</sup> Proviso u/s. 206C(1H). (Applicable from AY 2021-22)

**If such transactions are not reported in TCS Statement – Tax Auditor to Report in Clause 34(b) of the Tax Audit Report. [\[Clause 34\(b\) Format in Next slide\]](#)**

## New provisions of TCS u/s. 206C(1G) AND (1H) – SCOPE UNDER TAX AUDIT

### Clause 34(b) of the Tax Audit Report:

*(b) whether the assessee is required to furnish the statement of tax deducted or tax collected. If yes, please furnish the details :*

<i>Tax deduction and collection Account Number (TAN)</i>	<i>Type of Form</i>	<i>Due date for furnishing</i>	<i>Date of furnishing, if furnished</i>	<i>Whether the statement of tax deducted or collected contains information about all details/transactions which are required to be reported. If not, please furnish list of of details/transactions which are not reported.</i>

Thus, if any person has **not reported any transactions** - where TCS is not collected because of buyer being Central/State Govt. or Local Authority or where liable for TDS as per **2<sup>nd</sup> Proviso** u/s. 206C(1H) – Tax auditor to report the same in **Clause 34(b)** of Tax Audit Report.

## **Time limit for processing TDS / TCS Statements**

### **Time limit for intimation u/s. 143(1)(a) [w.e.f AY 2021-22] :**

9 months from the end of the financial year in which the return is furnished (Time limit of 1 year reduced to 9 months)

### **Time limit for processing TDS/TCS Statements as per Section 200A / 206CB:**

TDS / TCS Statements can be processed within a period of upto 1 year from the end of the financial year in which such TDS / TCS statement is filed.

Therefore time limit u/s 200A, 206CB should also have been reduced to 9 months in place of one year.

## **Time limit for TDS / TCS Assessments**

**Time limit for TDS Orders:** 7 years from the end of financial year in which payment is made or credit is made or 2 years in case of correction statements, whichever is later. No time limit specified for TCS orders.

**Vide Finance Act, 2021, time limit for assessment / reassessment has been reduced. However, no such reduction in time limit is provided for TDS / TCS Assessments.**

**THANK YOU !**

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