

06th August, 2021

CPE meeting on

Recent changes in TDS provisions

Radhesh L. Bhat, FCA

Partner

194IB -

Payment of rent

Amendments

(w.e.f 01.07.2021)

- Sec.194IB Inserted in by Fin Act 2017, **w.e.f 01.07.2017**
- Individuals / HUF (not covered in 194I) to deduct taxes for a rent paid for use of land or building to a resident, exceeding Rs 50,000 per month or part of a month @ 5%
- File Form 26QC (challan cum statement) online within 30 days from the end of the month in which tax paid
- Issue Form 16C to the landlord

Amendment:

- In case tax is required to be deducted as per Sec.206AA (Non-furnishing of PAN) or Sec 206AB (for non-filers)
- such deduction shall not exceed rent payable for last month of PY or last month of tenancy, as case may be

1941B - Amendments

-

Issues -

- onus to prove the last month of the PY/last month of tenancy
- Identification of non filer

194P –

TDS in case of
Specified Sr. citizen

[w.e.f 01.04.2021]

Relaxation to specified Sr. citizens (Age of 75 years or more), from filling Income tax return if –

- Specified Sr. citizen, resident in India, having age of 75 years or more during the previous year.
- Receiving pension income and interest income **only** from the same specified bank.
- He shall furnish declaration in the prescribed form containing certain particulars to specified bank
- The specified bank after giving effect to deduction under Chapter VI-A & rebate u/s 87A
 - deduct income tax on basis of rates applicable.

Once the tax is so deducted, the provisions of s.139 will not apply (i.e., no requirement to file return of income)

194P – Issues to be addressed

- Whether Family pension covered under the section as the same will be considered under Income from Other Sources
- Whether the interest income includes interest from SB a/c or even interest from FD maintained by the Senior Citizen in that same bank
- Whether benefit of section is available if assessee has any exempt incomes also, like agri. income
- At what time tax is deductible by specified bank – It is not given in section 194P presently.
- How the rate of tax would be practically computed by the specified bank
- Forms for declaration to the specified banks not yet notified
- How refund claimed under the section
- Specified banks notified?

206(1H) – TCS on sale of **goods** [w.e.f 01.10.2020]

- Applicable to those sellers whose total sales, gross receipts or turnover from the business exceeds Rs. 10 crore in the immediate previous year.
- On the amount of sales consideration received on or after 1st October, 2020
- Applies only in cases where receipt of sale consideration exceeds Rs. 50 lakh in a financial year. The threshold is based on yearly receipt.
- Sales does not include 'Export sales'
- Rate of TCS is 0.1% in excess of Rs.50 Lakhs, from the buyer
- If no PAN/Aadhar, 5% as per sec.206CC
- Not applicable to goods covered in 206C (1), (1F), (1G), i.e., other TCS provisions

206(1H) –

TCS on sale of **goods**
[w.e.f 01.10.2020]

Buyer does not include:

- Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State
 - local authority as defined in the *Explanation* to clause (20) of section 10
 - Person importing goods into India or other notified persons
- The buyer gets credit of tax so paid, in 26AS

206(1H) – Illustration

- A seller, received Rs. 1 crore before 01.10.2020 from a buyer and again receives Rs. 5 lakh after 01.10.2020 from him;
 - Seller, would be required to collect tax on Rs. 5 lakh only and not on Rs. 55 lakh [i.e., Rs.1.05 crore - Rs. 50 lakh (threshold)] by including the amount received before 01.10.2020
- In the above illustration, the seller has to collect tax on receipt of Rs. 5 lakh after 01.10.2020 because the receipts from 01.04.2020 (i.e.. Rs. 1.05) crore exceeded threshold of Rs. 50 lakhs.
- If a seller received a payment of Rs. 1 crore from a buyer, Rs.5,000 i.e., [0.1% of (Rs. 1 crore - Rs. 50 lakh)] shall be collected.

➤ How to collect practically?

206(1H) – Guidelines CBDT vide circular no.17/2020 [Circular 17 2020](#)

Not applicable on any sale consideration received before 01.10.2020

Not applicable to (a) transactions in securities and commodities which are traded/cleared/settled through/by recognized stock exchanges/recognized clearing corporation (b) transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC;

Only for the purpose of calculation of this threshold of Rs. 50 lakh, the receipt from the beginning of the financial year i.e., from 01.04.2020 shall be taken into account

Receipt of sale consideration from a dealer would be subjected to TCS under 206C(IH) of the Act, if such sales are not subjected to TCS sec.206C(1F) ---> 206C(1F) is for individual retail sales

In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of Rs.10 Lakhs or less to a buyer would be subjected to TCS u/s.206C(1H), if the receipt of sale consideration for such vehicles during the previous year exceeds Rs.50 lakhs.

In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding Rs.10 lakhs would not be subjected to TCS u/s.206C(1H), if such sales are subjected to TCS u/s 206C(1F)

No adjustment on account of sale return or discount or indirect taxes including GST is required to be made (?)

206AB-

(w.e.f 01.07.21)

Higher rate of TDS
on non-filers of ITR

Who is responsible to ensure higher rate of TDS	Deductor of tax at source
On which amount	On any sum or income or amount paid or payable or credited
When higher rate is applicable	If the payee ('specified person') : <ul style="list-style-type: none">▪ has not filed ITR for both of the immediately prior two assessment years, for which time limit of filing ITR u/s.139(1) has expired and;▪ the aggregate of TDS and TCS in his case is Rs.50,000/- or more in each of these two previous years
What is the rate	Higher of: <ul style="list-style-type: none">▪ twice the rate specified in the relevant provision of the Act.▪ twice the rate or rates in force.▪ 5%▪ If no PAN, higher of the above three (as per this section) or rate as per sec.206AA, whichever is higher, i.e., 20%
Exceptions	Not applicable to: <ul style="list-style-type: none">▪ Non-resident, not having a PE* in India,▪ TDS u/s. 192, 192A, 194B, 194BB, 194LBC or 194N <p><i>*PE includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.</i></p>

206CCA- (w.e.f 01.07.21)

Higher rate of TCS
on non-filers of ITR

Who is responsible to ensure higher rate of TCS	Collector of tax at source
On which amount	On any sum or amount received
When higher rate is applicable	If the payer ('specified person') : <ul style="list-style-type: none">▪ has not filed ITR for both of the immediately prior two assessment years, for which time limit of filing ITR u/s.139(1) has expired and;▪ the aggregate of TDS and TCS in his case is Rs.50,000/- or more in each of these two previous years
What is the rate	Higher of: <ul style="list-style-type: none">▪ twice the rate specified in the relevant provision of the Act.▪ 5%▪ If no PAN, higher of rate of the above two (as per this section) or rate as per sec.206CC, whichever is higher
Exceptions	Not applicable to Non-resident, not having a PE* in India <i>*PE includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.</i>

206AB/ 206CCA -What is important

- If ITR has been filed for one of the preceding years, this section will apply?
- Which are the relevant preceding years for AY 2021-22, as time limit for ITR u/s.139(1) has not expired?
- Aggregate of Rs.50000/- is for each payer or for one PAN?[compliance-check notification](#)

206AB & 206CCA

CBDT's Tool to check
compliance

- Compliance check functionality is enabled by CBDT which enables tax deductors / collectors to check the last return filed by an individual.
- Tax deductor/collector shall register themselves in the reporting portal of Income Tax as principal officer with form type Compliance Check (<https://report.insight.gov.in>.)
- Once logged in click on the Compliance check for section 206AB and 206CCA link
- Tax deductor / collector can verify whether a particular person is a specified person from this utility using PAN of the person
- Bulk verification functionality is also provided.
- Tax deductor/collector can also download the PDF of search results for documentation purposes.

Issues

- Whether the section will override 15G and 15H?

194Q

Tax Deduction at Source (TDS) on purchase of goods

[w.e.f 01.07.21]

Who is liable to deduct	Buyer of any goods
When to deduct	At the time of : <ul style="list-style-type: none">▪ credit of such sum to the account of the seller or▪ at the time of payment thereof by any mode. - for purchase of any goods
Whether applicable on payment to non-resident	TDS obligation will arise only if the payment is made to a Resident seller
What is the rate	<u>Normal rate</u> @ 0.1% of sale consideration on payment exceeding Rs.50 Lakhs in a Financial Year <u>Higher rate</u> @ 5%, if the seller does not provide PAN
Turnover threshold to invoke S.194Q	If the person making the payment for purchases (i.e., buyer) has gross receipts/turnover from business exceeding Rs.10 Crores in the immediately preceding financial year

194Q

Tax Deduction at Source (TDS) on purchase of goods

Exceptions	This section does not apply if; <ul style="list-style-type: none">▪ Tax is deductible under any of the provisions of the IT Act; and• Tax is collectible u/s.206C, <u>except sec.206C(1H)</u>
Applicable from	01 st July 2021
Effect of non-compliance	As per section 40a(ia) of IT Act, if the Buyer fails to deduct TDS, 30% of the expenditure (purchases) will be disallowed
Form for furnishing quarterly return	26Q
Certificate to be issued by the buyer	Form 16A

194 Q - Illustration

Particulars	Date of invoice	
	<u>Upto30.06.21</u> [Rs]	<u>from 01.07.21</u> <u>onwards</u> [Rs]
Taxable Value	1,00,000	1,00,000
GST @18%	18,000	18,000
Invoice Value	118000	118000
TCS u/s 206C (1H) at the rate of 0.1% on Rs.1,18,000	118	-
TDS u/s 194Q at the rate of 0.1% on Rs. 1,00,000	-	100
Total amount to be collected from the buyer	1,18,118	1,17,900

194Q -

Issues addressed/
to be addressed

- Guidelines issued on implementation vide dt 30.06.2021 [CBDT Circular on 194Q.pdf](#)
- Corresponding amendment to Sec. 206AA - higher rate restricted to 5%, instead of 20%
- ✓ Whether PY turnover Rs.10 cr is inclusive of GST?
- ✓ Whether 194Q is applicable on payment to KSEBL
- ✓ Whether 194Q to be applied on tax/duty portion on purchase of petrol/diesel by dealers
- ✓ Whether applicable on payments to primary agri. Coop. societies
- ✓ Compliance burden

194Q v.206C(1H) -Illustration 1

Applicability of section 194Q with Examples:

Seller's Turnover : Rs. 9 Crores

Buyer's Turnover : Rs. 15 Crores

Receipt or Payment for sale or purchase of Goods in previous year : Rs. 55 lakhs

Taxability:

Buyer's Turnover is more than Rs. 10 Crores

Taxable amount : Rs. 5 lakhs (Rs. 55 lakhs-Rs.50 lakhs)

TDS u/s194Q : 0.1% on Rs. 5 lakhs

TCS u/s 206C(1H): not applicable as Seller's turnover is less than 10 Crores.

194Q-Illustration 2

Seller's Turnover : Rs. 15 Crores

Buyer's Turnover : Rs. 9 Crores

Receipt or Payment for sale or purchase of Goods in previous year : Rs. 55 lakhs

Taxability:

Buyer's Turnover is less than Rs. 10 Crores

Seller's Turnover is more than Rs. 10 Crores

Taxable amount : Rs. 5 lakhs (Rs. 55 lakhs-Rs.50 lakhs)

TDS u/s194Q : Not applicable

TCS u/s 206C(1H): 0.1% on Rs. 5 lakhs

194Q-Illustration 3

Seller's Turnover : Rs. 15 Crores

Buyer's Turnover : Rs. 15 Crores

Receipt or Payment for sale or purchase of Goods in previous year : Rs. 55 lakhs

Taxability:

Buyer's Turnover is more than Rs. 10 Crores

Seller's Turnover is more than Rs. 10 Crores

Taxable amount : Rs. 5 lakhs (Rs. 55 lakhs-Rs.50 lakhs)

TDS u/s 194Q : 0.1% on Rs. 5 lakhs

TCS u/s 206C(1H): Not applicable (exception)

'Significant Economic Presence'

(inserted in sec.9 to expand the meaning of the term 'business connection', for non-resident persons)

Sec. 9(1)(i) of the Income Tax Act, 1961 provides for situations when a non-resident is deemed to have a 'business connection' in India, in which case,, income tax will be payable on its business income in India.

This will also require TDS u/s.195 of the Act on payment to such non-residents.

As per the Finance Act of 2018, by insertion of Explanation 2A to section 9(1)(i) of the Income Tax Act, the scope of the term 'business connection' has been widened.

The said Explanation 2A provides that 'Significant Economic Presence ('**SEP**') of a non-resident in India shall constitute a "business connection" in India.

'Significant Economic Presence'

- Explanation 2A "...the SEP of a non-resident in India shall constitute "business connection" in India and "SEP" for this purpose, shall mean–
- (a) *transaction in respect of any goods, services or property carried out by a non-resident with any person in India*
 - *including provision of download of data or software in India,*
if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
- (b) *systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India, as may be prescribed:"*
- CBDT vide notification no. 41/2021 dt 03.05.2021 prescribed threshold limit for applicability of the SEP.
- For this purpose, a new rule 11UD has been inserted in the IT Rules.
- Effective from 01.04.2022 (FY 2021-22)

Rule 11UD

The provisions of explanation 2A to sec. 9(1)(i) of the Act and Rule 11UD summarised as under:

The threshold limit beyond which a non-resident is considered to have an SEP in India, as prescribed under Rule 11UD of the Income-tax Rules, 1962 (Rules), is:

Amount of aggregate of payments arising from transaction or transactions in respect of any goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India

- Rs.2.00 crores during the PY

In respect of systematic and continuous soliciting of business activities or engaging in interaction with users in India,

- 3 lakhs users

The above threshold limits are effective from 01.04.2022 (i.e., AY 2022-23)

IMPACT of SEP

Whether this amendment will affect transactions with all non-residents?

In the Memorandum to Finance Bill 2018, it was clarified that unless corresponding modifications to PE rules are made in the DTAA's, the cross-border business profits will continue to be taxed as per the existing treaty rules. This would mean that the above amendments are not going to affect non-residents of countries having Tax Treaties with India.

Whether compliance of provisions of sec.90A(4)/(5) and Rule 37BC are to be ensured?

Assessee may ensure compliance of provisions of Sec.90A of the IT ACT/Rule 37BC of the IT Rules to avail the benefit of DTAA provisions.

What about transactions with non-residents from countries with whom no tax treaty is available?

Non-residents who do not have any treaty protection may have to evaluate the impact of the SEP provisions on their business transactions. The profits attributable to India on account of SEP can be subjected to TDS @ 40% (or such other rate in force)

Whether the above criteria are cumulative?

From a plain reading, it appears that the SEP provisions could get attracted if any one of the criteria is fulfilled.

What about transactions already completed in the FY 2021-22 prior to the date on which Rule 11UD is notified?

If the remittance of money has not occurred, then it would be advisable to ensure compliance before remittance of money.

If money already remitted, then required information /documents may be obtained from foreign party to ascertain requirement of TDS. If deductible, the same be considered for compliance along with subsequent transactions.

194 -

Dividend Income

W.e.f 01.04.2020 (Fin
Act 2020)

- Applicable to resident in India
- On dividend within the meaning of sec.2(22)(a) to (e), including on pref. shares
- @10% on dividend paid (earlier 'at the rate in force') by any mode other than cash
- Before making payment or before making any **distribution** or payment to a shareholder
- In excess of Rs.5000/- (earlier Rs.2500/-)

194 – Dividend Income - taxability

When taxable

- ✓ Dividend can be distributed before year end; but paid in the next year, within time limit specified in Sec.123/124 of the Companies Act/Rules therein - when taxable to recipient?
- ✓ **Final Dividend - earliest of** 'declared, distributed or paid by the company - Sec.8 (a)
- ✓ **Interim dividend** is taxable in the previous year in which the amount of such dividend is unconditionally made available by the company to the shareholder, i.e., chargeable to tax **on receipt basis.(Sec.8(b))**
- ✓ ICDS IV- recognition as per provisions of the Act

194A -

Fin Act 2021

(inserted in w.e.f
01.04.2021)

- 194A - not applicable to
- Income which is paid or payable by an infrastructure capital company or infrastructure capital fund or [infrastructure debt fund or] a public sector company or scheduled bank in relation to a zero coupon bond issued on or after the 1st day of June, 2005 by such company or fund or public sector company or scheduled bank;

194A -

Fin Act 2020
(w.e.f. 01.04.20)

- 194A(5) inserted to grant absolute power to Central Govt to provide non-deduction/ deduction at lower rate in respect of any person or class of person
- 194A(3)(iii) amended to provided that no notification under this clause be issued on or after 01.04.2020
 - Prior to amendment, the Central Govt issued notification granting exemption under this clause, giving reasons
- Exemption from 194A not available to Co-op society (not co-op bank) on income credited to its member/another co-op society if;
 - Total sales/gross receipts/turnover in the immediate PY exceeds Rs.50 cr
 - The interest credited/paid exceeds Rs.50000/- to Sr. citizen or Rs.40000/- to others

194C-

Payments to Contractors
for carrying out work
(incl. supply of labour for
carrying out such work)

- The expression 'work' includes
"manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, being a person placed similarly in relation to such customer as is the person placed in relation to the assessee under the provisions contained in clause (b) of sub-section (2) of section 40A,"
- *Not a 'work' if material used is supplied by other than customer/associate*
- *Effect is that in contract manufacturing, raw material provided by assessee or its associate shall fall within the purview of the 'work'*
- (amendment w.e.f 01.04.2020)

194K -

TDS on income in respect of units of Mutual Fund
(w.e.f 01.04.2020)

- Any person responsible for paying
- To a Resident
- 'Any' income come in respect of units of MF u/s.10(23D)/ Units from Admn. of specified undertaking/units from specified company referred to in UTI Act
- TDS @ 10%, subject to threshold of Rs.5000/-
- Clarification vide Press release dt 04.02.2020
 - a Mutual Fund shall be required to deduct TDS @ 10% **only on dividend payment** and no tax shall be required to be deducted by the Mutual Fund on income which is in the nature of capital gains.

194J –

Fees for professional or technical services (w.e.f 01.04.2020)

- Reduced rate of 2% of in case of fees
 - for technical services (not being a professional services),
 - or royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films
- Debatable issue
 - **'Professional'** – service rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession notified.....(explained in s.194J)
 - **'Technical'**– rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel)
 - but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries";

[Sec,9(1)(vii)]

194J – 'Royalty'

"Royalty" means consideration (including any lump sum consideration but excluding any consideration in the nature of "Capital gains") for:–

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property ;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property ;

(iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property ;

(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ;

(iva) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in [section 44BB](#);

(v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting ; or

(vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to (iv), (iva) and (v).

[Sec,9(1)(vi)]

194N

(substituted) -by
Finance Act, 2020,
w.e.f 01.07.2020

a) ITR Filer - 2% if cash withdrawal exceeds Rs.1 cr from Bank/Coop bank/post office (on entire amount)

b) ITR non filer -Provision more stringent -
Threshold

- a recipient who has not filed
- ITR for 3 preceding financial years immediately preceding the financial year,
- in which the payment of the sum is made to him,
- tax to be deducted would be:
 - @2%, if the cash withdrawal in a year is more than Rs.20 lakh; but does not exceed Rs.1 crore (on entire amount) and
 - @5%, if the cash withdrawal exceed Rs.1 crore (on entire amount)

194-O: Tax deduction at source by Ecommerce operators

Inserted in Fin Act 2020, w.e.f 01.10.2020

E-com operator facilitating sale of goods or provision of services of an E-com Participant through its digital or electronic Facility or platform (by whatever name called).

TDS either *at the time of credit of amount of sale/services to an e-commerce participant's a/c* OR *at the time of payment thereof to such e-commerce participant by any mode*, whichever is earlier.

TDS @1% on the gross amount of sales or services or both if sale/service exceed Rs.5 lakhs and PAN/Aadhar furnished. If no Pan, @5% (Sec.206AA amended)

Electronic Commerce means the supply of goods or services or both, including digital products over digital or electronic network.

E-commerce operator: means a person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is responsible for paying to e-commerce participant.

E-commerce participant means a person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.

194 O-

Guidelines by CBDT
vide circular
no.17/2020 [Circular 17
2020](#)

- Not applicable on any sale consideration received before 01.10.2020
- The payment gateway not required to deduct tax on a transaction, if the tax deducted by the ecommerce operator under section 194-0, on same transaction.
- Insurance agents or insurance aggregators having no involvement in transactions between insurance company and the buyer for subsequent years, 194O is not applicable for those subsequent years
- Not applicable to (a) transactions in securities and commodities which are traded/cleared/settled through/by recognized stock exchanges/recognized clearing corporation (b) transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC;

194 ○ - Issues

TDS deduction on gross amount including operator's charges/commission?

TDS is required to be deducted by e-commerce operator on gross amount received from customer, including the amount retained by e-commerce operator as his commission / packing charges etc.

TDS deduction on GST portion?

If GST is indicated separately in invoice, it shall be excluded for the purpose of TDS (CBDT Circular No. 23/2017 dt 10.07.2017)

Whether TDS to be deducted if e-commerce participant receives the payment directly?

TDS is required to be paid by the e-commerce operator even if the payment is received directly by the e-commerce participant.

206C(1G)-

TCS on Foreign remittance under Liberalized Remittance Scheme (LRS) & sale of overseas tour program package

(w.e.f. 1st October 2020)

206C (1G) covers	<ul style="list-style-type: none">Foreign remittance under Liberalized Remittance (LRS)Purchase of Tour Package which includes expenses for travel or hotel stay / boarding / lodging etc
Who is liable to collect	<ul style="list-style-type: none">Authorised dealer for foreign remittanceSeller of overseas tour program package
When to collect	Earlier of : <ul style="list-style-type: none">at the time of debiting the buyer or i.e., amount due from buyerat the time of Receipt from the buyer, i.e., actual receipt
What is the Threshold limit	<ul style="list-style-type: none">No TCS if aggregate amount in FY is less than Rs. 7 Lakhs and remittance is for the purpose other than overseas tour programme package.If the payment is for overseas tour programme package to an operator, then TCS is liable to be collected without any threshold

206C(1G)-

TCS on Foreign remittance under Liberalized Remittance Scheme (LRS) & sale of overseas tour program package

(w.e.f. 1st October 2020)

Rate of TCS	<p>Authorised dealer</p> <ul style="list-style-type: none">▪ 5% on an amount in excess of Rs. 7 lakhs in a Financial Year (aggregate)▪ 0.5% if the remittance is out of educational loan obtained from bank or notified financial institution (as defined in sec.80E) <p>Tour operator</p> <ul style="list-style-type: none">▪ 5% without any threshold limit <p>Higher Rate</p> <ul style="list-style-type: none">▪ Rate of TCS will be 10% / 1% respectively, if the buyer does not furnishes PAN/Aadhar
Exception	<ul style="list-style-type: none">▪ If tax already collected by Tour Operator, then no further TCS will be collected by the authorized dealer for remittance outside India
Not applicable to	<ul style="list-style-type: none">▪ Buyer is liable to deduct TDS and has deducted and produce proof▪ Buyer is Central / State Government, Embassy, High Commission etc.

206C(1G) - Illustrations

1.If remittance outside India for medical treatment of Rs.10 Lakhs?

TCS u/s. 206C(1G) @5% to be collected on Rs. 3 Lakhs- i.e., Rs.15,000

2. If amount remitted under LRS in a financial year is INR 8,00,000 for pursuing overseas education?

TCS at 0.5% will be applicable on INR 1,00,000 (INR 8,00,000 - INR 7,00,000)

3. If in (1) above, the buyer does not furnish PAN/Aadhar?

TCS u/s. 206C(1G) @10% to be collected on Rs. 3 Lakhs- i.e., Rs.30,000 (as per sec.206CC)

206C(1G) – Illustrations (‘aggregate remittance’)

Mr. India has made remittance during FY 2020-21 as follows:

- ✓ Transaction 1 – Rs. 5,00,000
- ✓ Transaction 2 – Rs 8,00,000
- ✓ Transaction 3 – Rs 1,50,000

Transaction	TCS
Transaction 1 – Rs. 5,00,000	No TCS since amount is below Rs 7,00,000/-
Transaction 2 – Rs 8,00,000	TCS applicable on Rs 6,00,000 [(Rs 5,00,000 + Rs 8,00,000 = Rs 13,00,000) – Rs 7,00,000 = Rs 6,00,000]
Transaction 3 – Rs 1,50,000	TCS applicable on Rs 1,50,000 entirely since Rs 7,00,000 limit has been exceeded in transaction 2 itself.

Turnover threshold amended- Fin Act 2020

- Individual or HUF required to deduct tax at source u/s.194A, 194C, 194H, 194I and 194J, if total sales, gross receipts or turnover exceed *
 - (A) Rs.1 crore in case of business or
 - (B) Rs.50 lakhs in case of professionduring the financial year immediately preceding the financial year in such sum is credited or paid.
- Effect is, individual/HUF carrying on business and whose total sales, gross receipts or turnover exceeds Rs. 1 crore; but does not exceed Rs. 2 crore in preceding financial year & opted for section 44AD of the Act are also liable to deduct tax at source u/s.194A, 194C, 194H, 194I and 194J w.e.f. 01-04-2020

**prior to amendment - reference was to sec.44AB*

Sec.40(a)(i) – immunity -TDS on Non residents (w.e.f 01.04.2020)

- In the case of non deduction/non remittance after deduction,
- if the assessee is not treated as 'assessee in default' in terms of sec.201(1) (as per conditions stated therein),
- then it is deemed that the assessee has deducted and paid TDS on the date of furnishing of return by the payee, referred to in sec.201(1)

[earlier this benefit was available only to resident payee (40(a)(ia)]

Charitable Trusts -

Applicability of TDS
provisions

- Explanation 3 added sec.11(1)(d)

For the purposes of determining the amount of application, provisions of section 40(a)(ia) of the Act shall apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession

- Finance Act, 2018, w.e.f. **1-4-2019**.

Common issues -

Year end provision and
TDS applicability

- TDS applicable at the time of credit to payee's account or at the time of payment in cash or by issue of a cheque or draft or by any other mode, whichever is earlier
- Explanation: "amount credited to any account, whether called "suspense account" or by any other name, in the books of account"
- Whether TDS applicable to year end provision in books, before relevant invoice is received?
- Judicial Decisions
 - "TDS mechanism cannot be put into practice until payee is identified in whose hands, it is includible as Income can be ascertained."

Consequences of TDS defaults

- Non allowance of expenditure u/s 40(a)(i) / 40(a)(ia).
- Being treated as an assessee in default u/s 201
- Simple interest payable u/s 201(1A) on account of failure to deduct or pay tax - 1%/1.5%
- Assessee liable to pay fee u/s 234E for delay in furnishing statement - Rs.200/day
- Penalty u/s 221 when assessee is in default in payment of tax (subject to max of tax in arrears)
- Penalty u/s 271C for failure to deduct tax at source (amount equal to TDS)

Consequences of TDS/TCS defaults

- Penalty u/s 271CA for failure to collect tax at source (amount equal to TCS)
 - Penalty u/s 271H for failure to furnish the statements of tax deducted at source
(Rs.10000/- to Rs.1 lakh)
 - Penalty u/s. 272A(2)(g) for failure to furnish a certificate as required by section 203 or 206C -
 - Prosecution u/s 276B on failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B
 - Rigorous imprisonment - 3 mnths to 7 years with fine
 - Prosecution u/s 276BB on failure to pay the tax collected at source.
- 273B - reasonable cause - except 276B/BB

TDS/TCS defaults - issues & way forward

- *Issues -*
 - *221 v. 271C ?*
 - *'Issue- delay' v. 'default'*
- *Way Forward*
 - *Handling IT notices carefully & professionally*
 - *Creating awareness about financial discipline*

???



**Thank
you**

Varma & Varma
Chartered Accountants

Offices at : Kochi, Bangalore, Chennai, Bombay, Hyderabad,
Calicut, Kannur, Trichur & Trivandrum