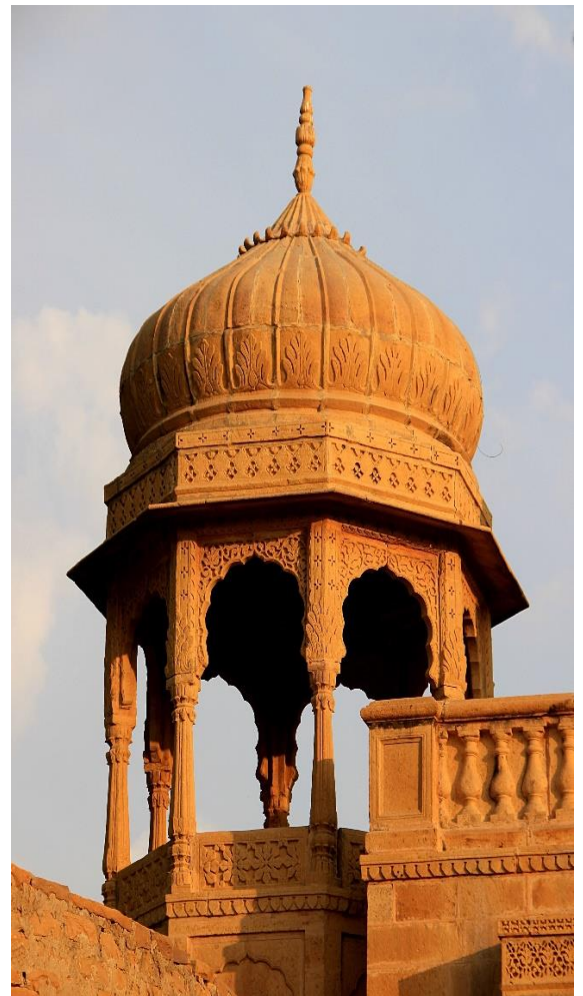


Corporate Update

June Special Edition | 2021

CONTENT

- New income tax provisions relating to TDS and TCS effective from July 01, 2021 2



WITHHOLDING TAX PROVISIONS

New income tax provisions relating to TDS and TCS effective from July 01, 2021

Section 206AB and Section 206CCA - Higher TDS and TCS rates for non-filers of income tax return

The Finance Act, 2021 introduced new sections, Section 206AB and section 206CCA, to prescribe higher rate of tax deducted at source (TDS) or tax collected at source (TCS) for persons making default in filing of tax returns and having substantial TDS deduction to their account. Such provisions shall come into force on or after July 01, 2021.

Under these provisions, tax shall be deducted or collected at twice the applicable rate or 5%, whichever is higher. Section 206AB relating to TDS shall not apply where tax is required to be deducted in specified cases, such as payment of salaries, provident funds, cash withdrawals etc.

Such higher rate shall be triggered in the following case:

- where the person (i.e. recipient in case of TDS and payer in case of TCS) has not filed its tax returns for both of the last two assessment years preceding the year in which tax is required to be deducted/collected, and the due dates for filing the tax returns have already expired, and
- where the aggregate amount of TDS 'and' TCS in his case in each of such two preceding years is INR 50,000 or more.

The aforesaid provisions shall not apply to persons who are non-residents not having a Permanent Establishment in India.

For making compliance of these new provisions, it is necessary to gather the following information from payee (in case of

TDS) or buyer (in case of TCS), as mentioned in **Annexure A**.

Note 1: If the reply to all the fields relating to filing of return and TDS threshold above Rs 50000 is in negative, the evidence for TDS threshold may also be required to be taken in order to rule out applicability of this section.

Note 2: Where the income tax return has not been filed for FY 2019-20 (AY 2020-21), the position needs to be revisited once the time limit to file original return of income for FY 2020-21 (AY 2021-22) expires and aforesaid information needs to be sought for FY 2020-21 to determine applicability of Sections 206AB and 206CCA.

It is pertinent to note that under the existing provisions of the Act, a higher penal rate of tax has been specified where the deductee/collectee does not furnish its PAN to the deductor/ collector (Section 206AA for TDS cases and 206CC for TCS cases). In case the rates applicable under Section 206AA or 206CC are higher than the rates determined under the corresponding new Sections, such higher rates under Section 206AA or 206CC shall continue to apply.

As per news reports, the income tax department is working on the compliance check utility as well to implement sections 206AB and 206CC. Till the time such utility is made available, mail may be sent to suppliers (in case of TDS) / buyers (in case of TCS) seeking the above details, where TDS/ TCS is applicable.

Section 194Q- TDS on purchase of goods

The Finance Act, 2021 also introduced Section 194Q, with effect from July 01, 2021, to provide for TDS by 'buyer' who buys goods from a 'resident' seller. In 2020, a similar provision was introduced under TCS, requiring collection of TCS by the seller at 0.1% from the buyer on sale of goods. The new section 194Q requires deduction of tax

by the buyer on the amount credited or paid to a seller, whichever is earlier, for purchase of any goods, the value of which or the aggregate thereof in a financial year exceeds Rs 50 lakh.

The rate of TDS is 0.1% on the amount which exceeds Rs 50 Lakh.

For the purposes of this provision, a buyer shall be a person whose annual turnover/gross receipts exceeds Rs 10 crore in the immediately preceding financial year.

Where PAN of resident seller is not available, higher penal TDS rate of 5% shall apply in terms of amended provisions of Section 206AA.

It is pertinent to note that where 194Q is attracted, provisions of TCS under Section 206C(1H)* shall not apply. As such, where you are liable to deduct TDS under section 194Q, the seller needs to be informed that you would be deducting TDS on the transaction and he is not liable to collect tax at source on the same transaction.

The interplay between section 194Q and section 206C(1H) is tabulated in **Annexure B**.

Annexure A

Particular	Yes/ No	If yes, provide
Filed Income Tax Return for FY 2018-19 (AY 2019-20)		Screenshot from income tax website/ e-filing acknowledgment number
Filed Income Tax Return for FY 2019-20 (AY 2020-21)		Screenshot from income tax website/ e-filing acknowledgment number
TDS & TCS is more than Rs. 50,000 in FY 2018-19		
TDS & TCS is more than Rs. 50,000 in FY 2019-20		

Annexure B

	Buyer's turnover	Seller's turnover	Value of sale/ purchase of goods	Applicable Provision
	(in INR crores)			
Case I	More than 10 Cr	More than 10 Cr	More than 50 Lakh	TDS
Case II	More than 10 Cr	Less than 10 Cr	More than 50 Lakh	TDS
Case III	Less than 10 Cr	More than 10 Cr	More than 50 Lakh	TCS
Case IV	Less than 10 Cr	Less than 10 Cr	More than 50 Lakh	N.A.
Case V	More than 10 Cr	More than 10 Cr	Less than 50 Lakh	N.A.
Case VI	Less than 10 Cr	More than 10 Cr	Less than 50 Lakh	N.A.
Case VII	More than 10 Cr	Less than 10 Cr	Less than 50 Lakh	N.A.

**Section 206C(1H) provides for TCS by the seller of goods at the rate of 0.1% of sale consideration exceeding INR 50 Lakhs in any financial year, where the annual turnover/ gross receipts of the seller exceeds INR 10 Crores in the immediately preceding financial year. This provision came into effect from October 01, 2020. There are certain exclusions to this provision.*

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