

CBDT issues clarifications on TDS on purchase of goods (1/2)

Introduction

The Finance Act 2021, with effect from 1 July 2021, introduced a new provision [Section 194Q of the Income-tax Act, 1961 (the Act)] requiring a 'buyer' to deduct tax at source (TDS) at the rate of 0.1% while making payment to a resident seller for purchase of any goods of the value (or aggregate value) exceeding INR 5 million in year.

'Buyer' has been defined to mean a person whose total sales, gross receipts or turnover from the business carried on by him exceeds INR 100 million during the year immediately preceding the year in which the purchase of goods is carried out.

In order to remove difficulties and to address various representations received by the government, the Central Board of Direct Taxes (CBDT) has issued a circular dated 30 June 2021 clarifying various aspects of the new provision.

Non-applicability of provisions

- It has been clarified that TDS provisions shall not apply to a non-resident buyer if purchase of goods is not effectively connected with the permanent establishment of such non-resident in India.
- TDS shall not be applicable in relation to the following:
 - transactions in securities and commodities, which are traded through recognised stock exchanges or cleared and settled by the recognised clearing corporation. This would also include recognised stock exchanges/clearing corporation that are located in International Financial Service Centre.
 - transactions in electricity, renewable energy certificates and energy saving certificates traded through registered power exchanges.
- It has been clarified that a buyer is not required to deduct TDS under these provisions in the year of its incorporation.
- TDS shall not apply on purchase of goods from a seller, whose income is exempt from tax. Further, it has also been clarified that tax collection at source (TCS) [under Section 206C (1H) of the Act] shall also not apply if the buyer's income is exempt from tax. The above clarifications would not apply if only a part of the income of the buyer/seller is exempt.

Calculation of threshold for Financial Year 2021-22

- It has been clarified that the threshold of INR 5 million, with respect to a particular seller, shall be computed from 1 April 2021. However, since the provisions are effective from 1 July 2021, TDS shall be applicable on payment or credit made on or after the said date.
- Further, a buyer is required to meet turnover threshold of INR 100 million from the business carried on by him. Accordingly, it has been clarified that turnover or receipts from non-business activity is not to be taken into consideration for this purpose.

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Other clarifications

- **Payment or credit happening before 1 July 2021:** As per the provisions, the requirement of TDS arises on payment or credit to the account of the seller, whichever is earlier. Accordingly, it has been clarified that TDS is not required to be deducted if either of the two events (i.e. payment or credit) has happened before 1 July 2021.
- **Advance payments:** TDS shall also be applicable in case of advance payment made by the buyer to the seller.
- **Goods and Service Tax (GST):** It has been stated that if tax is deducted on payment basis, it would be deducted on the whole amount since the GST component would not be separately identifiable.

However, if the requirement of TDS has arisen due to credit happening before the payment and in terms of agreement between the buyer and the seller, the component of GST comprised in the amount is indicated separately; tax will be deducted on the amount credited without including such GST.

- **Purchase returns:** It has been clarified that if tax was deducted at the time of original purchase and the seller refunds the money against the purchase return, then the TDS may be adjusted against the subsequent purchase from the same seller. However, no adjustment is required if the purchase return is replaced with goods by the seller.

Interplay between TDS and TCS provisions

- If tax has been deducted by the e-commerce operator on a transaction (under Section 194-O of the Act), including the transaction on which tax is not deducted in accordance with the provision of such section, then that transaction shall not be subjected to the new TDS provisions.
- If a transaction is covered by both Section 194-O and the new TDS provisions, then tax is required to be deducted under Section 194-O of the Act.
- Further, if a transaction is covered by the new TDS provisions as well as the TCS provisions (on sale of goods), tax is required to be deducted under the new TDS provisions. However, if the seller has already collected TCS, TDS shall not be required. This concession is provided to remove difficulty since both the TDS and TCS rates are the same.
- However, it has been stated that the primary responsibility of deducting tax under Section 194-O of the Act (in case of an e-commerce transaction) is on the e-commerce operator and that responsibility cannot be condoned merely because the seller has collected TCS. This is because the rate of TDS under Section 194-O of the Act is higher than the rate of TCS.



Our comments

These clarifications are a welcome move, which provide clarity to taxpayers on some of the key issues raised by them and would help mitigate litigation on interpretational issues in future.