

Income Tax Latest by Sudhir Halakhandi

194 Q Vs. 206(C) (1H): - The Real Story & Course of Action

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1st. July 2021 is going to be a big day as far as TDS and TCS under the Income Tax Law is Concerned. A new Section 194Q – The TDS on Purchases of Goods will be there and further another new section 206AB and 206CCA will also be there for Enhanced rate of TDS/TCS.

One more thing you should note that Existing Section 206 (C)(1H) will also be affected due to newly introduction of Section 194Q. Let us have a practical study on 194Q Vs. 206(C) (1H).

See the Practical Aspect of Section 194Q and 206(C) (1H) in the present context: -

Section 194 Q

If a purchaser has his Sales, turnover and Gross receipts in the Preceding Financial Year more than Rs. 10 Crore then he has to deduct 0.1% TDS on his purchases from a vendor in Excess of Rs. 50 Lakhs in a financial year. – It will be applicable from 1st. July 2021.

AND

206(C) (1H)

If a Seller has his Sale, turnover and Gross receipts in the Preceding Financial Year is more than Rs. 10 Crore then he has to Collect 0.1% TCS on the amount received on account of Sales made to him from a Purchaser in Excess of Rs. 50 Lakhs in a financial year. – It is already applicable from 1st. Oct 2020.

The TDS under Section 194Q is to be deducted on the Invoice value at the time of Purchases and if the payment is made in advance, then the TDS on such amount of advance is to be deducted at the time of making such advance money to the seller.

The TCS under section 206(C)(1H) is to be collected purely on Payment basis i.e. the time of collection of TCS has nothing to do with the time of sale and it has to be deducted when payment is received from the purchaser though most of the companies are adding it in the Invoice but that is only for their convenience.

Are this provision overlapping each other

A big question? The answer is Yes to some extent and in some situations both the provisions are applicable on a single transaction which is sell for one person and purchases for other Person.

See If X is selling goods to Y, then it is sale for X and simultaneously it is purchases for Y also. Nothing new in it since every transaction has two parties and there are two aspects on a single transaction.

Let us have a look at one Example to understand how these two sections are simultaneously applicable on a single transaction in certain situations: -

X and Company is a Seller and Y and Company is a Purchaser. The sale of X and Company is Rs.100 Crore for the year ending on 31st. March 2021. The sale of Y and Company is Rs. 7 Crores during the year ending with 31st. March 2021.

Now in this situation Section 206(C) (1H) is applicable but since the **sale** of Purchaser is Less than Rs. 10 Crore in previous year the Section 194Q will not apply. Here without any confusion the seller has to collect the TCS.

Now see Situation No.2: -

X and Company is a Seller and Y and Company is a Purchaser. The sale of X and Company is Rs.100 Crore for the year ending on 31st. March 2021. The sale of Y and Company has the sale of Rs. 15 Crores during the year ending with 31st. March 2021.

Now in this situation Section 206(C) (1H) is applicable but since the sale of Purchaser is also More than Rs. 10 Crore in previous year the Section 194Q will also apply.

This is the situation where a question arises which section is practically applicable? Whether Section 206(C) (1H) is applicable or Section 194Q is applicable means whether the Seller will collect the TCS or Purchaser will deduct the TDS or both will do the same simultaneously. The situation is that both the sections are overlapping each other and the situation may be confusing but the answer is very simple and clearly given in both the sections.

The Answer of Overlapping Situation – Whether 194Q or 206 (C) (1H)

The only one tax is applicable but the situation is not as such that the both Seller and Purchaser can mutually decide who will deduct or collect the Tax so the other one is absolve from his responsibility. This is not the solution but the perfect answer is given in the law itself.

Where both Sections 206(C) (1H) and 194Q are applicable in a particular situation then the Purchaser will have to deduct TDS

under section 194Q and if he has deducted the TDS then the TCS 206(C) (1H) will not apply.

See here where the Turnover of the purchaser is Less than Rs. 10 Crores then the Seller will continue to collect TCS on the payments received by it and if the Purchaser has turnover more than Rs. 10 Crores than the burden will shift on the Purchaser now from 1st. July 2021 and it is the purchase who in any case have to deduct the Tax under section 194Q. In such a situation section 206(C)(1H) is not applicable.

Let us have a look at the relevant part of the legal provision to support the above answer. First, we have to look into section 194Q and the relevant part is as under: -

Section 194Q (5)

The provisions of this 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.

Now it is clear from the above that there is no exemption from TDS if the TCS is collectable under Section 206(C)(1H) i.e., TCS on Sales on Goods. If TCS is collectable under any other sub section of section 206(C) “**except 206(C)(1H)**” then the TDS under this section is not applicable hence it is clear that there is an exception of this exemption and which is lying in section 206(C)(1H) and this section relates to TCS on sale of Goods and if the TCS applied under this section 206(C)(1H) then there is no exemption from section 194Q and TDS under section 194Q has to be deducted on purchase of Goods.

Now take a look at section 206(C)(1H) where the answer of this question is also given: -

Provided further that the provisions of this sub section shall not apply, if the buyer is liable to deduct tax at source under any provision of this Act on the Goods purchased by him from the seller and has deducted such amount.

Hence when TDS provisions on purchase of Goods are applicable on purchaser then TCS provisions on the same transaction is not applicable on seller it means where Section 194Q is applicable then there is an exemption from section 206(C) (1H).

Here one problem may be there because the additional words **“has deducted such amount”** added to the words **“buyer is liable to deduct tax”** hence the actual exemption from TCS is dependent not only on Liability of Purchaser for deduction of TDS but on **“actual deduction of TDS”**. This is somewhat a strange position of Law but practically problem can be resolved with better communication and coordination with the purchaser.

What happened if TCS is collected in Such Situation?

Please note here that if TDS under section 194Q is deducted then there is no need to collect TCS but no such exemption is provided in Section 194Q hence though TCS is deducted by mistake or due to non-communication with or from purchaser even then TDS is to be deducted otherwise all the relevant provisions of Non deduction or non-deposit of TDS including section 40(ia) of 30% disallowance will apply. So be careful and timely inform your seller that you are liable and also deducting the TDS on your purchases hence the seller should not collect TCS on the Same.

Here due to overlapping of these two sections a new duty is cast on the Seller and Purchaser. It is now the duty of the Purchaser to inform the seller that he is liable to deduct TDS under section 194Q and he will deduct the Tax on his purchases hence seller should stop collecting TCS from his transactions under section 206(C)(1H).

See one situation where purchaser failed to inform the seller that he is going to deduct TDS under section 194Q on his purchases from a particular transaction then naturally seller will continue to collect TCS on his sales to that purchaser. Now if TCS is collected then what will the duty of Purchaser. Since TCS is collected and the transaction is the same so he will be absolved from deducting the TDS?

No because there is no provision in the law which says if TCS is collected under section 206(C)(1H) then TDS is not applicable hence in this situation purchaser is required to deduct the TDS also and, in that case, both TCS and TDS will be deducted and collected on the same transaction. To avoid such situation the Purchasers must communicate with the sellers immediately since 1st. July 2021 is not very much far from today. The communication between Sellers and Purchasers will avoid this type of situation. Even after collection of the TCS communication between the two parties may solve this problem by issuing Debit / credit notes if the tax is collected but not deposited by the seller.

The practical impact of introduction of Same type of provisions in Section 194 Q and Section 206 (C) (1H)

The introduction of section 194Q will certainly create confusion both on the Sellers and Purchases. Now burden will be shift from sellers to purchasers in some cases and in other cases the sellers will continue to collect the TCS. Anyways the Law is law and we have to follow it.

See one big manufacturing company has 1000 dealers and the sale to these dealers are more than 50 Lakhs every year. Now till 30th June 2021 the company is collecting TCS from all these dealers but now from 1st. July 2021 you have to collect data from your dealers and you find that 700 are covered under section 194Q and rest 300 are below Rs.10 Crores Dealers.

So, these 700 will deduct TDS under section 194Q and in case of rest 300 dealers, you have to collect TCS under 206(C)(1H).

The draft of the Letter from Purchaser to the Seller is given at the end of this article.

Since sell is a flexible figure hence this will be a yearly exercise. Further you cannot presume the eligibility of your purchasers under section 194Q from your own sell to these purchasing dealers. Say for example you have 100 dealers whose average purchases per year is less than Rs. 5 Crore so these all should continue be under TCS? It is not possible and it is not safe presumption because these dealers may have other sell/turnover also hence communication between the Sellers and Purchases is must for smooth and proper implementation of these two sections.

The law is made hence we have to follow it as it is made hence a better communication should be there to resolve the issue before 1st. July 2021.

Now you have two Types of Dealers one TDS Dealers and Other Group is TCS Dealers

By Sudhir Halakhandi

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**1ST. JULY 21
206 (C) (1H)
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194Q
TDS**

In the Dealers' conference, we should make separate sitting arrangements for TDS dealers and TCS Dealers.

A cartoon illustration of two men with large noses and black hair, wearing red shirts and black pants, sitting on the ground and talking to each other. One man is pointing towards the other.

Draft of Letter from Purchaser to Seller

Letter to Seller

To,
The Authorized/Concerned Officer
X and Company
New Delhi

Dear Sir

Re: - Our Liability to deduct TDS under Section 194Q

With reference to above it is respectfully submitted that our sales for the year ending on 31st. March 2021 is more than Rs. 10 Crore and we are covered by section 194Q to deduct TDS on our purchases from your company and will deduct the same as and when applies on our purchases.

Your good self is therefore requested to please stop collecting TCS on our purchases w.e.f. 1st. July 2021.

Please keep above information on your records and do the needful

Thanking You
Yours etc.

FOR Y & Company

(Auth. Sign)

Please inform the mistakes and inputs to make this article better.

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