

TAX WITHHOLDING ON BUYING GOODS - SECTION 194Q

Effective July 1st of this year, a fresh element of compliance comes into play for businesses. This relates to the requirement of withholding tax on purchase of goods where the buyer would need to withhold at 0.1 % on high value purchases from vendors. This note aims to capture the key elements of the newly enacted provisions (section 194Q) under the Income-tax Act, 1961 ('the Act').

Applicability

As usual, there are three critical limbs to this requirement i.e.

- *The Deductor:* Buyers, whose business gross revenue or receipts during the year prior to the year of purchase exceeds Rs 10 Crore.
- *The Deductee:* A Resident¹ seller from whom buyer bought goods exceeding Rs 50 Lakh during the previous year.
- *Rate of Tax:* 0.1 per cent on purchases starting July 1, 2021. The obligation to deduct arises on payment or credit to the account of the seller, whichever falls earlier.

Insights

A deep dive into the provisions of section 194Q reveal that

- The provisions apply in respect of the transactions entered into Jul 1, 2021 onwards.

- Withholding applies on purchases exceeding Rs 50 Lakh from every seller.
- In a situation where the threshold of Rs 50 Lakh stands breached prior to July 1st, the withholding shall apply only in respect of transactions post July 1, 2021.
- There is no clarity on inclusion of GST in determining the threshold. Thus, 23 of July 19, 2017 should prevail i.e. GST to be excluded in determining the threshold.
- Non-submission of PAN by the Seller shall enhance the rate of withholding rate from 0.1 to 5² per cent.
- Similarly, for non-filers of tax return, the withholding shall apply at higher of the following
 - a) at twice the rate specified in the relevant provisions of the Act.
 - b) at twice the rate or rates in force
 - c) at the rate of 5%
- Reporting is quarterly in form 26Q only.

Compliance Exemption

The following categories of taxpayers are exempted (cases where provisions of section 194Q shall not apply)

¹Resident as per section 6 of the Act

²Section 206AA

- Buyers whose previous year turnover was less than Rs 10 Crore.
- Where the transaction suffers withholding tax under any other provision of the Act.
- On purchase of goods, where TCS under section 206C (other than transactions covered under section 206C(1H)), is applied to the seller.

Non-Compliance Consequences

Failure to deduct

- Penalty u/s 271C - An amount equal the tax which deductor failed to deduct

Failure to Deduct & Deposit

- Per section 40(a)(ia) of the Act, 30 per cent of the amount on which withholding tax is required to be deducted and deposited will be disallowed as expenditure if the same is claimed as expenditure in the profit and loss account..
- Prosecution proceedings u/s 276B may follow suit.

Illustration

Purchase value for the year is Rs 80 Lakh in case of a buyer whose turnover in previous year ending March 2021 was Rs 12 Crore.

- *Amount subjected to withholding*
0.1 per cent on Rs 80 Lakh

- *Advance of Rs 50 Lakhs paid to seller prior to upto Jun 30, 2021*

0.1 per cent on Rs 30 Lakh

- *Entire consideration of Rs 80 Lakh paid by June 30th*

No withholding

- *What happens if the turnover of buyer during FY 2020-21 is exactly Rs 10 Crore instead of Rs 12 Crore?*

No withholding

- *What if the aggregate purchase during the financial year is exactly Rs 50 Lakh instead of Rs 80 Lakhs?*

No withholding

- *Will the tax rate change if the seller fails to provide his PAN to the buyer?*

Yes, higher rate at 5 per cent shall apply

- *Will the tax rate change if the seller is a non-filer of income tax return u/s 206AB?*

Yes, higher of twice the withholding rate of tax or 5 percent shall apply.

Impact

With this change, the manufacturers in the automobile and other consumable sectors that collect TCS at 0.1 per cent from the traders u/s 206C(1H) may perhaps shift to section 194Q which could be a logistical nightmare to categorise sellers that fall under TDS or TCS.

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