

Clarification by CBDT on Sections 194-O, 194Q & 206C

1. TDS u/s 194Q on various levies like VAT, Excise duty, sales tax etc

In terms of Circular No 13 dated 30-06-2021, it was clarified that Tax shall be deducted under section 194Q on the amount credited without including GST element. It was further clarified that if the tax is required to be deducted on advance payment which is made prior to the credit, the tax would be deducted on the whole amount as it will not be possible to identity the GST component from the amount to be invoiced in future.

Vide Circular No 20 dated 25-11-2021, it has now been clarified that in case of purchase of goods which are not covered under GST (like petroleum products) but are covered under various levies like VAT, Excise duty, sales tax etc, being separately indicated on invoices, Tax shall be deducted under section 194Q on the amount credited without including element of aforesaid taxes and duties. It is further clarified that if the tax is required to be deducted on advance payment which is made prior to the credit, the tax would be deducted on the whole amount as it is not possible to identity that payment with VAT, Excise duty, sales tax etc component from the amount to be invoiced in future.

2. Applicability of section 194Q in cases where exemption has been provided under Section 206C(1A)

Section 194Q is not applicable in respect of those transactions where tax is collectible under Section 206C, other than Section 206C (1H). It has now been clarified that by virtue of section 206C(1A), the tax is not required to be collected on goods covered under Section 206C(1), in such cases, the provisions of section 194Q will apply and the buyer shall be liable to deduct tax.

It may be noted that Section 206C(1A) provides that no tax is to be collected if the buyer, who is a resident in India, furnishes to the person responsible for collecting tax, a declaration that the goods (as referred to in sub-section (I) i.e. Minerals, being coal or lignite or iron ore, Scrap, Timber, Tendu leaves, any other forest produce etc) are to be utilized for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and **not for trading purposes**.

In such cases, no tax is collectible under Section 206C(1H) also since that section categorically exclude the goods which are covered under Section 206C(1) including the goods exempted under Section 206C(1A).

3. Deduction u/s 194-O on E-auction services carried out through electronic portal

it is clarified that the provisions of section 194-O shall not apply in relation to e-auction activities carried out by e-auctioneers if all the six conditions listed below are satisfied:

(a) The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible for the price discovery only which is reported to the client.

(b) The price so discovered through e-auction process is not necessarily the price at which the transaction takes place and it is up to the discretion of the client to accept the price or to directly negotiate with the counter-party.

(c) The transaction of purchase/sale takes place directly between the buyer and the seller party outside the electronic portal maintained by the e-auctioneer and price discovery only acts as the starting point for negotiation and conclusion of purchase/sale.

(d) The e-auctioneer is not responsible for facilitating the purchase and sale of goods for which e-auction was conducted on its electronic portal except to the extent of price discovery.

(e) Payments for the transactions are carried out directly between the buyer and the seller outside the electronic portal and the e-auctioneer does not have any information about the quantum and the schedule of payment which is decided mutually by the client and the counterparty.

(f) For payment made to e-auctioneer for providing e-auction services, the client deducts tax under the relevant provisions of the Act other than section 194-O of the Act.

The above clarification shall not apply if any of the aforesaid conditions are not satisfied.

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