

F. No.370133/22/2020-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

Dated: 29th September, 2020

Sub.: Guidelines under section 194-O (4) and section 206C (1-I) of the Income-tax Act, 1961 – reg.

Finance Act, 2020 inserted a new section 194-O in the Income-tax Act 1961 (hereinafter referred to as “the Act”) which mandates that with effect from 1st day of October, 2020, an e-commerce operator shall deduct income-tax at the rate of one per cent (subject to the provisions of proposed section 197B of the Act) of the gross amount of sale of goods or provision of service or both, facilitated through its digital or electronic facility or platform. However, exemption from the said deduction has been provided in case of certain individuals or Hindu undivided family fulfilling specified conditions. This deduction is required to be made at the time of credit of amount of such sale or service or both to the account of an e-commerce participant or at the time of payment thereof to such e-commerce participant, whichever is earlier.

2. Finance Act, 2020 also inserted sub-section (1H) in section 206C of the Act which mandates that with effect from 1st day of October, 2020 a seller receiving an amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year to collect tax from the buyer a sum equal to 0.1 per cent (subject to the provisions of proposed sub-section (10A) of the section 206C of the Act) of the sale consideration exceeding fifty lakh rupees as income-tax. The collection is required to be made at the time of receipt of amount of sales consideration.

3. Sub-section (4) of section 194-O and sub-section (1-I) of section 206C of the Act empowers the Board (with the approval of the Central Government) to issue guidelines for the purpose of removing difficulties. Various representations have been received by the Board for issuing guidelines for removing certain difficulties. In exercise of power contained under sub-section (4) of section 194-O of the Act and sub-section (1-I) of section 206C of the Act, the Board, with the approval of the Central Government, hereby issues the following guidelines.

4. Guidelines

4.1 Applicability on transactions carried through various Exchanges:

4.1.1 It has been represented that there are practical difficulties in implementing the provisions of Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) contained in section 194-O and sub-section (1H) of section 206C of the Act in case of certain exchanges and clearing corporations. It has been stated that sometime in these transactions there is no one to one contract between the buyers and the sellers.

4.1.2 In order to remove such difficulties, it is provided that the provisions of section 194-O, and sub-section (1H) of section 206C, of the Act shall not be applicable in relation to,-

(i) transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre;

(ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC; and

For this purpose,-

(i) "recognized clearing corporation" shall have the meaning assigned to it in clause (i) of the *Explanation* to clause (23EE) of section 10 of the Act;

(ii) "recognized stock exchange" shall have the meaning assigned to it in clause (ii) of the *Explanation 1* to sub-section (5) of section 43 of the Act; and

(iii) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005.

4.2 Applicability on payment gateway:

4.2.1 In e-commerce transactions, the payments are generally facilitated by payment gateways. It is represented that in these transactions, there may be applicability of section 194-O twice i.e. once on e-main commerce operator who is facilitating sell of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service. To illustrate a buyer buys goods worth one lakh rupees on e-commerce website "XYZ". He makes payment of one lakh rupees through digital platform of "ABC". On these facts liability to deduct tax under section 194-O may fall on both "XYZ" and "ABC".

4.2.2 In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-O of the Act on a transaction, if the tax has been deducted by the e-commerce operator under section 194-O of the Act, on the same transaction. Hence, in the above example, if "XYZ" has deducted tax under section 194-O on one lakh rupees, "ABC" will not be required to deduct tax under section 194-O of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

4.3 Applicability of on insurance agent or insurance aggregator:

4.3.1 It has been represented that insurance agents or insurance aggregators in many cases have no involvement in transactions between insurance company and the buyer for subsequent years. It has been represented that in subsequent years, the liability to deduct tax may arise on the insurance agents or insurance aggregators even if the transactions have been completed directly with the insurance company. This may result into hardship for the insurance agents/aggregators.

4.3.2 In order to remove difficulty it is provided that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 194-O of the Act for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.

4.4 Calculation of threshold for the financial year 2020-21.

4.4.1. Since both section 194-O, and sub-section (1H) of section 206C, of the Act would come into effect from 1st October, 2020, it was requested to clarify how the various thresholds specified under these

sections shall be computed and whether the tax is required to be deducted/collected in respect of amounts received before 1st October, 2020.

4.4.2 it hereby clarified that,-

(i) Since the threshold of five lakh rupees for an individual/ Hindu undivided family (being e-commerce participant who has furnished his PAN/Aadhaar) is with respect to the previous year, calculation of amount of sale or services or both for triggering deduction under section 194-O of the Act shall be counted from 1st April, 2020. Hence, if the gross amount of sale or services or both facilitated during the previous year 2020-21 (including the period up to 30th Sept 2020) in relation to such an individual/ Hindu undivided family exceeds five lakh rupees, the provision of section 194-O shall apply on any sum credited or paid on or after 1st October, 2020.

(ii) Since sub-section (1H) of section 206C of the Act applies on receipt of sale consideration, the provision of this sub-section shall not apply on any sale consideration received before 1st October 2020. Consequently it would apply on all sale consideration (including advance received for sale) received on or after 1st October 2020 even if the sale was carried out before 1st October 2020.

(iii) Since the threshold of fifty lakh rupees is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under sub-section (1H) of section 206C shall be computed from 1st April, 2020. Hence, if a person being seller has already received fifty lakh rupees or more up to 30th September 2020 from a buyer, the TCS under sub-section (1H) of section 206C shall apply on all receipt of sale consideration during the previous year, on or after 1st October 2020, from such buyer.

4.5 Applicability to sale of motor vehicle:

4.5.1 The provisions of sub-section (1F) of section 206C of the Act apply to sale of motor vehicle of the value exceeding ten lakh rupees. Sub-section (1H) of section 206C of the Act exclude from its applicability goods covered under sub-section (1F). It has been requested to clarify that whether all motor vehicles are excluded from the applicability of sub-section (1H) of section 206C of the Act.

4.5.2 It this regard it may be noted that the scope of sub-sections (1H) and (1F) are different. While sub-section (1F) is based on single sale of motor vehicle, sub-section (1H) is for receipt above 50 lakh rupee during the previous year against aggregate sale of good. While sub-section (1F) is for sale to consumer only and not to dealers, sub-section (1H) is for all sale above the threshold. Hence, in order to remove difficulty it is clarified that,-

(i) Receipt of sale consideration from a dealer would be subjected to TCS under sub-section (1H) of the Act, if such sales are not subjected to TCS under sub-section (1F) of section 206C of the Act.

(ii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of ten lakh rupees or less to a buyer would be subjected to TCS under sub-section (1H) of section 206C of the Act, if the receipt of sale consideration for such vehicles during the previous year exceeds fifty lakh rupees during the previous year.

(iii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ten lakh rupees would not be subjected to TCS under sub-section (1H) of section 206C of the Act if such sales are subjected to TCS under sub-section (1F) of section 206C of the Act,

4.6 Adjustment for sale return, discount or indirect taxes

4.6.1 It is requested to clarify that whether adjustment is required to be made for sales return, discount or indirect taxes including GST for the purpose of collection of tax under sub-section (1H) of section 206C of the Act. It is hereby clarified that no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under sub-section (1H) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration.

4.7 Fuel supplied to non-resident airlines

4.7.1 It is requested to clarify if the provisions of sub-section (1H) of section 206C of the Act shall apply on fuel supplied to non-resident airlines at airports in India. To remove difficulties it is provided that the provisions of sub-section (1H) of section 206C of the Act shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.


29.09.2020

(Ankit Jain)

Under Secretary to the Govt. of India

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