

Detailed Analysis of Sec. 194Q and 206C(1H)

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B2C or B2B

Sec. 206C(1F)

- Every person, being a seller, who receives any amount as consideration for sale of motor vehicle of the value exceeding ten lakh rupees
- shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 1 per cent of the sale consideration as income-tax.

Sec. 206C(1H) 01.10.2020

- Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the
 - goods being exported out of India or 
 - goods covered in
 - 206C (1) or 
 - 206C (1F) or 
 - 206C (1G) 
- shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax

Proviso to Sec 206C(1H)

If buyer **has not provided** the **Permanent Account Number** or **Aadhar Card** to seller, then the provisions of **Section 206CC(1)(ii)** shall be read as if word **5%**, the word **1%** had been substituted.

Further the provisions of this sub section shall not apply, if buyer is **liable to deduct Tax at source** under any other provision of this Act on **goods purchased by him from seller** and has deducted such amount

Buyer as per explanation (a) to sec. 206C(1H)

"Buyer" means

- a person who **purchases any goods** but does **not include**
 - the **Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate** and the trade representation of a foreign State
 - a **local authority** as defined in the Explanation to clause (20) of section 10
 - a **person importing goods into India** or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein

Seller as per explanation (b) to sec. 206C(1H)

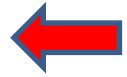
“Seller” means

- a person **whose total sales, gross receipts or turnover from the business** carried on by him **exceed ten crore rupees during the financial year immediately preceding the financial year in which the sale of goods is carried out**, not being a person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

Section is applicable from 01.10.2020 but receipt of Rs. 50 lacs to be seen for full P .Y.

Section 206C(1I): If **any difficulty arises** in giving effect to the provisions of **sub section (1G) or sub-section (1H)**, the Board may, with the **approval of the Central Government**, **issue guidelines** for the purpose of removing the difficulty.

Section 206C(1J): Every guideline issued by the Board under sub-section (1-I) shall be **laid before each House of Parliament**, and shall be **binding on the Income-tax authorities** and on the person liable to collect the sum.



Goods covered in sub section (1)


S.No	Nature of Goods	Percentage
1	Alcoholic Liquor for human consumption	1%
2	Tendu Leaves	5%
3	Timber obtained under forest lease	2.5%
4	Timber obtained by any mode other than forest lease	2.5%
5	Any other forest produce not being timber or tendu leaves	2.5%
6	Scrap	1%
7	Mineral, being coal or lignite or iron ore	1%



Goods covered in sub section (1F)



Dealer sell car to Consumer



Section 206C – Income Tax Act, 1961

Inserted by **Finance Act, 2016** w.e.f 01.06.2016

1F

Inserted by **Finance Act, 2020** w.e.f 01.10.2020

1H

- Every person, being a seller
- Receives any amount as Consideration
- Sale of **Motor Vehicle**
- Value Exceeding **Rs. 10 Lakhs**

- Shall at time of **receipt** of such amount
- Collect from buyer, sum equal to **1%** of sale consideration as income tax

Whether applicable to Sec 206C(1G)? No

As per Sec 206C(10A), **TDS and TCS** for period **14.05.2020 to 31.03.2021** has been **reduced by 25%**

- Every person, being a seller
- Receives any amount as Consideration
- Sale of **any goods** ~~(not services)~~
- Value Exceeding **Rs. 50 Lakhs in any PY**
- Other than goods exported out of India or goods covered in sub section (1), (1F) or (1G)**
- Shall at time of **receipt** of such amount
- Collect from buyer, sum equal to **0.1%** of sale consideration **exceeding Fifty Lakh rupees** as income tax



B2B



B2C



Circular **17** dated **29.09.2020** that Sec 206C(1H) is applicable on B2B

Circular No **22/2016** dated **08.06.2016** that Sec 206C(1F) is not applicable on B2B vide Ques No 1

Manufacturer

Authorized Dealer

Consumer

Sec 206C(1H)

Sec 206C(1F)

Manufacturer Transfer 30 Cars @ 12 Lacs each to Authorized Dealer



Dealer Sells each Car @ 15 Lacs

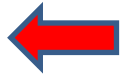


Consumer



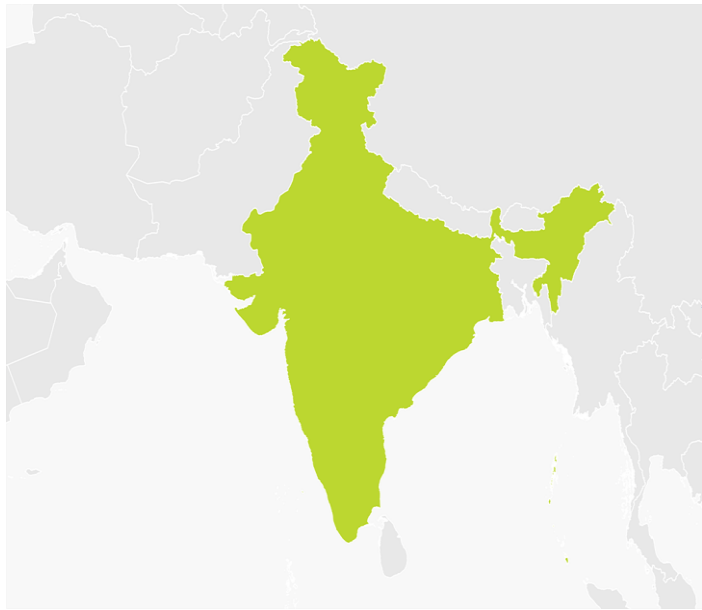
Particulars	Manufacturer	Authorized Dealer
Provision to Apply	206C(1H)	206C(1F)
Sale Consideration (in Rs.)	360 Lacs (30 Cars*12 Lacs)	15 Lacs per car
Exemption	50 Lacs	-
Amount on Which TCS apply (in Rs.)	310 Lacs	15 Lacs per car
Rate of TCS	0.1%	1%
Amount of TCS (in Rs.)	31000	15000 per car

Ques No 4 Payment Made in Installments (TCS @1% is to be collected for each installment **even if sale is made subsequently**)

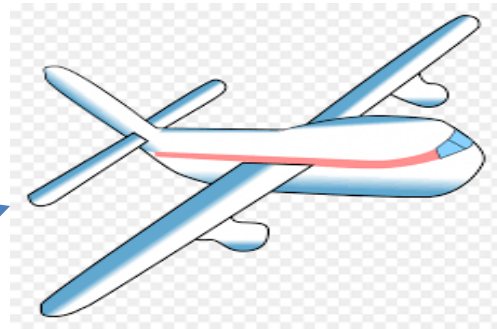


Goods Exported Outside of India

As per Sec 2(19) of Customs Act, 1962; exported goods means any goods taken out of India to a place outside India



India



Goods Exported



USA

(1G) **Every person**,—

- a) being an **authorised dealer**, who **receives an amount, for remittance out of India from a buyer, being a person remitting such amount out of India under the Liberalised Remittance Scheme of the Reserve Bank of India;**
- b) being a seller of an **overseas tour program package**, who receives any amount from a buyer, being the person who purchases such package,

shall, at the time of **debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer**, by any mode, whichever is earlier, collect from the buyer, a sum **equal to five per cent** of such amount as income-tax:

Provided that the authorised dealer **shall not collect the sum, if the amount or aggregate of the amounts being remitted by a buyer is less than seven lakh rupees in a financial year and is for a purpose other than purchase of overseas tour program package:**

Provided further that the sum to be collected by an authorised dealer from the buyer shall be equal to **five per cent** of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, where the amount being remitted is for a purpose other than purchase of overseas tour program package:

Provided also that the authorised dealer shall collect a sum equal to **one half** per cent of the amount or aggregate of the **amounts in excess of seven lakh rupees remitted by the buyer in a financial year, if the amount being remitted out is a loan obtained** from any financial institution as defined in section 80E, for the purpose of pursuing any education:

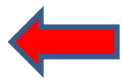
Provided also that the authorised dealer shall not collect the sum on an amount in respect of which the sum has been collected by the seller:

Provided also that the provisions of this sub-section shall not apply, if the buyer is,—

- i. liable to deduct tax at source under any other provision of this Act and has deducted such amount;
- ii. the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

Explanation.—For the purposes of this sub-section,—

- i. "authorised dealer" means a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of the Foreign Exchange Management Act, 1999 (42 of 1999) to deal in foreign exchange or foreign security;
- ii. **"overseas tour programme package" means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto**



Applicability of sec. 206C(1G)

a

Authorized dealers

;

b

Overseas tour operators.

“Authorized dealer” means a person **authorized by the Reserve Bank of India under sub-section (1) of section 10 of the Foreign Exchange Management Act, 1999 (42 of 1999) to deal in foreign exchange or foreign security**

“Overseas tour programme package” **means**
➤ **any tour package** which offers visit to a country or countries or territory or territories outside India **and**
➤ includes **expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.**

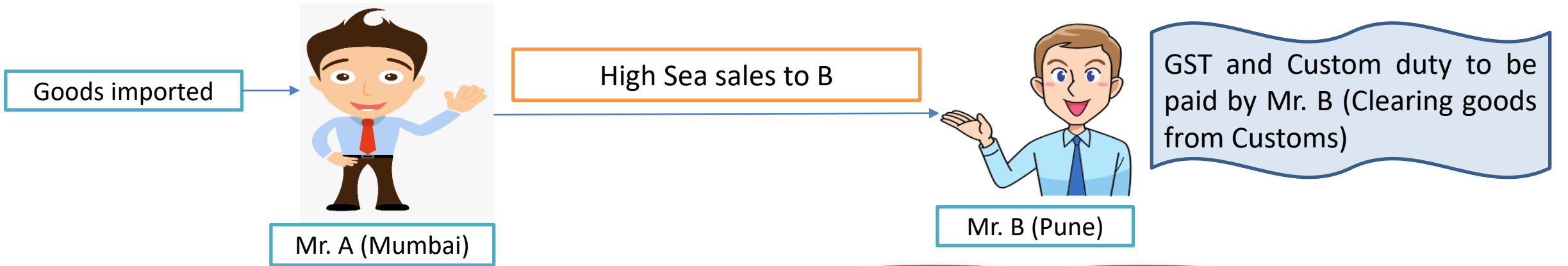
Sec. 10(1) of FEMA Act, 1999, “The Reserve Bank may, on an application made to it in this behalf, authorize any person to be known as authorized person to deal in foreign exchange or in foreign securities, as an authorized dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

Banks, Private Authorized dealers

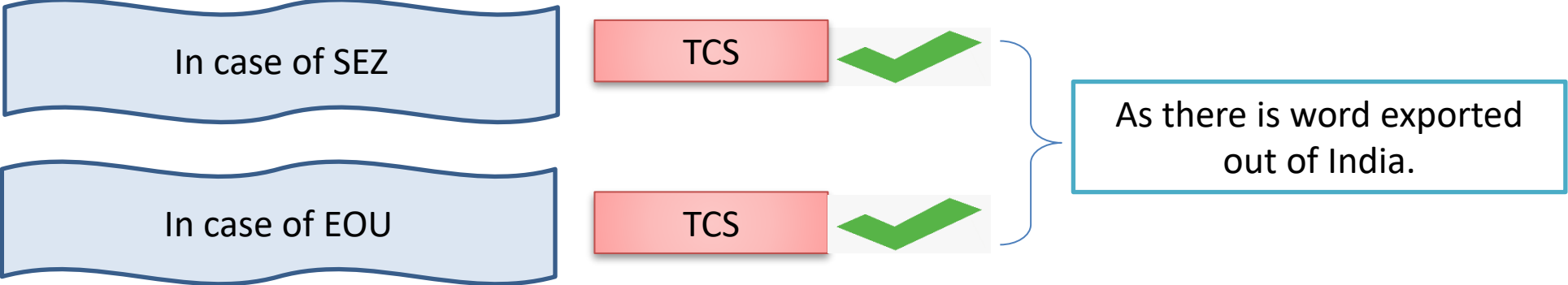
- Liable to collect TCS @5% if amount or aggregate of the amounts being remitted by a buyer is greater than or equal to seven lakh rupees
- In cases where the amount is remitted for the purpose of pursuing education through a loan obtained from any financial institute, rate of TCS shall be 0.5 per cent on the amount exceeding Rs 7 lakhs.

Particulars	Remittance out of India under LRS Scheme	Overseas Tour Package
Exemption	Exceeding 700000 Proviso 1	On every amount
Rate Of TCS	5% Proviso 2	5%
Remittance made out of loan obtained from any financial institution as defined in section 80E for purpose of education with PAN	0.5% Proviso 3	N.A.
Dealer to Dealer	N.A.	5%
Time of deduction	Debit or receipt whichever is earlier	Debit or receipt whichever is earlier
Transactions Liable to TDS	N.A Proviso 5	N.A.
Audit Requirement	No	No
Rate if PAN not available	10% as per sec 206CC	10%
Rate if PAN not available for loan obtained from any financial institution as defined in section 80E	5% as per sec 206CC	N.A.
Firm, Company, LLP, Trust	N.A.	Applicable
Expenditure on employee for Foreign Conference incurred by company	N.A.	Applicable
Non resident	N.A.	Applicable

High Sea Sales



But Mr. A need not to collect TCS on amount collected from Mr. B.



Calculation of
Threshold limit

Since Section 206C(1H) **applies on receipt of sale consideration**, the provision of this subsection **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 October 2020**

Since the threshold of fifty lakh rupees is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under Section 206C(1H) 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 this section shall apply on **all receipt of sale consideration** during the previous year, **on or after 1st October 2020**, from such buyer.

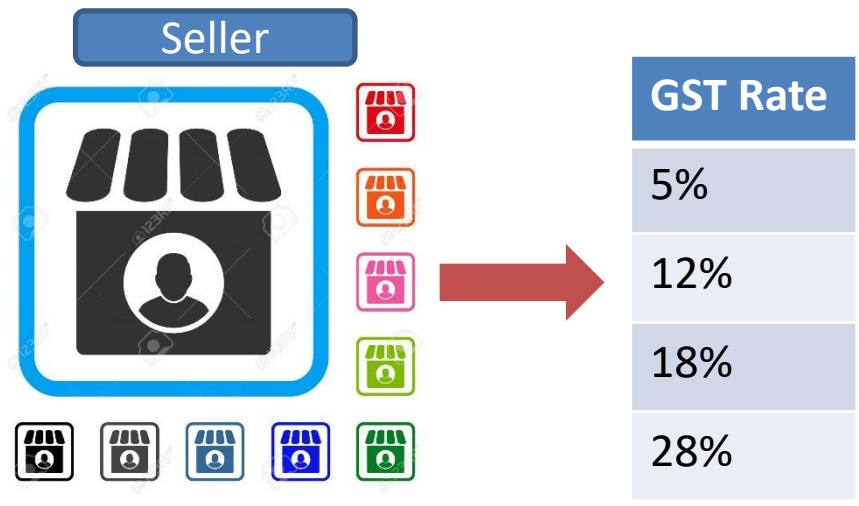
Clarification on doubts arising on account of new TCS provisions issued by Ministry of Finance

	Case 1	Case 2	Case 3	Case 4	Case 5	Case 6
Party	Seller	Seller	Seller	Seller	Seller	Professional
Sales in PY	Rs. 15 Crore	Rs. 5 Crore	Rs. 20 Crore	Rs. 17 Crore	Rs. 12 Crore	Rs. 11 Crore
Buyer	Mr. X	XYZ & Co	XYZ & Co	CG/SG	XYZ LLP	Mr. X
Consideration received till 30.09.2020	55 Lakhs	60 Lakhs	45 Lakhs	70 Lakhs	48 Lakhs	52 lakhs
Consideration received after 01.10.2020	45 Lakhs	20 Lakhs	2 Lakhs	10 Lakhs	5 Lakhs	3 Lakhs
Application of Sec 206C(1H)	Yes	No	Yes	No	Yes	No
Amount Liable to TCS	45 Lakhs	-	-	-	3 Lakhs	-
TCS Amt	4500	-	-	-	300	-

ISSUES

Issue 1

Why TCS on GST?



Consideration received against sale of goods irrespective of GST rate

To remove difficulty, CG has issued Press Release regarding TCS will be applicable on amount of all sale consideration

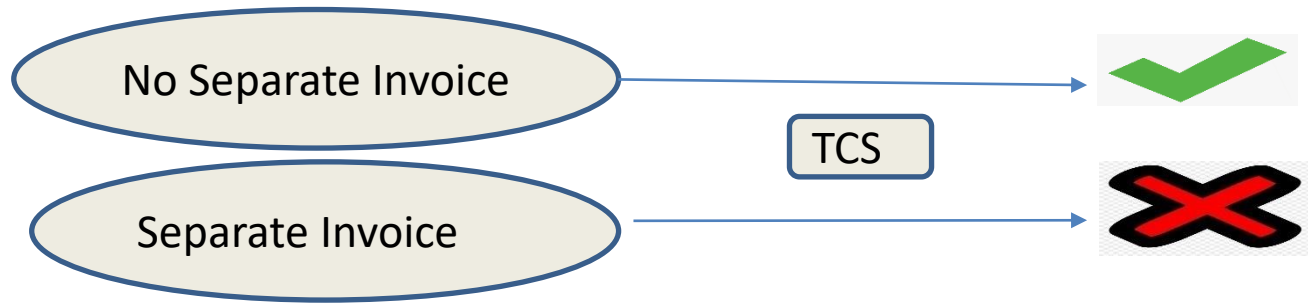
Issue 2	Remarks
<p>Effect of Discount and Sale Return</p>	<p><u>No adjustment</u> on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under Section 206C(1H) since the <u>collection</u> is made with reference to <u>receipt of amount of sale consideration</u>. (Clarified by <u>Press Release dated 30.09.2020</u>)</p>
Issue 3	Remarks
<p>Advance against Sale</p>	<p>Apply against <u>all</u> consideration (<u>incl. advance against sale</u>). Clarified by <u>Circular No 17 dated 29.09.2020</u></p>

Issue 4	Remarks
Fuel Supplied to non resident Airlines	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. (Clarified by Circular No 17 dated 29.09.2020)
Issue 5	Remarks
GST to form part for computing Rs. 10 Crore limit	CBDT has not clarified on procedure for calculation of limit of Rs. 10 Crore yet but following parity with Guidance Note issued by ICAI on Accounting for State Level Value added Tax ; GST not to form part while computing limit of Rs. 10 crore
Issue 6	Remarks
TCS to apply on sale of scrap	Provisions of Sec 206C(1) to apply in case of sale of Scrap. Therefore provisions of Sec 206C(1H) not to apply
Issue 7	Remarks
Actionable claim	The same has been exclude from the definition of goods under Sec 2(7) of Sale of Goods Act, 1930 therefore provisions of Sec 206C(1H) not to apply

Issue 8	Remarks
Provision for NR, selling goods from o/s India	As per Explanation to Sec 206C(1H), buyer who <u>import goods into India</u> has been specifically <u>excluded</u> from it's ambit

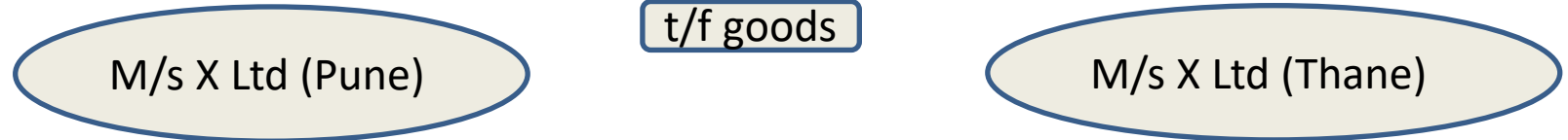
Issue 9	Remarks
TCS on sale of immovable property	Sec 206C(1H) is applicable of sale of goods. Goods means every kind of movable property, so immovable property <u>cannot</u> be treated as movable property.

Issue 10
TCS on allied, additional and out of pocket expense



Issue 11

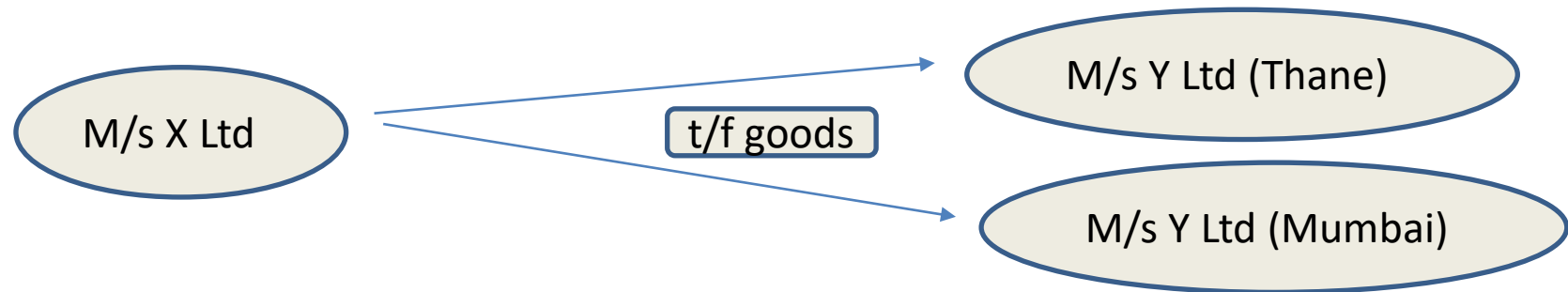
TCS on branch transfer



Existence of **two distinct parties** as '**seller**' and '**buyer**' is a **pre-requisite** for condition of sale and same is not fulfilled in case of branch transfer. Hence **no to apply Sec 206C(1H)**

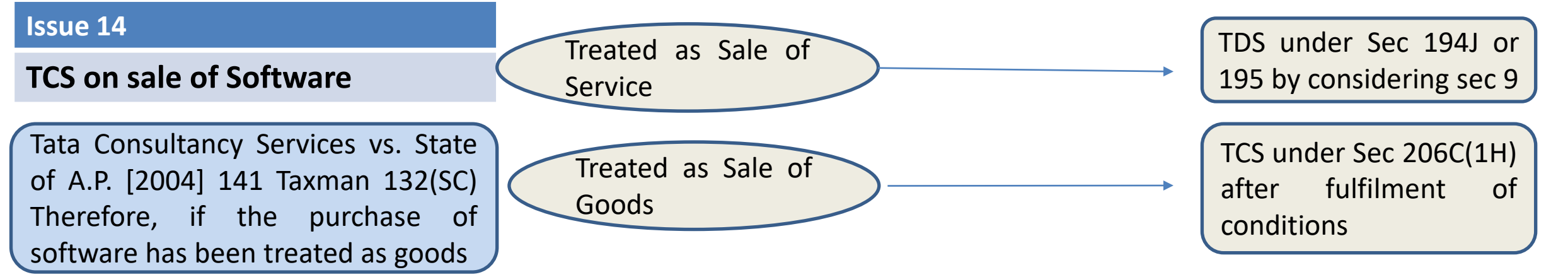
Issue 12

TCS on supply made to multiple branches of buyer



If different units of buyer are under **same PAN or Aadhar Number**, then amount received from all such units **shall be aggregated** to compute limit o Rs. 50 Lakhs

Issue 13	Remarks
Lower Rate of TCS for buyer	<u>Sec 206C(9) does not</u> extend the benefit to apply lower TCS for Sec 206C(1H)



Issue 15	Remarks
Loan from buyer	Sec 206C(1H) is applicable on <u>consideration for sale of goods</u> . But <u>Loan</u> is <u>not</u> a consideration towards sale of goods thus shall remain <u>outside from purview</u> of this provision. But when the same is <u>agreed between</u> the two parties to <u>adjust the same against sale of goods</u> , then <u>TCS will be applicable on date when agreed</u>

Issue 16	Remarks
TCS if TDS not deducted by virtue of Sec 197A	No, <u>TCS would not</u> be deducted under Sec 206C(1H) because it is deemed that <u>TDS has been deducted @ 0%</u> by submission of TDS declaration under Sec 197A

Issue 17

Bill Discounting

One delivers the bill **before deadline** at **cost less than actual price**

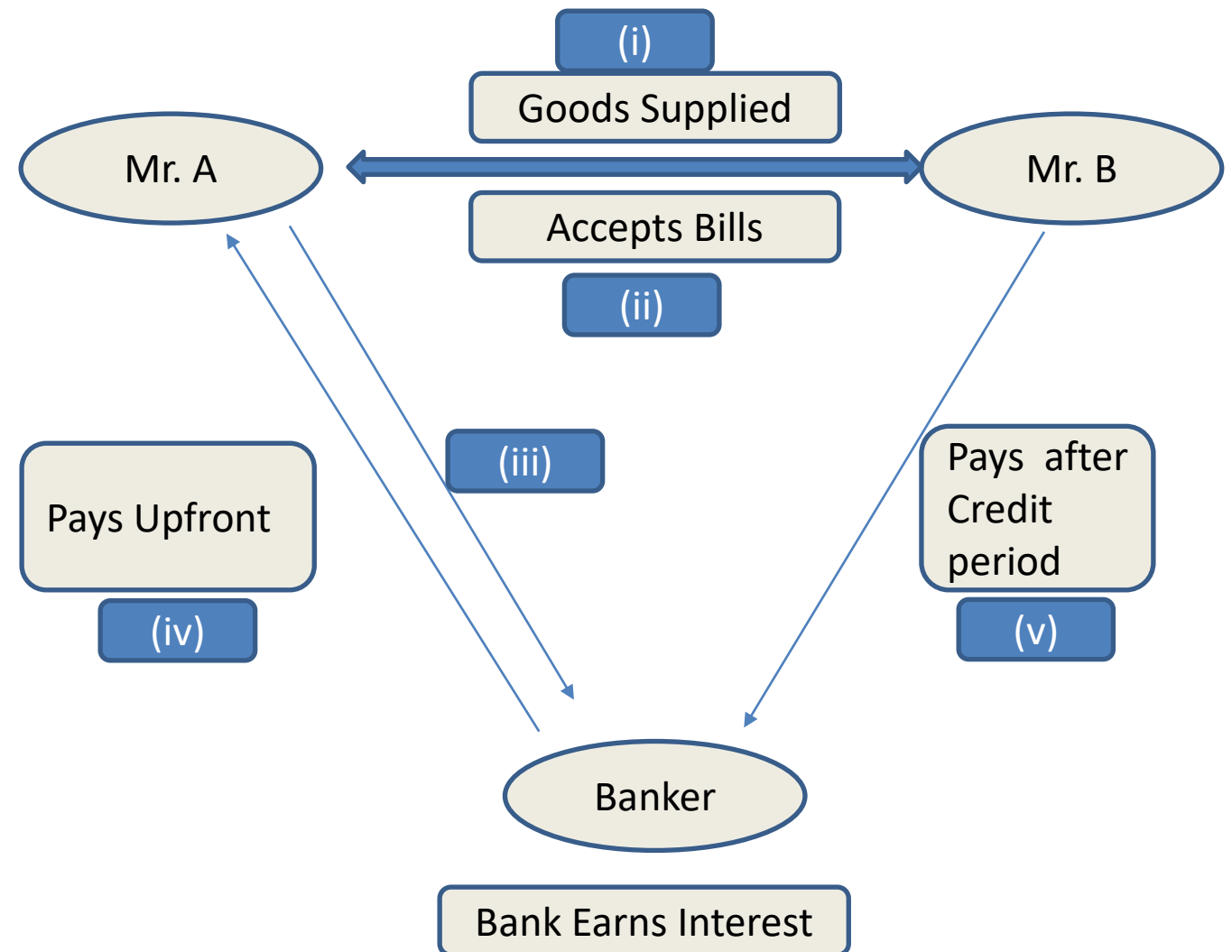
Trade debt carrying **portion of accounts** receivable is transferred

Advance payment by banker for the issued bill to customer

Option of **recourse** is only available

Covered under **Negotiable Instrument Act, 1881**

Provisions of Sec 206C(1H) will **not be applicable** as it is a **service** and Provisions of Sec 206C(1H) is applicable on **sale of goods not sale of service**



Factoring

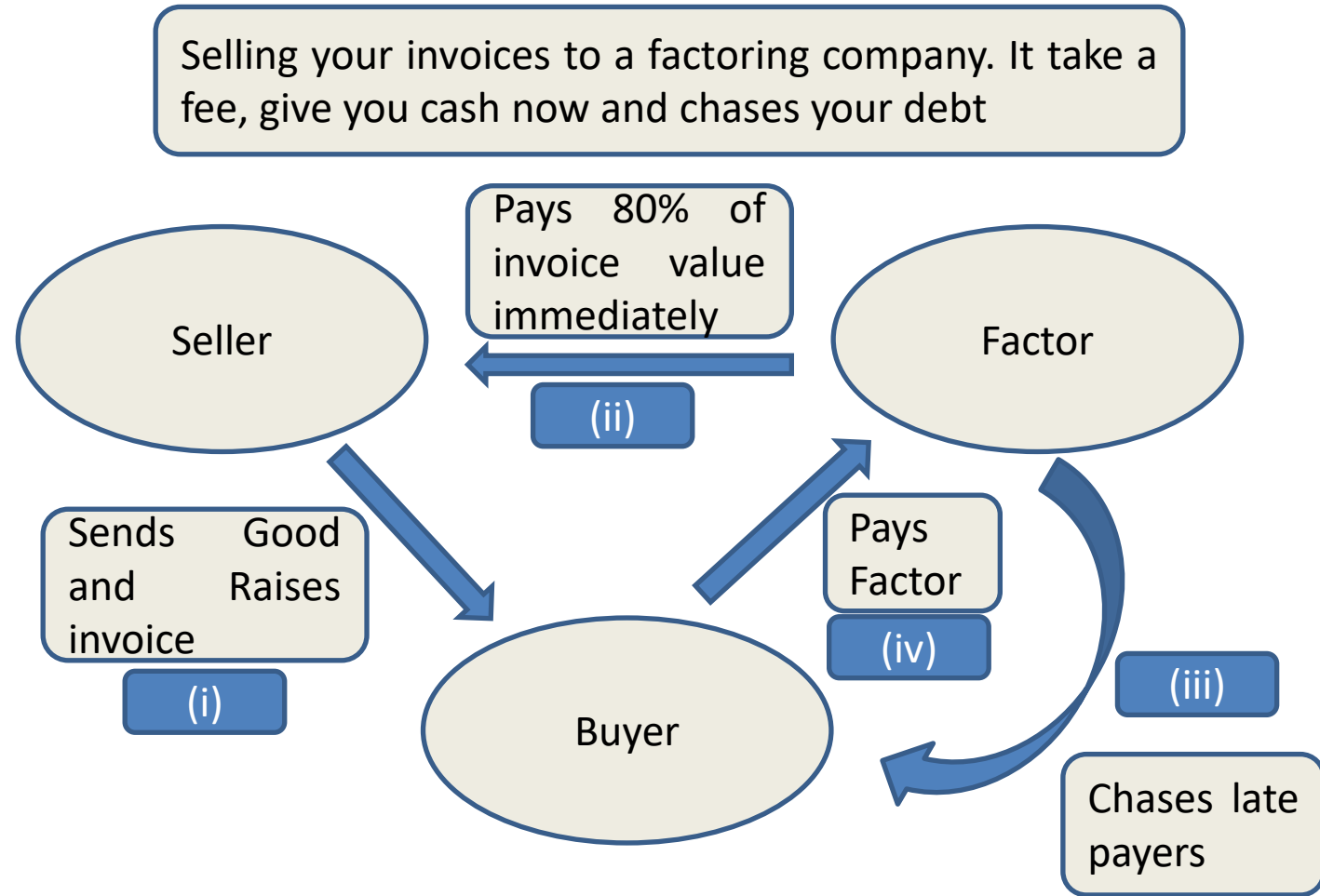
When a firm **sells its book debt** to the financial transaction of the factoring company **at a discount rate**

The **entire portion** of the trade debts of the company is **transferred**

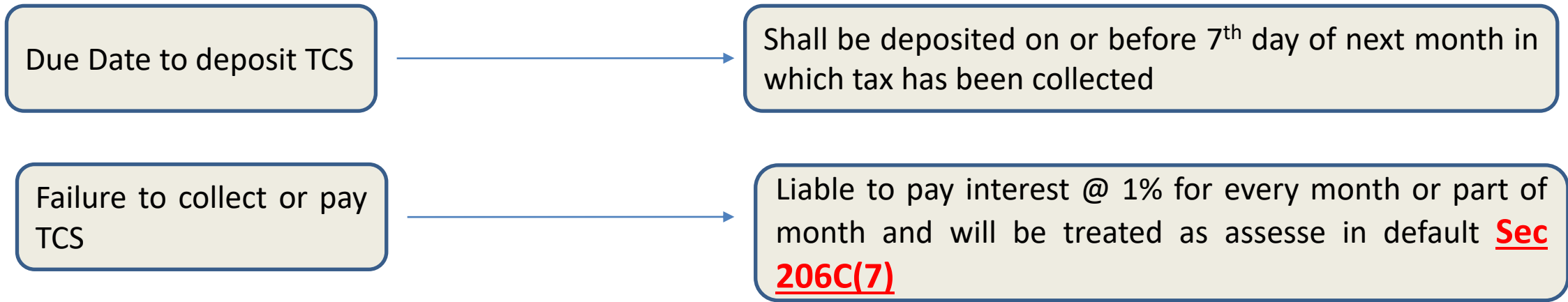
The full purchase of the trade debts.

Option of both **non-recourse** or **recourse** is available

There is **no Law and legislation act** under which the method of factoring is susceptible to



Provisions of Sec 206C(1H) will **not be applicable** as it is a **actionable claim** and Provisions of Sec 206C(1H) is applicable on **sale of goods not sale of service**



Quarter	Due Date (Filing of Form 27EQ)
April – June	15 th July of Financial Year
July – September	15 th October of Financial Year
October – December	15 th January of Financial Year
January – March	15 th May of Financial Year immediately following the financial year in which collection is made

Delay in Filing of TCS Return

Late Filing fee shall be payable under **Section 234E @ Rs. 200 per day** and such fees **shall not exceed** total amount deductible or collectable

Consequences of Furnishing of Inaccurate Information in TCS Return **or** Fail to file TCS Return

Liable for penalty under **Section 271H** amounting from **Rs. 10000 up to Rs. 100000**

Seller to be treated as assessee in default if buyer pays tax due on the income declared in the ROI

Seller is **not deemed** to be assessee in default if the receiver has obtained certificate to this effect from Chartered Accountant in **Form 27BA (Refer Rule 31AA)** and submit it electronically However this relief is available for **following only:**

- A. **TCS u/s 206C(1)**
- B. **TCS u/s 206C(1C)**

Sec **206C(1H) is not covered in this provision**. Hence Assessee will be treated as assessee in default

Applicability of Sec.194Q {w.e.f. -1/7/2021}

- Any person, **being a buyer**, who is responsible for **paying** any sum to **any resident** (hereafter in this section referred to as the seller) for **purchase of any goods** of the value or aggregate of such value **exceeding fifty lakh rupees** in **any previous year** shall,
 - at the time of credit of such sum to the account of the seller** or
 - at the time of payment thereof by any mode, whichever is earlier,**
- deduct an amount equal to **0.1 per cent of such sum exceeding fifty lakh rupees** as income-tax.



Buyer as per explanation to Sec. 194Q

"Buyer" means

- a person whose **total sales**, **gross receipts** or **turnover** from the **business carried** on by him **exceed 10 crore rupees** during the **financial year immediately preceding** the **financial year in which the purchase of goods is carried out** but does **not include**
 - the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

Sec 194Q(2) **Deemed to be credit of such income to the account of Payee**

- Suspense Account
- Other Account



Deemed to be credit of such income to the account of payee

Sec194Q(3), Board to issue guide lines

Circular 13/2021
30th June

- To Remove Difficulties



- Board May
- Subject to the approval of the CG issue guide lines

Sec 194Q(5) **The provisions shall not apply to a transaction on which**

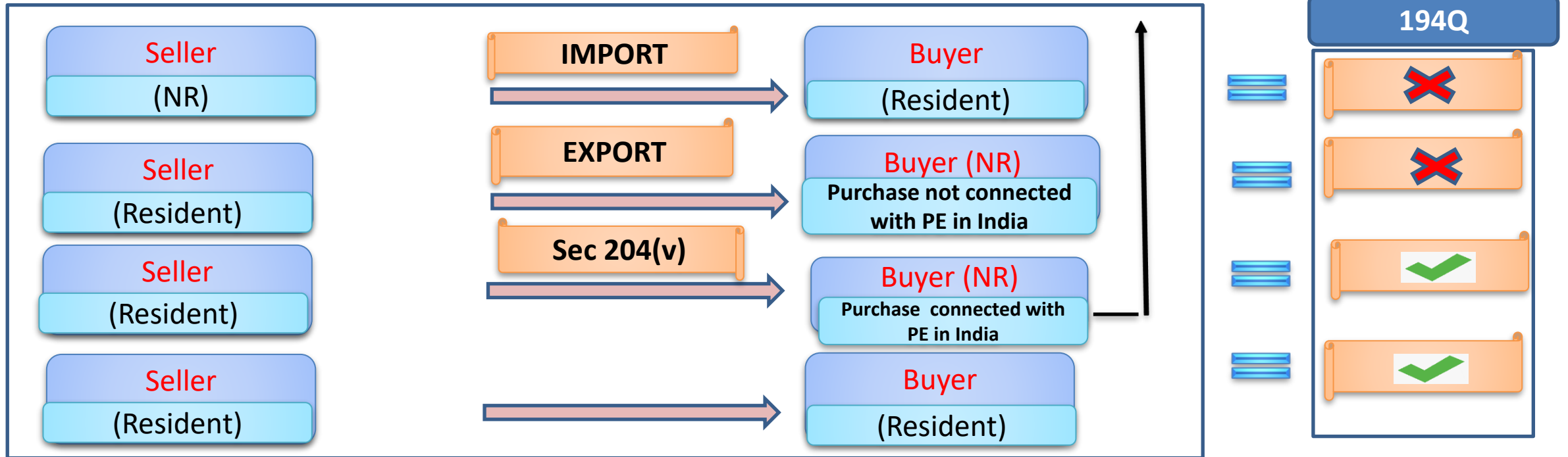
(a) tax deducted under any provision of this Act; and

(a) tax is collected under 206C other than a transaction to which sec 206C(IH) applies

Applicability of Section 194Q

Issue no. 1

Person responsible to paying in case of person NR in India the person himself or agent U/s 163



Issue no. 2

Turnover of Oil :
Rs. 9.5 Crores
FY 2020-21



Sale of Land :
Rs. 60 lakhs

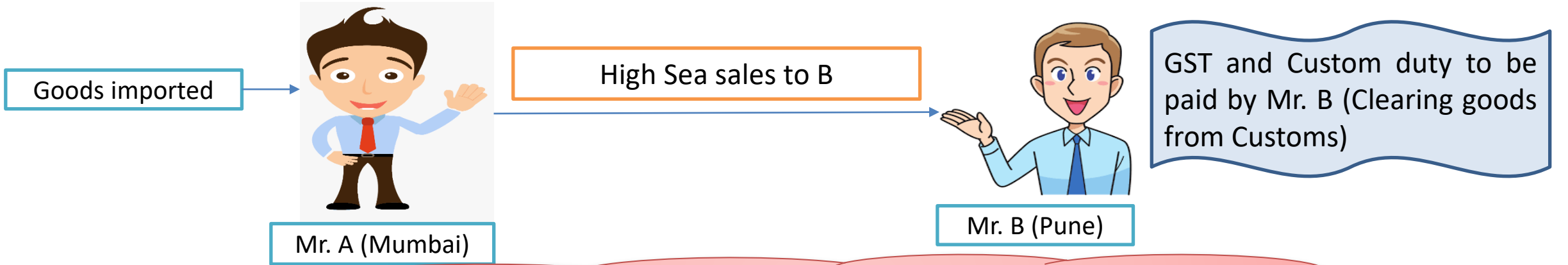


Total Receipts :
Rs. 10.10 Crores

194Q not applicable for the current year as business turnover less than 10 Crores Para 4.8 Circular no.13/2021

Section 44AB every person carrying on business if total, turnover or gross receipts as the case may be in business

High Sea Sales



But Mr. B need to deduct TDS on amount paid by Mr. B to Mr A.

In case of SEZ

TDS



In case of EOU

TDS



Turnover in case of Business Taken over by Inheritance or amalgamation of company

In July 2021 Business is taken over by Son by way of inheritance



Father

Turnover of Father's
Business for FY 2020-21 Rs.
12 Crores

In this case turnover of father for last year to
be considered by following analogy to section
78(2) and 79(2)(b)



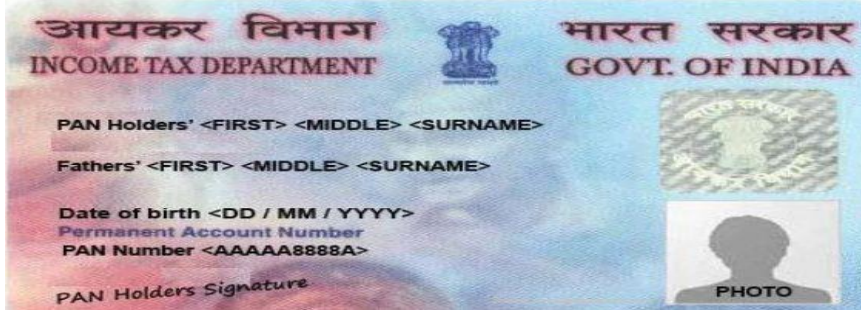
Son

Turnover of Son for FY 2020-
21 NIL

Issue no. 3

In case of New Concern

New Concern



The provisions of Section 194Q are not applicable as the concern was not in existence during FY 2020-21 (Para no. 4.7 Circular no. 13/2021)

Issue no. 4

Turnover for FY 2020-21 is more than Rs. 10 Crores

<u>Month</u>	<u>Invoice Amount (Exclude GST)</u>	<u>Payment</u>	<u>TDS</u>
April	15 Lakhs	500000	Nil
May	20 Lakhs	1500000	Nil
June	10 Lakhs	2500000	Nil
July	1500000	1499000 + 1000 (TDS Amount)	TDS on 1000000 @ 0.10% on 04/07/2021 and is to be deposited before 7 th August as per Rule 30
<u>Total</u>	<u>6000000</u>	<u>6000000</u>	

Issue no. 5

Applicability of TCS for FY 2021-22 assuming Turnover is more than Rs.10 Crores for FY 2020-21

Purchase (April-June)	Payment (April-June)	Purchase (July-March)	Payment (July-March)	Total Purchase	Total Payment	Amount on which TDS to be ded U/s 194Q
60 Lakhs	Nil	Nil	20 Lakhs	60 Lakhs	20 Lakhs	Nil
60 Lakhs	Nil	30 Lakhs	90 Lakhs	90 Lakhs	90 lakhs	30 lakhs
20 Lakhs	30 Lakhs	70 Lakhs	60 lakhs	90 Lakhs	90 Lakhs	40 Lakhs
Nil	90 Lakhs	60 Lakhs	Nil	60 Lakhs	90 Lakhs	NIL

Issue no. 6

Adjustment for GST indicated separately in Purchase invoice

Purchase of goods	CGST+SGST @ 5%	Invoice Value	TDS u/s 194 Q
1 Lakh	2500 + 2500 = 5000	105000	1 Lakh
Advance payment	GST leviable @5%	Invoice Value	TDS u/s 194Q
1 Lakh	Nil	Nil	1 Lakh

With respect to purchase returns, it is clarified that the tax is required to be deducted at time of payment or credit, whichever is earlier. Thus, **before purchase returns happens, tax must have already been deducted under section 194Q** on that purchase. If that is the case and against **purchase return, the money is refunded by the seller**, then this **tax deducted may be adjusted against the next purchase against the same seller**. No adjustment is required if the purchase return is replaced by the goods by the seller as in that case the purchase on which tax was deducted under Section 194Q has been completed with goods replaced.

Q2	Purchase in Crores	Payment in crores	P/R in crores	Net Purchases	Received back	TDS in Rs	Remarks
July	1.00	1.00	0.20	0.80	0.00	10000	TDS on Credit or payment which ever is earlier
Aug	2.00	1.80	0.00	2.00	0.00	18000	Adjustment of Payment in lieu of Return
Sep	3.00	3.00	0.50	2.50	0.00	30000	TDS on Credit or payment which ever is earlier
Oct	2.00	0.00	0.00	2.00	0.50	15000	TDS on 1.5 Crore by Considering TDS

Whether
Section 194-O
or Section
194Q ?

If tax has been deducted by e-commerce operator on a transaction under section 194-O {including transactions on which tax is not deducted on account of section 194-O(2)} then that transaction shall not be subjected to tax deduction u/s 194Q

Whether
Section 194-O
or Section
206C(1H) ?

The E-commerce operator has deducted the tax u/s 194-O on transaction, the seller is not required to collect the tax u/s 206C(1H) on same transaction. It is clarified that primary responsibility is on E-commerce operator to deduct tax u/s 194-O and that responsibility cannot be condoned if seller has collected tax u/s 206C(1H). **Reason- Rate of TDS u/s 194-O > rate of TDS u/s 206C(1H)**

Whether
Section 194Q
or Section
206C(1H) ?

If transaction on which section 194Q and section 206C(1H) applies- Tax is required to be deducted under section 194Q. This is because tax has already been deducted by buyer u/s 194Q. But for any reason tax has been collected by seller u/s 206C(1H) then buyer is not required to deduct tax u/s 194Q

Interplay of Section 206C(1H) and 194Q

Seller (A) Turnover FY 20-21	Buyer (B) Turnover 20- 21	Purchase of Goods from A up to 30 th June 21	Purchase of Goods from A B/W July to Mar 22	Payment before 30-06- 21	Payment after 30-06- 21	Amount to be taxed	Section
7.00	12.00	0.40	0.50	0.54	0.00	0.36 (0.90-0.54)	194Q
14.00	8.00	0.40	0.50	0.57	0.00	0.07	206C(1H) deducted by A
13.00	14.00	0.40	0.50	0.60	0.00	0.10 0.30 (.90-.60)	206C(1H) by A 194Q
15.00	18.00	0.70	2.00	0.65	2.05	0.15 up to 30-06 2.00 up to 31-03 0.05 up to 31-03	206C(1H) 194Q 206C(1H)
8.00	15.00	0.90	0.60	0.60	0.90	0.60	194Q

Definition of Goods

Issue no. 9

The Word Goods is not defined in Income Tax Act, 1961. But the same is defined in Article 366(12) of constitution, CGST Act, 2017 and Sale of Goods Act, 1930

goods includes all materials, commodities, and articles



As per Sec. 2(52) CGST Act, 2017

As per sec. 2(7) of Sale of Goods Act, 1930

GOODS

GOODS

means

means

Every kind of **movable property**

Every kind of **movable property**

Actionable claims and money

includes

excludes

excludes

includes

- (i) actionable claim only for Lottery, Gambling and betting
- (ii) Growing crops, grass and things attached to/forming part of the land which are agreed to be severed before supply or under a contract of supply.

- Money and securities
- Actionable Claim other than specified in (i)

- (i) stock and shares,
- (ii) growing crops,
- (iii) grass, and
- (iv) things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

Interplay of Section 206C(1H) and 194Q

<u>Goods</u>	<u>194Q</u>	<u>206C(1H)</u>	
Immovable Property	No	No	Sec 2(7) of Sale of Goods Act, 1930
Shares, Securities and Commodities traded through Recognized Stock Exchange and Corporation located in International Financial Service Centre	No	No	Circular No. 13 of 2021 dated 30.06.2021 and No 17 of 2020 dated 29.09.2020.
Shares, Securities and Commodities not traded through Recognized Stock Exchange	Yes	Yes	
Agriculture Produce by seller/Buyer whose income is exempt	No	No	Circular No. 13 of 2021 dated 30.06.2021 para 4.5
Fuel (Supplied to NR Airline in India)	No	No	Para No 4.7 of Circular No 17 dated 29.09.2020
Motor Vehicle sale by seller if value exceeds Rs. 10 Lakh(B2C)	No	No	As liable to TCS under 206C(1F) Refer detailed discussion

Interplay of Section 206C(1H) and 194Q

<u>Goods</u>	<u>194Q</u>	<u>206C(1H)</u>	
Electricity traded through Power Exchanges registered under Regulation 21 of CERC	No	No	<div style="border: 1px solid #00aaff; background-color: #e0f0ff; padding: 5px; border-radius: 5px;"> Para No 4.1.2(ii) of Circular No 17 dated 29.09.2020 </div>
Software	Yes/No	Yes/No	<div style="border: 1px solid #00aaff; background-color: #e0f0ff; padding: 5px; border-radius: 5px;"> If goods Yes and if 194J then no </div>
Out of Pocket Expense	Yes/No	Yes/No	<div style="border: 1px solid #00aaff; background-color: #e0f0ff; padding: 5px; border-radius: 5px;"> Discussed in Issues </div>
Sale of Capital Asset except immovable.	Yes	Yes	
GST on purchase	No	NA	<div style="border: 1px solid #00aaff; background-color: #e0f0ff; padding: 5px; border-radius: 5px;"> The Purchase value without GST </div>
Payment received or Adv Paid	Full amount	Full amount	<div style="border: 1px solid #00aaff; background-color: #d0e0ff; padding: 5px; border-radius: 5px;"> No GST to be segregated </div>

Interplay of Section 206C(1H) and 194Q

<u>Goods</u>	<u>194Q</u>	<u>206C(1H)</u>	
Electricity and Steam	Yes	Yes	<div style="border: 1px solid #00aaff; border-radius: 15px; padding: 10px; background-color: #e0f0ff; margin-top: 10px;"> <p>Apex Court in case of <u>Andhra Pradesh vs National Thermal Power Corporation (2002)</u> & Commissioner Of Sales Tax, Madhya vs Madhya Pradesh Electricity 1970 AIR 732, 1969SCR(2)939 held Electricity as Goods</p> </div>
Slump Sales	No	No	
NCLT approved merger and demerger	No	No	
Brand	Yes/No	Yes/No	<div style="border: 1px solid #00aaff; border-radius: 15px; padding: 10px; background-color: #e0f0ff; margin-top: 10px;"> <p>If 194J then no 194Q / 206C(1)(H), otherwise yes</p> </div>

Circular No 17 of 2020 dated 29th September, 2020 and Circular No 13 dated 30.06.21

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**

Particulars	Transaction through Recognized Stock Exchange or Recognized clearing corporation		Transaction other than Recognized Stock Exchange or Recognized clearing corporation	
	Capital Asset	Stock in Trade	Capital Asset	Stock in Trade
Transacting Item	Securities and Commodities		Securities and Commodities	
Nature	Capital Asset	Stock in Trade	Capital Asset	Stock in Trade
Income to be assessed	Capital Gain	Business Income	Capital Gain	Business Income
Effective TCS provision	Sec 206C(1H)/194Q		Sec 206C(1H)/194Q	
Applicability of TCS	No		Yes	
Reason	Circular No 17 of 2020 and Cir No 13 of 2021		Circular No 17 of 2020 and Cir No 13 of 2021-	



B2B



B2C



Circular **17** dated **29.09.2020** that Sec 206C(1H) is applicable on B2B

Circular No **22/2016** dated **08.06.2016** that Sec 206C(1F) is not applicable on B2B vide Ques No 1

Manufacturer

Authorized Dealer

Consumer

206C(1H)/194Q

Sec 206C(1F)

Manufacturer Transfer 30 Cars @ 12 Lacs each to Authorized Dealer



Dealer Sells each Car @ 15 Lacs



Consumer

Particulars	Manufacturer TCS/TDS	Authorized Dealer TCS
Provision to Apply	206C(1H) up to 30.06.21 and 194Q(5) from 01.07.21	206C(1F)
Sale Consideration (in Rs.)	360 Lacs (30 Cars*12 Lacs)	15 Lacs per car
Exemption	50 Lacs	-
Amount on Which TCS/TDS apply	310 Lacs	15 Lacs per car
Rate of TCS/TDS	0.1%	1%
Amount of TCS/TDS (in Rs.)	31000	15000 per car

Ques No 4 Payment Made in Installments (TCS @1% is to be collected for each installment **even if sale is made subsequently**)

Circular No 17 of 2020 & 13 of 2021

Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC (Central Electricity Regulatory Commission)

Apex Court in case of Andhra Pradesh vs National Thermal Power Corporation (2002) & Commissioner Of Sales Tax, Madhya vs Madhya Pradesh Electricity 1970 AIR 732, 1969 SCR (2) 939, treated electricity as movable property though it is not tangible. Thus it will be treated as good and TCS on consideration received from transmission in electricity

Electricity

Transmission

Directly from Electricity Generation company

Through Power Exchange registered with Regulation 21 of CERC

TCS


TCS


Circular No 17 of 2020

Electricity Transmission	Power Receiver	TCS
PSEB	Individual/ Firm/ HUF/ Company	YES
PSEB	CG/ SG/ Local Authority u/s 10(20)	NO
PSEB	Public Sector Undertaking	YES
PSEB	University or other education institution existing solely for education and not for purpose of profit and which is substantially financed by government Under Sec 10(23C)(iiiab)	NO
PSEB	Authority/ Board/ Trust/ Commission/ whose income exempt u/s 10(46)	NO

For purpose of **Sec 10(20)**: In Explanation, Local Authority Means:

- (i) **Panchayat** as referred to in **clause (d) of article 243 of the Constitution**
- (ii) **Municipality** as referred to in **clause (e) of article 243P of the Constitution**
- (iii) **Municipal Committee and District Board**, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund
- (iv) **Cantonment Board** as defined in **section 3 of the Cantonments Act, 1924 (2 of 1924)**

- Sec 10(46)**: any specified income arising to a body or authority or Board or Trust or Commission (by whatever name called) or a class thereof which-
- (a) has been **established or constituted** by or under a Central, State or Provincial Act, or constituted by the CG or a SG, with the **object of regulating or administering any activity** for the **benefit of the general public**;
 - (b) is **not engaged** in any **commercial activity**
 - (c) is **notified** by the **CG in the Official Gazette**

Issue no. 10

Example

Purchase : Rs.10,00,000

Insurance: Rs. 10,000

Freight : Rs. 20,000

Less Discount in bill : (Rs. 5000)

Total Rs. **10,25000**

After Discount net payment of Rs. 10,10,00/-
Yet TDS to be deducted on Rs. 10,25,000/-

TDS on Rs. 10,25,000/-

Discount given subsequently 15000 not in bill, thus to be ignored

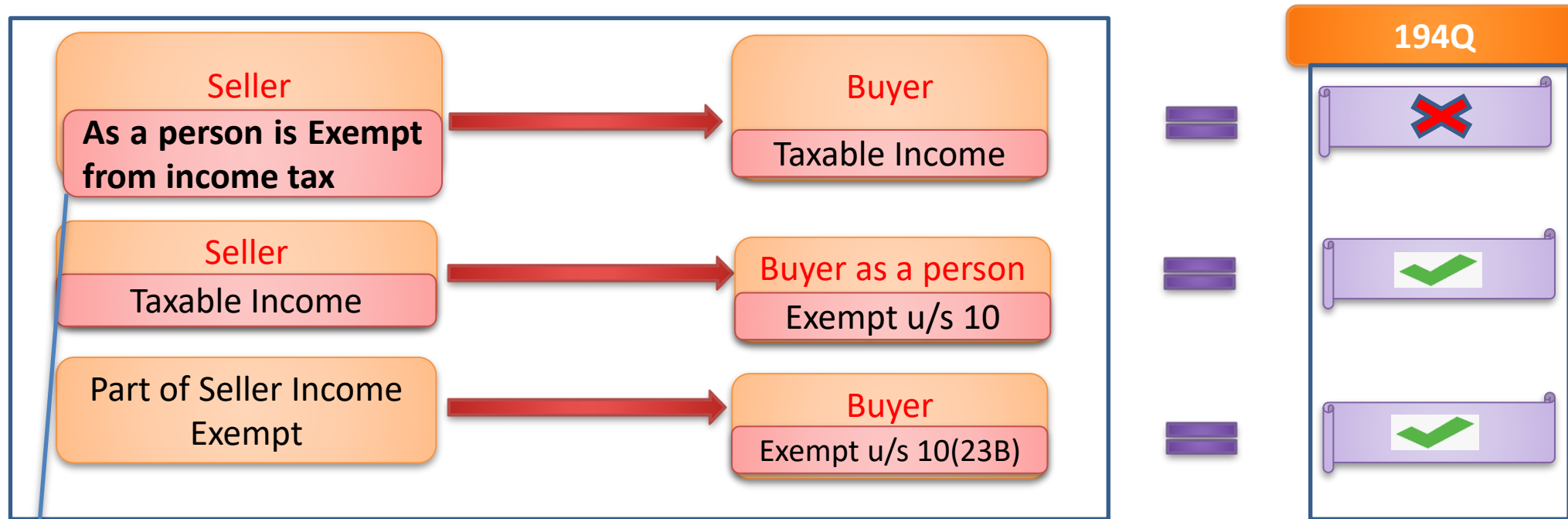
Separate invoice in respect of Freight Bulity then not to be included

Issue no. 11

Consequences of not deducting or not depositing TDS u/s 194Q

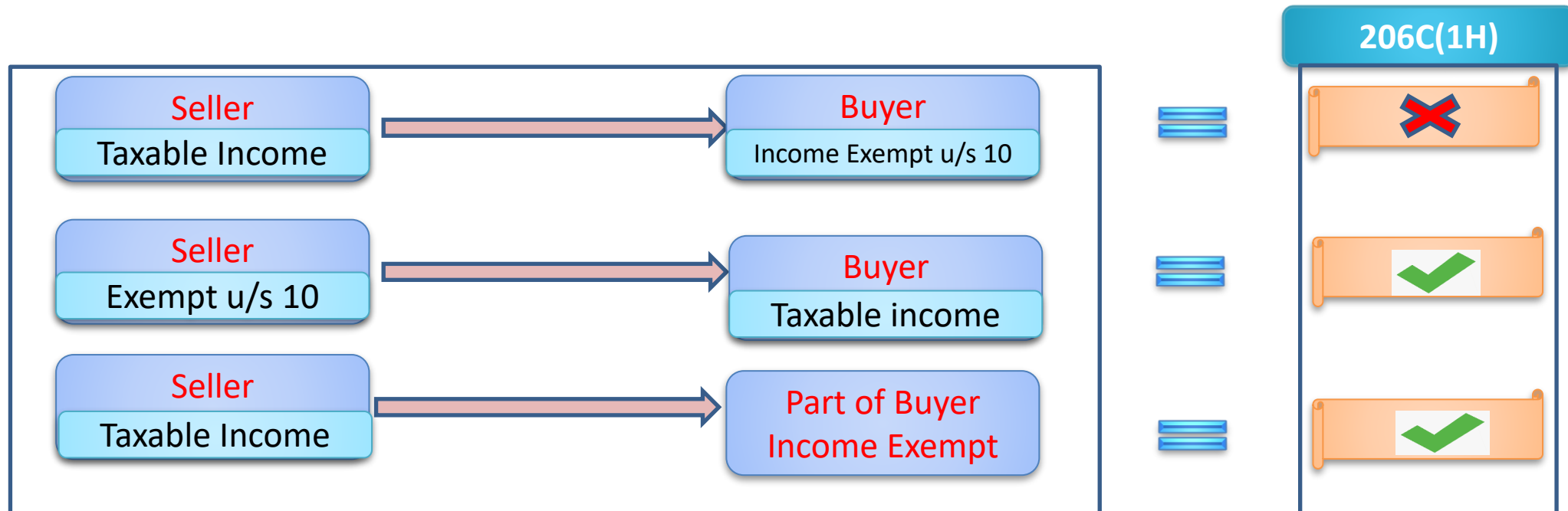
If TDS is not deducted or deducted but not deposited then as per section 40(a)(ia) , 30% of amount on which TDS is deducted and deposited will be added to the income of that person. However on the payment of TDS in subsequent year, 30% of such amount added back in the previous is allowed as deduction in the year the Tax deducted is paid.

Section 194Q shall not apply to purchase of goods from person being a seller **who as a person is exempt** from income tax under Act (like exempt under section 10) or under any other Act passed by parliament (like RBI Act, ADB Act etc.)



Seller Mr A an Agriculturist is selling his crop to Buyer. Now buyer has to verify that such agriculturist is not having any other taxable income. So its advised to deduct TDS.

Under Section 206C(1H) , it is clarified that the provisions of this subsection shall not apply to the sale of goods to person, being a buyer, who as person is exempt from income tax (like person exempt under section 10) or under any other Act passed by Parliament(like RBI Act, ADB Act etc.)



LOWER DEDUCTION ---TDS U/S 194Q / TCS U/S 206C(1H)



Lower Deduction
for TDS U/S 194Q



Not
covered
by Section
197

Lower Deduction for
TCS U/S 206C(1H)



Not
covered
by Section
206C(9)



Higher Deduction for TDS U/S 194Q on Non Furnishing of PAN/Aadhar

Section 206AA Any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates:

- (i) at the rate specified in the relevant provision of this Act; or
- (ii) at the rate or rates in force; or
- (iii) at the rate of twenty per cent.....

Provided further where the tax is required to be deducted under **section 194Q**, the provisions of clause (iii) shall apply as if for the words "20%", the words "5%" had been substituted.

Hence, Higher deduction @5%

Higher Deduction for TCS U/S 206C(1H) on Non Furnishing of PAN/Aadhar

Section 206CC Notwithstanding anything contained in any other provisions of this Act, any person paying any sum or amount, on which tax is collectible at source under Chapter XVII-BB (herein referred to as collectee) shall furnish his Permanent Account to the person responsible for collecting such tax (herein referred to as collector), failing which tax shall be collected at the higher of the following rates, namely:—

- (i) at twice the rate specified in the relevant provision of this Act; or
- (ii) at the rate of five per cent.

Proviso to Section 206C(1H) Provided that if the buyer has not provided the Permanent Account Number or the Aadhar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if **for the words "5%", the words "1%" had been substituted.**

Hence, Higher deduction @1%



Higher Deduction for TDS U/S 194Q on Non Furnishing of PAN/Aadhar

Section 206AA Any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates:

- (i) at the rate specified in the relevant provision of this Act; or
- (ii) at the rate or rates in force; or
- (iii) at the rate of twenty per cent.....

Provided further where the tax is required to be deducted under section 194Q, the provisions of clause (iii) shall apply as if for the words "20%", the words "5%" had been substituted.

Hence, Higher deduction @5%

Higher Deduction for TCS U/S 206C(1H) on Non Furnishing of PAN/Aadhar

Section 206CC Notwithstanding anything contained in any other provisions of this Act, any person paying any sum or amount, on which tax is collectible at source under Chapter XVII-BB (herein referred to as collectee) shall furnish his Permanent Account to the person responsible for collecting such tax (herein referred to as collector), failing which tax shall be collected at the higher of the following rates, namely:—

- (i) at twice the rate specified in the relevant provision of this Act; or
- (ii) at the rate of five per cent.

Proviso to Section 206C(1H) Provided that if the buyer has not provided the Permanent Account Number or the Aadhar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words "5%", the words "1%" had been substituted.

Hence, Higher deduction @1%

Disclosure in return that as to why TDS not deducted

Reason for non deduction /
lower deduction/ Higher
Deduction/ Threshold/
Transporter etc. (See notes 1
to 15)

- 3) Write "C" if deduction is on higher rate under section **206AA on account of non-furnishing of PAN**
- 14) Write "S" if no deduction is in view of the provisions of **sub-section (5) of section 194Q.***
- 15) Write "U" if the deduction is on higher rate in view of section **206AB for non-filing of return of income***

Purchase Entry to be made Date Wise or payment wise

Date of payment or credit (dd/m m/ yyyy)

Provisions of Section 206AB and 206CCA

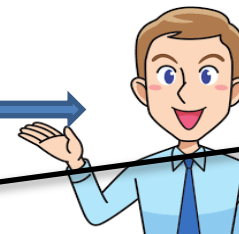
Section 206AB

Special Provision for deduction of Tax at Source for Non-Filers of Income Tax Return applicable **from 1st July 2021**



Person

Where **tax** is required to be deducted at source **under the provisions of Chapter XVIIIB**, on any sum or income or amount paid, or payable or credited, by a **person** to a **specified person**,



Specified Person

Other than
sect 192 (salary) ,
Sec 192A (withdrawal
from EPF),
Sec 194B (lottery
winning)
, Sec 194BB(Horse races
winning)
, Sec 194LBC(Income
from investment in
Securitization trust)
or
Section 194N(Cash
Withdrawals)

The specified person shall not include a **non-resident who does not have a permanent establishment in India.**

A person who has :

- Not filed ITR of last two previous years **and**
- for which time limit of ITR filing has expired as per Section 139 (1) **and**
- His TDS and TCS is Rs. 50000 or more in each of these two previous years

The tax shall be deducted at:

at twice the rate specified in the relevant provision of the Act; or

or

at twice the rate or rates **in force**; or

or

at the rate of five per cent

Sec 197B
Sec 2 (37A)

Whichever is **higher**

Explanation.—For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Section 206CCA

Special Provision for collection of Tax at Source for Non-Filers of Income Tax Return Applicable from **1st July 2021**

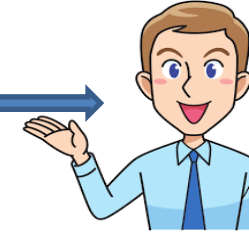


Specified Person

A person who has :

- Not filed ITR of last two previous years **and**
- for which time limit of ITR filing has expired as per Section 139 (1) **and**
- His TDS and TCS is Rs. 50000 or more in each of these two previous years

Where **tax** is required to be collected at source under the provisions of Chapter XVIIIB, on any sum or amount received **by a person** from a **specified person**,



Person

The specified person shall not include a **non-resident who does not have a permanent establishment in India.**

Explanation.—For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

The tax shall be deducted at:

at twice the rate specified in the relevant provision of the Act; or

or

at the rate of five per cent

Whichever is higher

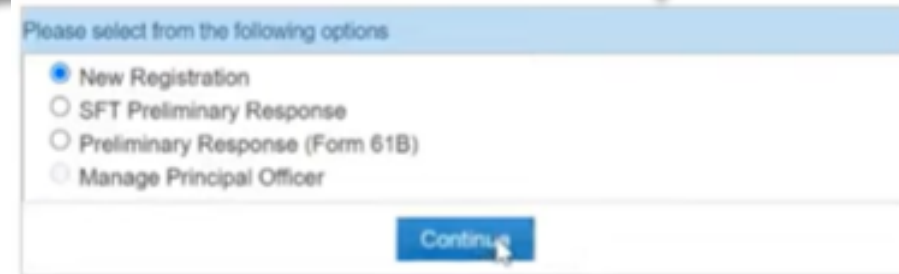
Facility for Sec 206AB and 206CCA on online Portal

Step I

On www.incometax.gov.in Login with TAN

Step II

Go to **Pending Actions** bar and select **Reporting portal** and click **New Registration**



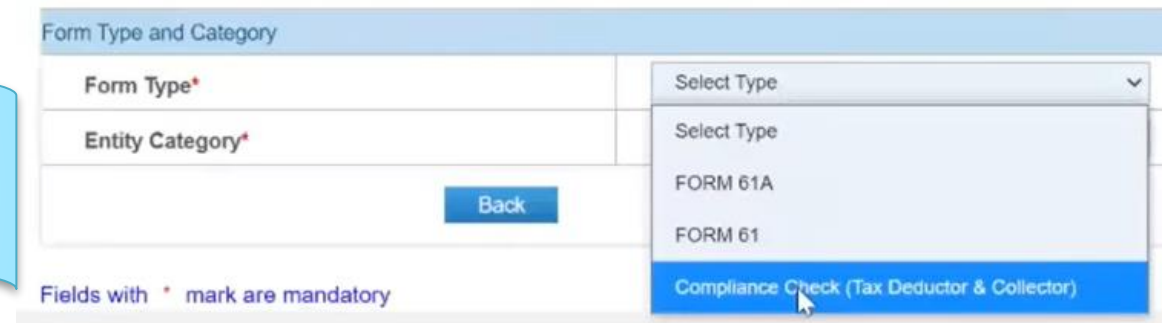
Please select from the following options

- New Registration
- SFT Preliminary Response
- Preliminary Response (Form 61B)
- Manage Principal Officer

Continue

Step III

Next in **Form Type** select **Compliance check (Tax deductor & Collector)**



Form Type and Category

Form Type*	Select Type
Entity Category*	Select Type
	FORM 61A
	FORM 61
	Compliance Check (Tax Deductor & Collector)

Back

Fields with * mark are mandatory

Step IV

Next up fill all the mandatory Fields for **Entity Details**

Enter Entity Details	
Entity Name*	Enter Entity Name
Entity PAN*	Enter PAN
Flat/Door/Building*	Enter Flat/Door/Building
Road/Street	Enter Road/Street
Area/Locality*	Enter Area/Locality
Town/City/District*	Enter Town/City/District
Pin Code*	Enter Pin Code
State*	Select State
Country*	Select Country

Back Add Principal Officer

Step V

Now you have to fill details of **Principal officer** and submit

Principal Officer Details - Compliance Check (Tax Deductor & Collector) (Who is Principal Officer?)	
Authorized Person Type	Principal Officer
PAN*	Enter PAN
Person First Name*	Enter First Name
Middle Name	Enter Middle Name
Last Name*	Enter Last Name
Designation*	Enter Designation
Access Type*	Operational
Date Of Birth(DD-MM-YYYY)	Enter Date Of Birth
Mobile Number*	+91 Enter Mobile No

Step VI

- You can download acknowledgement from the **pop up** that will appear after submitting.
 - You will receive an email with **Login Credentials** and **link to login (user id & password)**
- Now Login by clicking on the link using the credentials received on your mail id**

Your details have been successfully submitted, Please find registration Request Number : REG0000080993.
An email has been sent to registered email id.

Download Acknowledgement PDF

Continue to Login

Step VII

After logging in , select **Compliance check (Tax deductor & Collector)** and select **your ITDREIN** and proceed

Step VIII

Next click on Compliance Check for Section 206AB and 206CCA on top left corner

Step IX

- Search by entering PAN and
- Portal will display **whether Person with PAN is a Specified Person or NOT**

Search Result of PAN : [redacted] on 21-06-2021 (Financial Year 2021-22)

Name	PAN Allotment Date	PAN-Aadhaar Link Status	Specified Person u/s 206AB & 206CCA
[redacted]	19-02-2013	Linked	No

Thank You