

▶ INSURER CAN ALSO APPLY RECEIPT OF INTEREST AND OTHER SUMS WITHOUT DEDUCTION OF TAX 1

▶ CLARIFICATION ON SEC 195-O AND 206 (1H) BY CBDT 2

▶ FACELESS APPEAL SCHEME 3

Nucleus roundup

Starting October 1, 2020, the biggest change of the year in income tax law is taking effect. To widened the scope of Tax Collection at Source, TCS has now made applicable on sale of general goods with a threshold of 50 Lacs per customer.

Insurer can also apply receipt of interest and other sums without deduction of tax

Till now, only a foreign banking company was eligible to make an application for receiving interest and other income except dividend income without deduction of tax through Form 15C to the Assessing Officer. **This benefit has now been extended to a non-resident insurance company.**

Under section 195(3), any person entitled to receive any interest or other sum on which income-tax has to be deducted under section 195(1) may make an application in the prescribed form (Form 15C) to the Assessing Officer for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under section 195(1).

Further, section 195(4) prescribes that a certificate granted under section 195(3) shall remain in force till the expiry of the period specified therein or, if it is cancelled by the Assessing Officer before the expiry of such period, till such cancellation.

Rule 29B deals with making an application for a certificate authorising receipt of interest and other sums without deduction of tax under section 195(1).

Notification No. 75 of 2020 has substituted the words 'banking company' with the "banking company or an insurer" in the said Rule 29B.



Vide this notification, Form 15C for Application by a banking company or insurer for a certificate under section 195(3) of the Income - tax Act, 1961, for receipt of interest and other sums without deduction of tax shall be substituted with revised format.

CLARIFICATION ON SEC 195-O AND 206 (1H) BY CBDT

Circular 17/2020—CBDT has issued guidelines under section 194-O (TDS on e-commerce operators) and section 206C(1H) (TCS on sale of goods)

1. Applicability on transactions carried out through various exchange

Considering that sometimes in these transactions there is no one to one contract between the buyers and sellers, it has been clarified that the provisions of Section 194-O and Section 206C (1H) of the Act shall not apply in relation to:

- Transactions in securities and commodities which are traded through recognised stock exchanges or cleared and settled by recognised clearing corporations, including those located in IFSCs
- Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC.

2. Applicability on Payment Gateway

In view of the fact that in e-commerce transactions, payments are usually enabled by payment gateways, a concern was raised that operation of Section 194-O may be witnessed twice - First, on the main e-commerce operator and again, on the payment gateway (which also qualify as e-commerce operators for facilitating service).

To address this difficulty, it has now been stipulated that payment gateways will not be required to deduct tax at source on a transaction, if tax has been deducted by the e-commerce operator under this section on the same transaction. Meaning thereby, that if 'X' has deducted tax at source on one lakh rupees under 194-O, 'A' would not be required to deduct tax under the same section on the same transaction. To facilitate proper implementation, 'A' may take undertaking from 'X' regarding deduction.

3. Applicability on Insurance Agent and Insurance Aggregator

Owing to the fact that in many cases, insurance aggregators/ agents do not have any involvement in transactions between insurance company and buyers in renewals for subsequent years, it was represented before the government that the liability to deduct tax at source may fall on agents/ aggregators in the subsequent year renewals, even if the renewal transactions have been completed directly with insurance companies.

It has now been elucidated that in any year subsequent to the first year, if the insurance agent/ aggregator has no involvement in transactions between the insurance company and the buyer of

insurance policy, such agent/aggregator shall not be required to deduct tax under section 194-O. *However, it has been clarified that TDS would be required to be deducted on any commission paid to such agent/aggregator.*

4. Calculation of Threshold for FY 2020-21

Considering the ambiguity revolving around the computation of threshold and the requirement of deduction of tax in respect of amounts received before October 1, 2020, it has been explained that:

- Threshold of INR 5 lakh triggering TDS under Sections 194-O (in case of Individual/ HUF e-commerce participant who has furnished PAN/Aadhar) respectively shall be computed from April 1, 2020.
- Hence, if gross amount of sale/ services or both facilitated during FY 2020-21 (including period up September 30, 2020) in relation to such individual/ HUF exceeds INR 5 Lakh, the provision of section 194-O shall apply on sum credited or paid on or after October 1, 2020.
- Further, since Sec. 206C (1H) applies on receipt basis; the provision shall not apply to any sale consideration received before October 1, 2020. Consequently, it would apply on all sale consideration (including advance received on sale) received on or after October 1, 2020 even if the sale was carried out before October 1, 2020.
- Threshold of INR 50 Lakh triggering TCS under Section 206C (1H) shall be computed from April 1, 2020. Therefore, if a person being seller has already received INR 50 Lakh or more up to September 30, 2020 from a buyer, TCS shall apply on all receipts of sale consideration during previous year on or after October 1, 2020, from such buyer.
- It has also been explained that the receipt from 1st April 2020 shall be taken into account only for the purpose of calculation of the threshold of INR 50 Lakhs. Therefore, in the above example, the seller has to collect tax on receipt of INR 5 lakh after 1st October, 2020 because the receipts from 1st April, 2020 (INR 1.05) crore exceeded the specified threshold of INR 50 lakhs.

FACELESS APPEAL SCHEME

- Further, the seller in most cases maintains running account of the buyer in which payments are generally not linked to a particular sale invoice. Therefore, in order to simplify and ease the compliance of the collector, it may be noted that TCS provisions shall be applicable on the amount of all sale consideration received on or after 1st October, 2020 without making any adjustment for the amount received in respect of sales made before 1st October, 2020.
- TCS shall be applicable only on receipt exceeding INR 50 lakh by a seller from a particular buyer. Therefore, on payment of INR 1 crore made by a buyer to a particular seller only INR 5,000 (INR 3,750 this year) i.e. [0.1% of (INR 1 crore - INR 50 lakh)] shall be collected. Further, any excess of TCS over tax liability shall be refunded with interest.

5. Applicability to sale of Motor Vehicles

The provisions of 206C (1F) of the Act applies to sale of motor vehicles of value exceeding INR 10 Lakhs. Section 206C (1H) excludes goods covered under sub-section (1F) from its ambit.

Due to lack of clarity as to whether all motor vehicles are excluded from the applicability of 206C(1H), it has been elucidated that both the sub-sections are different in scope.

While sub-section (1F) is based on single sale of motor vehicles, sub-section (1H) is for receipt above INR 50 Lakhs against aggregate sale of goods during the previous year. Further, while sub-section (1F) is for sale to consumers only and not to dealers, (1H) is for all sale above the threshold.

Therefore:

- TCS under section 206C (1H) shall apply to sale of motor vehicle, only if such sale is not subject to TCS under section 206C (1F)
- In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of value less than or equal to INR 10 lakhs would be subject to TCS under 206C (1H) only if aggregate receipts of seller from the buyer of such vehicles exceeds INR 50 Lakhs during the financial year

In case of sale to consumer, where the value of motor vehicle is more than INR 10 lakh, TCS under 206C (1H) would not apply, since such sales are subjected to TCS under section 206C (1F).

6. Adjustment of Sale Return/ Discount or Indirect Taxes

The circular provides that no adjustment on account of sale return, discount, indirect taxes including GST is required to be made for TCS under 206C(1H) since collection is made with reference to receipt of amount of sale consideration.

7. Fuel supplied to non-resident airlines

It has been clarified that provisions of Section 206C (1H) shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.

The Central Board of Direct Taxes (CBDT) vide a Notification dated 25th September 2020, has notified the much-awaited Faceless Appeals Scheme, which becomes effective immediately. The Scheme prescribes a detailed procedure for the conduct of Faceless Appeals. The National Faceless Appeal Centre (NFAC) shall facilitate e-proceedings in a centralized manner assigning the appeals to an Appeal Unit (AU) in any Regional Faceless Appeal Centre (RFAC) selected randomly through an automated process. So that any communication between the appellant and the AU shall be through NFAC.

- ❑ The above Scheme has been announced in view of the powers vested to the Government under section 250(6B) of the Income-tax Act, 1961 (Income Tax Act) recently inserted by the Finance Act, 2020. The Scheme will transform the appellate process before CIT(A) completely.
- ❑ The above reform is also part of the Government's attempt to honour 'honest' taxpayers of the country and to make the tax system 'seamless, faceless and painless' and is also in furtherance to the Hon'ble Prime Minister's initiative of the 'Transparent Taxation' Platform launched on 13 August 2020 comprising of faceless assessments, faceless appeals and taxpayers' charter.
- ❑ The Scheme provides detailed directions with respect to admissibility of additional evidences and grounds of appeal. The scheme enables multiple layers of review before passing of the final order, which shall ensure qualitative, unbiased judgments.

SCOPE

It applies to all appeals filed before CIT(A). The Central Board of Direct Taxes (CBDT) vide its press release dated 25 September 2020 has, however, specified that appeals relating to serious frauds, major tax evasion, sensitive and search matters, international tax and Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 matters will not be covered currently under the Scheme.



Units and their role in Faceless Appeal Scheme

National Faceless Appeal Centre

- ✓ To facilitate the conduct of e-appeal proceedings in a centralised manner.
- ✓ To act as a single point of contact for all communications between (i) the taxpayer and the Appeal Units, or (ii) Appeal Units and the National e-Assessment Centre (NeAC)/ tax officer.

Regional Faceless Appeal Centre

- ✓ To facilitate the conduct of e-appeal proceedings.

The NFAC shall assign the appeal to a specific AU in any one RFAC through an automated allocation system.

Appeal Unit

To perform the function of disposal of appeal which includes:

- ✓ admission of additional grounds of appeal,
- ✓ making further inquiries,
- ✓ directing the NeAC or the tax officer for making further inquiry,
- ✓ seeking information or clarification on admitted grounds of appeal,
- ✓ providing opportunity of being heard to the taxpayer,
- ✓ analysis of the material furnished by the taxpayer,
- ✓ review of draft order



Faceless Scrutiny and appeals have been a desired change if the decade. Aiming to reduce harassment and corruption, it could be the biggest change easing out business, if implemented properly.