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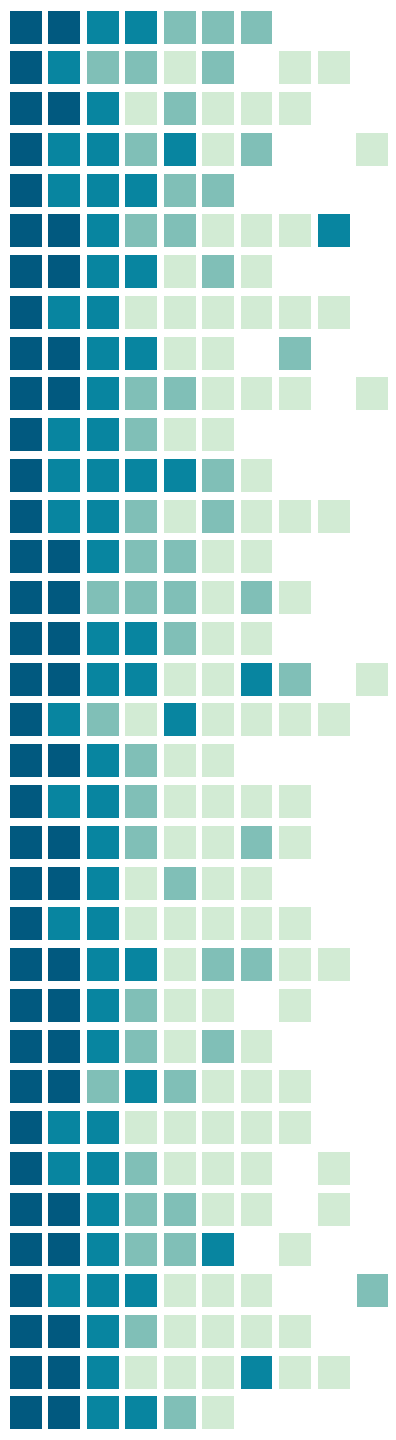
DECODING SECTION 194Q: IMPACT ON PROSPECTIVE PURCHASE AND SALE TRANSACTIONS

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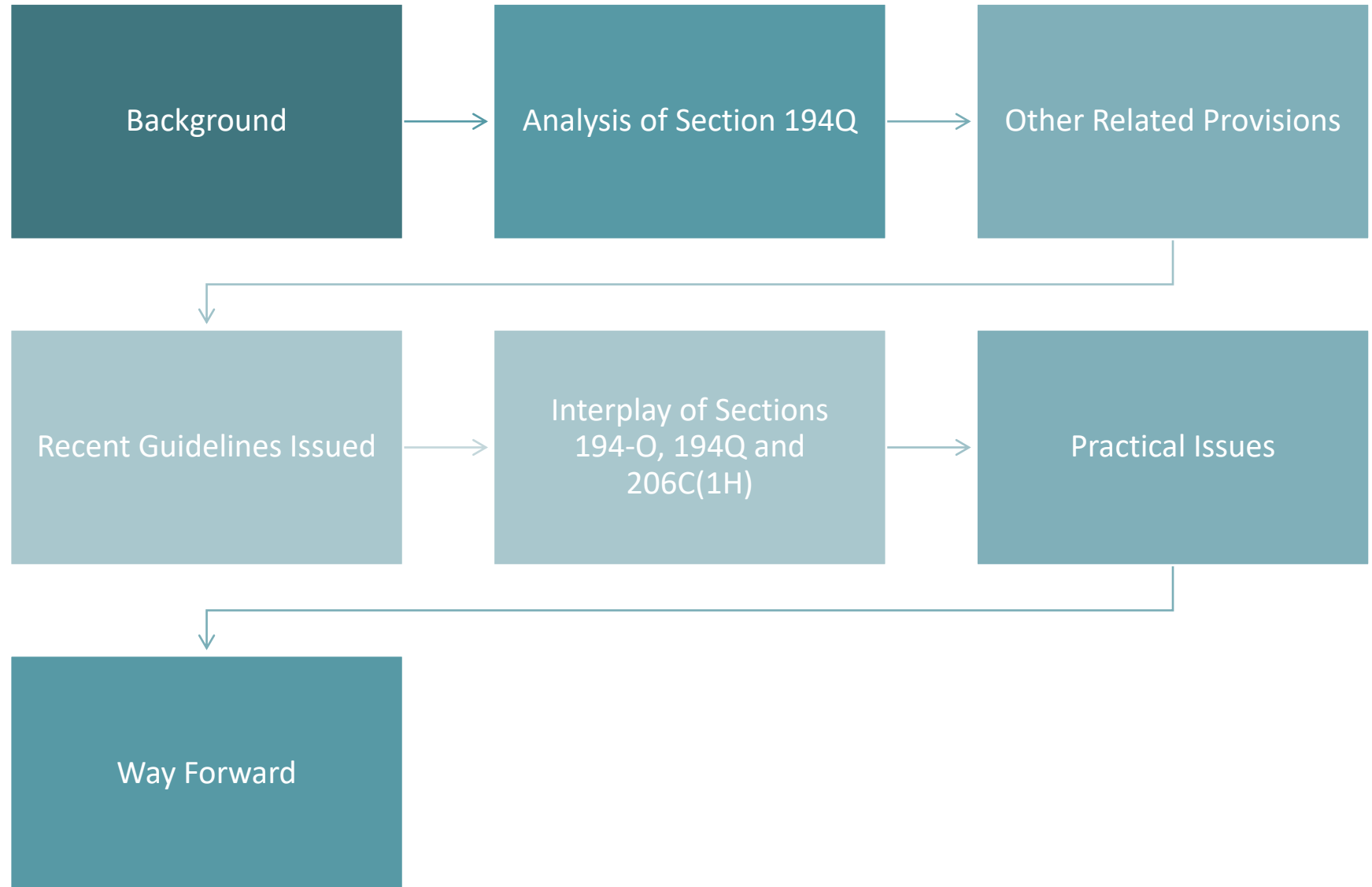


Harsha D

LEGENDS USED

ADB	Asian Development Bank
CBDT	Central Board of Direct Taxes
CGST	Central Goods and Services Tax
FY	Financial Year
GST	Goods and Services Tax
IGST	Integrated Goods and Services Tax
ITA	Income Tax Act, 1961
PE	Permanent Establishment
RBI	Reserve Bank of India
RSE	Recognised Stock Exchange
TDS	Tax Deducted at Source
u/s	Under Section
w.e.f	With effect from

PRESENTATION SCHEMA



BACKGROUND

The **Finance Act 2020** amended **section 206C** to provide that a specified **seller of goods is liable to collect TCS at the rate of 0.1%** on consideration received from a buyer in a previous year in excess of ₹ 50 lakhs.

Such tax was collectible at the time of **receipt of consideration**.

Given that:

Collection of tax was being delayed till the point of receipt of consideration, and

The fact that **tax was collected from the buyer of goods (for whom such purchase is an expense)**, a new section was inserted vide Finance Act 2021.

Section 194Q was introduced w.e.f 1st July 2021, requiring a specified buyer of goods to deduct tax at source at the rate of 0.1% on purchases made from a resident in excess of ₹ 50 lakhs.

Where tax is deductible on the amount payable to a seller, such amount is available as a tax credit in the hands of seller.



ANALYSIS OF THE SECTION

EXTRACT OF SECTION 194Q OF THE ITA

Extract of the Act- Sec 194Q

(1) 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.**

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

(***)

(5) The provisions of this section shall not apply to a transaction on which—

(a) tax is deductible under any of the provisions of this Act; and

(b) tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section 206C applies.

ANALYSIS OF THE SECTION

Who is responsible for the deduction?

A buyer:

- Who purchases goods of value > ₹ 50 lakhs in a FY from a single seller, **and**
- Whose total sales, gross receipts or **turnover from the business** carried on > ₹ 10 crores during the FY immediately preceding the FY in which the goods are purchased (**non-business receipts shall not be included**)

Who is the deductee?

- **Resident** seller, selling goods of value > ₹ 50 lakhs to the specified buyer, as identified above

At what rate and on what amount is tax to be deducted?

- TDS is to be deducted @ 0.1% on **such sum paid, exceeding ₹ 50 lakhs**, i.e., if goods worth ₹60,00,000 are bought, TDS is to be deducted @ 0.1% on ₹ 10,00,000 (₹60,00,000- ₹50,00,000)

When should tax be deducted?

- Tax to be deducted at the time of **credit** of such sum to the account of the seller in the books of accounts, or at the time of **payment**, whichever is **earlier**.

When is TDS not required to be deducted?

In case a **specified buyer is exempt** vide a notification issued by the Central Government (circular exempting specified persons discussed later)

In case **TDS is deductible under any other section** (For e.g., supply of goods via an e-commerce platform where tax is deductible u/s 194-O)

In case **tax is collectible at source u/s 206C**. However, where tax is to be collected u/s 206C(1H), Sec 194Q will take priority and tax shall be deductible u/s 194Q.

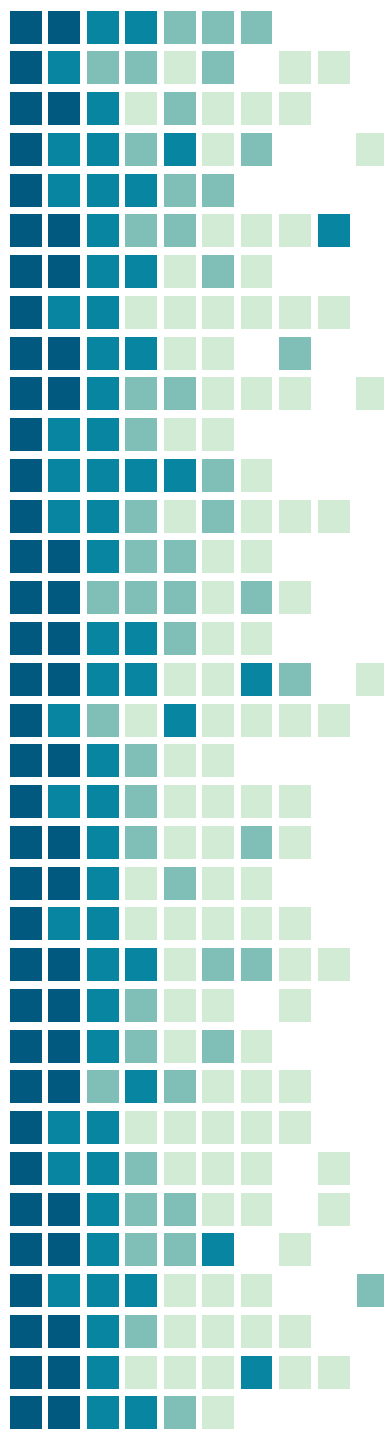
When **buyer is in his first year of incorporation**

Sec 194Q will be applicable even if payment is made in cash.



OTHER RELATED PROMSIONS

CONSEQUENCES OF FAILURE TO DEDUCT TAX



Upon failure to comply with the provisions of this section, the buyer will be deemed to be an **assessee-in-default** and shall be liable to **penal consequences (1% per month for delay in deduction / 1.5% for delay in remittance – penalty only if no deduction without genuine reasons)**

In case of failure to deduct tax as per Sec 194Q, the assessee shall be **disallowed 30% of the sum** so allowable as a deduction, as purchase/expenses.

Consequent to the introduction of this provision, Sec 206AA(1) was amended to provide that where the tax is required to be deducted u/s 194Q and **PAN is not provided, the TDS shall be at the rate of 5%.**

REGULATORY COMPLIANCE

When should TDS be remitted to the Government?

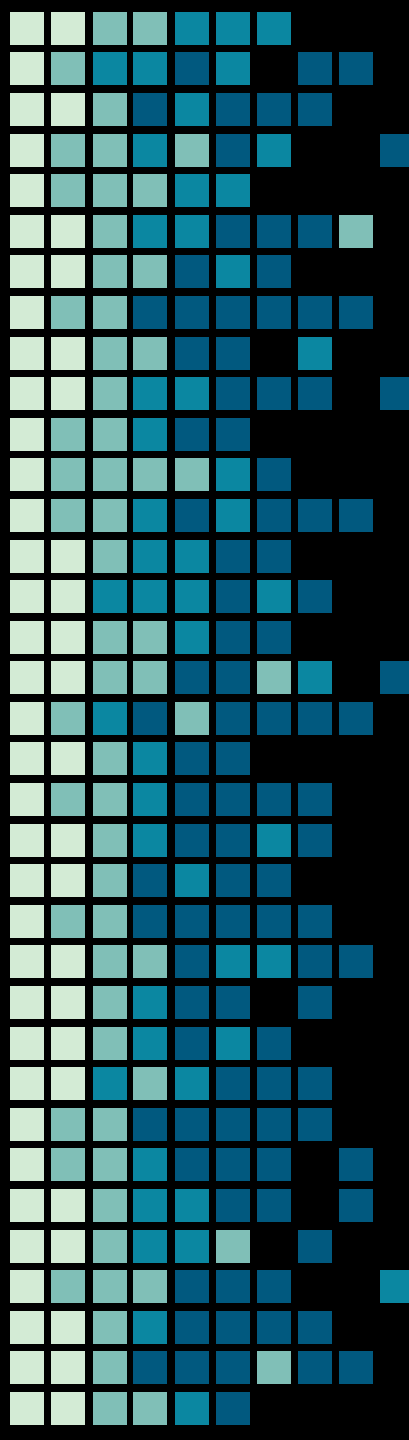
- Tax, so deducted shall be deposited with the Government by the **7th of the following month.**

When should TDS Returns be filed?

Quarterly returns in Form 26Q to be filed as follows:

- For Q1-31st July
- For Q2-21st October
- For Q3- 31st January
- For Q4- 31st May

Certificate of deduction to be furnished by the buyer in **Form 16A**



RECENT GUIDELINES ISSUED U/S 194Q
OF THE ITA
(Circular No. 13 of 2021)

GUIDELINES

- Clarifications were issued by CBDT vide Circular No. 13 of 2021, to remove difficulties in implementation of the section.

Exempted Transactions



Transactions in securities and commodities which are traded through RSE or cleared and settled by the recognized clearing corporation including RSE or recognized clearing corporation located in IFSC.



Transactions in electricity, renewable energy certificates and energy saving certificates traded through registered power exchanges.

This relaxation has been provided as usually in these transaction, there is **no one to one contract** between the buyers and sellers.

CALCULATION OF THRESHOLD

- Calculation of threshold of ₹ 50,00,000 becomes an issue because the section becomes effective from 1st July 2021.
- TDS is to be deducted on **such sum, exceeding ₹ 50 lakhs and which is entered into on or after 01.07.2021.**
- Let us understand how threshold is to be calculated, with examples (assumed turnover in preceding FY > ₹ 10 crores)

02.04.2021 (₹)	16.06.2021 (₹)	04.07.2021 (₹)	19.08.2021 (₹)	Calculation of TDS
25,00,000	10,00,000	6,00,000	-	No TDS u/s 194Q (Transaction value < ₹50 lakhs)
5,00,000	35,00,000	5,00,000	7,00,000	2,00,000 * 0.1% = ₹ 200 to be deducted on 19.08.2021
10,00,000	43,00,000	5,00,000	-	5,00,000 * 0.1% = ₹ 500 to be deducted on 04.07.2021 (Transaction value > ₹ 50L but ₹3,00,000 (part of ₹43,00,000) entered before 01.07.2021, hence no TDS on such sum)
7,00,000	13,00,000	35,00,000	4,00,000	5,00,000 * 0.1% = ₹ 500 to be deducted on 04.07.2021 4,00,000 * 0.1% = ₹ 400 to be deducted on 19.08.2021
10,00,000	20,00,000	20,00,000	10,00,000	10,00,000 * 0.1% = ₹ 1000 to be deducted on 19.08.2021

ADJUSTMENT FOR GST

When tax is deducted at the time of credit of amount in the account of seller

- If the **component of GST** comprised in the amount payable to the seller is **indicated separately**, tax shall be deducted u/s 194Q of the Act on the amount credited **without including such GST**

When tax is deducted on payment basis

- Tax to be deducted on the whole amount

Example

Particulars of Invoice	₹
Taxable Value	5,00,000
Add: IGST @ 18%	90,000
Invoice Total	5,90,000

Tax to be deducted on ₹ 5,00,000 @ 0.1%, i.e.,
TDS= ₹ 500

ADJUSTMENT FOR PURCHASE RETURNS

Before purchase return happens, tax must have already been deducted u/s 194Q.

If **money is refunded** against the purchase return, then the tax already deducted shall be **adjusted against next purchase from the same seller**.

However, **no adjustment is required if the purchase return is replaced by goods by the seller**. This is because the purchase on which tax was deducted u/s 194Q has been completed with goods replaced.

Whether non-resident buyers are required to deduct tax at source u/s 194Q?

A non-resident, whose purchase of goods from a resident seller **is not effectively connected** with the **permanent establishment** of such non-resident in India, **shall not be liable to deduct tax** u/s 194Q. This is to relieve non-residents acting in an individual capacity, of additional compliance burden.

Whether tax is to be deducted when the seller is a person whose income is exempt?

The provisions of Sec 194Q **shall not apply to a seller, whose income is exempt under the ITA** (like person exempt u/s 10) **or under any other Act** passed by the Parliament (Like RBI Act, ADB Act, etc)

However, if **only part of the income of the seller is exempt**, Sec 194Q **will apply**

Whether tax is to be deducted on advance payment?

Since the provisions apply on **payment or credit whichever is earlier**, the TDS u/s 194Q **shall be deducted** on advance payment made by the buyer to the seller, on the entire amount paid.



INTERPLAY OF SECTION 194Q, 1940 AND 206C(1H)

INTERPLAY OF SECTIONS 194Q, 194O AND 206C(1H)

Sec 194-O(1) provides for **deduction of tax at source by an e-commerce operator** on sale of goods or provision of services by an e-commerce participant, facilitated by such e-commerce operator. **The section starts with a non-obstante clause.**

Further, Sec 194-O(3) provides that a transaction in respect of which tax has been deducted by the e-commerce operator shall **not be liable to tax deduction at source under any other provision** of chapter XVII of the ITA.

Sec 206(1H) provides for the collection of tax (TCS) by the seller on the sale of goods, the aggregate of which exceeds ₹ 50 lakhs.

Further, the second proviso to Sec 206C(1H) provides that the provisions of **Sec 206C(1H) shall not apply, if the buyer is liable to deduct tax at source under any other provisions of the ITA** on the goods purchased by him from the seller and has deducted such tax.

Sec 194Q provides that its provisions shall not apply, if tax is liable to be deducted under any other provisions of the ITA.

A conjoint reading of the provisions would bring us to this conclusion.

Applicable Section	Applicable Section	Prevailing Section
194-O	194Q	194-O (being an overriding provision)
194-O	206C (1H)	194-O*
194Q	206C (1H)	194Q**

It is clarified that here **primary responsibility is on e-commerce operator to deduct the tax u/s 194-O of the Act and that responsibility cannot be condoned if the seller has collected the tax u/s 206C (1H) of the Act. This is for the reason that the **rate of TDS u/s 194-0 is higher than rate of TCS u/s 206C (1H)** of the Act.*

The e-commerce operator will still be liable to deduct tax u/s 194-O.

*** However, if for any reason, **tax has been collected** by the seller u/s 206C (1H) , **before the buyer could deduct tax u/s 194-Q** on the same transaction, **such transaction would not be subject to tax deduction again by the buyer**. This is because **tax rate of deduction and collection are same** in section 194Q and 206C(1H) of the Act.*

PRACTICAL ISSUES

PRACTICAL ISSUES

Whether TDS is liable to be deducted on purchase for non-business purposes?

- There is **no condition that the purchases should be connected with business only.**
- Thus, if a person is falling within the definition of the specified buyer, **tax is required to be deducted** even if such purchase is not connected with the business carried on by him.

Whether tax to be deducted on the purchase of goods by one branch from another?

- The **existence of two distinct parties as 'seller' and 'buyer' is a pre-requisite to construe a transaction as a purchase.**
- This condition is not fulfilled in the context of branch transfer. Therefore, the provisions of this section shall not apply in the case of branch transfers.

Whether the turnover of ₹10 crores will include GST?

- **Where GST is mentioned separately** in the invoice, it is believed that the turnover of ₹ 10 crores shall be **calculated without including GST** in the sale value. However if sales tax is included in the sale price, then such amount is to be considered for calculating the threshold of ₹ 10 crores.

What constitutes “goods”?

- Goods have not been defined in the ITA.
- However, as defined in the Sale of Goods Act and CGST Act, **goods includes any movable property excluding money or actionable claims or securities or things attached to or forming part of the land, agreed to be severed before supply.**

Whether tax is deductible on entire advance amount, even if the GST component can be ascertained?

- Given that the circular assumes it is not possible to ascertain GST component in case of advance payments, it is **advised to deduct tax on the entire amount.** Any excess can be adjusted in the future against the full invoice value.

Whether tax is deductible on purchase of software?

- The Honourable Supreme Court held in the case of **Tata Consultancy Services vs State Of Andhra Pradesh [2004] 141 taxmann 132 (SC)** that **canned software**, one which is not specifically created/customized for any particular consumer, can be regarded as **goods**.
- Relying on the judgement supra, **TDS may be deductible u/s 194Q** in case of canned/readymade software.
- However, **liability u/s 194-O may be considered before analysing the applicability of Sec 194Q in terms of download of software**

Whether tax is deductible on purchase of intangible assets?

- **No distinction is made between intangible and tangible goods.** Intangibles such as patents, being **easily transferable** are likely to fall within the ambit of goods, as contemplated by this section.

WAY FORWARD

WAY FORWARD

The provision shall **ease the cumbersome processes on the part of the seller** and transpose the levy to a “deduction” based mechanism wherein, the compliance burden would be on the buyer, and he would be certain about the point of invoking the deduction.

Although the circular removes major concerns regarding the implementation of the section, **more clarity is required in terms of what constitutes “goods”**.

Clarification in respect of amount on which tax is deductible on advance payments where it is possible to ascertain GST component is sought from the department.

There is not much clarity on what constitutes “purchases effectively connected with PE in India” – whether the purchase has to be for the purpose of use by the Indian PE or would activities like facilitation of purchase itself be included within its ambit?

Addressing these concerns would help the government in the wider adoption of the newly inserted section



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