



## **Major Amendments in Income Tax Act through Finance Act, 2021**

# Editorial Note

It is with great pleasure and honor that DMC Global has issued its newsletter, major amendments in Income Tax Act through Finance Act, 2021. During the development of our newsletter, the team endeavored to provide all the relevant information required to keep oneself up to date with the changing scenario of the Indian economy. The focus has been made to serve the latest information gathered, interpreted & analyzed from the reliable sources some of which includes the official websites of Government Authorities. The matters focused upon in this newsletter include analysis on various sections that have been inserted in Finance Act, 2021.



Providing our readers crisp and concise content is the first & foremost priority of this newsletter established by DMC Global and its team. By this newsletter we look forward to provide you with apt information and requirements of readers.



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# Major Amendments in Income Tax Act through Finance Act, 2021

## Section 194Q of Income Tax Act, 1961

In the Budget 2021, a new section 194Q of the Income-Tax Act has been inserted which shall be effected from 1<sup>st</sup> day of July 2021 and reads as under-

**194Q. Deduction of tax at source on payment of certain sum for purchase of goods.**

(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.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income, such credit of income shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(4) Every guideline issued by the Board under sub-section (3) shall, as soon as may be after it is issued, be laid before

each House of Parliament, and shall be binding on the income-tax authorities and the person liable to deduct tax.

(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 this section-**

- **Date of applicability of the provisions of Section 194Q**  
The provisions of Section 194Q are made applicable with effect from 1<sup>st</sup> day of July, 2021.
- **Time Limit for deduction of TDS under section 194Q**  
Tax to be deducted at the earliest of the following dates:
  - (i) time of credit of such sum to the account of the seller, or
  - (ii) time of payment
- **Rate of TDS under section 194Q**
  - (i) Buyer of all goods will be liable to deduct tax at source
    - @ 0.1% of sale consideration
    - exceeding INR 50 Lakhs in a Financial Year
  - (ii) Tax to be deducted @ 5%
    - if the seller does not provide PAN/Aadhar (as per Memorandum explaining the provisions in the Finance Bill, 2021).

• How to ensure compliance of section 194Q:

In any business, purchase is an ongoing process and it is difficult to keep tab to identify as and when purchase from any vendor is exceeded Rs.50 lakhs especially in a big organization. Hence, atomization is the only solution for compliance of section 194Q.

Hence, following steps are required to atomization:

- (i) On the basis of previous year, identify the vendors from whom purchases for more than Rs.50 lakhs have been made in previous year and arrange alteration in the master of these vendor with activation of TDS deduction option in your accounting software.
- (ii) Arrange changes in your accounting software so that software can automatically identify and deduct TDS or provide you alert to deduct TDS as and when purchase of any vendor exceed from Rs.50 lakhs during the current accounting year.

• Conditions for applicability of section 194Q

- (i) TDS obligation will arise
  - if the payment is made to a resident seller
  - (ii) No requirement of TDS u/s 194Q on a transaction:

- if TDS is deductible under any other provision, or
- TCS is collectible under section 206C [excluding 206C(1H)]

(iii) On a given transaction

- either TDS u/s 194Q will apply, or
- TCS u/s 206C(1H) will apply

Both TDS u/s 194Q and TCS u/s 206C (1H) will not apply on the same transaction

(iv) In case of potential overlap between the two provisions-

- TDS u/s 194Q will apply, and
- TCS u/s 206C(1H) will not apply

• Comparison of Sec 194Q and 206C(1H) of Income Tax Act, 1961

Section 194Q is similar to Section 206C (1H) which is applicable for collection of tax at source. Both these provisions are distinguished in the below table:

Particulars	194Q	206C(1H)
<b>Purpose</b>	Tax to be DEDUCTED	Tax to be COLLECTED
<b>Applicable to</b>	Buyer/Purchaser	Seller
<b>With effect from</b>	01/07/2021	01/10/2020
<b>When deducted or collected</b>	Payment or credit, whichever is earlier	At the time of receipt
<b>Advances</b>	TDS shall be deducted on advance payments made	TCS shall be collected on advance receipts
<b>Rate of TDS/TCS</b>	0.1%	0.1% (0.075% for FY 2020-21)
<b>PAN not available</b>	5%	1%



<b>Triggering point</b>	Turnover/Gross Receipts/Sales from the business of BUYER should exceed Rs.10cr during previous year (Excluding GST)- Purchase of goods of aggregate value exceeding Rs.50Lakhs in P.Y. (The value of goods includes GST)	Turnover/Gross Receipts/Sales from the business of SELLER should exceed Rs.10cr during previous year (Excluding GST)- Sale consideration received exceeds Rs.50Lakhs in P.Y. (The value of goods includes GST)
<b>Exclusions</b>	Yet to be notified by government	If Buyer is- <ul style="list-style-type: none"> <li>• Importer of goods</li> <li>• Central/State Government, Local Authority</li> <li>• An embassy, High Commission, legation, commission, consulate and trade representation of a foreign state.</li> </ul>
<b>When to deposit/collect</b>	Tax so deducted shall be deposited with government by 7th day of subsequent month	Tax so collected shall be deposited with government by 7th day of subsequent month
<b>Quarterly statement to be filed</b>	26Q	27EQ
<b>Certificate to be issued to seller/buyer</b>	FORM 16A	FORM 27D

## **Section 206AB & 206CCA of Income Tax Act, 1961**

In the Budget 2021, new sections 206AB & 206CCA of the Income-Tax Act has been proposed which shall be effected from 1<sup>st</sup> day of July 2021 and reads as under-

**206AB.** *Special provision for deduction of tax at source for non-filers of income-tax return.*

(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source under the provisions of Chapter XVIIIB, other than section 192, 192A, 194B, 194BB, 194LBC or 194N on any sum or income or amount paid, or payable or credited, by a person (hereafter referred to as deductee) to a specified person, the tax shall be deducted at the higher of the following rates, namely:—

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

(2) If the provisions of section 206AA is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA.

(3) For the purposes of this section "specified person" means a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Provided that 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.

**206CCA.** *Special provision for collection of tax at source for non-filers of income-tax return.*

(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person (hereafter referred to as collectee) from a specified person, the tax shall be collected at the higher of the following two rates, namely:—

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

(2) If the provisions of section 206CC is applicable to a specified person, in addition to the provisions of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC.

(3) For the purposes of this section "specified person" means a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be collected, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Provided that 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.

### Analysis of above sections-

The Government at the time of presentation of Budget 2021 has also proposed to insert new section 206AB and section 206CCA in the Income Tax Act, 1961 as a special provision providing for higher rate for TDS and TCS for the *non-filers of income-tax return*.

Proposed section **206AB** of the Act would apply on any sum or income or amount paid or payable or credited, by a person (herein referred to as deductor) to a specified person. The proposed TDS rate in this section is higher of the followings rates:-

- twice the rate specified in the relevant provision of the Act; or
- twice the rate or rates in force; or
- the rate of five per cent

However, provisions of Section 206AB do not apply to the following tabulated TDS sections of Income Tax Act-

S. No.	Section	Description
1	Section 192	Salary
2	Section 192A	Premature withdrawal from the accumulated balance of Provident Fund which is taxable in the employee's hands.
3	Section 194B	Winning from the card game, crossword, lottery, puzzle or any other games.
4	Section 194BB	Winning from horse race.
5	Section 194LBC	Income against investment in the securitization trust.
6	Section 194N	Payments of certain amount/ amounts in cash.

If the provision of section 206AA of the Act is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA of the Act.

Proposed section **206CCA** of the Act would apply on any sum or amount received by a person (herein referred to as collectee) from a specified person. The proposed TCS rate in this section is higher of the following rates:-

- twice the rate specified in the relevant provision of the Act; or
- the rate of five per cent

If the provision of section 206CC of the Act is applicable to a specified person, in addition to the provision of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC of the Act.

The specified person is a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years which are immediately before the previous year in which tax is required to be deducted or collected, as the case may be. Further the time limit for filing tax return under sub-section (1) of section 139 of the Act has expired for both these assessment years. There is another condition that aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years. Specified person shall not include a non-resident who does not have a permanent establishment in India.

Consequential amendment is proposed in sub-section (4) of section 194-IB of the Act.

This amendment will take effect from 1st July, 2021.



## Section 50B of Income Tax Act, 1961

**50B.** *Special provision for computation of capital gains in case of slump sale.*

(1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place:

Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

(2) In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.

(3) Every assessee, in the case of slump sale, shall furnish in the prescribed form 49 along with the return of income, a report of an accountant as defined in the Explanation below sub-section (2) of section 288, indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

*Explanation 1-* For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account:

Provided that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.

*Explanation 2-* For computing the net worth, the aggregate value of total assets shall be, —

- (a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of sub-clause (c) of clause (6) of section 43;
- (b) in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, nil; and
- (c) in the case of other assets, the book value of such assets.

### Analysis of above section-

- Meaning of Slump Sale-

In simple words, 'slump sale' is nothing but transfer of a whole or part of business concern as a going concern; lock, stock and barrel. As per section 2(42C) of Income -tax Act 1961, 'slump sale' means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

Where-

- 'Undertaking' has the same meaning as in Explanation 1 to section 2(19AA) defining 'demerger'. As per Explanation 1 to section 2(19AA), 'undertaking' shall include any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole but does not include individual assets or liabilities or any combination thereof not constituting a business activity.
- Slump Sale means sale of any undertaking as a going concern, where consideration is considered in lump sum and individual values are not taken into account. But, when individual values of assets are taken for calculating the amount of stamp duty, registration charges, taxes etc. then it won't violate slump sale.

➤ For the purposes of Slump Sale a Chartered Accountant's report in form No. 3CEA will be required.

➤ Only transfer of assets or liabilities is not a slump sale

➤ On slump sale, no indexation benefit will be allowed.

➤ Court approval is not required for carrying out such transactions.

• Tax Effect in a Slump Sale-

The gain or loss resulting out of a slump sale shall be a Capital Gain/Loss under the Income Tax Act. Capital gain in case of slump sale u/s 50B shall be calculated as below-

Particular	Amount
Full value of lump sum consideration	XXX
Less :- Expenditure in relation to transfer	(XXX)
Less :- Net worth** of the undertaking being the cost of acquisition and improvement	(XXX)
Capital Gain/loss	XXX

\*\*Computation of Net Worth

Particular	Amount
Aggregate value of total assets of the undertaking or division :	
In case of depreciable assets	WDV of block
In case of capital assets in respect of which whole expenditure claimed u/s 35AD	Nil
In case of other assets	Book value of assets
Less :- Value of liabilities of such undertaking or division	Book value
Net worth of the undertaking	XXX

\*\*If net worth comes negative, then cost of acquisition shall be NIL.

• Key Terms under Section 50B-

➤ **How to determine the nature of capital assets?**

The capital gain or loss as computed above will be either long term or short-term depending upon the period for which the undertaking is held.

If the undertaking is held for more than 36 months, the resulting capital gain or loss shall be long-term and if it is held for less than 36 months, the resulting capital gain or loss shall be short term.

➤ **Whether indexation benefit is available u/s 50B?**

While calculating capital gain in case of slump sale, no indexation benefit shall be available in case of long-term capital asset.

➤ **What is the reporting requirement under section 50B?**

*Certificate by a chartered accountant-* In case of slump sale, every assessee shall furnish in the prescribed form along with the return of income, report of a CA along with computation of net worth.

➤ **In which year, capital gain arise out of the slump sale shall be taxable?**

The capital gains arising out of a slump sale shall be taxable in the year of transfer.

➤ **What is the treatment of transfer of stock in case of slump sale u/s 50B?**

No profit under the head profit from business & profession shall arise even if stock is transferred in case of slump sale.

➤ **Treatment of accumulated business losses and depreciation-**

Accumulated business losses and depreciation shall be carried forward by the transferor in case of slump sale.

➤ **Taxation under GST-**

The basis of taxation under the Goods and Services Tax Act revolves around 'supply'. A slump sale would also be a supply and hence fall under the purview of GST. The supply would be in the nature of 'transfer as a going concern' and such a transfer attracts nil rate of GST.

Transfer as a going concern would roughly mean that the current business as a whole will be carried on by a different person or that there is a change in the ownership of the business.

➤ **What are the tax rates in case of slump sale?**

The rates of tax applicable to the capital gain in a slump sale are as follows:

- 20% in case of Long-Term Capital Gain (LTCG) and
- Normal rates of tax in case of Short-Term Capital Gain (STCG)

• Slump sale vs Itemized Sale

Slump Sale refers to sale of business as a going concern without assigning the assets and liabilities any individual values. Whereas itemized sale means the sale of one or more business assets not essentially resulting in sale of business. It was witnessed particularly in the case of loss-making undertakings, transactions of slump sale was window dressed as itemized sale to stop the same various rulings came out.

The difference amongst slump sale and itemized sale can be summarized as under-

Slump Sale	Itemized Sale
No individual values are assigned to assets	Individual values are assigned to assets
Warrants sale of all assets and liabilities	One or more assets can be sold
Business is sold as a going concern	Business might not be transferred as a going concern
It results not just in sale of asset but mandatorily in sale of business	Itemized sale may refer to mere sale of asset(s) and not sale of business

# Meet the DMC Global Editorial Team



Leena Goswami

DMC Global



Bhawna Khanduja

DMC Global



Surbhi Gupta

DMC Global



Gunika

DMC Global



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by sending us at [dheeraj.mehta@dmcglobal.co.in](mailto:dheeraj.mehta@dmcglobal.co.in)

### DMC Global Services LLP

*Unit No 45, Ground floor, JMD Megapolis, Sohna*

*Road, Sector-48, Gurgaon, HR-122018 IN*

[www.dmcglobal.co.in](http://www.dmcglobal.co.in)

Ph. 0124-495 2727, 9818214570

