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May 21, 2021

Shri P C Mody
Chairperson
Central Board of Direct Taxes
Department of Revenue, Ministry of Finance
North Block, New Delhi - 110 001

Subject: Operational and Procedurals Issues and Request for extension of applicability of provisions of Section 194Q and Section 206AB/206CCA of Income Tax Act 1961

Respected Sir,

Set up in 1982, MAIT is the apex body representing India's Electronic Hardware Sector. MAIT is recognized by both the Government, as well as the industry, for its role in the growth and development of the IT Hardware industry. MAIT has a membership of leading organisations, including several large multinational enterprises within the industry. These include manufacturers, system integrators, solution & service providers, e-Waste recyclers, testing labs, EMS players, IT park developers, consulting organizations, companies in the areas of cloud and IoT, etc. At MAIT, we believe that technology is the primary contributor of economic growth and with our consistent policy advocacy efforts, we hope to help India being a leader in ICT and help India attain the ambitious goal of becoming a USD 5 Trillion economy.

Background

Finance Act 2021 introduced a new provision section 194Q of the Income-tax Act, 1961 (IT Act) mandating companies to withhold taxes (TDS) on purchase of goods, subject to revenue and transaction thresholds specified. Further, last year, Finance Act 2020 had introduced a provision for tax collection at source (TCS) (by the seller) on sale of goods under section 206C(1H) of the IT Act. Impact of above is that the same transaction is to be tested for TDS by the buyer and TCS by the seller. The seller has to determine if the buyer is liable to withhold taxes, and if not, then proceed to levy TCS, subject to satisfaction of the prescribed conditions.

Further, Finance Act 2021 also inserted a new section 206AB in the IT Act as a special provision providing a higher rate for TDS for non-filers of income-tax return. Similarly, it also introduced a new section 206CCA in the IT Act for providing a higher rate of TCS for non-filers of income-tax return.

Section 194Q and Section 206AB/206CCA are set to come into effect from 1 July 2021.

Issues involved

Operational and Procedurals Concerns:

1. Challenge for seller of the goods to ascertain/ensure whether buyer has filed the tax return or not – Govt. should come up with some mechanism here. As regards determining whether the vendor/buyer has filed the Tax return for the previous two years, the Govt. should also come-up with FAQ to clarify the applicability of section 206AB/206CCA if the assessee is a newly incorporated entity or only one Tax return period has expired post its incorporation.
2. If buyer fails to deduct Withholding Tax on purchase of goods, then whether seller becomes obligated to do TCS – how this can be done post facto by the seller when invoices have been raised earlier? It creates tracking issues, manual work and unwarranted complications – hence, when first obligation is on buyer, then there is no need to have secondary obligation.
3. Only one type of law should be imposed on one kind of transaction – either TCS or TDS – with or without threshold. Having both, creates operational and tracking challenges – it can lead to accidental / unintentional errors.

Compliance with sections 194Q and 206C(1H) of the IT Act would require significant investment in technology infrastructure by businesses to enable accurate compliance, since each has high volumes of transactions that the system would need to support. Further, coupled with the requirement to obtain PAN (Section 206AA) and validating tax return filing status of the sellers and buyers (Section 206AB and section 206CCA), this section imposes disproportionate compliance requirement on the buyers and sellers, compared to the underlying taxes involved. Such intricate mapping obligations on account of these vicarious obligations on buyers and sellers is disproportionate.

Given the current difficult COVID times, there are challenges in implementing these changes in the short term. Further, many companies are still in the process of building a technology infrastructure for the TCS provisions introduced last year. Accordingly, to bring in a new requirement within such a short span would be extremely onerous for the industry.

Our request

Considering the significant time and efforts involved to build systems and processes to comply with the new requirements, we request the Government of India to defer the applicability of sections 194Q, 206AB and 206CCA of the IT Act to the financial year starting **April 1, 2022 and also look into the Operational and Procedurals challenges**. This would mitigate the hardships of the taxpayers to comply with the procedural requirements in these difficult times and would give them time to implement the technology infrastructure efficiently.

We will be glad to have a discussion with you at any time convenient.

With regards,



George Paul
Chief Executive Officer