Statutory Update for November, 2022 Examination

The **June 2021 edition of the Study Material** is based on the provisions of income- tax law, as amended by the **Finance Act, 2021**. The relevant assessment year for November 2022 examination is **A.Y.2022-23**. The significant notifications/circulars issued upto 30th April 2022, relevant for November 2022 examination but not covered in the June 2021 edition of the Study Material, are given hereunder:

Chapter 7: Capital Gains

Computation of Fair Market Value of Capital Assets for the purposes of section 50B [Rule 11UAE]

As per section 50B(2)(ii), in relation to capital assets being an undertaking or division transferred by way of slump sale, fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.

Accordingly, the CBDT has prescribed that, for the purpose of section 50B(2)(ii), the fair market value (FMV) of capital assets would be **the higher of** –

(i) **FMV 1**, being the **fair market value of capital assets transferred** by way of slump sale; and

(ii) **FMV 2**, being the **fair market value of the consideration (monetary and non-monetary)** received or accruing as a result of transfer by way of slump sale

Note *– Notification No.68/2021 dated 24.5.2021, to the extent relevant at Intermediate level, has been included in this Statutory Update.*

Note *- It may be noted that the ULIP related provisions under section 2(14), section 45(1B) and section 112A (definition of equity oriented fund) discussed in Unit 4 Chapter 4 Capital Gains and the ULIP related provisions under section 10(10D) discussed along with deduction under section 80C in Chapter 7 Deductions from gross total income in the June, 2021 edition of the Study Material are* ***not*** *applicable for Intermediate examinations.* ***Hence, students are advised to ignore the ULIP related provisions discussed in the above sections in the Study Material.***

Chapter 9: Advance Tax, TDS and Introduction to TCS

Notification of "Specified bank" and manner of computing total income and deducting tax under section 194P [Notification No.98/2021 and 99/2021 dated 2nd September, 2021]

Section 194P requires deduction of tax at source on the basis of rates in force by a specified bank, **being a banking company as notified by the Central Government**, on the total

income of specified senior citizen for the relevant assessment year, computed after giving effect to -

- deduction allowable under Chapter VI-A; and
- rebate allowable under section 87A

Accordingly, the CBDT has, vide *Notification No.98/2021 dated 2.9.2021*, notified specified bank to mean a **banking company which is a scheduled bank** and has been appointed as agents of RBI under section 45 of the RBI Act, 1934.

A specified senior citizen is exempted from filing his return of income for the assessment year relevant to the previous year in which the tax has been deducted under section 194P**.**

"Specified Senior Citizen" means an individual, being a resident in India, who

- is of the age of 75 years or more at any time during the previous year;
- is having pension income [Also, he should have no other income except interest income received or receivable from any account maintained by such individual in the same specified bank in which he is receiving his pension income]; and
- **has furnished a declaration to the specified bank containing such particulars, in the prescribed form and verified in the prescribed manner**.

The CBDT has, *vide Notification No.99/2021 dated 2.9.2021*, provided that on furnishing of such declaration in the prescribed form by the specified senior citizen, the specified bank has to compute the total income of such specified senior citizen for the relevant assessment year and deduct income-tax on such total income on the basis of the rates in force, **after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A. The effect to the deduction allowable under Chapter VI-A has to be given based on the evidence furnished by the specified senior citizen during the previous year.**

The declaration given in the prescribed form and evidence submitted for claiming deduction under Chapter VI-A by the specified senior citizen has to be properly maintained by the Specified Bank and made available to the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax, as and when required.

Guidelines under section 194Q of the Income-tax Act, 1961 [CBDT Circular No.13/2021 dated 30th June, 2021]

The Finance Act, 2021 has inserted new section 194Q in the Income-tax Act 1961 which is effective from 1.7.2021. It applies to any buyer who is responsible for paying any sum to any resident seller for purchase of any goods of the value or aggregate of value exceeding ₹ 50 lakhs in any previous year. The buyer, at the time of credit of such sum to the account of the

seller or at the time of payment, whichever is earlier, is required to deduct an amount equal to 0.1% of such sum exceeding ₹ 50 lakhs as income tax.

"Buyer" is defined to be person whose total sales or gross receipts or turnover from the business carried on by him exceed ₹ 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. The Central Government has been authorised to specify, by notification in the Official Gazette, person who would **not** be considered as buyer for the purposes of this section.

Section 194Q(3) empowers the CBDT (with the approval of the Central Government) to issue guidelines for the purpose of removing difficulties. In exercise of power contained under section 194Q(3), the CBDT has, with the approval of the Central Government, issued the following guidelines. These guidelines at some places also removes difficulties in implementing the provisions of section 194-O and section 206C(1H) using power contained in section 194-O(4) and section 206C(1-I), respectively.

Guidelines

1. Applicability on transactions carried through various Exchanges

There are practical difficulties in implementing the provisions of TDS contained in section 194-Q in case of certain exchanges and clearing corporations. In these transactions, sometimes, there is no one to one contract between the buyers and the sellers.

In order to remove such difficulties, it is provided that the provisions of section 194Q shall **not** be applicable in relation to,-

(i) 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 (IFSC)

(ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through registered power exchanges.

2. Calculation of threshold for the F.Y. 2021-22

Section 194Q has come into effect from 1st July, 2021. Accordingly, as regards the manner of computation of threshold of ₹ 50 lakh specified under this section, it is clarified that since the threshold of ₹ 50 lakhs is with respect to the previous year, calculation of sum for triggering TDS u/s 194Q shall be computed from 1st April, 2021. Hence, if a person being buyer has already credited or paid ₹ 50 lakhs or more up to 30th June 2021 to a seller, TDS u/s 194Q shall apply on all credit or payment during the previous year, on or after 1st July 2021, to such seller.

As regards whether tax is required to be deducted in respect of advance paid before 1st July 2021 and sum credited thereafter, it is clarified that since section 194Q mandates buyer to deduct tax on credit of sum in the account of seller or on payment of such sum, whichever is earlier, the provisions of this section shall **not** apply on any sum credited or paid before 1st July 2021. If either of the two events had happened before 1st July 2021, that transaction would **not** be subjected to the provisions of section 194Q.

3. Adjustment for GST, purchase returns

As regards whether adjustment is required to be made for GST or purchase returns for the purpose of tax deduction u/s 194Q vide *Circular No.17/2020 dated 29.9.2020*, it was clarified that no adjustment on account of GST is required to be made for collection of tax under section 206C(1H), since the collection is made with reference to receipt of amount of sale consideration.

However, the situation is different so far as TDS is concerned. It has been clarified in Circular No.23/2017 dated 19th July 2017 as under -

"wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B on the amount paid or payable without including such 'GST on services' component. GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax."

Accordingly, with respect to TDS u/s 194Q, it is clarified that when tax is deducted at the time of credit of amount in the account of seller and in terms of the agreement or contract between the buyer and the seller, the component of GST comprised in the amount payable to the seller is indicated separately, tax shall be deducted u/s 194Q on the amount credited without including such GST. However, if the tax is deducted on payment basis because the payment is earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identify that payment with GST component of the amount to be invoiced in future.

Further, with respect to purchase return it is clarified that the tax is required to be deducted at the time of payment or credit, whichever is earlier. Thus, before purchase return happens, the tax must have already been deducted u/s 194Q on that purchase. If that is the case and against this 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.

4. Whether non-resident can be buyer under section 194Q?

As regards whether the provisions of section 194Q would apply to a buyer being a non-resident, it is clarified that the provisions of section 194Q shall **not** apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such non-resident in India. For this purpose, "permanent establishment" shall mean to include a fixed place of business through which the business of the enterprise is wholly or partly carries on.

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

As regards whether the provisions of section 194Q would apply to a seller whose income is exempt, it is clarified that the provisions of section 194Q would **not** apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).

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

The above clarifications would not apply if only part of the income of the person (being a seller or being a buyer, as the case may be) is exempt.

6. Whether tax is to be deducted on advance payment?

As regards whether the provisions of section 194Q would apply to advance payment made by the buyer, it is clarified that since the provisions apply on payment or credit whichever is earlier, the provisions of section 194Q shall apply to advance payment made by the buyer to the seller.

7. Whether provisions of section 194Q shall apply to buyer in the year of incorporation?

As regards whether the provisions of section 194Q shall apply to a buyer in the year of its incorporation, it is clarified that u/s 194Q, a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding ₹ 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q shall not apply in the year of incorporation.

8. Whether provisions of section 194Q shall apply to buyer if the turnover from business is ₹ 10 crore or less?

As regards whether the provisions of section 194Q would apply to a buyer who has turnover or gross receipts exceeding ₹ 10 crore but total sales or gross receipts or turnover from business is ₹ 10 crore or less, it is clarified that, for the purposes of section 194Q, a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding ₹ 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Hence, the sales or gross receipts or turnover from business carried on by him must exceed ₹ 10 crore. His turnover or receipts from non-business activity is not to be counted for this purpose.

9. Cross application of section 194-O, section 206C(1H) and section 194Q

Clarification of how section 194-O, section 206C(1H) and section 194Q apply on the same transaction.

Under section 194-O(3), a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), shall **not** be liable to tax deduction at source under any other provision of Chapter XVII of the Act. Under the second proviso to section 206C(1H), provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provisions of this Act on the goods purchased by him from the seller and has deducted such tax.

Under section 194Q(5), the provisions of this section would **not** apply to a transaction on which-

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

(ii) tax is collectible under the provisions of section 206C, other than a transaction on which section 206C(1H) applies

After conjoint reading of all these provisions, it is clarified that:

(i) If tax has been deducted by the e-commerce operator on a transaction u/s 194-O [including transactions on which tax is not deducted on account of section 194-O(2)], that transaction shall not be subjected to tax deduction u/s 194Q.

(ii) Though section 206C(1H) provides exemption from TCS if the buyer has deducted tax at source on goods purchased by him, to remove difficulties, it is clarified that this exemption would also cover a situation where, instead of the buyer, the e-commerce operator has deducted tax at source on that transaction of sale of goods by seller to buyer through e-commerce operator.

(iii) If a transaction is both within the purview of section 194-O as well as section 194Q, tax is required to be deducted u/s 194-O and not u/s 194Q.

(iv) Similarly, if a transaction is both within the purview of section 194-O as well as section 206C(1H), tax is required to be deducted u/s 194-O. The transaction shall come out of the purview of section 206C(1H) after tax has been deducted by the e-commerce operator on that transaction. Once the e-commerce operator has deducted the tax on a transaction, the seller is not required to collect the tax u/s 206C(1H) on the same transaction. It is clarified that here primary responsibility is on e-commerce operator to deduct the tax u/s 194-O and that responsibility cannot be condoned if the seller has collected the tax u/s 206C(1H). This is for the reason that the rate of TDS u/s 194-O is higher than rate of TCS u/s 206C(1H).

(v) If a transaction is both within the purview of section 194Q as well as section 206C(1H), then, tax is required to be deducted u/s 194Q. The transaction shall come out of the purview of section 206C(1H) after tax has been deducted by the buyer on that transaction. Once the buyer has deducted the tax on a transaction, the seller is not required to collect the tax u/s 206C(1H) on the same transaction. However, if, for any reason, tax has been collected by the seller u/s 206C(1H), before the buyer could deduct tax u/s 194Q on the same transaction, such transaction would not be subjected to tax deduction again by the buyer. This concession is provided to remove difficulty, since tax rate of deduction and collection are same in section 194Q and section 206C(1H).

Guidelines u/s 194-O, 194Q and 206C(1-I) [Circular No. 20/2021 dated 25.11.2021]

Adjustment of various state levies and taxes other than GST:

Treatment of tax deduction on GST component included in the invoice has been clarified vide CBDT Circular No. 13/2021 dated 30.6.2021. This circular gives clarification in case of purchase of goods which are not covered within the purview of GST, but which are subject to VAT/Sales tax/Excise duty/CST.

	Condition	Amount on which tax is to be deducted u/s 194Q
(i)	Where tax is deducted at the **time of credit** of amount in the account of the seller **and** In terms of the agreement or contract between the buyer and seller, component of VAT/Sales tax/Excise duty/CST is **indicated separately** in the invoice	**Tax has to be deducted on the amount credited (without including such VAT/ Sales tax/ Excise duty/CST**)

(ii)	Where tax is deducted on payment basis (if payment is earlier than the credit)	Tax has to be deducted on the whole amount (since it is not possible to identify the payment with the tax component to be invoiced in the future)
(iii)	In case of purchase returns, where the money is refunded by the seller	Tax deducted earlier u/s 194Q on such purchase (which is now returned) may be adjusted against the next purchase from the same seller
(iv)	In case of purchase returns, where goods are replaced by the seller	No adjustment is required.

Applicability of section 194Q in cases where exemption has been provided under section 206C(1A)

Section 194Q does not apply in respect of transactions where tax is collectible u/s 206C [except sale of goods under section 206C(1H)].

Section 206C(1H) requires to collect tax at source in respect of sale of goods other than goods which have been covered u/s 206C(1)/ (1F)/(1G).

In accordance with section 206C(1A), tax is not required to be collected in the case of a resident buyer who furnishes declaration to the effect that the goods u/s 206C(1) are to be utilised for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

In case of goods which are covered u/s 206C(1) but exempted u/s 206C(1A), tax would not be collectible u/s 206C(1)/(1H).

It is clarified that the provisions of section 194Q will apply in such cases covered under section 206C(1A) and the buyer is to be liable to deduct tax u/s 194Q, if the conditions specified therein are fulfilled.

Applicability of the provisions of section 194Q in case of department of Government not being a public sector undertaking or corporation

To be considered as a buyer for the purposes of 194Q, such person should be carrying out a business/commercial activity; and the total sales, gross receipts or turnover from such business/commercial activity should be more than ₹ 10 crore during the financial year immediately preceding the financial year in which goods are being purchased by such person.

	Issue	Would TDS u/s 194Q be attracted?
(i)	Can Department of Government be a "buyer" for the purposes of section 194Q? - If it is carrying on business/ commercial activity	Yes (subject to fulfillment of other conditions)

	- If it is not carrying on any business/commercial activity	No, since it will not be considered as a buyer
(ii)	Can Department of Central/State Government be considered as "seller" for the purpose of section 194Q?	No [Hence, no tax can be deducted u/s 194Q by the buyer]

Note - A Public sector Undertaking or corporation established under Central or State Act or any other such body, authority or entity, would, however, be required to comply with the provisions of section 194Q and tax shall be deducted accordingly.

Non-applicability of provisions of section 206C(1G) to a non-resident individual visiting India [Notification No. 20/2022 dated 30.03.2022]

Tax is collectible u/s 206C(1G) by -

- an authorised dealer who receives amount under LRS of RBI for overseas remittance from a buyer, being a person remitting such amount out of India; **and**
- a seller of an overseas tour package who receives any amount from the buyer who purchases the package.

However, TCS u/s 206C(1G) would **not** be applicable, if the buyer is an individual who:

- is **not** a resident in India [in terms of section 6(1) and (1A)]; **and**
- who is **visiting India**.

Chapter 10: Provisions for filing return of income and self-assessment

"Other person" prescribed for verification of return of income in case of a company or LLP [Section 140(c) and (cd)]

Section 140 specifies the persons authorised to verify returns of income in case of different assessees, namely, individual, HUF, company, firm, LLP, local authority and political party.

In case of a company, clause (c) of section 140 requires the managing director thereof to verify the return of income. Where for any unavoidable reason, such managing director is not able to verify the return or where there is no managing director, any director of the company **or any other person prescribed for this purpose** can verify the return.

In case of an LLP, clause (cd) of section 140 requires the designated partner thereof to verify the return of income. Where for any unavoidable reason, such designated partner is not able to verify the return or where there is no designated partner, any partner of the LLP **or any other person prescribed for this purpose** can verify the return.

The CBDT has, vide *Notification No.93/2021 dated 18.8.2021*, specified that "any other person" referred to in section 140(c) and 140(cd) shall be the person, appointed by the Adjudicating Authority (i.e., National Company Law Tribunal constituted under section 408 of the Companies Act, 2013) for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the Insolvency and Bankruptcy Code, 2016 and the rules and regulations made thereunder.

Requirement of filing return of income u/s 139(1) by certain persons, when the quantum of prescribed transactions exceed the prescribed monetary threshold [Notification No. 37/2022 dated 21.04.2022]

Clause (iv) to seventh proviso of section 139(1) provides that a person (other than a company or a firm) who is not required to furnish a return u/s 139(1) has to furnish return on or before the due date if the person fulfills such other conditions as may be prescribed.

Rule 12AB has been inserted vide this notification to prescribe the following other conditions for furnishing return u/s 139(1). Accordingly, the persons referred to in column (2) of the table below have to furnish their return u/s 139(1), in cases where the amount of prescribed transaction (sales/turnover/gross receipts/TDS +TCS/aggregate of savings bank deposits, as the case may be) referred to in column (3) exceed (> or ≥, as the case may be) the prescribed monetary threshold in the corresponding row of column (4) of the table below:

	Case	Prescribed transaction(s)	Prescribed Monetary threshold
(1)	**(2)**	**(3)**	**(4)**
(i)	A person carrying on **business**	His **total sales, turnover or gross receipts**, as the case may be, in the business	> **₹ 60 lakhs** during the relevant P.Y.
(ii)	A person carrying on **profession**	His **total gross receipts** in profession	> **₹ 10 lakhs** during the relevant P.Y.
(iii)	(a) A resident individual who is aged **≥ 60 years** at any time during the relevant P.Y.	The **aggregate of TDS and TCS** in his case	≥ **₹ 50,000** during the relevant P.Y.
	(b) Any other person	The **aggregate of TDS and TCS** in his case	≥ **₹ 25,000** during the relevant P.Y.
(iv)	A person having **savings bank account**	The **deposit in one or more savings bank** account of the person, in aggregate	≥ **₹ 50 lakh**s during the relevant P.Y.

Fee for subsequent intimation of Aadhaar [Notification No. 17/ 2022 dated 23.03.2022]

Under section 234H, where a person, who is required to intimate his Aadhar Number under section 139AA(2), fails to do so on or before the notified date i.e., ***31st March, 2022***, he would be liable to pay such fee, as may be prescribed, at the time of making intimation under section 139AA(2) after 31st March, 2022. However, such fee shall not exceed ₹ 1,000.

As per section 139AA(2), every person who has been allotted PAN as on 1st July, 2017 and eligible to obtain Aadhar Number, is required to intimate his Aadhaar number to the prescribed authority in the prescribed form and manner.

Accordingly, the CBDT has, vide notification no. 17/2022 dated 29.3.2022, inserted Rule 114(5A) to provide that if such person fails to do so by the date notified in section 139AA(2) i.e., 31st March, 2022, then, at the time of subsequent intimation of his Aadhaar number to the prescribed authority, such person would be liable to pay, by way of fee, an amount equal to,—

(a) ₹ 500, in a case where such intimation is made within three months from the date referred in section 139AA(2) i.e., by 30.06.2022; and

(b) ₹ 1,000, in all other cases.

Clarification with respect to relaxation of provisions of Rule 114AAA prescribing the manner of making PAN inoperative [Circular No. 7/2022 dated 30.03.2022 read with Notification No. 17/ 2022 dated 23.03.2022]

Section 139AA(2) makes it mandatory for every person who has been allotted a PAN as on 1st July, 2017 to intimate his Aadhaar Number so that the Aadhaar and PAN can be linked. This is required to be done on or before a notified date, failing which the PAN would become inoperative.

Accordingly, in case of failure to intimate the Aadhaar Number by 31.03.2022, the PAN allotted to the person would be made inoperative. Further, section 234H provides that where a person who is required to intimate his Aadhaar under section 139AA(2) fails to do so on or before a notified date, he would be liable to pay a fee not exceeding ₹ 1,000, as may be prescribed, at the time of making intimation under section 139AA(2) after the said date.

Further, Rule 114AAA provides that if PAN of a person has become inoperative, he will not be able to furnish, intimate or quote his PAN and would be liable to all the consequences under the Act for such failure. This will have a number of implications such as:-

(i) The person would not be able to file return using the inoperative PAN

(ii) Pending returns will not be processed

(iii) Pending refunds cannot be issued to inoperative PANs

(iv) Pending proceedings as in the case of defective returns cannot be completed once the PAN is inoperative

(v) Tax will be required to be deducted at a higher rate as PAN becomes inoperative

In addition to the above, the tax payer might face difficulty at various other fora like banks and other financial portals, as PAN is one of the important KYC criterion for all kinds of financial transactions.

As per Rule 114AAA(2), where a person, whose PAN has become inoperative under Rule 114AAA(1), is required to furnish, intimate or quote his PAN, it would be deemed that he has not furnished, intimated or quoted the PAN, as the case may be, in accordance with the provisions of the Act. Consequently, he would be liable for all the consequences under the Act for not furnishing, intimating or quoting the PAN.

In order to have smooth application of section 234H and existing rule 114AAA, it is clarified that the impact of Rule 114AAA(2) would come into effect from 1st April, 2023; and the period from 1st April, 2022 to 31st March, 2023, would be the period during which Rule 114AAA(2) would not have its negative consequences.

However, the tax payer would be liable to pay a fee in accordance with section 234H read with Rule 114(5A).

Note *- The last date for intimating Aadhaar number under the Income-tax Act, 1961 for the purposes of linking Aadhaar with PAN has been extended from 30th June, 2021 to 31st March, 2022 [Section 139AA] [Refer page no. 10.26 of the June, 2021 edition of the Study Material].*