

TAX COLLECTION AT SOURCE (TCS) ON SALE OF GOODS

We are aware of the intention of the Government to widen the tax base and also have a smooth flow of revenue collection throughout the year. Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) are two tools to bring more transactions under its purview and broaden the tax base.

During the last budget, the Government introduced section 206C(1H) by Finance Act, 2020. Certain clarifications and guidelines in this regards have been issued by the CBDT vide circular no. 17/2020 dated 29.09.2020 (Circular). Our view on the same is given in FAQs format.

Section 206C(1H) read as follows:

“(1H) Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax:

Provided that if the buyer has not provided the Permanent Account Number or the Aadhaar number to the seller, then the provisions of clause (ii) of sub-section (1) of section 206CC shall be read as if for the words “five per cent”, the words “one per cent” had been substituted:

Provided further that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

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

(a) “buyer” means a person who purchases any goods, but does not include, —

(A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(B) a local authority as defined in the Explanation to clause (20) of section 10; or

(C) a person importing goods into India or any other 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;

(b) “seller” 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 sale 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.”

Q.1 Explain the section in simple terms

A.1 This section pertains to Tax Collection at Source. For the specified transactions, the seller is required to charge the requisite percentage, as TCS, of the amount of sale of goods to the counter party i.e. the buyer/purchaser, as income tax, at the time of debiting the amount payable on sales to the account of the buyer; though, such TCS is payable on collection through receipt of money. Such TCS is considered as payment of income tax on behalf of the purchaser and is deductible from the total income tax liability of the purchaser at the time of filing the Return of Income (ROI), which is similar to the treatment of TDS.

Q.2 When does this section become applicable?

A.2 The intention of the Finance Bill, 2020 was to make it effective from 1st April, 2020. However, due to the Covid situation, the applicability was postponed to 1st October, 2020.

Q.3 To whom is this section applicable?

A.3 The section is applicable to all sellers who are engaged in sale of goods.

Q.4 What is “consideration”?

A.4 The word “consideration” has not been defined here. In terms of section 145A of the Income Tax Act, 1961 (the Act) no specific clarification is available regarding base amount for TCS on sale of goods in absence of any specific provision or circular or clarification by CBDT. However, there are indicators to explain the meaning of the word “consideration”. E.g.

- a) Consideration has to be for sale of goods which can be received in cash or in kind and can be subjected to TCS.
- b) “Consideration” includes sums paid by the buyer on behalf of the seller like expenses on freight, insurance, loading, unloading charges and so on.
- c) If there is a receivable-payable set-off in an account, the constructive receipt and not the net receipt will be taken as “consideration”.

Q.5 Who is a “seller”?

A.5 For this section, “seller” is defined as a person whose total sales/ turnover / gross receipts from the business carried on by him **exceeds ₹10 Crores** during the financial year immediately preceding the relevant financial year. Hence, TCS will not be applicable to

a new seller irrespective of its turnover. Conversely, if the turnover of the seller had exceeded Rs. 10 crores in the preceding financial year, TCS will become applicable even if the sales / turnover / gross receipts fall below Rs. 10 crores during the relevant financial year.

The threshold parameter has to be considered at the entity level. In other words, if a seller has multiple businesses, TCS will become applicable even if the business segment pertaining to sale of goods does not exceed the threshold limit.

Q.6 Whether once the seller is covered under this definition, he will be considered as “seller” in future years too?

A.6 No. The applicability for TCS has to be checked and considered on a year-to-year basis.

Q.7 What are the exceptions?

A.7 This section is not be applicable:

- a) for export of goods out of India and goods already covered under the existing provisions governing TCS under chapter XVII-BB of the Act viz. tendu leaves, liquor, timber, scrap, toll tickets, cars or goods that are liable to TDS.
- b) 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.
- c) Transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC.
- d) Sales consideration received for fuel supplied to non-resident airlines at airports in India.
- e) where value or aggregate value of consideration for sale of goods, qua each buyer, is less than or equal to ₹50 lakhs during the previous year. In calculating this threshold, if multiple accounts of a buyer are maintained in the books of the seller, then sales on all such accounts have to be aggregated. This is because deduction of TCS is PAN based.
- f) for goods to Central Government/ State Government / Local Authority / an

Embassy / High Commission / Consulate and the representation of foreign states.

- g) To a person notified by the Government.

Q.8 Whether sale of all motor vehicles covered u/s 206C(1F) are excluded from the provisions of TCS covered under sub-section (1H)?

- A.8. The provisions of 206C(1F) apply to sale of motor vehicle of the value exceeding ten lakh rupees. The TCS provisions under sub-section (1H) exclude from its applicability goods covered under sub-section (1F). While the sub-section (1F) is based on a single sale of motor vehicle, sub-section (1H) is for receipts above Rs. 50 lakh rupees during the previous year against aggregate sale of good. While sub-section (1F) is for sale to consumer only and not to dealers, sub-section (1H) is for all sales above the threshold limit of Rs. 50 lacs. Vide clarification issued by the CBDT, it has been further stated that the receipt of sale consideration from a dealer would be subjected to TCS under sub-section (1H), if such sales are not subjected to TCS under sub-section (1F) of the Act. In case of sale to a consumer, receipt of sale consideration for sale of motor vehicle of the value of ten lakh rupees or less to a buyer would be subjected to TCS under sub-section (1H) of section 206C of the Act, if the receipt of sale consideration for such vehicles during the previous year exceeds fifty lakh rupees during the previous year. However, in case of a sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ten lakh rupees would not be subjected to TCS under sub-section (1H) if they are subjected to TCS under sub-section (1F) of section 206C of the Act.

Q.9 How to calculate the threshold limit of Rs. 50 lacs for FY 2020-21?

- A.9 According to the Circular, since the threshold of fifty lakh rupees is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under sub-section (1H) of section 206C shall be computed from 1st April, 2020. Hence, if a person being seller has already received fifty lakh rupees or more up to 30th September 2020 from a buyer, the TCS under sub-section (1H) of section 206C shall apply on all receipt of sale consideration during the previous year, on or after 1st October 2020, from such buyer.

Q.10 Who is a “buyer”?

- A.10 “Buyer” means a person who purchases any goods, but does not include:

(A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or

(B) a local authority as defined in the Explanation to clause (20) of section 10; or

(C) a person importing goods into India or any other 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.

Q.11 What do you mean by “Goods”?

A.11 As “Goods” have not been defined in the Act, its meaning can be drawn from other statutes like Sale of Goods Act, 1930, Service Tax Act, 2017 etc. Hence, “Goods” mean every kind of movable property other than money and securities and includes actionable claims, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. It can be tangible or intangible and should be capable of being sold, transferred, stored, possessed or transmitted.

Q.12 Whether sale of Services have to be considered under this section?

A.12 No.

Q.13 From whom is the tax to be collected?

A.13 TCS is to be collected from the buyer when the value or the aggregate value of consideration received from him during the relevant previous year exceeds ₹50 lakhs.

Q.14 What is the rate is the TCS to be collected?

A.14 The TCS has to be collected @ 0.1% of the value of consideration received from the buyer. However, due to the Covid situation, such rate has reduced to 0.075% for the financial year 2020-21. In case the buyer does not have a PAN or Aadhar, the rate of TCS is 1% (0.075% for the financial year 2020-21).

Q.15 When do the provisions of TCS on sale of goods get triggered?

A.15 The provisions trigger when the following conditions are satisfied cumulatively:

- i. there is a seller
- ii. there is a buyer
- iii. there is receipt of consideration

Q.16 How is the - TCS to be collected from the buyer?

A.16 The seller has to raise an invoice for the sale of goods including the amount of TCS. Alternatively, the amount of TCS may be charged separately by way of a debit note. Needless to add that the liability of remittance to the Government does not arise until the receipt of the proceeds from the buyer.

Q.17 Can the seller pay the TCS on accrual basis?

A.17 In order to overcome the difficulty in monitoring and reconciling the TCS bill-wise, the seller can consider paying the TCS on accrual basis. However, this would mean an adverse impact on the cash flow of the seller.

Q.18 In which year the purchaser gets the credit of the TCS?

A.18 He will get the credit of TCS in the year of collection.

Q.19 Whether TCS is applicable on sale of property?

A.19 The transactions relating to sale of property are covered by the provisions of section 194I of the Act. Hence, TCS is not applicable on such transactions.

Q.20 In case there is sale return or discount given after receiving the proceeds, what will be the treatment of TCS?

A.20 Once the TCS has been booked as such, the reversal of sales or the subsequent discount given should take place only from the principal amount of the bill and not from the TCS. Once the amount has been considered on the receipt of the proceeds on sale from the buyer, the TCS cannot be reversed in any case. The said TCS so collected and paid to the Government shall appear in Form 26AS as amount collected and the buyer can take credit for the same. This is now confirmed by the CBDT in the Circular.

Q.21 Whether for the purpose of TCS, GST would form part of sales/ turnover/ gross receipts?

A.21 As per section 145A of the Act, the sales have to be disclosed inclusive of taxes, duties etc. Similarly, section 44AC pertaining to TCS on sale of alcohol, timber, tendu leaves etc. requires that excise duty, taxes etc. form part of the sales turnover. In view of this, the seller should charge TCS on the amount of sale inclusive of GST.

A contrary view is that GST, being a statutory levy not forming part of the sales

consideration, should be excluded while charging TCS. Support for this view is available in Circular No 23 of 2017 dated 19-07-17 wherein, in the context of TDS, the CBDT has clarified that Tax has to be deducted on an amount excluding GST. In the circular of the CBEC F.No.20/16/04/2018–GST dated 07-03-19, it is stated that that GST is not leviable on the TCS component charged in the sale bill. An analogy can therefore be drawn that, as a corollary, there should not be any TCS on the GST component.

It is suggested that, in view of the possible divergent views, as a tax collector at source, a seller adopts a conservative view that tax should be collected at source inclusive of GST. In the circular, the Board is also of the view that TCS has to be collected on the GST component also.

Q.22 What are the TCS implications on Advance receipt from the buyers?

A.22 As stated in Answer to question no.1, the responsibility to charge TCS from the buyer arises only on sale of goods. In view of this, the seller need not collect TCS at the time of receipt of advance. However, once the sale takes place, the TCS has to be charged and collected on the entire amount of sales.

However, vide clarification issued by the CBDT, it has been stated that the TCS provisions would apply even to amounts received on or after 01.10.2020 as an advance against sale.

Q.23 Is TCS leviable on sale consummated prior to 1st October, 2020 or even in the earlier year but payment received after 1st October, 2020?

A.23 A reading of the provision shows that the three essential prerequisites for levy of TCS are:

- Seller who carries out sale of goods
- Existence of Buyer
- Receipt of consideration

The threshold of ₹50 lakhs qualifies the sale of goods and not the receipt of consideration. Accordingly, since sale of goods is concluded prior to 1st October, 2020, it can be argued that provisions are not applicable on mere receipt of money. An interpretation contrary to this would result in the TCS becoming applicable even for sales made in the earlier year(s) or a recovery of bad debts, which surely cannot be the intention of the Legislature. Moreover, a law cannot have retroactive applicability unless stated specifically.

However, vide clarification issued by the CBDT, it has been stated that the TCS provisions shall not apply on any sale consideration received before 01.10.2020 i.e. to say that it would apply to all sale considerations received on or after 01.10.2020 even if the sale was carried out before 01.10.2020. to this extent, the section is applicable retroactively.

Q.24 What should be done to the amount of TCS collected?

A.24 The amount of TCS collected has to be paid within 7 days of the end of the month of collection in the Government Treasury.

Q.25 Which Return has to be uploaded for TCS?

A.25 The seller has to furnish quarterly TCS returns in for 27EQ giving necessary details.

Q.26 What are the due dates for furnishing such TCS quarterly Returns?

A.26 The due dates are as under:

Quarters	Due dates of filing TCS Returns
April-June	15 th July
July-September	15 th October
October-December	15 th January
January-March	15 th May

Q.27 What are the due dates for furnishing such TCS quarterly certificates?

A.27 The due dates are as under:

Quarters	Due dates of filing TCS Returns
April-June	30 th July
July-September	30 th October
October-December	30 th January
January-March	30 th May

Q.28 Which challan has to be used to make payment of TCS?

A.28 Challan no. ITNS 281

Q.29 What are the consequence of defaults connected to TCS?

A.29 The consequences shall be on account of

a)	Not collecting the tax when required	Interest @ 1% per month or part of the month from due date of deduction to actual date of deduction
b)	Not depositing the TCS with the Government	Interest @ 1.5% per month or part of the month from the actual date of deduction to the actual date of payment
c)	Late filing of Form 27EQ	Minimum penalty @200 per day until filing of return, Maximum penalty can be equal to the amount of TCS
d)	Not filing of Form 27EQ	Minimum penalty Rs. 10,000, Maximum penalty Rs. 1,00,000

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