

TCS on sale of goods exceeding Rs 50 lakhs w.e.f 1st October 2020 after considering CBDT guidelines

The Government of India in the Finance Bill, 2020 introduced a new sub section (1H) to section 206C of the Income Tax Act, 1961 (IT Act) widening the scope of tax collection at source.

Provision of the Income Tax Act

“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.”

Seller means a person whose total sales, gross receipts or turnover from the business carried on by him exceed 10 Crores during the previous year ended on 31st March.

Explanation



- Sale of goods of aggregate value > 50 lakhs in a year to a buyer
- Goods does not include exports, goods covered u/s 206C(1), 206C(1F) and 206C(1G) viz., alcoholic liquor for human consumption, tendu leaves, timber, scrap, coal, lignite, iron ore, sale of motor vehicle, foreign remittances and overseas tour program package etc.
- If buyer has not deducted TDS on purchase of goods then the Seller shall collect TCS @ 0.1%¹ at the time of receipt of consideration in excess of Rs.50 lakhs.
- Applicable with effect from 01st October 2020

¹ Due to global pandemic, the rate of TCS has been reduced from 0.1% to 0.075% till 31/03/2021 as per the Taxation and Other Laws (Relaxations and Amendment of certain provisions) Bill, 2020.

There was uncertainty regarding applicability of TCS on the amounts standing as trade receivables on 30/09/2020 and whether to include GST component while calculating TCS.

Thus, Central Board of Direct Taxes² (CBDT) has recently issued guidelines and clarified that even if sale is carried out before 01 October 2020, TCS should be collected if the consideration is received on or after 01 October 2020. Further, the guidelines also gives an impression that TCS is required to be collected on the total amount of sale consideration including the GST component.

Important points:

1. **Seller:** Seller means a person having turnover/gross receipts/total sales from business exceeding Rs.10 Crores during the financial year (FY) preceding the FY in which goods are sold.
2. **Buyer:** No TCS is required when the buyer is from the following category:
 - a) Central Government
 - b) State Government
 - c) Embassy
 - d) Commission / High Commission
 - e) Legation
 - f) Consulate
 - g) Trade representation of foreign state
 - h) Local Authority
3. **Services:** These provisions are applicable only in respect of transaction of sale of goods and do not apply to sale of services.
4. **Goods:** The term goods have not been defined in the Income Tax Act, hence we may refer to Sales of Goods Act, 1930 or Goods and Service Tax Act 2017 for the meaning of goods. In both the Acts, the term "Goods" has been defined as *"Goods" means every kind of movable property other than money and securities but 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.*

² Circular No. 17 of 2020 dated 29 September 2020.

5. **COVID-19 relief:** Due to COVID-19 pandemic, the TCS rate of 0.1% has been reduced to 0.075% till 31/03/2021 as per The Taxation and Other Laws (Relaxations and Amendment of certain provisions) Bill, 2020.
6. **PAN/Aadhar not provided by buyer:** If the buyer does not provide PAN/Aadhar number then the TCS shall be collected at 1%, instead of 0.1%. In such situation, Covid-19 related concession is also not available.
7. **Exempted transactions:** If the buyer is liable to deduct tax at source on goods purchased by him and the buyer has deducted the amount then the seller is not required to collect TCS on such transactions. Both the conditions need to be fulfilled i.e., the buyer should be liable for deduction of tax at source and has deducted such amount.
8. **Exports and other provisions relating to TCS:** TCS is not required to be collected in respect of Export sales as the consideration for sale of goods excludes consideration towards goods exported out of India and even the definition of buyer excludes a person importing goods from India. Further, this provision will also be not applicable if TCS is required to be collected by the seller under section 206(1) or 206C(1F) or 206C(1G) viz., for sale of alcoholic liquor for human consumption, tendu leaves, timber, scrap, coal, lignite, iron ore, sale of motor vehicle, foreign remittances and overseas tour program package etc. Thus, if a seller is receiving consideration of 1 Crores from a buyer for sale of scrap or sale of motor vehicle, then provision u/s 206C(1) and 206C(1F) would be applicable.
9. **Qualifying amount:** The amount on which the tax needs to be collected shall be limited only to the consideration for sale of goods actually received. The liability is triggered at the point of receipt of amount once the threshold of Rs.50 Lakhs is crossed. In the absence of sale of goods and amount received, the liability does not exist. The sale consideration can be interpreted as amount received in advance or in arrears. In case, if there is some change in valuation say under GST law then too the requirement of TCS will be qua actual consideration and not qua valuation under the GST law.

10. TCS on trade receivables standing in books as on 30 September 2020: The trigger point of collection of TCS is receipt of consideration for sale of goods and hence one may say that as the consideration is received on or after 01 October 2020, TCS provisions are applicable on such transactions and TCS should be collected by the seller.

The CBDT² has recently issued a clarification which gives an impression that in cases where goods have been sold prior to 01 October 2020 and the consideration is received on or after 01 October 2020, TCS should be collected.

However, an alternate view is also possible because for this provision to be applicable both the conditions need to be satisfied:

- The sale of goods is carried out i.e., sale of goods must have been actually effected and
- The consideration must be received in respect of such sale.

Therefore, in cases where goods have already been sold prior to 01 October 2020, TCS may not be required to be collected because these provisions are effectively operative from 01 October 2020. Needless to mention, considering that CBDT has issued a clarification that TCS should be applicable on receipt of consideration on or after 01 October, 2020 even if sale is made before 01 October 2020, litigation cannot be entirely ruled out.

11. Point of tax collection:

Sr. No	Situation	Remarks
1	Sale order is before 01/10/2020 but the sale is not completed as up to 30/09/2020.	TCS would be applicable in respect of amount received on or after 01/10/2020.
2	Sales Order executed on or after 01/10/2020	TCS shall be applicable on the amount received as consideration.
3	Sale is completed before 01/10/2020 and the payment is received after 01/10/2020	As per CBDT² Circular, TCS shall be applicable as the consideration is received after 01/10/2020.

² Circular No. 17 of 2020 dated 29 September 2020.

- 12. Cancellation of sale:** Practical difficulties may arise where advance is collected for sale of goods and TCS is remitted and subsequently the contract is cancelled and the amount is refundable. In such cases, the seller may only refund the primary sale consideration received and not the TCS amount, since such TCS amount is already credited as prepaid taxes and will appear in Form 26AS and the buyer should not insist for refund of the TCS amount as the buyer would otherwise be entitled to credit of the TCS in the return of income.
- 13. Payments by third Party:** In quite a few cases, the sale proceeds are partly paid by the Government as a release of subsidy, or the costs are funded by third-party payments. All such transactions also amount to receipt on behalf of the buyer and hence the seller will be under obligation to remit TCS.
- 14. Whether consideration will include the amount collected towards GST:** The word consideration has not been defined and hence one may say that consideration amount will be inclusive of GST for the purpose of collection of TCS. **The CBDT² has recently issued a clarification which gives an impression that TCS should be collected on the amount of consideration including GST.** However, one may argue that when it comes to withholding taxes at source, TDS is not deducted on the GST element, hence similar view should also be applicable in case of tax collection at source and given that GST is a separate tax, it should not be included for the purpose of collection of TCS. Needless to mention, considering that CBDT has issued a clarification that TCS should be applicable on receipt of entire consideration including GST, litigation cannot be entirely ruled out.
- 15. Should TCS amount be included in the invoice:** As such, there is no provision which mandatorily requires the seller to include the amount of TCS in the tax invoice. However, if the amount of TCS is not included in the invoice, then the buyer would not be aware of the total amount of consideration payable to the seller and therefore it would be advisable for the seller to add the TCS figure in the invoice itself and also raise an accounting entry in the books of accounts as a TCS liability even though not payable until the receipt of consideration. It may be noted that even though if the TCS amount is debited to the buyer, the liability to deposit TCS u/s 206C(1H) does not arise till receipt of consideration.

² Circular No. 17 of 2020 dated 29 September 2020.

- 16. Impact of Credit notes and Debit notes:** If sales return/credit note/debit note is before receipt of any consideration, then the impact thereof will be included in the amount of consideration, and accordingly, on receipt of the revised consideration, the provisions of TCS would be applicable. If the amount of consideration is already received and TCS is collected and paid, no impact thereof will be required to be made at the time of passing entry for sales return/credit note/debit note. However, against the subsequent realization, if the same gets adjusted and net consideration is paid then on such net consideration TCS should be collected.
- 17. Whether TCS Provisions would be applicable if the amount of sale consideration is adjusted against the amounts payable for purchases from said party:** In such a situation, though the amount is not received in cash mode, however there is a deemed receipt of consideration through indirect means i.e., through an adjustment of receivable and payables account and hence TCS should be collected under such transactions. Even a past, present or future act is valid consideration under the Contract Act and therefore consideration would be deemed to have been received on an adjustment of mutual liabilities.
- 18. TCS applicable even on part receipt of consideration:** M/s ABC (Turnover for the FY 2019-20 was Rs.25 Crores) from the period 01 April 2020 to 30 October 2020 has sold goods worth Rs.50 Lakhs to Mr A and the consideration has been received to M/s ABC. Thereafter, M/s ABC again sold goods worth Rs.75 Lakhs on 01/11/2020 and till 30/11/2020, M/s ABC has received only Rs.60 lakhs from Mr A. Here in this case, M/s ABC will have to consider the receipt of amount of Rs.60 lakhs inclusive of TCS and accordingly compute the amount of TCS on gross up basis as under;
Amount Received / (100 + Rate of TCS) * Rate of TCS = $60,00,000 / 100.075 * 0.075\% = \text{Rs.}4,497/-$
- 19. Due date of payment of TCS and disclosure in TCS return:** The amount collected as TCS by the seller (other than an office of the Government) shall be paid to the credit of the Central Government within one week from the last day of the month in which the collection is made. These transactions are to be reported by the sellers in Form No. 27EQ.
In the above example, M/s ABC has to deposit the amount of Rs.4,497/- to the Government treasury by 07/12/2020 and such transaction will have to be reported by M/s ABC in Form No. 27EQ for the quarter October - December 2020.

- 20. Whether TCS set off would be available:** No set off is allowed under the Act. E.g., If M/s PS Ltd on 01/10/2020 has sold goods worth Rs 1 Crore to M/s SD Ltd and collected TCS of Rs.3,750/-. Thereafter, on 15/10/2020, M/s PS Ltd purchases goods worth Rs 2 Crores from M/s SD Ltd (or any other party), who therein collects Rs.11,250/- as TCS. Here in the given example, M/s PS Ltd cannot take credit of Rs.11,250 while depositing Rs.3,750/-, nor can M/s SD Ltd (or any other party) take any set off while depositing TCS of Rs.11,250/-.
- 21. Person having commission income along with sale of goods:** This provision is applicable to those persons, whose sales or receipts or turnover during the previous year ended on 31 March is more than 10 Crores. Thus, if a person is having two types of income from a business i.e., commission income and sale of goods, then both the receipts from the Commission business and the sales from the trading business will be considered for determining the limit of turnover of Rs.10 Crore. E.g., If a seller is having commission income of Rs.5.5 Crores and Sales of Rs.6 Crores for the year ended 31 March 2020, then the provision u/s 206C(1H) will be applicable to such seller in the FY 2020-21 from 01 October 2020 onwards and accordingly the seller needs to collect TCS on receipt of consideration from the sale of goods subject to other conditions. Despite the applicability of this provision, TCS will not be required to be collected in respect of consideration received by the seller with regards to commission income.
- 22. TCS not applicable on transactions carried through Exchanges:** CBDT² has clarified that TCS is not applicable in relation to transactions in securities and commodities which are traded through recognised stock exchanges or recognised clearing corporation located in International Financial Service Centre.
- 23. TCS no applicable on supply of fuel to Non-resident airlines:** CBDT² has clarified that TCS is not required to be collected on sale consideration received for fuel supplied to non-resident airlines at airports in India.

² Circular No. 17 of 2020 dated 29 September 2020.

- 24. TCS applicability on sales to a person located in special economic zone:** TCS is not required to be collected if the goods are exported out of India. Given that the special economic zone (SEZ) is located within the country's national borders, sale of goods to a person located in SEZ would not mean that the goods are exported out of India, hence TCS should be applicable on such sales, subject to fulfilment of other conditions.
- 25. Consideration of 50 lakhs is per year qua buyer:** TCS is required to be collected if the value of consideration in respect of sale of goods is more than 50 lakhs qua buyer for a year and only in respect of the consideration in excess of 50 Lakhs. E.g., M/s MU Ltd, has sold goods worth Rs 25 Lakhs to Mr. Ron from April 2020 to September 2020. Thereafter, M/s MU Ltd sells goods worth Rs 30 Lakhs to Mr. Ron on 01/10/2020. Here, M/s MU Ltd will have to collect TCS only on 5 lakhs.
- 26. TCS not applicable on transfer of one branch to another:** The preliminary condition for applicability of provision of TCS is that there should be two parties involved in a transaction viz., a seller and a buyer. Further, there must be a sale of goods between the two parties. The activity of transfer of goods from one branch to another should not be construed as a sale transaction and accordingly TCS need not be collected on inter branch transfer of goods. Moreover, even if this type of transactions are held to be a sale of goods, TCS should not be applicable because as per the Income-tax Act, 1961 both the seller and the buyer are one and the same person and one cannot collect taxes for himself on his own.

Let us take a look at some illustration for better understanding of the new provision:

Sr. No	Turnover for PY 2019-20 (Rs.)	Turnover for PY 2020-21 (Rs.)	Buyer (Nature of Goods)	Receipts from Buyer upto 30 th September 2020 (Rs.)	Receipts from 01/10/2020 to 31/03/2021 (Rs.)	TCS u/s 206C(1H) (Rs.)	Remarks
1	13 crore	9 crore	M/s Sam Trading Co (Papers)	24 lakhs	65 lakhs	2,925	0.075% ¹ on 39 lakhs (Being excess of Rs.50 lakhs)
2	10 crore	25 crore	M/s Shyam & Co (Books)	50 lakhs	40 lakhs	Not applicable	Turnover of preceding PY does not exceed 10 crores
3	12 crore	14 crore	PK & Associates (Mobile phones)	55 lakhs	20 lakhs	1,500	0.075% ¹ on 20 lakhs.
4	15 crore	20 crore	Local Authority (Stationery)	85 lakhs	15 lakhs	Not applicable	The clause is not applicable for sale to local authority
5	16 crore	10 crore	Mayur (Motor Vehicle)	0	65 lakh	Not applicable	Section 206C(1F) shall be applicable.

¹ Due to global pandemic, the rate of TCS has been reduced from 0.1% to 0.075% till 31/03/2021 as per the Taxation and Other Laws (Relaxations and Amendment of certain provisions) Bill, 2020.

The CBDT Circular is a welcome step that provides clarification on some critical issues, considering that non-compliance or inaccurate compliance with TCS provisions has onerous consequences. Further, certain other aspects relating to TCS provisions are not addressed in the Circular which may need detailed examination in the absence of any clarification.

30 September 2020

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