



Tax Collection At Source (TCS) under Income Tax Act, 1961
(amendments w.e.f. 1st October, 2020)

In this article we will be discussing TCS U/s 206C(1H) as applicable in case of Sale of Goods.

What is TCS ?

Tax collected at source (TCS) is the tax payable by a seller which he collects from the buyer at the time of sale.

Finance Act, 2020 has inserted two new subsections **(1G)** & **(1H)** in **Section 206C** for widening the tax base by introducing TCS provision on remittance of Foreign Ex & overseas tour package and on Sale of Goods respectively. Both these (1G) & (1H) is made effective from 1st October, 2020

Collection of TCS on sale of goods is not new and it is in force from past many years but was restricted to certain specified category of goods vis-à-vis –

U/s 206C(1) Alcoholic liquor for human consumption , Tendu leaves, timber Any other Forest produce, Scrap, Minerals, being coal or lignite or iron ore

U/s 206C(1F) sale of a motor vehicle of the value exceeding Rs.10 Lakhs



TCS U/s 206C(1H) on Sales of Goods

Applicability Conditions of Sec 206C(1H) :-

- ✓ Seller of Goods will collect TCS from Buyer
- ✓ **“Seller”** means a person whose **total sales, gross receipts or turnover from the business carried on by him exceed Rs.10 crore** during the financial year immediately preceding the financial year in which the sale of goods is carried out. ***(Ex. If turnover of seller in the year 2019-20 was exceeding Rs.10 crore, then only TCS provision will be applicable in the year 2020-21).***
- ✓ TCS is to be collected when Seller receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding **Rs.50 Lakhs in a financial year**
- ✓ TCS is to be collected at the time of receipt of consideration exceeding Rs.50 Lakhs.
- ✓ Rate of TCS @ 0.10 % of Sales consideration exceeding Rs.50 Lakhs. (Rate of TCS will be @ 0.075% for the period upto 31st March, 2021).
- ✓ If PAN / Adhaar is not provided by the buyer , then rate of TCS will be @ 1%



Non Applicability of Sec 206C(1H) :-

- On goods being exported out of India;
- On goods covered in sub-section (1) such as scrap, tendu leaves, timber etc
- On goods covered in sub-section (1F) sale of a motor vehicle of the value exceeding Rs.10 Lakhs;
- On goods covered in sub-section (1G), TCS by authorized dealer, of the buyer (person) making remittance out of India under RBI Liberalised Remittance Scheme and TCS by seller of an overseas tour programme package, who receives any amount from a buyer, being the person who purchases such package;
- If the buyer is liable to deduct TDS under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.
- It is not applicable where buyer of goods are any of following –
 - Central Government, State Government, embassy, High Commission, legation, commission, consulate, trade representation of a foreign State;
 - local authority
 - a person importing goods into India or
 - any other person as the Central Government may notify.



*CBDT has recently issued clarification guidelines vide **Circular No. 17 of 2020 dated 29th September, 2020**. However having regard to the provisions contained in section 206C(1H) as summarized above, there are many issues which may need more clarification from the government & CBDT to avoid any future disputes in this matter.*

In this present article, alongwith the clarification guidelines as issued by CBDT we are sharing our opinion also on when & how to comply with this TCS provision. Our opinion is purely our views and we highly recommend that you seek professional advice prior to initiating any action on specific issues.

How to Implement newly inserted TCS provision U/s 206C(1H)

- ✓ Seller should check its total sales, gross receipts or turnover in the FY 2019-20. If it is more than Rs.10 crore then 206C(1H) is applicable
- ✓ Then identify the customer(s) from whom total receipt is more than Rs.50 Lakhs or is going to be more than Rs.50 Lakhs
- ✓ This receipts are related to sales consideration & including GST or any other tax as may be charged on invoice.
- ✓ Instead of charging TCS on invoice issued for sales of goods, a Separate Debit Note should be raised for collection of Tax at Source. *It may have its inherent limitation and control risks.* It has also come to our notice that most of the industry participants are planning to collect TCS at the time of invoicing itself for better control purpose.
- ✓ Separate debit note is suggested because TCS is required at the time of receipt of consideration and not at the time of sale of goods.



- ✓ Seller should intimate all its buyer regarding this new TCS provision & also collect PAN / Adhaar. Non availability of PAN / Adhaar attracts higher rate of TCS @ 1%

Other Critical Issues associated with applicability of Sec 206C(1H)

1. Meaning of total sales, gross receipts or turnover-

The term "sales", "turnover" or "gross receipts" are not defined in the Act, therefore the meaning of the aforesaid terms has to be considered for the applicability of the section.

"Turnover" has been defined under Section 2(91) of the Companies Act, 2013 as follows: "2(91) "turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year

In the "Guidance Note on Terms Used in Financial Statements" published by the ICAI, the expression "Sales Turnover" (Item 15.01) has been defined as under:- "The aggregate amount for which sales are effected or services rendered by an enterprise. The term 'gross turnover' and 'net turnover' (or 'gross sales' and 'net sales') are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts".

2. Whether GST charged to be included in total sales, gross receipts or turnover?

Para 5.10 of "Guidance Note on tax Audit U/s 44AB of the Income tax act, 1961" published by the ICAI - Considering that the words "Sales", "Turnover" and "Gross receipts" are commercial terms, they should be construed in accordance with the method of accounting regularly employed by the assessee. Section 145(1) provides that income chargeable under the head "Profits and gains of business or



profession" or "Income from other sources" should be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. The method of accounting followed by the assessee is also relevant for the determination of sales, turnover or gross receipts.

So in case exclusive method is followed whereby GST charged is entered in separate a/c and further deposit of GST is adjusted from that separate a/c itself then GST should not be included in amount of sales / turnover / gross receipt.

3. Whether GST charged to be included in value of consideration received ?

Yes.

4. Whether TCS to be collected on whole amount received or amount in excess of Rs.50 Lakhs ?

TCS is to be collected on amount received in excess of Rs.50 Lakhs during a financial year.

5. For calculating threshold of Rs.50 Lakhs being triggering event of TCS, whether sales made upto 30th Sept, 2020 is included?

TCS is required to be collected at the time of receipt of sales consideration and not at the time of sales. So as and when receipts of sales consideration exceed Rs.50 Lakhs TCS is required to be collected.

6. Whether TCS is required to be collected on amount received in excess of Rs.50 Lakhs upto 30th Sept, 2020 ?

No.

For Ex. Amount received upto 30th Sept, 2020 is Rs.55 Lakhs, & on 1st October, 2020 amount received Rs.5 Lakhs. In this case TCS is required on Rs.5 Lakhs only which is received on or after 01st October, 2020 and in excess of Rs.50 lakhs.



7. Whether sale of services is also to be included while calculating applicability threshold of Rs.10 crore turnover?

Yes.

Turnover is required to be seen for the business. So sale of goods as well as services both will be included to ascertain applicability threshold of Rs.10 crore.

8. Whether TCS should be collected on Advance received ?

Yes

9. Whether TCS required to be collected on Sale value including GST or Sale value excluding GST ?

An earlier FAQ issued by the Income Tax Department on TCS U/s 206C(1) provides that the TCS shall be collected on amount inclusive of VAT /Excise /GST.

As per para 4.6 of CBDT circular 17 of 2020 dated 29th Sept, 2020, it is clarified that no adjustment on account of sales return or discounts or indirect taxes including GST is required to be made for collection of tax since collection is made with reference to receipt of amount of sales consideration.

Considering this, in our opinion TCS to be collected on inclusive of GST.

10. Whether TCS U/s 206C(1H) applicable on sale of Motor Vehicle?

Sec 206C(1F) is applicable on sale of motor vehicle of the value exceeding Rs.10 Lakhs. It is clarified that TCS under sub-section (1H) will be applicable in cases where TCS is not applicable under sub-section (1F) and other conditions as stipulated under (1H) is fulfilled.



11. Whether GST is required to be charged on value including TCS or excluding TCS ?

As per corrigendum to CBIC Circular No. 76/50/2018-GST issued on dt. 07/03/2019, regarding correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961, it is provided that Section 15(2) of the CGST Act specifies that the value of supply shall include “any taxes, duties cesses, fees and charges levied under any law for the time being in force other than GST Act(s), if charged separately by the supplier. Further, it clarified that for the purpose of determination of value of supply under GST, TCS under the provisions of Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax

So GST is not to be charged on TCS

Other Compliance Required

- ✓ In case seller do not possess Tax Deduction and Collection Account Number (TAN), then apply for TAN
- ✓ TCS is required to be deposited with the government latest by 7th of the succeeding month.
- ✓ TCS Statement in Form 27EQ (commonly known as TCS return) is required to be furnished on quarterly basis within 15 days from the end of the quarter, except for the quarter ended March where due date is 15th May.
- ✓ TCS Certificate in Form 27D is required to be issued by the Seller to the Buyer within 15 days of due date of filing of TCS return.



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- ✓ Form 27D certificate will be issued only in those cases where valid PAN was provided.
- ✓ As per CBDT **NOTIFICATION NO. 54/2020 dated 24th July, 2020**, Collector (Seller) is required to furnish particulars of amount received or debited on which tax was not collected from the buyer, for the reason that TCS is not applicable due to the conditions specified in Sec 206C(1H).

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TCS on Sales of Goods under Income Tax Act effective from 01st Oct, 2020

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