

New TCS provisions wef 1st October 2020

By R R Modi

The relevant Section 206C(1H) reads as under:

206C(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,—

“**Buyer**” means a person who purchases any goods, but does not include,—

1. the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or
2. a local authority as defined in the Explanation to clause (20) of section 10; or
3. 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.

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| TCS Collection @ 0.1 % (0.075% till 31.03.21) | On receipt of sale consideration above Rs. 50 Lakh per buyer excepting those excluded. |
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| TCS payment | Withing 7 days of the next following month. |
| TCS Return in FORM 27EQ | Within 15 days from the end of each quarter except for the last quarter it is 15 th May. Late Fee – Rs. 200 Per day |
| TCS Certificate | Within 30 days from end of each quarter except for the last quarter is 30 th May. |

BULLET POINTS – Different situations

1. Why Such TCS when infrastructure technology of ITD is so strong. Bogus billing versus actual sales.
2. Who knows! probably in future TCS on Capital Gain might come??? Fund flow might become part of income tax return???
3. One seller ten buyers each buying less than Rs. 50 Lakh and consideration from each of them is less than Rs. 50 Lakh- No TCS.
4. Similarly, a buyer purchasing from 10 different seller each below Rs. 50 – He will not suffer any TCS.
5. TCS on GST is not a tax on tax. TCS is a mode of recovery of tax.
6. Date of raising of invoice not important.
7. Two main conditions (a) Previous FY turnover including GST and including services is more than 10 Crore, (b) The receipt of sale consideration during the year for each buyer is above Rs. 50 Lakh inclusive of GST but excluding receipt on account of services including GST on the services. – this is lower compliance burden.
8. When ‘A’ buys and sales (cross sales) both from/to ‘B’, and only the net consideration is paid, the TCS has to be calculated on such adjusted value. This point is not free from doubt as the mode of consideration is not defined moreover the Section uses the term ‘ Amount received’
9. Branch transfer – No sale.
10. High-sea sale - no TCS as it is done outside the territory of India.
11. Sale of Crops – yes, as it sale as per as per Sale of Goods Act.
12. Sale of immovable property – No TCS – No goods.
13. Sale of TDR – No TCS – No goods.

14. Sale of electricity from power grid to DISCOMS – No TCS.
15. Sale of electricity from DISCOMS to consumer – Yes, TCS applicable as it is goods.
16. As per circular 17 dated 29th September, 20 – transaction in electricity, renewable energy saving certificates traded through registered power exchanges has been excluded from TCS.
17. If invoice is for supply of plant as well as installation charges – Whether TCS on whole amount? Answer depends whether the other charges are incidental and part and parcel to the machinery cost.
18. Slump sale which includes immovable property – No clarity – on safer side should be subjected to TCS.
19. Sale of shares of closely held companies – TCS applicable – it is goods as per Sale of Goods Act, even though it is not goods as per GST. This is more clear from the exclusion of share transactions through recognized stock exchanges.
20. Goods sold- payment fully received – TCS deducted – later claimed raised for defect – money refunded back by the seller – whether adjustment of TCS reversal is allowed – NO- but can be adjusted from subsequent transactions with this party if any.
21. Effect of discounts, sales return or GST etc – Not relevant as TCS is on collection.
22. Forward contract – Yes, applicable.
23. Sale to SEZ / EOU – TCS applicable – export not out of India.
24. Sale of export promotion, Licences etc – TCS applicable.
25. Sale of old year receivable – no sale during the year – TCS applicable. It cannot be branded as retrospective.
26. Sale is 60 lakh – received during the year 49 lakh – no TCS.
27. Bill discounting – No TCS at the time of Bill Discounting – it's a loan.
28. Factoring – No clarity – In my view TCS will apply.
29. Sale of software – if it is in the nature of ready-made goods TCS will apply. If it is in the nature of royalty NO TCS will apply.
30. Car Dealer – If 1F applicable no 1H if 1F not applicable than 1H will apply.
31. If motor car sold to consumer – value of each motor car is Rs. 10 lakh or less – TCS U/s 206(1H) will apply if sale consideration exceeds Rs. 50 Lakh.

32. Cash sale – very difficult to sustain cash sale without TCS if Cash sale amount is very high, probably it might invite 1 % TCS for no PAN. Better to avoid cash sales on large scale, this might be treated as intentional bypassing of TCS provisions.
33. Whether NIL or Lower TCS certificate can be obtained? – No such provisions so far.
34. Transaction in commodities and securities through recognized stock exchange etc has been excluded from TCS – refer circular no 17 dated 29th September, 2020.
35. If fuel is supplied Non-resident airlines at Indian airports – TCS is excluded.
36. Buyer does not include – government, embassy, High Commission, Consulate, trade representation of a foreign state, local authority, Indian importer.
37. TCS applicable to even if buyer is PSU, Government companies or corporations.
38. Buy back of shares – No clarity.
39. Invoice/debit note – in my view debit note should be preferred instead of adding in invoice. In invoice, should be shown .075% will be adjusted out of the receipts till 31st March 2021 towards TCS, and 0.1 % (TCS) will be adjusted out of the receipts after 31st march 2021. I am made to understand that SAP/ORACLE have changed their software to include the same in invoice but the problem will arise when the payment is not received till 31st march 2021.

194 - O

1. Payment gateways may not make TDS in 194 O subject to certain conditions.
2. In case of insurance agents /aggregators, 194 O is applicable only in the first year and not in subsequent years.
3. TDS rate is 1 %.
4. In case of individual or HUF being e-participant, if the gross amount of sale of goods or services or both does not exceed Rs. 5 lakh in a year- NO 194 O.

LRS - 206 C (1G)

1. TCS @ 5 %. (10 % if no PAN)
2. Applicable only to residents.
3. Threshold ceiling 7 lakh.
4. Not applicable to NON- RESIDENTS.

Other related Sections in TCS

| S.N | Section of | |
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| 1. | 206C(1) | Alcoholic Liquor for Human Consumption, Tendu Leaves, Timber obtained under Forest Lease, Timber obtained by any other mode, Any other Forest Produce, Scarp, Coal or lignite or iron |
| 2. | 206C(1C) | Lease of following :- Parking Lot, Toll Plaza, Mining & Quarrying |
| 3. | 206C(1F) | Sale of Motor Vehicle exceeding 10 Lacs |
| 4. | 206(1G) | Amt reced by the Authorised Forex Dealer under Liberalised Remittance Scheme (LRS) of FEMA |
| 5. | 206C(1H) | All Goods excepting above |

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